# LEGISLATIVE COUNCIL

## Thursday, 15 October 2020

**The PRESIDENT (Hon. J.S.L. Dawkins)** 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*

### TEACHERS REGISTRATION AND STANDARDS (MISCELLANEOUS) AMENDMENT BILL

*Final Stages*

Consideration in committee of message No. 68 from the House of Assembly.

*Amendments Nos 4 to 10:*

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

That the Legislative Council do not insist on its amendments.

Subsequently, if that is agreed, there are a number of other motions that I will need to move as well in relation to the other amendments. Speaking broadly, I have not been actively engaged in the discussions. I am advised by my colleague the Minister for Education that there has been considerable discussion over the last weeks in relation to a compromised position on the amendments moved by the Legislative Council and the position initially adopted by the government.

My advice is that there has been the Teachers Registration Board perhaps equivalent of peace in our time, but I remain to be informed by others who might contribute to the debate, that is, that there is broad agreement from, potentially, a majority in this chamber to what is a compromise position, which I will put on behalf of the government. To commence the debate, I therefore have moved that the council does not insist on its amendments Nos 4 to 10.

**The Hon. K.J. MAHER:** Regularly, the Treasurer comes in misinformed about what is the state of negotiations and the position between parties. Gladly, this is not one of these occasions. What he says is what I understand to be the case, that there has been a lot of discussion and a compromise reached and that, as I understand it and as outlined by the Treasurer, is what the opposition will be agreeing to.

This bill has been passed in the other place with amendments. Labor supports the bill as it was received by the House of Assembly, but also supports the compromise position the Treasurer has foreshadowed in terms of the amendments that will not be agreed to and those that will be agreed to.

Teachers and educators play a vital role in our community—that cannot be underestimated. We are pleased the government has moderated its position on this bill to ensure appropriate representation from the Australian Education Union and the Independent Education Union. I thank the courageous and brave honourable members of the crossbench for moving amendments in this place to support the voices of teachers.

I note that some of the council suggestions were passed in the other place: the seats for at least six practising teachers are required on the board, and the opposition is pleased that the Teachers Registration Board will remain a body that is for and by teachers. This will keep guaranteed seats at the table for Australian teachers in their own profession's registration board, and I commend the work everybody has done on this bill and the position that has been reached.

**The Hon. C. BONAROS:** By all accounts, a consensus has been reached on this bill and those contentious aspects of the bill. We are pleased that SA-Best's amendments were supported in the lower house by both the government and the opposition regarding the board representation of the AEU and IEU, and that has been agreed by all. We appreciate the discussions that have taken place between the government and the opposition in relation to some of the more contentious aspects of the other amendments that were proposed, and it is fair to say that we all accept that compromises have been made on all sides in relation to those.

I want to make one comment in particular in relation to the code of conduct and, although there has been agreement to withdraw that code of conduct, the discussion that was had yesterday with the minister's advisers at the briefing, which was raised by me, was in relation to the consultation process and submissions that are made regarding the design of the code of conduct.

I put it directly to the government's team that we would be seeking an undertaking that those submissions, where it is not opposed, are made publicly available, given that the code is now no longer going to be included in the auspices of the bill for reasons which we accept as well. Given that that was the original position, there is absolutely no reason why submissions that are made should not be made publicly available because they will go to the heart of the development of that code.

If somebody wishes for that submission not to be made public, if somebody wishes for their name to be redacted from that submission, if there is a submission that is completely inappropriate for whatever reasons, then the government will be equipped to deal with those issues by either redacting, by not publishing, or by not publishing at all submissions that people do not want published or groups do not want published.

I think there was general consensus at the briefing yesterday that there is no reason why those submissions should not be made publicly available, given that they will go to the heart of the code. I did indicate that I would be seeking from the Treasurer a commitment to that effect. I understand, from the responses I received yesterday, that there was no issue with that being the case.

**The Hon. R.I. LUCAS:** The advice I have is that I understand the honourable member sought some assurance about the openness and transparency of any consultation on the code of conduct conducted by the board and suggested that stakeholders' submissions should be publicly available unless the stakeholder has specifically requested their submission to be confidential.

Before I continue with the advice that I have, I am further advised that, whilst the member has talked about decisions of the government, these will be decisions for the Teachers Registration Board, not the government, and undertakings the Teachers Registration Board will give. I am happy to convey those undertakings from the board, but it will not be a decision for the government, as I understand it.

The advice I have is that this is a matter for the Teachers Registration Board at the time of consultation. The presiding member of the board and the registrar, in consultation with the board to date, indicate it would be their intention to make available, where appropriate, submissions from stakeholders as part of consultation on a proposed code of conduct.

As to the terms of the undertaking that the honourable member is seeking from the government, I would read that to be, from the presiding member of the board and the registrar, an agreement that, where they say 'where appropriate', there might be appropriate redactions, as the Hon. Ms Bonaros has indicated there might need to be in the circumstances that she outlined. So I am therefore pleased, on behalf of the presiding member of the board and the Registrar, to give that undertaking to the honourable member.

Motion carried.

*Amendments Nos 1 and 3:*

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

That the Legislative Council do not insist on amendments Nos 1 and 3 and agrees to accept the alternative amendments made by the House of Assembly in lieu thereof.

I will not add any further detail. They are part of a package we have just had a discussion about. I do not believe there is need for any further discussion, at least from the government's viewpoint.

Motion carried.

## STATUTES AMENDMENT (NATIONAL ENERGY LAWS) (PENALTIES AND ENFORCEMENT) BILL

*Second Reading*

Adjourned debate on second reading.

(Continued from 22 September 2020.)

**The Hon. C.M. SCRIVEN (11:17):** I rise on behalf of the opposition and indicate that I am the lead speaker in this place. Like a number of similar laws, this legislation has been developed nationally by the COAG Energy Council. As such, the opposition will be supporting it. We have spoken before about legislation that is designed in this way, with the involvement of COAG in such a direct way. It means that we are able to put aside some of our political differences and work for the greater good of the state and the nation.

This bill amends three different laws: the National Electricity Law, the National Energy Retail Law and the National Gas Law. The member for West Torrens in the other place was able to ask a number of questions when in committee, which has addressed some of the things that needed clarification. In particular, this talks about the penalties and has increased the information-gathering powers of the Australian Energy Regulator. That is something the opposition thinks is quite overdue and welcomes. It is a positive reform. The opposition congratulates the COAG Energy Council and indicates that we will be supporting the passage of this bill in all stages.

**The Hon. R.I. LUCAS (Treasurer) (11:18):** I thank the honourable member for her contribution to the debate and her willingness to support it.

Bill read a second time.

*Committee Stage*

Bill taken through committee without amendment.

*Third Reading*

**The Hon. R.I. LUCAS (Treasurer) (11:21):** I move:

That this bill be now read a third time.

Bill read a third time and passed.

## RADIATION PROTECTION AND CONTROL BILL

*Committee Stage*

In committee.

Clause 1.

**The Hon. M.C. PARNELL:** To assist with the speedy resolution of this bill, I had two sets of amendments filed: a set 1 and a set 2. Following some concerns that were raised by the government, I have rewritten two of those amendments. In my set 1, I will not be moving amendments Nos 1 or 5, and in their place I will be moving amendments Nos 1 and 2 in my second set. The first amendment on file according to me—and I hope the Chair's notes are the same—is to clause 12.

**The Hon. K.J. MAHER:** For the sake of doing this efficiently, I might indicate the opposition's view about the amendments foreshadowed before we get there, to give some clarity. It might be easier to indicate that the opposition will be supporting the majority of the Greens' amendments. With amendment No. 1 and amendment No. 5, as the Hon. Mark Parnell has outlined, being replaced by

the second set of amendments, I can indicate that the opposition will be supporting both of the amendments in the second set. In the first set, we will be supporting amendments Nos 2, 3, 4, 6 and 8 and opposing amendments Nos 7 and 9. Just for clarity, I will say a little bit more about some of these amendments when we get there.

**The Hon. J.M.A. LENSINK:** In relation to the Hon. Mr Parnell's second set, the government is supporting both of those. I understand that his first one in that set, amendment No. 1 [Parnell-2], supersedes amendment No. 1 [Parnell-1] in his first set. I indicate, for the benefit of others, that he is nodding in agreement. His amendment No. 2 [Parnell-2] supersedes, in his first set, amendment No. 5 [Parnell-1]. He is indicating that is also correct. The government is opposing in [Parnell-1] amendments Nos 2, 3 and 4, supporting No. 6, opposing No. 7, supporting No. 8 and opposing No. 9.

Clause passed.

Clauses 2 to 11 passed.

Clause 12.

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

Amendment No 1 [Parnell–2]—

Page 14, after line 7—After subclause (7) insert:

(7a) Subject to subsection (7b), the Committee must publish the minutes of its meetings on a website determined by the Minister that is accessible by the public free of charge.

(7b) The Committee may omit, redact or delete, from minutes published under subsection (7a), any information that would make the minutes an exempt document under the Freedom of Information Act 1991.

This is a very simple amendment that requires the Radiation Protection Committee to publish its minutes. The change that was made to the original version of this amendment is that I have acknowledged that there may well be some parts of those minutes that would be exempt documents under the Freedom of Information Act. This amendment acknowledges that in those circumstances they may be redacted from the minutes. Otherwise, this is an amendment that goes to openness and transparency, and I am pleased that both the major parties are supporting it.

**The Hon. J.M.A. LENSINK:** I will provide some remarks in relation to this particular clause. As previously advised, the government is supporting this amendment, which seeks to make the minutes of the Radiation Protection Committee, established under the bill, publicly available on a website determined by the minister. The amendment further provides that the committee may omit, redact or delete from the minutes any information that would make the minutes an exempt document under freedom of information laws.

The functions of the Radiation Protection Committee are established in clause 10 of the bill and include advising the minister responsible for the act on various matters, including the formulation of regulations, regulatory codes and standards and technical matters regarding radiation protection and safety relating to human health and the environment. It also may investigate and report on matters relevant to the administration of the act.

A further function is to provide technical advice to the Minister for Health on matters related to the application or use of radiation for medical purposes. The minister may also refer any application to the Radiation Protection Committee for advice. The functions of the committee are such that there is a reasonable expectation that the minutes of its meetings will on occasion contain information that would otherwise be protected or require consultation with affected parties under the Freedom of Information Act 1991.

This includes cabinet documents, such as draft regulations yet to be considered by cabinet; documents affecting law enforcement and public safety, such as investigations of offences and details of security-enhanced radioactive sources; documents affecting personal affairs, such as allegations of improper conduct yet to be established by the judicial process; documents affecting business affairs, such as information of commercial value; and documents affecting the conduct of research, such as consideration of applications for use of radiation in research or updates on research being undertaken.

Given that the minutes of the Radiation Protection Committee will at times contain material that would otherwise be protected under freedom of information laws, it would be inappropriate to disclose the minutes publicly without due consideration of these matters. The Hon. Mark Parnell's original proposed amendment did not consider these issues. I commend the honourable member and the opposition on working with the government towards a more workable proposal through application of a freedom of information lens when disclosing the minutes of the committee.

Amendment carried; clause as amended passed.

Clauses 13 to 27 passed.

Clause 28.

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

Amendment No 2 [Parnell–1]—

Page 21, lines 15 to 18 [Clause 28(2) and (3)]—Delete subclauses (2) and (3)

This is a most interesting provision. When I think of the precedent that it creates, it suggests to me that we had better amend this clause because in a whole lot of other areas of law a precedent may be set that we would rue. In a nutshell, clause 28 of the bill provides, 'A person must not carry on an operation for the conversion or enrichment of uranium.' In other words, it is a criminal offence. It is a criminal offence of such significance that the maximum penalty is a $1 million fine for breaching this provision of the act, but then the clause goes on to say that this section will expire 'on a date to be fixed by proclamation'.

In other words, the parliament, after having decided that an offence is so egregious that it will attract a $1 million fine, goes on to say that when the executive government of the day decides that it is no longer an offence, they can effectively just remove it from the statute books. What a remarkable way to handle criminal offences!

My amendment is very straightforward. It basically removes the section of the clause that allows the section to expire on a date to be fixed by proclamation. If my amendment is successful, we revert back to the normal principle, which is that parliament, having decided that something is a criminal defence with a $1 million fine, should also get to decide when it is no longer a criminal offence. It is a really straightforward matter of principle, and I am surprised that it got through as far as it did in the drafting this bill. I would urge members to support my amendment, which provides that any change to the criminal offence and penalty will be a matter for parliament, not for the executive by proclamation.

**The Hon. J.M.A. LENSINK:** The Hon. Mr Parnell is a very learned colleague, and we often listen to his advice because of his great wisdom and experience, but on this occasion he is referring to a precedent that was set in 1982, so the honourable member doth protest a little much.

The government, as I have previously indicated, is opposing this amendment which removes provisions that allow the section that prohibits enrichment or conversion of uranium to be expired by proclamation. The provisions have been carried over verbatim from the 1982 act in section 27 that the bill will replace and have been in place since the commencement of the 1982 act.

The provisions are in place because the prohibition of enrichment or conversion of uranium is also prohibited by commonwealth law under clause 10 of the commonwealth Australian Radiation Protection and Nuclear Safety Act 1998. If commonwealth law was changed to allow for enrichment or conversion of uranium, it would be highly unusual if those laws would allow state laws to continue to apply. The National Radioactive Waste Management Facility is a case in point.

The commencement of enrichment or conversion of uranium in Australia would be a national issue and decision, and the South Australian ban on enrichment would be redundant if that were to occur. The amendment is intended to ensure that the parliament is responsible for any decision to allow for the enrichment or conversion of uranium in South Australia, but the reality is that any amendment sought through the parliament to remove the section would be for the purpose of removing a redundant provision. The existing identical provisions have not been used in the 38 years they have been in place, so the concern for the inappropriate use is unfounded.

**The Hon. K.J. MAHER:** As outlined before, I indicate that the opposition will be supporting this amendment.

**The Hon. C. BONAROS:** I also indicate for the record that we will be supporting this amendment.

**The Hon. J.A. DARLEY:** I indicate that I will be opposing this amendment.

The committee divided on the amendment:

Ayes ..... 11
Noes..... 8
Majority..... 3

AYES

| | | |
|---|---|---|
| Bonaros, C. | Bourke, E.S. | Franks, T.A. |
| Hanson, J.E. | Hunter, I.K. | Maher, K.J. |
| Ngo, T.T. | Pangallo, F. | Parnell, M.C. (teller) |
| Pnevmatikos, I. | Scriven, C.M. | |

NOES

| | | |
|---|---|---|
| Centofanti, N.J. | Darley, J.A. | Hood, D.G.E. |
| Lee, J.S. | Lensink, J.M.A. (teller) | Ridgway, D.W. |
| Stephens, T.J. | Wade, S.G. | |

PAIRS

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| Wortley, R.P. | Lucas, R.I. |

Amendment thus carried; clause as amended passed.

Clauses 29 to 48 passed.

Clause 49.

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

Amendment No 3 [Parnell–1]—

Page 35, lines 30 and 31—Delete 'more stringent than the most stringent of all the limits, or'

In some ways, this amendment is similar in theme to the earlier one, but it deals with a quite remarkable provision in the bill that seeks to hamstring the South Australian parliament in relation to what we might want to do in the future in relation to radiation standards. I will paraphrase, then I will go to the exact words. In a nutshell, what this provision says is that South Australia must never be out of step with international or national standards in relation to exposure to ionising radiation.

In other words, this provision, clause 49 of the bill, effectively says that the South Australian parliament washes its hands of standard-setting unless we are in lock step with other jurisdictions. In other words, do not ever try to be tougher than anyone else. You only have to think for a minute: if we applied that standard to other areas of law, we could never be the first to do anything. We would not have been the first to give women the vote and we would not have had the container deposit scheme. There is no shortage of things where we would not have been first if we had a provision like this in other bits of legislation. The words are:

Despite any other provision of this Act, no limit of exposure to ionising radiation may be fixed by the regulations or a condition of an authorisation imposed under this Act in relation to an operation for mining or mineral processing—

here are the words—

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…

In other words, we are promising in legislation that in the future we will never try to impose standards that are tougher than effectively the lowest common denominator. That is effectively what this means.

I understand that the government, and even the opposition and the Greens, accept that there is a lot to be gained from consistency of approach. My feeling is that even if my amendment passes and we reserve for ourselves the right to be tougher, chances are we will not. Chances are that the government of the day will probably go with the flow and adopt the standards that international authorities might have done or that the Australian parliament might have done. That is in all likelihood the way it will go, but it is an entirely different matter for this parliament to be putting into law a provision that says we may never be any different.

I want to reserve the right for this parliament to exercise sovereignty on the part of the people of this state, and if in the future conditions require it, yes, we could be tougher. We could have tougher standards. In all other areas of pollution there are differences, in all other areas of law and regulation there are differences, whether it is the criminal law or the civil law. It is not a uniform, internationally accepted regime. I put that on the record in my second reading contribution. It is contested turf what these radiation levels should be. There is lots of evidence that workers are exposed to unhealthy doses of radiation.

Within the scientific community and the health community there are differences of opinion. If those differences of opinion in the future mean that we protect our workers more, why would we write into legislation: we cannot, we cannot protect our workers anymore because we have agreed never to do anything different from other jurisdictions?

So this is an important amendment. I am very pleased to have the opposition on board. It simply deletes the words 'more stringent than the most stringent of all the limits'. In other words, it does allow us to protect citizens, to protect workers, even if the rest of the world is still languishing in old standards that do not sufficiently protect workers from ionising radiation.

**The Hon. J.M.A. LENSINK:** I think the honourable member once again demonstrates that he is very adept at his gymnastics in these areas. I think it is somewhat offensive to suggest that somehow the national standards are negligent and that those approaches that exist are not working in the best interests of any who may be exposed to these limits.

The honourable member's amendment would allow for occupation exposure limits for mining and mineral processing operations to be applied through regulations or as conditions of licence that are stricter than national and international standards. It needs to be noted, however, that it would not be applicable to the Olympic Dam mine, as section 8 of the Roxby Downs (Indenture Ratification) Act prohibits stricter controls from being applied to that mine, and neither this bill nor any amendment seeks to amend that act.

So, in essence, this amendment could only apply to other mines where there is exposure to radiation. Given the honourable member's second reading contribution focused almost entirely on Olympic Dam mine, it is a very important point to make that the proposed amendment would have no application to that mine.

More fundamentally, though, the then Labor South Australian government in 2004 agreed through the Australian Health Ministers' Conference to implement the National Directory for Radiation Protection, which establishes a nationally agreed and uniform approach to radiation protection and safety. The adopted national standards and codes of practice are a key part of national uniformity in radiation protection and reflect the best available international science.

The EPA supports the use of national and international standards and does not apply conditions of licence as a delegate of the minister contrary to national and international best available science. It should be noted that, although the section where the amendment is sought is limited to mining and mineral processing, the 20-millisievert limit is applied uniformly to all occupational exposure in South Australia. There is no special treatment for mining.

Also, the 20-millisievert limit operates alongside obligations for all operators to optimise protection of workers, keeping doses as low as is reasonably achievable, taking into account economic, social and environmental factors. The 20-millisievert limit is a very conservative upper limit based on potential risk to human health. Second reading contributions indicated BHP Billiton had previously agreed to meet a 10-millisievert limit, but the reality is that BHP are obliged to limit exposure as far as is reasonably achievable. Average exposure at Olympic Dam mine is consistently below five millisieverts per annum.

The Hon. Mark Parnell quotes the European Committee on Radiation Risk (ECRR) in stating that the current radiation standards are deficient and not suited for 2020. The ECRR is an informal committee formed in 1997 following a meeting held by the European Green Party at the European Parliament. ECRR is not a formal scientific advisory committee to the European Commission or to the European Parliament. A visit to their website, which is euradcom.eu, may interest members, but not their old one which, according to their current website, and I quote, 'should be assumed to be in the control of the nuclear/military complex'. This is not a reputable authority on the matter.

The standards that are currently applied in South Australia, and will be continued if the bill passes, are derived from an international, science-based governance framework which I will outline for honourable members. The United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) was established in 1955 by the United Nations. The UNSCEAR is the world's authority on the effects of ionising radiation.

The International Commission on Radiological Protection (ICRP) is an independent, not-for-profit organisation that provides recommendations and guidance on protection against ionising radiation. It has more than 250 globally recognised experts in radiological protection science, policy and practice from more than 30 countries. The ICRP makes recommendations on radiological protection, based on the advice of these international experts and using UNSCAR publications.

The International Atomic Energy Agency (IAEA) was formed by the United Nations in 1957. It published the safety requirements and guidance based on the recommendations of the ICRP. The most recent report of the UNSCAR to the United Nations General Assembly was presented in 2017. The ICRP published its most recent general recommendations in 2007, and more than 40 publications since that date. The IAEA published its most recent standards, including dose limits that are reflected in this bill in 2014.

The recommendations and requirements of these internationally-recognised bodies are reflected in Australia's Radiation Protection Standards and are adopted by South Australia. ARPANSA has updated its code for radiation protection in planned exposure situations, which sets out the requirements in Australia for the protection of occupationally-exposed persons, the public and the environment in planned exposure situations as recently as January 2020, which also maintains the 20 millisievert occupational exposure limit.

The Hon. Mr Parnell is incorrect in saying that national occupational exposure limits are out of date. If South Australia decided to have radiation dose limits that were contrary to international standards, it would be going against the world's authorities on radiation protection and would go against its national commitments to adopt Australia's national radiation standards. Strictly, limits would also have to be applied equally to all occupations, as there is no difference in the occupational limits applied to mining and those applied to other occupations that involve exposure to radiation. The national limit is applied in all circumstances.

The highest individual doses are most often in the medical sector, in nuclear medicine and diagnostic radiology, so the biggest impact of any reduction in an occupational dose limit away from the international standard would be to providers of medical diagnoses and treatment that potentially would limit their ability to diagnose and treat serious illness. Around the world, average natural background ionising radiation is between one and 13 millisieverts, and in some places as high as 100 millisieverts, and there is no evidence in these areas of abnormal incidence of harm.

To reflect on the Hon. Mr Parnell's second reading contribution, he suggests that all radiation is harmful and that he would prefer a dose limit of two millisieverts per year, and that is about the level of background radiation that every South Australian receives every year. The government opposes this silly amendment.

**The Hon. M.C. PARNELL:** I cannot let that go. Let me put it like this: even if honourable members accepted 90 per cent, or even 95 per cent, of what the minister said in relation to the desirability of letting people overseas determine what is safe for our workers, even if you accept, which I do not, the minister saying that these decades-old standards currently reflect best medical practice—even if you accept all of that—what that suggests to you is that future governments are likely to continue to toe the line, as they have. But that is not what this amendment is about. This amendment is about whether we write into South Australia law a provision that we must never, ever think independently on these things.

So if my amendment passes, and if the minister is correct, then whether it is her government or a subsequent government, chances are, if they agree with her, they will continue to adopt national and international standards, but at least the people of South Australia will know that, if new information came to light—new information that related to health impacts that were not known before—then at least the South Australian parliament has not ruled itself out of the game. A future South Australian government could, through regulations or through licences for mining companies or whatever, impose tougher standards on those licences. They do not remove the right to do that. My point is that you can agree, which I do not, with much of what the minister said and still support this amendment.

**The Hon. K.J. MAHER:** The opposition will be supporting this amendment. We agree with parts of what both the Hon. Mark Parnell and the government has said. We do not see that the government will necessarily depart from national or international standards; in fact, we think it highly unlikely that will happen, but see it more as an abundance of caution measure, just in case it is needed.

**The Hon. J.M.A. LENSINK:** I will just repeat that I think that honourable members who have expressed support for this bill are reflecting poorly on the regulators who currently have carriage of these standards in that of course they always take new evidence into account in setting standards. I think the Hon. Mr Parnell has been applying to some fairly undergraduate internet organisations to advance some of his causes. It is disappointing that the Labor Party in government chose this approach and now is supporting, for some reason, the Greens' amendment.

**The Hon. C. BONAROS:** SA-Best and I, for one, am always very grateful for the very well thought out contributions and material that the Hon. Mark Parnell shares with us in relation to some of the concerns that he has brought to our attention. This is certainly one of those, as was the previous one, and for those reasons we will be supporting this amendment.

**The Hon. J.A. DARLEY:** For the record, I will not be supporting the amendment.

The committee divided on the amendment:

Ayes ..... 11
Noes ..... 8
Majority ..... 3

AYES

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|---|---|---|
| Bonaros, C. | Bourke, E.S. | Franks, T.A. |
| Hanson, J.E. | Hunter, I.K. | Maher, K.J. |
| Ngo, T.T. | Pangallo, F. | Parnell, M.C. (teller) |
| Pnevmatikos, I. | Scriven, C.M. | |

NOES

| | | |
|---|---|---|
| Centofanti, N.J. | Darley, J.A. | Hood, D.G.E. |
| Lee, J.S. | Lensink, J.M.A. (teller) | Ridgway, D.W. |
| Stephens, T.J. | Wade, S.G. | |

PAIRS

Wortley, R.P. Lucas, R.I.

Amendment thus carried; clause as amended passed.

Clauses 50 to 64 passed.

Clause 65.

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

Amendment No 4 [Parnell–1]—

Page 47, lines 17 and 18 [Clause 65(16)]—Delete 'subsection (15), in determining whether to make any order in relation to costs' and substitute 'subsections (12), (13) and (15), in determining whether to make any order under those subsections'

This is a fairly minor but important technical amendment to the civil enforcement provisions in the act. Members would know that, as a former environmental lawyer, this is a subject very close to my heart. I have urged for the inclusion of civil enforcement provisions in all manner of acts relating to the environment or natural resources and, to be fair, those provisions are mostly there.

The ability of citizens to go to court where a government is unable or unwilling to enforce the law—citizens have that right. Civil enforcement exists in the Environment Protection Act for our general pollution laws. As a citizen, you can enforce the law in the development and the planning laws. You can enforce the law on natural resources, now landscapes, and I am pleased that the Radiation Protection and Control Bill also includes the ability for citizens to enforce the law.

There are some significant barriers to people being able to go to the umpire to have a law enforced. Those barriers include the issue of legal costs. The government has gone part of the way to addressing that barrier in this bill. It effectively says that if a person brings a case in the court and they lose—normally costs follow the event, so normally the loser would pay the winner's legal costs.

In cases like this, if the person who has brought the court case is not motivated by private profit or by any selfish desire but is motivated in the public interest, then the bill provides that the court might say, 'Look, you gave it a good shot. We know you were only doing this in the public interest. You weren't out for personal gain. We're not going to order you to pay the other side's costs.' That provision is already in this bill.

The bit that is not in the bill is two other provisions that are barriers to entry to being able to enforce the law. One is called security for costs and the other is undertakings as to damages. In other words, sometimes what can happen is the respondent to a court case can say, 'Look, this plaintiff, this conservation group, we don't think they have a very good case. Unless they can put $50,000 in the court's trust account, you shouldn't even let the case get started.'

Similarly, they can ask for undertakings as to damages and they can ask for compensation up-front. If the community group, for example, cannot afford to find that money and put it into the court's trust account, they do not even get the right to set foot in the door of the court. Basically, the case is effectively thrown out without any arguments being raised.

All my amendments do is provide that when the court is deciding whether to put in place any of these barriers, whether it is security for costs, undertakings for damages or legal costs more generally, then the court should be able to take into account the public interest nature of proceedings and should be able to say, 'Well, we are going to let them have their day in court because it's a public interest case and because we think that's the fair thing to do.'

Like I said, my amendment is fairly minor in many ways. It ensures that people should not have the door slammed in their face unnecessarily. I do understand that people can be worried about vexatious litigants who bring court cases and have no chance of success whatsoever. The courts already have the power to deal with vexatious litigants. That is not necessary here; those powers already exist.

My amendment, as I said, is a minor tweak to a provision that I otherwise support in clause 65, which allows third parties to enforce the law. It is a minor tweak to make sure that unnecessary doors are not slammed in the face of public interest litigants.

**The Hon. J.M.A. LENSINK:** The honourable member is indeed consistent in that he has throughout his career in this place advocated for third-party enforcement actions in a range of pieces of legislation, as he does in this particular amendment. The bill allows the court to determine not to order legal costs against an unsuccessful third-party applicant provided they did not stand to gain personally by the action, so if it was a public interest case or the case raised important issues in relation to the administration of the act. As the honourable member has outlined, that is already in the bill.

This amendment seeks to extend the same criteria to applications for security for costs, undertakings as to damages and compensation. The current drafting of the clause aligns with a similar provision in the Environment Protection Act. The court may only be in a position to determine that a case has substance if in the public interest or significance in relation to administration of the act towards the end of the proceedings and well after an application for security for costs or undertakings as to future damages have been sought.

It also needs to be considered that damages are to be awarded to a respondent that equate to loss or damage as a result of the actions of the applicant and the damage incurred is not reduced by the fact that an action was in the public or wider interest or of significance to the administration of the act. The government believes that it is possible that including such a provision may well increase the likelihood of vexatious court actions using the argument of public interest and therefore opposes this amendment.

**The Hon. K.J. MAHER:** I rise to indicate, as I did at the outset, that the opposition will be supporting this amendment. If there are concerns about vexatious litigants, there are other provisions within the law to declare and deal with people who are using court processes vexatiously.

**The Hon. J.A. DARLEY:** I will not be supporting this amendment.

**The Hon. C. BONAROS:** I think people have grown accustomed to having the door slammed in their faces by our courts on many occasions when the law as it stands is very much on their side because the reality is if you cannot afford it it is very much a matter of tough luck. Access is often denied to people who would otherwise have a very valid case based purely on their bank accounts and not having deep pockets. I think this is a very sensible amendment. I think any concerns around frivolous and vexatious actions are already able to be dealt with and if there is a genuine public interest here then the size of your bank account should not stand in the way of that.

Amendment carried; clause as amended passed.

Clauses 66 to 76 passed.

Clause 77.

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

Amendment No 2 [Parnell–2]—

Page 57, after line 9—After subclause (1) insert:

(1a) The Minister must ensure that information relating to the grant, renewal, variation, suspension, cancellation or revocation of any accreditation, authorisation, exemption or permit is entered on the register within 30 days after the grant, renewal, variation, suspension, cancellation or revocation takes effect.

Amendment No 6 [Parnell–1]—

Page 57, lines 13 to 17 [Clause 77(3) and (4)]—Delete subclauses (3) and (4) and substitute:

(3) Subject to subsection (5), the Minister must ensure that the register is kept publicly available for inspection without fee—

(a) on a web site determined by the Minister; and

(b) during ordinary office hours at a public office, or public offices, determined by the Minister.

(4) Subject to subsection (5), a member of the public may, on payment of the prescribed fee, obtain a copy of any part of the register.

Both these amendments have the support of most parties, as I understand it. Section 77 is the register of accreditations, authorisations, exemptions and permits, and these amendments simply require that the register be published online, rather than in a paper form—a very old school way of doing registers—and also that material is published in a timely manner, such as within 30 days. I think they are sensible amendments. They are consistent with public register provisions of other pieces of legislation, and I commend them to the chamber.

**The Hon. J.M.A. LENSINK:** In relation to amendment No. 2 [Parnell-2], the government supports this amendment, which requires that information relating to the grant, renewal, variation, suspension, cancellation or revocation of any accreditation, authorisation, exemption or permit is entered onto the register within 30 days after the grant, renewal, variation, suspension, cancellation or revocation takes effect.

The EPA is in the final stages of delivering an online public register for radiation protection matters—that will be finalised by Wednesday next week, I have just been advised. The system will in most cases upload relevant information to the public register immediately once an action is completed. There are, however, extremely important circumstances provided for in subclause (5) of the clause for the minister to restrict access to information included in the register for various highly significant and sensitive reasons, including to prevent a threat to the security of radioactive material or to protect the health or safety of the public.

Making such a decision may require significant liaison with other parties, including state and national security agencies, as well as adherence to governance processes that would ensure such decisions are robust and defensible. Given the gravity of the decision-making, it is incumbent on the parliament to ensure there is sufficient time to make such decisions, so as not to create undue pressure that may lead to errors that may create an avoidable security or public health risk. The Hon. Mr Parnell's original proposed amendment that required registration within seven days would have been unworkable in the circumstances I have just outlined. I commend him and the opposition for working towards a more workable proposal.

In relation to amendment No. 6 [Parnell-1], which we are speaking to concurrently, this amendment specifies that the public register must be publicly available on a website for inspection without charge and must also be available for inspection at a public office during office hours. It further provides that a member of the public may, on payment of the prescribed fee, obtain a copy of any part of the register.

The current provision of the bill that it is proposing to replace provides that the register may be provided by electronic means, which may include a website that is available for inspection during office hours, and that the ability to obtain a copy of any part of the register is more broadly available to persons, including companies and other corporations. The term 'electronic means' is less restrictive, in that future methods of providing the information, for example via an app, are able to be accommodated.

Similar to requirements to post notices in newspapers becoming redundant with the advent of websites, it may also be the case that websites are not the preferred media in the future. However, as mentioned against the previous amendment, the EPA is in the final stages of delivering its online public register, so the change in language is of no consequence. The outcome that the amendment is seeking is underway and will be delivered before the act is commenced. I commend both of the amendments.

**The Hon. C. BONAROS:** I indicate SA-Best's support for this amendment.

Amendments carried.

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

Amendment No 7 [Parnell–1]—

Page 57, after line 22—After subclause (5) insert:

(6) If the Minister restricts access to information on the register under subsection (5), the Minister must, within 7 sitting days after doing so, report to Parliament on the reasons for acting under that subsection.

The minister, in her contribution just now, alluded to the fact that there may be sensitive security issues, or there may be a need to protect public health that trumps the right of the public to be able to see everything that would normally be on the register. The Greens accept that as a proposition. In other words, the minister does have the right to restrict access to certain information.

The question that then flows is how that right is exercised and whether anyone should be told that they have exercised that right. My amendment is fairly straightforward. If the minister decides to restrict access to documents—in other words, the minister instructs the EPA not to put it on the public register, and I will be visitor No. 1 next Wednesday when it is launched—and instructs the EPA, 'Don't put this information on the website,' then my amendment provides that, within seven sitting days, the minister should report to parliament on the reasons why the register is not complete; in other words, why the minister has determined that the information should not be published.

Of course, the minister would need to be careful in giving parliament a reason not to effectively disclose all of the sensitive material that was sought to be prevented from being disclosed, but it could be as simple as saying that there were national security issues or there was some other particular reason. In other words, it is a level of accountability so that when a register is incomplete, the community knows that it is incomplete. They know it is incomplete because the minister has withheld something and they know the reason that the minister has provided. It is a measure that goes to transparency.

**The Hon. J.M.A. LENSINK:** The government strongly opposes this amendment. It kind of defeats the purpose of why you would decide not to publish things to then require the minister to provide reasons why. One of the examples that I have just been given is potentially talking about the publication of details of where plutonium is stored and potential significant risk to the public. I would strongly urge members not to support this amendment, which, as the member has outlined, requires the minister to report to parliament within seven days of making a decision to restrict information to be available through the public register on the reasons why they were restricted.

It is unclear what the amendment would achieve, as the reasons for restricting access to information are limited within the clause as being to prevent a threat to the security of radioactive material, to protect the health or safety of the public, or for reasons prescribed. I am advised that there are no other reasons being considered for inclusion in regulations at this time.

For the same reasons that information would be inappropriate to have on a public register, it would be difficult to provide any useful information to parliament in a public report. The information able to be provided to parliament would be limited to the fact that a determination had been made and for which of the two allowable reasons it was made, as in some cases it would be inappropriate to provide and identify an individual or business as it may jeopardise the security of a security enhanced radiation source.

This requirement would place a further administrative obligation on the EPA and the minister's office, and it is unclear from the amendment what benefit, if any, would be achieved, as I have outlined. There is no certainty as to the regularity of such determinations. It may be that reports are necessarily required very sparsely or they may be required on a weekly basis. The amendment proposes an obligation for each individual determination rather than a regular report on the use of the power, so the administrative burden for the EPA reduces their available resources to offer other actions which are clearly valued, such as protecting the community and the environment.

**The Hon. K.J. MAHER:** As I outlined earlier, this is one of the two amendments of the Hon. Mark Parnell that the opposition will not be supporting.

**The Hon. C. BONAROS:** Can I indicate that I think that this goes to the heart of issues of accountability and transparency and in some ways is not dissimilar to something that we have proposed in relation to a very separate piece of legislation. But I do not see it as insurmountable. I think that the very important issues that the minister has raised, particularly as they relate to any risks or so forth of the disclosure of information that should not be in the public realm, can easily be dealt

in the framing of that response. But at the very least providing that response to parliament would provide the rationale for not doing so otherwise. For those reasons we do support the amendment.

**The Hon. J.A. DARLEY:** For the record, I will not be supporting the amendment.

Amendment negatived; clause as amended passed.

Clause 78.

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

Amendment No 8 [Parnell–1]—

Page 57, lines 28 to 30 [Clause 78(2)]—Delete subclause (2) and substitute:

(2) The Minister must ensure that a document adopted under this section is kept publicly available for inspection without fee—

(a) on a web site determined by the Minister; and

(b) during ordinary office hours at a public office, or public offices, determined by the Minister.

Again, as this amendment has universal support I do not need to speak to it at any length. I just point out that, again, it goes to accountability and it goes to a provision that occurs often in law where extraneous documents are incorporated into the law of South Australia. There is a principle that the entirety of the public law should be freely and publicly available. Ignorance of the law is no excuse which means that any document that we have incorporated into the law of South Australia must be freely available, otherwise the doctrine of ignorance being no excuse falls flat.

We have seen in the past situations where, in different fields, the government has incorporated some national standard and then, when you go to find that standard, you come across a pay wall, where you have to pay to see it. That is outrageous when it comes to lawmaking. This provision is pretty straightforward. The bill provides in clause 78 that the minister can adopt standards and guidance notes and codes of practice—can adopt them from elsewhere, in particular from the National Directory—so my amendment just makes it really clear.

When the EPA publishes its public register next week, as we have been told, it should make sure that all of these subsidiary documents, if I can call them that, are also included. In other words, it provides for a central repository for all relevant documents that together form part of the law of South Australia. I am glad everyone is supporting this sensible amendment.

**The Hon. J.M.A. LENSINK:** This amendment proposes that documents that form part of the National Framework for Radiation Protection, the National Directory, are adopted as part of the South Australian regulatory scheme and published on a website as determined by the minister. The amendment proposes to add to the existing provision of the bill requiring documents to be available for inspection at a public office without fee.

Any documents that are adopted will have already been published online by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), so either referencing the ARPANSA website or providing copies of the documents through the EPA website will be straightforward. As I previously indicated, we are supporting the amendment.

Amendment carried; clause as amended passed.

Clauses 79 to 99 passed.

Schedule.

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

Amendment No 9 [Parnell–1]—

Page 69—This Schedule will be opposed

It is probably no surprise to members that, of all the amendments I have moved, this is probably the one that is closest to my heart. Schedule 1 of this bill perpetuates the situation where a major industrial activity in our state is effectively not governed by the law of this state. The Roxby Downs

mine has its own law. It is a law largely of the company's making, aided and abetted over many years by this parliament.

Members would recall that in the Roxby Downs (Indenture Ratification) Act it says in one of the very early sections of that act that the law of South Australia is hereby modified to be subservient, in effect, to the special indenture act that they had. In other words, the law of South Australia does not apply at Roxby Downs, other than with a few limited exceptions.

Of all the laws that should apply to Australia's biggest uranium mine, you would have thought that South Australia's Radiation Protection and Control Act would be at the top of the list of laws that should apply, yet what schedule 1 of this bill perpetuates is the fact that that operation is beyond the reach of the general law of South Australia.

The minister earlier on correctly pointed out that I devoted a fair bit of my second reading speech to the subject of Olympic Dam, and she correctly pointed out that, under this bill, this act does not touch Olympic Dam. It does not touch it. It does not go to the health and safety of the workers at Olympic Dam because they are governed by their own special law.

I, for one, think that if this parliament is going to the trouble of writing general laws for the good order and wellbeing of the people of this state then they should be universally applied, and that means they should be applied to the Olympic Dam mine as well. I understand that, for historical and political reasons, both the Labor Party and the Liberal Party are locked into their support for the Olympic Dam mine being above the law in South Australia. It has been the position for nearly 40 years that that situation has occurred.

I know that they are not going to accept this schedule, but I think it is a matter of principle and I think that at some point we need to bring all mining operations into the fold. We need to bring them all in to be bound by the general law of South Australia. Any other mining company that does not have its own special law has to comply with this act, but not the Olympic Dam mine. This is a matter of some significance.

I will take the opportunity to point out that several years ago we debated major amendments to the Olympic Dam indenture legislation in order to encourage them to build the biggest hole in the ground on the face of the planet, a hole that was going to take five years to dig before they got to any payable ore. Having given the company absolutely everything they wanted in that indenture legislation, the company then proceeded to not proceed with their plans.

Their bean counters in London decided that it was not economic, so despite having been given every concession by the South Australian government and the South Australian parliament in relation to protection from laws and in relation to free water—you name it, they got it—they still did not come through with what the former Labor government thought was going to be a massive jobs bonanza.

So I do not think we owe that particular company, that particular venture, any special treatment when it comes to exemption from South Australian law. That is what schedule 1 of this bill does, and that is why I am opposing schedule 1.

**The Hon. J.M.A. LENSINK:** I think that speech on behalf the honourable member can be characterised as the 'Let's beat Olympic Dam and BHP over the head with a stick clause'. I will point out in my contribution how some of his comments are, we believe, factually incorrect. This amendment opposes the entire schedule 1. Schedule 1 of the bill is similar to schedule 1 of the 1982 act that was inserted in 1986 after the Roxby Downs indenture was agreed by the South Australian government.

There are minor changes to reflect the changed structure of the bill compared to the act, but the application remains the same. The majority of it simply explains the application of the indenture to the bill. The Roxby Downs indenture is applied through the Roxby Downs (Indenture Ratification) Act 1982 (Indenture Act). Section 7 of that act dictates that:

(1) The law of the State is so far modified as is necessary to give full effect to the Indenture and the provisions of any law of the State shall accordingly be construed subject to the modifications that take effect under this Act.

As such, the bill is subject to the indenture. The Indenture Act would need to be amended in order to remove the application of much of schedule 1. Schedule 1 of the bill for the most part usefully outlines how the indenture applies to this area of regulation, which I will explain through each of the clauses.

Clause 1 explains that the act applies to the Olympic Dam mine, subject to any modifications articulated in the schedule. Most modifications are directly required by the indenture or the Indenture Act. There are a few that are additional. Clause 2 reflects the application of section 8 of the Roxby Downs (Indenture Ratification) Act, requiring the grant of a licence. For comparison and to demonstrate that this is not unique to Olympic Dam mine, section 47(2) of the Environment Protection Act also requires that licences be granted in certain broader circumstances such as where a development approval has been granted for an activity.

Clause 3 is additional to the indenture and requires consultation with the mines minister and the applicant. This is no different to how the coregulation of mining between the EPA and the Department for Energy and Mining operates with regard to the consideration of applications.

Clause 4 is additional to the indenture. Under the 1982 act it simply confirmed the requirement under section 35 of the act that all licence applications must be referred to the Radiation Protection Committee. Under the bill it remains an obligation for those subject to the indenture, whereas for other licence applications the minister will have discretion to refer applications to the committee. This results in what is technically a stronger requirement for parties subject to the indenture; however, it is noted that even if it were not there, any significant applications will likely still be referred to the committee.

Clause 5 reflects the arbitration provisions in clause 49 of the indenture. Clause 6 reflects to a large extent clause 7(3) of the indenture. Clause 7 is additional to the indenture but generally aligns with clause 36 of the bill and previously with section 36 of the 1982 act regarding the application of conditions of authorisation.

Clause 8 usefully explains how clause 36 of the bill, regarding conditions of authorisation, applies alongside the arbitration requirements of the indenture. Clause 9 reflects section 8(2) of the indenture act. Clause 10 clarifies the application of the indenture act in that it requires the grant of a licence and determines that the law of the state is so far modified as is necessary to give full effect to the indenture and generally prevents the hindering of the projects covered by the indenture.

Clause 11 sets the expiry of the mining licence to align with the term of the special mining lease, whereas the act sets a term for licences of five years at which time a renewal would be required.

Clause 12 outlines provisions of the act contrary to provisions in the indenture or indenture act. Sections 18(4), 19(4) and 20(4) provide discretion for the minister contrary to clause 4 of the schedule. Section 36(3) deals with variation or revocation of conditions which are specifically dealt with under the indenture and have arbitration requirements. Sections 41, 42 and 43 deal with matters related to dealing with authorisations, licences that are dealt with for Olympic Dam mine through the indenture act and the indenture.

Clause 13 contains interpretation for the schedule.

I want to emphasise that the bill does not add further dispensation or favour to the Olympic Dam mine. The bill in fact provides for a number of improvements in the way that the EPA can regulate the Olympic Dam mine and any other person that is responsible for or uses radiation under it. The bill includes a general duty of care that applies to Olympic Dam mine as it does to every other person in South Australia.

The bill also provides for order-making powers. These include radiation protection orders to gain compliance with the general duty, a condition of licence or any other requirement of the act as well as reparation orders that can be used by the EPA to require a person to make good any harm that has resulted from a contravention of the act. The maximum penalty for noncompliance with an order is $100,000 or a $3,000 expiation.

The bill also introduces major offences of causing radiation harm and serious radiation harm. The maximum penalty for the serious radiation harm offence is $5 million for a body corporate and $1 million or 15 years in prison for a natural person. These offences apply to Olympic Dam mine as

they do to anyone else. To say that Olympic Dam mine is, to quote the Hon. Mark Parnell, above the law, ignores the considerable new powers that the bill makes available to the EPA to regulate all radiation users and ensure all South Australians are safe and protected and can still enjoy the many benefits that radiation use brings.

The government opposes this amendment.

**The Hon. K.J. MAHER:** I think the Hon. Mark Parnell has outlined the Liberals' and Labor's position helpfully. As unsurprising as the Hon. Mark Parnell said it was that he was moving this amendment, it will be equally unsurprising that Labor, as it has in government, will in opposition support this inclusion and therefore oppose the Hon. Mark Parnell's amendment.

**The Hon. J.A. DARLEY:** For the record, I will be opposing this amendment.

Amendment negatived; schedule passed.

Remaining schedule (2) and title passed.

Bill reported with amendment.

*Third Reading*

**The Hon. J.M.A. LENSINK (Minister for Human Services) (12:35):** I move:

That this bill be now read a third time.

Bill read a third time and passed.

## HEALTH CARE (GOVERNANCE) AMENDMENT BILL

*Second Reading*

Adjourned debate on second reading.

(Continued from 10 September 2020.)

**The Hon. C. BONAROS (12:36):** I rise to speak in support of the second reading of the bill. Last year I spoke at length on the previous version of this bill, which did not pass the lower house before parliament was prorogued. The main provisions of this bill effectively are the same. The government has chosen not to pursue the conflict of interest provisions, which I spoke to at length in this round of debate, but they are still pursuing other more substantive changes, such as the dissolution of the Health Performance Council, for one. In relation to that Health Performance Council, we continue to have concerns about how the performance of SA Health will be monitored with the removal of the council.

The proposed dissolution is of great concern to the stakeholders we have consulted with to date. The council has provided independent and objective oversight of the South Australian health system since its inception in 2008. With all that has transpired in SA Health, it is our view that it is imperative that there be a mechanism for this oversight. They serve an extremely useful purpose and, if it was abolished, we would not have access to some of the same impartial information that we do now—impartial information such as the report released in July into mental health in South Australia, monitoring access and outcomes.

In September, the council continued its research on institutional racism by releasing a second report auditing South Australian Local Health Networks. That latest report found evidence of very high institutional racism in all local health networks, bar the Women's and Children's Hospital, which returned a moderate score. It is hoped that this very important research will, once again, encourage those boards to make improvements to not only their corporate governance in respect of discrimination and institutional racism but also their cultures. I have seen one of the first reports done in relation to this, which was the subject of evidence provided to a committee; I have seen the government's responses to that sort of evidence.

What concerned me most was that we had a council like this undertaking this most important role, preparing a report, highlighting the incidence of, in this case, racism and discrimination in the health system. I have to say that the government's response to that left me somewhat speechless. It was a couple of paragraphs basically saying, 'We don't condone racism.' Well, that may very well be

the case, but you are being told it exists and you are being told that it is rampant in some areas of SA Health. If that is the best response that you can come up with, then that is extremely alarming.

The minister cited the fact that the council met only every four weeks as evidence of its worthlessness. He is happy with alternative checks and balances in place. However, as I have just highlighted, in one instance only, where very solid evidence was provided of a problem that simply has not been addressed, we do not consider a strong case has been made for the council's dismantling in the absence of an equally independent replacement.

I note that new appointments were made to the council in August for six months. Once again, I invite the minister to heed the advice of stakeholders, stakeholders like SACOSS, to put forward an alternative option if this government is insistent on abolishing the current council, an alternative that would incorporate key aspects of the functions and other accountability measures which are at risk of being lost. My door is always open. I know that the minister has made himself extremely accessible and amenable in this debate, and I expect that we will continue those discussions if this bill is to see a smooth passage through this place.

Then, of course, there is the issue of the Mental Health Commission. It is clear the minister does not agree that the commission needs to be enshrined in the health act. We have had this debate as well previously. I think he has said he would rather see it evolve organically over time. In any event, he considers that the most appropriate place for the amendment is the Mental Health Act. My problem with this, I suppose, is that we have not seen any legislation which amends the Mental Health Act and we have had nine months to do so.

The minister has cited the appointment of three part-time Mental Health Commissioners until January 2023 as evidence that the government is taking the commission seriously. However, if the government and the minister are true to their word in terms of taking this seriously, I think there is an expectation that this would be enshrined in legislation with the equivalent powers, independence and resourcing that you would expect that to come with, even if it was not in this bill. I do not think this is a big ask. It is a small ask, and as long as it goes unanswered, I doubt will continue to prevail regarding the government's insistence.

Without stating the bleeding obvious, we have a mental health crisis in this jurisdiction and, dare I say, as a result of COVID we have not seen the worst of it. I do not think we have even scratched the surface. SA is not alone in this. Just yesterday, it was revealed that more than a million—a million—Australians have sought mental health treatment during the pandemic, with ongoing lockdowns in other jurisdictions, especially Victoria, resulting in that number expected to increase dramatically.

Health Minister Hunt responded yesterday to these figures, saying that they were of significant concern, that they are severe and devastating. He said that the Morrison government recognises it is a chilling time for many Australians, with the effects of the COVID-19 pandemic on daily life, and it has taken its toll on the life of many individuals and communities, and again especially Victoria.

Closer to home in SA, Mental Health Commissioner David Kelly has been absolutely scathing in calling for an end to the COVID-19 response legislation and criticising its effects on vulnerable individuals. I do think those comments need to be taken in context, because he also acknowledges that they were made in a very urgent situation.

Much to the surprise of many of us, though, we found out just recently that the commission was not consulted on those measures before we rushed it through this place in April. We all did everything in our power, I understand, to get these laws in place. We all acknowledge the urgency of that situation and the fact that that meant we acted without acknowledging the full impacts of some of those measures on some, particularly our most vulnerable members of the community. That has certainly been highlighted with us now and goes to show the importance of the work that the commission does.

Just four days ago, it was reported that psychiatric consultations with medical professionals and emergency departments have increased so dramatically it is now labelled the 'hidden epidemic'—the 'third wave', if you like. Meanwhile, it is expected to take at least four or five years for the strain of the past seven months to even remotely recover. Our young adults, our unemployed,

our rural communities—whose waiting lists are at breaking points—our small businesses, people working from home, carers and our kids have all experienced unprecedented levels of vulnerability during this time.

Our Chief Psychiatrist, Dr John Brayley, acknowledges this. Our three commissioners acknowledge this. Our clinicians acknowledge this. The AMA SA and SASMOA acknowledge this. We need to be doing the same. It is against this backdrop that the government has chosen to not enshrine the commission in legislation but, more importantly, has chosen not to take any action to ensure that it is done in the Mental Health Act, if that is where we consider it more appropriately placed.

I am not confident that allowing South Australians to continue to evolve organically is not without risks in the future and I do not think any of the stakeholders I have met with and spoken to, including some I have mentioned, are any more confident than I am. I have indicated, and again I say to the minister, that I am more than happy to work with the government in relation to getting this bill right, but I think these are the most contentious aspects that we really need to look at more closely.

They are just some of the concerns that have been raised with me, and other members have raised concerns that have been outlined by other stakeholders, which I really think we need to take on board. I think every stakeholder I have spoken to to date has indicated a willingness to work with us, with the government and with the opposition to get this legislation right if it is going to pass this place.

With those words, I do support the second reading of this bill. I welcome the opportunity to have those further discussions with the minister and, of course, the continued discussions with the stakeholders in relation to the concerns that have been raised with us to date.

Debate adjourned on motion of Hon. D.G.E. Hood.

*Sitting suspended from 12:49 to 14:15.*

*Parliamentary Procedure*

## PAPERS

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Reports, 2019-20—
- Approvals to Remove Track Infrastructure—Pursuant to Section 5 of the Non-Metropolitan Railways (Transfer) Act 1997
- Attorney-General's Department
- Club One (SA) Ltd
- Commissioner for Victims' Rights
- Legal Practitioners Education and Admission Council
- National Heavy Vehicle Regulator
- Office of the National Rail Safety Regulator
- Pastoral Board
- Professional Standards Councils
- South Australian Cattle Advisory Group
- South Australian Government Boards and Committees Information
- South Australian Sheep Advisory Group
- Surveillance Devices Act 2016
- The Mining and Quarrying Occupational Health and Safety Committee

Report by the Essential Services Commission of South Australia on the 2020
- South Australian Rail Access Regime Review

## ANSWERS TABLED

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

*Question Time*

**WOMEN'S AND CHILDREN'S HOSPITAL**

**The Hon. K.J. MAHER (Leader of the Opposition) (14:19):** My question is to the Minister for Health and Wellbeing regarding hospitals. Given that you announced the completion of a new facility for the Women's and Children's Hospital special care baby unit on 14 August, some 62 days ago, is that new unit now properly operational? If not, why not?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:19):** I thank the honourable member for his question, because it yet again gives the opportunity for me to highlight this government's ongoing investment in the Women's and Children's Hospital. We are not only delivering a world-class new co-located facility on the RAH site, we are continuing to invest in the Women's and Children's North Adelaide site.

The special care baby unit has been upgraded as part of the $50 million sustainment work at the Women's and Children's hospital network. The unit has new treatment spaces, isolation rooms, a family lounge area and extra space for family at the cotside. The upgraded facility will provide a supportive environment for vulnerable newborns and their families at a stressful time.

On 14 August 2020, I toured the new SCBU facility and met with a parent, Amy Purling, whose son Jack received treatment at the unit. The SCB unit was due to open on 25 August 2020. This has been delayed to allow consultation with the ANMF, as per the consultatory requirements contained within the 2020 enterprise agreement. On 24 September 2020, the ANMF was advised in writing that the SCBU development would open on 1 October. This was revised on 25 September to 13 October to ensure adequate time for the final building completion, including ICTU supports.

As of 13 October 2020, the parties have not reached agreement. WCHN has provided all information required and a plan for the first three months after the move, and offered for discussions to continue in relation to longer term arrangements. The ANMF has not agreed and expect that the status quo will remain. WCHN has now advised that the move will occur on 20 October, and it will continue to seek agreement from the union.

**WOMEN'S AND CHILDREN'S HOSPITAL**

**The Hon. K.J. MAHER (Leader of the Opposition) (14:22):** Supplementary arising from the answer: can the minister then confirm that this brand-new special care baby unit has sat completely empty and unused for the last two months since he officially opened it?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:22):** Because of the actions of a union.

**The PRESIDENT:** I just remind the minister that, technically, in this place when he says 'you', he is actually referring to the President.

*Members interjecting:*

**The PRESIDENT:** I beg your pardon.

**WOMEN'S AND CHILDREN'S HOSPITAL**

**The Hon. K.J. MAHER (Leader of the Opposition) (14:22):** Further supplementary: what exactly would the minister say to clinicians and staff who are concerned that for two months—and it is still ongoing—this unit has sat completely empty?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:22):** I would be very surprised if the staff asked me about this because they know that this unit is replacing a unit that is currently operational. The old unit will continue to operate until the new unit is operational.

**WOMEN'S AND CHILDREN'S HOSPITAL**

**The Hon. K.J. MAHER (Leader of the Opposition) (14:23):** Final supplementary: is the minister aware of any concerns that clinicians or staff have raised about the failure of this unit to be operating yet, and how would he specifically respond to them?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:23):** I have no doubt that staff are extremely frustrated at the actions of the union, because they want to be in a brand-new facility delivering top quality care to South Australians. They are currently continuing to operate in a facility that is well past its use-by date.

**The PRESIDENT:** Before calling the Deputy Leader of the Opposition, I would like, on behalf of the council, to wish the Hon. Frank Pangallo a very happy birthday. I am sure it is an anniversary of his 21st birthday, but I am not sure which one.

**The Hon. F. PANGALLO:** Thank you, Mr President, and thank you to all of the members who have given me those fine wishes. Thank you.

## WOMEN'S AND CHILDREN'S HOSPITAL

**The Hon. C.M. SCRIVEN (14:24):** My question is to the Minister for Health and Wellbeing regarding hospitals. Noting the litany of problems facing the Women's and Children's Hospital, including under-resourcing and understaffing, are the nine emergency department pods he opened in May now fully operational? Given wait times for obstetrics patients are up to nine months and obstetrics is frequently referring to pregnancies, isn't that a bit late, when babies are normally born by nine months?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:24):** I think it is important to remember why the additional nine emergency treatment bays were constructed. That was because of the COVID pandemic. That was surge capacity if needed. Thankfully, to this point, we have not needed to activate those nine treatment bays. When they need to be, they will be.

## WOMEN'S AND CHILDREN'S HOSPITAL

**The Hon. C.M. SCRIVEN (14:25):** A supplementary, because the minister appears to have failed to answer the second part of the question regarding obstetrics waits of up to nine months.

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:25):** The opposition continues its pattern of highlighting negatives. Let me highlight some positives. Orthopaedics at the Women's and Children's Hospital outpatient departments have reduced in the median waiting time from 2.3 years to one month. Let's be clear: this government does not regard extended outpatient waiting lists as acceptable. That is why in opposition we committed to being transparent and publishing outpatient data. The only reason why the opposition can quote this data is that, unlike them, we publish them.

## WOMEN'S AND CHILDREN'S HOSPITAL

**The Hon. C.M. SCRIVEN (14:25):** Supplementary: does the minister think that a nine-month wait for obstetrics outpatients is acceptable?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:25):** We are continuing to bring down the outpatient waiting times.

**The PRESIDENT:** Final supplementary.

*Members interjecting:*

**The PRESIDENT:** Order!

## WOMEN'S AND CHILDREN'S HOSPITAL

**The Hon. C.M. SCRIVEN (14:26):** What additional services will the minister commit to across the Women's and Children's Health Network to address under-resourcing, in particular for mental health?

*Members interjecting:*

**The PRESIDENT:** Order! The minister has the right to answer that, but he may choose not to. I will let the minister respond.

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:26):** I just make the point—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. S.G. WADE:** —that is three different topics in one question.

*Members interjecting:*

**The Hon. S.G. WADE:** Oh, I see, so the subject matter is health. Supplementary questions are meant to arise out of the original answer. There was no reference to mental health.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. K.J. MAHER:** Point of order, sir: if the minister has a complaint—

*Members interjecting:*

**The PRESIDENT:** Order, on both sides!

**The Hon. K.J. MAHER:** If the minister has a complaint about the way a supplementary is being asked, maybe he should put a point of order rather than trying to give rulings from his seat in parliament?

**The PRESIDENT:** There is no point of order. A number of Presidents have been pretty reasonable about what is the relationship of a supplementary to the primary question. We have had a number of cases in my short tenure where the relationship is a bit thin. I have allowed that one, and the minister has responded. Does the minister wish to respond further? We will move on. I call the Hon. Emily Bourke.

## WOMEN'S AND CHILDREN'S HOSPITAL

**The Hon. E.S. BOURKE (14:27):** I seek leave to make a brief explanation before asking a question of the Minister for Health and Wellbeing regarding hospitals. The minister promised to consult with clinicians when he took office. To date, the minister has not provided Women's and Children's Hospital clinicians with a full report compiled by his Women's and Children's Hospital task force. He received this more than 18 months ago. The minister also refused clinicians' advice regarding the viability of a cardiac surgery at the hospital by continuing to send South Australians interstate for surgery. My questions to the minister are:

1. When will the minister provide clinicians with a report of the Women's and Children's Hospital task force?

2. Does the minister continue to refute the viability of cardiac surgery at the hospital?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:28):** Let me answer the second question first. I am not going to override the board of the Women's and Children's Hospital as they deliberate the future of paediatric cardiac surgery. The Labor government, I appreciate—

*Members interjecting:*

**The PRESIDENT:** Continue.

**The Hon. S.G. WADE:** I appreciate that the former Labor government centralised health governance with the abolition of boards in the mid-2000s, and they strenuously continue to oppose the decentralisation of Health under this government, but we believe that just as health care is better delivered closer to home, we also believe that decisions are made closer to those who deliver the service. That is why we have established board governance. We leave the decisions with the board—

**The Hon. I.K. Hunter:** There's no money.

**The PRESIDENT:** The Hon. Mr Hunter is out of order.

**The Hon. S.G. WADE:** In relation to the Women's and Children's Hospital, I have certainly had discussions with clinicians and I have made it clear to—

**The Hon. K.J. Maher:** Name a single one.

**The PRESIDENT:** Order! Continue, minister.

**The Hon. S.G. WADE:** Dr Michael Yung.

**The Hon. K.J. Maher:** That's the single one you have had a discussion with?

**The PRESIDENT:** The minister is on his feet and he is trying to answer a question and he is continually interrupted by members on my left. The minister has the call.

**The Hon. S.G. WADE:** In relation to paediatric cardiac surgery, the board sought an independent review. It received that review and met with Dr Yung and other clinicians. My understanding is that those discussions are ongoing. Unlike the Hon. Emily Bourke I am not going to ride roughshod over local boards working with local clinicians to deliver local services.

**The PRESIDENT:** The Hon. Ms Bourke has a supplementary.

## WOMEN'S AND CHILDREN'S HOSPITAL

**The Hon. E.S. BOURKE (14:30):** In the last 12 months have there been any adverse outcomes for children going interstate because we are unable to provide this service here?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:30):** These are exactly the issues that the board is working through: what is the optimal outcome, the best outcome for children in South Australia? There are risks both in delivering services through interstate-based units and there are also risks delivering services in a state-based unit. That is presumably one of the reasons why the Labor government in the early 2000s withdrew this service.

## WOMEN'S AND CHILDREN'S HOSPITAL

**The Hon. E.S. BOURKE (14:31):** Supplementary arising: the minister has not answered. Have there been any adverse outcomes?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:31):** If the honourable member is asking me if, since the Labor Party abolished this service in the early 2000s, there have been any adverse outcomes, I will need to take that on notice.

## NEW HOME SALES

**The Hon. D.G.E. HOOD (14:31):** My question is to the Treasurer. Can the Treasurer update the chamber on housing development and sales from the housing industry, in particular new home sales in South Australia?

**The Hon. R.I. LUCAS (Treasurer) (14:31):** In addition to the information that I shared with members yesterday in relation to the HomeBuilder scheme going gangbusters, my attention has been drawn to a publication by the Housing Industry Association, 'A monthly update on the sales of new homes September 2020', produced by their national body. The Housing Industry Association looks at new home sales in all states and nationally as well. Just quoting from that, the HIA reports that:

> SA has also seen a significant increase in new work entering the pipeline with the September 2020 quarter 77.7 per cent higher than the June quarter. When balanced with the low sales at the beginning of the pandemic the seven months to September 2020 are equal to [the same period for] sales in 2019.

Further on in their particular analysis of South Australia they report that:

> Sales of new detached houses in South Australia increased by a further 29.7 per cent during the month of September 2020 to the strongest monthly result in over a decade.

So that goes back to 2010. They then repeat the analysis where essentially new home sales in the seven months since COVID restrictions were first implemented—the period from March to September this year compared to March to September last year, which is the pre-COVID stage—were essentially at the same level. They are extraordinarily encouraging figures in terms of the last seven months, and September in particular.

The information I shared yesterday in relation to the pipeline of work which will be coming towards the end of this year and through at least six to nine months of next year is encouraging in terms of current and future work. However, I think what these figures are demonstrating is that our housing sector in South Australia has been remarkably resilient in terms of the March to September

figures on any of those measures—that is, the September numbers being the biggest increase, the strongest monthly result in over a decade according to the Housing Industry Association.

I guess more encouragingly, because that is in the middle of the pandemic or during the pandemic, from March to September our numbers in terms of new home sales actually held for the comparative period last year.

I think all members in this chamber recognise the very important role the housing industry sector plays in South Australia in terms of economic growth and jobs growth in this state. The government has worked assiduously with stakeholder groups, such as the Housing Industry Association and the Master Builders Association.

I would like to very briefly place on the record my thanks and congratulations to the outgoing Chief Executive Officer of the Master Builders Association, Mr Ian Markos, for his willingness to work with me and my office. He has always had very frank views in terms of the housing industry but nevertheless has spoken out fearlessly on behalf of the needs of the industry. I of course welcome the incoming appointment of the new chief executive officer, Mr William Frogley. I know the organisation will be in safe hands with Mr Frogley.

I note that prominent members of the Australian Labor Party's front bench have also publicly acknowledged that the organisation will be in safe hands over the coming years. Certainly, I do want to place on the record my thanks to Mr Markos for the work he has done and welcome the appointment of Mr William Frogley to the new position.

## WOMEN'S AND CHILDREN'S HOSPITAL

**The Hon. F. PANGALLO (14:35):** I seek leave to make a brief explanation before asking a question of the Minister for Health and Wellbeing about the proposed Women's and Children's Hospital.

Leave granted.

**The Hon. F. PANGALLO:** Recently, in discussing the plans for the proposed development of the Women's and Children's Hospital on Port Road, next to the new Royal Adelaide Hospital, the minister indicated there would be need for remediation of the site because of the presence of contaminants like heavy metals and that this would be taken into consideration in the enormous cost of the project.

My question to the minister is: is the minister aware that Adelaide is the most earthquake-prone city in Australia and that the site sits on our most active fault line? Therefore, does he have concerns that we will have two major hospitals being built on fault lines only 66 years after a major earthquake caused enormous damage in the city and the suburbs? Has this been, or will it be, factored into the projected $2 billion-plus cost of the project, and will the new building be required to be earthquake-proof?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:37):** I thank the honourable member for his question. I will certainly both attempt an answer and also undertake to take the question on notice because I won't be able to offer him the detail that he's seeking. The new Women's and Children's Hospital is located on the same parcel of land, if you like, as the new Royal Adelaide Hospital. It was appreciated that, being a former railway industry site, there was likely to be the risk of significant soil contamination.

The advice I have received is that the risk of significant contamination is significantly lower at the western end of the site but, nonetheless, as a matter of due diligence, bores are being drilled in that area. That is an important part of assessing what work needs to be done in terms of soil contamination and also in terms of the nature of the soil and the engineering requirements. It's only when we have those drilling results that we will have confidence about what we are dealing with, and we can deal with that in the project planning.

The honourable member rightly indicates that Adelaide is an earthquake-prone city. In that context, my understanding was that the new Royal Adelaide Hospital was built with a higher level of earthquake standards to be able to cope with an earthquake. Also, in the context of the discussion of the cost comparisons between the new Women's and Children's Hospital and the Calvary Hospital,

one of the factors is that the new Women's and Children's Hospital will need to be built to higher critical infrastructure requirements.

The functional services at the new Women's and Children's Hospital are higher than at what is commonly called Calvary Blue. Also, because it is a major trauma hospital for paediatrics, it has a higher level of specialist services. So in terms of both earthquake and general critical infrastructure requirements as well as soil remediation, these things do all add to the cost.

**The PRESIDENT:** The Hon. Mr Pangallo, a supplementary.

**WOMEN'S AND CHILDREN'S HOSPITAL**

**The Hon. F. PANGALLO (14:40):** Can the minister explain the remediation? Will the soil have to be removed from the site, and are there any approximate costs of what that would be? Furthermore, I can point out to the minister that it is not just contaminated soil that is there. My understanding is that there is a large plume of contaminated water on the site as well—underneath.

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:40):** My understanding is that the work being done will identify all of those risks, and certainly no cost estimates have been given to me, because the estimate of the cost remediation depends on what is found.

**WOMEN'S AND CHILDREN'S HOSPITAL**

**The Hon. E.S. BOURKE (14:40):** Supplementary arising from the original answer: if the levels do come back with a high level of contamination, will the minister continue to push forward to build the hospital at this site?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:41):** The government has no intention of revisiting the site location. Let's remember what is at risk here. We have shut the book on Labor's plan to leave the children's hospital isolated at the North Adelaide site—children deprived of an opportunity for medical retrieval at the Royal Adelaide site. We are not interested in a second-class hospital for South Australian children. We're not going anywhere.

**WOMEN'S AND CHILDREN'S HOSPITAL**

**The Hon. T.T. NGO (14:41):** I seek leave to make a brief explanation before asking a question of the Minister for Health and Wellbeing regarding hospitals.

Leave granted.

**The Hon. T.T. NGO:** The opposition obtained documents about a KPMG consultancy at the Women's and Children's Hospital that examines cost reduction initiatives such as reducing nursing hours per patient day. Documents reveal that the $1 million contract, with an option to extend to $3 million over three years, didn't go to tender, and discussions between executives revealed that no evaluation plan was ever completed.

Despite SA Health Chief Executive, Dr Chris McGowan, claiming he has nothing to do with decisions about the hospital, his signature signed off on the engagement of KPMG in a briefing from him to the hospital CEO, Lindsey Gough. My questions to the minister are:

1. Did the KPMG procurement fail to meet expected standards and processes?

2. Will nursing FTEs be cut at the Women's and Children's Hospital or not?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:42):** I am certainly happy to take the honourable member's questions on notice. I'm not aware of those details.

**CORONAVIRUS, SOCIAL IMPACT ON ELDERLY**

**The Hon. T.J. STEPHENS (14:42):** My question is for the Minister for Health and Wellbeing. Can the minister update the council on efforts to reduce the impact of social isolation on older South Australians in the context of the pandemic?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:43):** I thank the honourable member for his question. For many in our community the COVID-19 pandemic has meant that 2020 has been a time of retreating from the world, of cutting back, even cutting off interactions with family,

friends and the broader community. While many of us are learning to live more of our lives online, not everyone is ready and able to transition to the latest app or to log in to a zoom meeting or to create an online community.

This is particularly true for some older Australians who are digitally challenged, finding themselves more likely to be alone and often feeling ignored or unheard. The Marshall Liberal government has always recognised that this pandemic presents challenges beyond the immediate physical impacts of the virus, and we have been working hard to mitigate those broader difficulties. One response, to which I want to pay tribute for its innovative approach, is called Postcards from Behind the COVID Curtain, a project initiated by COTA SA with the support of SA Health's Office for Ageing Well.

Thousands of reply-paid postcards were sent to older South Australians with an invitation to them to express their thoughts and feelings on the card and return them to COTA. Each person was also provided with a second card, which they were encouraged to send to someone they had lost touch with, send to someone they were aware needed cheering up or to drop in a letterbox as a way to make contact with someone in the neighbourhood.

Over the last few months many cards have been returned to COTA. Some have been messages of hope and determination. One postcard from Kay reads:

> During the COVID my family thought I needed some company—got me an RSPCA rescue cat with my permission, so I now have a constant companion!! He is getting me trained.

Julie writes:

> Highs of lockdown: peaceful neighbourhood. Quiet traffic conditions. Empty Doctor's surgery. No sport on TV. No politics on TV. Improved podcasts on ABC Radio.

*Members interjecting:*

**The Hon. S.G. WADE:** It's a very sad pandemic when you haven't got politics on TV. Frank, aged 93, begins his message with a recollection of the last years of World War II and writes:

> I was called up, but didn't go anywhere. This lockdown is a little like those years…

Margaret writes:

> I now have the tidiest cupboards and drawers I have ever had. At 89 years of age, I now have to find a job to pay for the phone bill.

For others the postcards are providing a window into difficult and lonely times, and I quote:

> I'm becoming invisible, invalid and irrelevant. I don't want to ring anyone because I've got nothing to say. My phone is mainly silent.

These handwritten messages provide an insight into the challenges and the opportunities that the pandemic has brought to older South Australians. It is also a reminder to each of us to pick up the phone or leave a note in someone's letterbox to check in on those more vulnerable in our communities. On behalf of the government, and the parliament I am sure, I thank COTA for their work to acknowledge social isolation, to give older people a voice and provide us all with a clearer picture of what is going on behind the COVID curtain.

## CORONAVIRUS, MEDI-HOTELS

**The Hon. T.A. FRANKS (14:46):** My question is to the Minister for Health and Wellbeing on the topic of medi-hotels. How many people have been accommodated in medi-hotels since we initiated this process; how many have applied for an exemption from the payment, either through a deferral or payment plan or a full exemption; and how many have been granted that exemption?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:47):** As at 12 October 2020, South Australia has been privileged to provide hospitality to 4,552 international arrivals and 1,059 interstate arrivals, and that is hospitality within the medi-hotels. In terms of the total fees, as at 7 October total fees generated under the payment program total $3.9 million, I am advised, but that is in terms of invoices issued, as I understand it, rather than payments received. As I understand it, the actual cost recovery payments received is $0.515 million. In terms of applications for exemptions and the like, I will take that part of the question on notice.

## CORONAVIRUS, MEDI-HOTELS

**The Hon. T.A. FRANKS (14:48):** Supplementary: how much of that $3.9 million will be given to those hotels participating in the medi-hotel program?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:48):** I will certainly take that on notice, too, but I do want to indicate that this is by no means covering the full cost of the medi-hotel program. One of the reasons is that the government of South Australia took very seriously—

**The Hon. T.A. Franks:** So the Pullman is not actually recouping their costs? That was my question—not SA Health but hotels.

**The Hon. S.G. WADE:** Sorry, I will certainly address that in my answer, but I still think it is important to make the point that, whilst under contracts, the providers of the hotel services will get paid in accordance with those contracts. The state government by no means recovers all its costs, inclusive of the hotel. There is the hotel provider, there is the police, there is the security, there is the nursing care, there is the in-reach mental health care and there are the buses.

This is a very expensive operation. I am told that the average cost of hotel quarantine is more than $600 per day, which equates to $8,700 over a 14-day quarantine period. What we recover I think is about $3,000 for a single, and then you add increments. My understanding is we fall well short of cost recovery.

We could get much closer to cost recovery if we provided a much more basic service, but the point I was trying to make is that this government takes very seriously its responsibility to ensure that quarantine is a public health measure that is not punitive. We try to provide that in what is a challenging environment. Two weeks in a hotel room is not something any of us choose and so we do what we can to make that experience as tolerable as possible.

I would like to pay tribute again to not only the members of our public health team but particularly our nursing workforce. They have shown themselves to be very innovative in providing support to people. We are still learning. We appreciate that there are complaints from time to time. The costs of this program are significant, but we don't shy away from them, because we believe we have responsibility to provide a quality form of quarantine.

## CORONAVIRUS, MEDI-HOTELS

**The Hon. T.A. FRANKS (14:51):** Of the 4,052 people who have been accommodated in these medi-hotels, has a single person been granted an exemption to the payment for their stay?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:51):** As I said, I will take that on notice. I would remind the house, and I know the Hon. Tammy Franks is well aware of this, that the intention was to charge international arrivals and provide some exemptions, and the reverse was the assumption in relation to interstate arrivals.

As we have gone into the program, there has perhaps been a higher level of charging interstate arrivals than was originally anticipated. I will certainly make sure that the information that comes back to the member differentiates between the charging of international arrivals and interstate arrivals because of that different policy presumption.

## HOUSING AUTHORITY

**The Hon. I. PNEVMATIKOS (14:52):** I seek leave to make a brief explanation before asking a question of the Minister for Human Services regarding housing.

Leave granted.

**The Hon. I. PNEVMATIKOS:** The member for Cheltenham in another place wrote to the minister in August about urgent maintenance needs at the home of Mr Nathan Andersen of Findon. This matter was featured on television last weekend. Mr Andersen's bathroom ceiling had severe mould due to a leaking pipe in the flat above. This was reported to Housing SA seven months ago, in March. Contractors removed a large section of ceiling to test for asbestos but then left a gaping hole open in the roof.

Mr Andersen has four children, who now have to use a substandard bathroom out of necessity and continue to be exposed to health risks. This is despite the South Australian Housing Authority spending a tiny fraction of the $24.1 million that was approved for extra maintenance in a year after it was approved in the last budget. In this place yesterday, the minister spoke about how this money was on top of a maintenance budget of $150 million. My questions to the minister are:

1. Why are people being left in substandard housing conditions when you have millions of dollars in approved maintenance funds that have not been spent?

2. How long does Mr Nathan Andersen of Findon have to live with a gaping hole in his bathroom ceiling and threats to his family's health?

**The Hon. J.M.A. LENSINK (Minister for Human Services) (14:54):** I thank the honourable member for her question, and I assume that she and the local member have permission to raise his concerns in the public domain. On that basis, I can provide some advice that the Housing Authority has been aware of Mr Andersen's requests.

There have been various assessments made since earlier this year. I think it's fair to say that it hasn't been a satisfactory process, from my point of view, that's been managed in this particular case and there have been mistakes made. My understanding is that Mr Andersen has actually been relocated from his unit so that those repairs can be made and to make provision for his and his family's health needs.

## HOMELESSNESS SERVICES

**The Hon. N.J. CENTOFANTI (14:55):** My question is to the Minister for Human Services regarding homelessness. Can the minister please update the council on how the Marshall Liberal government is improving access to homelessness services for South Australians?

**The Hon. J.M.A. LENSINK (Minister for Human Services) (14:55):** I thank the honourable member for her question. We have indeed commenced some reforms in the service provision for homelessness services, including some of the services that people who are experiencing homelessness connect directly with. We have issued some new tenders for some of the services that we were providing and I would just like to outline some of those service improvements.

Homelessness improvement is being led by the Office for Homelessness Sector Integration, who are working on a staged approach to and prioritising of various parts of the service system so that things can have that opportunity to transition in a more planned way. We have a priority to reform the system, including the establishment of a new consolidated advisory and advocacy service which will incorporate and embed the customer voice into decision-making, ensuring that their voice is at the centre of decision-making.

There is a new service aiming to strengthen and integrate customer advocacy advice and engagement and this is the Housing Advice, Advocacy and Engagement Service, which was put to tender on 10 March with the tender closing on 7 May. In early September I announced that the successful provider for this new service is SYC, otherwise known as the Service to Youth Council, which will provide over the phone, email and face-to-face advice to South Australians who need support in navigating the housing system.

As I have said in the past in this place, people experiencing homelessness do need to be able to receive advice when they are experiencing homelessness, and particularly when they connect with a service they should be receiving the advice at that point in time and not needing to go away and come back at a different time, respecting the fact that often people, particularly those who are rough sleeping, may not have ID or access to a mobile phone in those sorts of situations.

This service will also provide people with legal, financial and dispute resolution advice as well as support to maintain tenancies, which clearly is going to assist at more of that preventative end to help people who may be at risk of losing their tenancy and therefore falling into homelessness. The creation of a single-point service replaces previous services which were offered across a number of organisations and alleviates the need—one of the things that people complain about the most is that they have to repeat their story across multiple organisations. I have certainly heard from some service providers who work closely with people who are rough sleeping, who have disconnected from services, that they find that so frustrating that they sometimes just give up on services altogether.

This new service commenced on 1 October under the new name of RentRight SA. We also are in the process with our non-government partners of reforming the homelessness gateways into Homeless Connect SA, which is again to simplify and improve access for customers. Following successful negotiations facilitated by the office of homelessness sector reform with Uniting Communities and the Service to Youth Council, it was agreed that Uniting Communities would become the private provider responsible for the delivery of all homelessness service access-point services from 1 July, and they are working on the new integrated service model to be implemented by the end of this year.

The service has been designed to provide the community with a clear and accessible point of contact to seek information and gain access to homelessness and related services. We also continue to have other specialist access point services, including the domestic violence and Aboriginal family violence gateway service, and the national sexual assault domestic family violence counselling service 1800RESPECT are also continuing on their existing format.

**VISVANATHAN, PROF. R.**

**The Hon. C. BONAROS (15:00):** I seek leave to make a brief explanation before asking the Minister for Health and Wellbeing a question about Professor Renuka Visvanathan.

Leave granted.

**The Hon. C. BONAROS:** The South Australian Employment Tribunal recently awarded highly respected physician Professor Visvanathan $115,000 after it ruled she was subject to discrimination and bullying at work between March 2014 and January 2018. This included a former Adelaide health bureaucrat repeatedly bullying the professor, turning colleagues against her and, when she complained, ensuring she was overlooked for a promotion despite being the only qualified applicant.

The tribunal president, Stephen Lieschke, ruled that Dr Visvanathan should have been appointed to that particular role that I referred to because she was the only eligible candidate; however, another doctor was awarded the position over her in March 2015. That appointment was set aside after she made complaints about the selection process and the role was eventually cancelled in early 2016. My questions to the minister in relation to the tribunal's decision are:

1. How much money has SA Health and CALHN spent over the past three years on legal fees fighting Professor Visvanathan in court?

2. What are the grounds for the appeal that is pending?

3. Have you received written advice from the Crown Solicitor's Office in relation to the prospects of success in the case?

4. What is the budget for the pending appeal?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:01):** The honourable member in her own question is highlighting the reason why I can't respond in detail. Following advice from counsel, which included representations from the Crown Solicitor's Office, an appeal has been lodged in this matter and in that context it would be inappropriate for me to comment.

**VISVANATHAN, PROF. R.**

**The Hon. C. BONAROS (15:02):** Supplementary: does the minister not believe that any funds that are potentially going to be put towards this matter could be better spent on improving the clinical services across SA Health?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:02):** I should make clear a decision of whether or not to pursue a tribunal appeal is not a decision that is made by me. It is not a decision as to whether I think that money should be spent another way. The local health networks and the department have responsibilities to make judgements and I expect them to do so responsibly. Beyond that, to go into this case would be to inappropriately participate in a legal proceeding.

## DISABILITY HOUSING

**The Hon. J.E. HANSON (15:03):** I seek leave to make a brief explanation before asking a question of the Minister for Human Services regarding disability and housing.

Leave granted.

**The Hon. J.E. HANSON:** In this place yesterday, the minister said:

> …the South Australian Housing Authority, they seek to have a minimum standard of, off the top of my head, 90 per cent of new builds to be built to a silver standard for disability access…

The minister's own 10-year housing strategy, the list action number of 1.5, states:

> Mandate sustainable housing design and environmental standards for a minimum of 75% of new public housing.

Chapter 2.3 of the SA Housing Authority's design guidelines has stated for more than a decade the following:

> The SAHT building program is committed to providing a minimum of 75 per cent of all new houses to meet or exceed the criteria in this guideline.

For the minister's benefit, neither her own new strategy nor the authority's technical guidelines refer to 90 per cent of homes being at the silver level of Liveable Housing Australia design guidelines. The Liveable Housing Australia silver level requires eight elements of compliance, but the Housing Authority document which she has produced links only two of those out of the eight—that's a quarter of the elements.

Finally, the silver level of design guidelines is the lowest of any of the accessibility standards, there being a gold and platinum standard also. My questions to the minister are: why can't your new agency, which has new additional executives and, as we know, a chairman who is paid twice as much, achieve more than one-quarter of the compliance to the lowest accessibility standard? Secondly, is the target 75 per cent or 90 per cent, and is the standard of the Liveable Housing Australia's silver level or indeed her agency's own internal standard?

**The Hon. J.M.A. LENSINK (Minister for Human Services) (15:05):** I have to hand it to the honourable member: he's got me. It is 75 per cent, not 90 per cent. But as I said in my response yesterday, I was working from my memory, not from notes, but I knew that it was a reasonably high level. Can I also say that the South Australian Housing Authority is also a lead in terms of the universal design across South Australia for adopting Liveable Housing Australia design guidelines for new social housing stock and is part of how to incorporate universal design principles in residential construction and maintenance specifications, and has other lead actions in terms of the Liveable Housing standards.

I think it is also important to note that there are other categories of housing standards for people with disabilities, particularly through the SDA payments. There are a number of organisations that are seeing some market development in South Australia for SDA. I think it is estimated that 6 per cent of people with disability who are on the NDIS are likely to be eligible for SDA. What the SDA payments do is provide those organisations with an ongoing payment, so it makes it much more attractive for organisations to fund those going forward, and those particular builds are at a much higher level and obviously part of the NDIA system. There is a range of non-government organisations that operate in this space, particularly Uniting Communities, which has the site that is the old Maughan Church, which is called—

**The Hon. S.G. Wade:** U City.

**The Hon. J.M.A. LENSINK:** U City, thank you very much. They operate the U City. I am aware that the Summer Foundation is also engaged in a range of construction in South Australia. One of their new plans that they are working towards is Norwood Green. They are building a number of sites there, and there are also some other community housing providers that operate community housing for people with disabilities, including Unity Housing and Access 2 Place. They are just some of the organisations that also operate in this space to provide a range of options for people with disabilities through the various spectrums of their needs.

## DISABILITY ACCESS AND INCLUSION PLANS

**The Hon. J.E. HANSON (15:08):** I am not sure I have my questions fully answered, but I have a supplementary out of that. Can the minister confirm whether the SA Housing Authority has even started drafting a disability access and inclusion plan that must be released, consulted on and finalised in the next two weeks, containing some of the answers that the minister gave just then?

**The Hon. J.M.A. LENSINK (Minister for Human Services) (15:08):** Again, I think we need to point out to members of the Labor Party that that didn't exactly arise out of the original answer, but the answer is yes, they have been consulting through YourSAy.

## UNEMPLOYMENT FIGURES

**The Hon. D.W. RIDGWAY (15:08):** My question is to the Treasurer. Whilst noting the significant reduction in the state's unemployment rate, does the Treasurer have any information on the effective unemployment rate in South Australia?

**The Hon. R.I. LUCAS (Treasurer) (15:09):** I am pleased to share with members that I have referred to the federal Treasurer's and federal Treasury's preferred measure of unemployment in the nation, given the global pandemic that we are enduring, and that is the effective unemployment rate.

Just to remind members, that is a combination of not just those who are defined by the ABS as unemployed but also people who have left the labour force since the pandemic started in March. It also includes those people who have been stood down from their jobs. That is, they are recorded as having worked zero hours for economic reasons, so it is a larger number than the officially recorded unemployment rate by the Australian Bureau of Statistics.

I do note the very pleasing results in terms of the unemployment rate as measured by the Australian Bureau of Statistics, which showed that South Australia's figure had dropped to 7.1 per cent for this month. Other states, such as Queensland, have the highest with 7.7 points; Tasmania, 7.6 per cent; New South Wales, 7.2 per cent; and South Australia then at 7.1 per cent. I must say that I have been anxiously scanning social media, looking forward to the Labor opposition welcoming the fact that the state's unemployment rate has declined. I am sure it is in progress.

The effective unemployment rate, as I said, the federal Treasurer has said is a better measure in terms of overall unemployment. Again, I am pleased to report that South Australia's effective unemployment rate on these September figures is 8.3 per cent—so higher than the ABS figure of 7.1 per cent—but the nation's effective unemployment rate is actually at 9.4 per cent, so South Australia's effective unemployment rate is actually a full percentage point plus some below the national effective unemployment rate.

Even more pleasing is the fact that, at its worst, our effective unemployment rate in April—so the first measure after the pandemic—was actually at an eye-watering 15.3 per cent. In that initial month there was a very, very significant increase in the effective unemployment rate. It has steadily declined from 15 to 13 to 11 and, as I said, at least on these figures, we are now down to 8.3 per cent, which is less than the nation's effective unemployment rate.

There is much more that needs to be done that the government has committed to doing. As I have said on any number of occasions, when the budget is brought down, this government will do whatever it has to and spend whatever it needs to to save as many jobs and as many businesses as we can as a result of the global pandemic.

## INTERSTATE TRAVEL

**The Hon. M.C. PARNELL (15:12):** I seek leave to make a brief explanation before asking the Minister for Health and Wellbeing a question about interstate travel.

Leave granted.

**The Hon. M.C. PARNELL:** Something I think many Australians are getting excited about is the ability to travel again interstate. I note that much of the advice that is available online is still either conflicting or incomplete. For example, we know that Tasmania is opening up its borders from 26 October. What the Tasmanian government says on its website is:

Based on current public health advice, people travelling from low-risk jurisdictions from October 26 will be able to continue to transit directly though Victoria (only stopping for fuel) to Melbourne Airport or the Spirit of Tasmania terminal and not be subject to quarantine requirements that apply to that jurisdiction.

In other words, you can drive from Adelaide to Melbourne Airport or the *Spirit of Tasmania* terminal, you can then get on a plane or a boat to Tasmania and you will not have to quarantine. But what I am unable to find on any South Australian government website is information on when you turn around and come back the same way. For example, if you fly back to Melbourne, pick up your car from the long-term car park or you get the ferry back to Melbourne, and then you front up at the border on the Western Highway, are you going to be made to quarantine for two weeks in South Australia because you have been through Victoria?

I know that there are some provisions that relate to people transiting, but they appear to only apply to people transiting through South Australia—for example, to Northern Territory or another state. My question is: when these border restrictions are lifted on 26 October, will South Australians returning from holiday in Tasmania have to quarantine in South Australia?

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:14):** I will attempt an answer but, as always, on something as important as public health advice, I will check it and get back to the member. There is significant inconsistency between the border controls in place in different jurisdictions. We don't apologise for that. We have the world's best public health team and we are going to take their advice.

Some of the transit issues that I might reflect on in answering the honourable member's question are that the State Coordinator has issued a direction which allows people travelling from New South Wales to South Australia to drive the stretch of road through Mildura, which is part of Victoria, and not have to quarantine on their return or, to be frank, to give them entry to South Australia in the first place. They are required to transit and not stop and so, by analogy, it would be a very challenging task, I think, to expect people to come off the *Spirit of Tasmania* in Melbourne and then drive right through to Adelaide without stopping, and that is not permitted—definitely, that is not permitted.

In terms of—I won't use the words 'foreign ports' as that might really make the Prime Minister cross—interstate airports, we have different rules for different airports. For example, in New South Wales, I think even before we lifted the border we allowed transiting from Queensland through the Sydney Airport to Adelaide but my understanding, and this is the bit that I'm very keen to verify for the member, is that we are still not allowing transit through the Tullamarine Airport. If you arrive on a flight from a low-transmission zone into the Melbourne Airport and then transit on to Adelaide, first of all, you may not be entitled to enter and, if you are entitled to enter, you would be subject to quarantine.

## DISABILITY ACCESS AND INCLUSION PLANS

**The Hon. K.J. MAHER (Leader of the Opposition) (15:16):** My question is to the Minister for Human Services regarding disability access plans. Today, the minister stated that the Housing Authority has a Disability Access and Inclusion Plan that is up for consultation. Can the minister be a bit more precise and inform the chamber where this Disability Access and Inclusion Plan can be found, how long it has been up for consultation, and who has been consulted?

**The Hon. J.M.A. LENSINK (Minister for Human Services) (15:17):** The advice that I have is that the South Australian Housing Authority developed and consulted their draft between 25 August and 14 September, including using the YourSAy consultation hub.

## AFFORDABLE HOUSING

**The Hon. J.S. LEE (15:17):** My question is to the Minister for Human Services regarding housing development. Can the minister please provide an update to the council on the progress of new social and affordable housing being built in South Australia?

**The Hon. J.M.A. LENSINK (Minister for Human Services) (15:17):** I thank the honourable member for her question and for her interest in this area. We know that the Marshall Liberal government is building what matters in South Australia, creating thousands of local jobs and better lives for South Australians through our record—

*The Hon. E.S. Bourke interjecting:*

**The PRESIDENT:** Order, the Hon. Ms Bourke!

**The Hon. J.M.A. LENSINK:** —$12.9 billion investment in roads, hospitals, schools, housing and regional infrastructure. We are proud to be part of a government that is creating more jobs and better lives for South Australians, building what matters.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. J.M.A. LENSINK:** In addition to roads, schools and hospitals, which are—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. J.M.A. LENSINK:** Mr President, they are baiting me.

**The PRESIDENT:** Order! The minister is on her feet and will be heard in silence. She will continue.

**The Hon. J.M.A. LENSINK:** Thank you, Mr President. We are also building new affordable homes, both on our own behalf and in partnership with the non-government sector. It was with great pleasure that, with the member for Colton, I was recently able to attend Unity Housing's particular site at Henley Beach South, which is estimated to support some 270 jobs, to develop a combination of housing for that particular prime location.

The site was formerly walk-up flats that were from the Housing Authority. That land has been provided for this project and is going to provide 22 affordable townhouses, 20 market-sale townhouses and 28 social housing apartments in a blend, if you like. I have spoken in this place before about the need for builds, as we are going forward, to have a blend of ownership types and with particular design and amenity to improve the social mix.

My understanding is that the 22 affordable housing townhouses will actually be disability friendly for either younger people with disabilities or older people who are ageing and have age-related disabilities. We will have all those features, including widened doors, no lintels—a range of things—and a ground floor site. There's also a range of other rental and private ownership types that will be incorporated in that site.

Feedback via the local member and from the community is that they are welcoming the redevelopment of that particular site, which has remained vacant for a couple of years. It's to commence either later this year or early next year and is expected to be finished by 2023.

*Bills*

## SPENT CONVICTIONS (DECRIMINALISED OFFENCES) AMENDMENT BILL

*Introduction and First Reading*

**The Hon. J.M.A. LENSINK (Minister for Human Services) (15:21):** Obtained leave to introduce a bill for an act to amend the Spent Convictions Act 2009. Read a first time.

*Second Reading*

**The Hon. J.M.A. LENSINK (Minister for Human Services) (15:23):** I move:

That this bill be now read a second time.

I am pleased to introduce the Spent Convictions (Decriminalised Offences) Amendment Bill 2020. The bill amends the Spent Convictions Act 2009 to expand and improve the system for spending convictions for historical homosexual offences.

South Australia was the first jurisdiction to introduce a legislative system for removing historic homosexual convictions. The Spent Convictions (Decriminalised Offences) Amendment Act 2013 introduced a new category of spendable offence called a designated sex-related offence (DSRO). A

DSRO is an offence involving consensual sexual activity between adults or, in some cases, consensual activity between 16 and 17 year olds.

The application to spend a DSRO is made under section 8A of the act. Section 8A can be used to spend a range of sex offences, including DSROs; however, separate factors apply to the decision to spend a DSRO. The magistrate need only need consider whether the offence meets the criteria to be considered a DSRO and whether the conduct constituting the offence has ceased by operation of law to be an offence. If so satisfied, the magistrate may spend the conviction.

Spending a DSRO gives substantial benefits not given to other spent convictions. Generally, spent convictions can be revealed in a range of circumstances set out in schedule 1 of the act, including in relation to parole proceedings, character tests, screening units and working with children and vulnerable people. By contrast, the schedule 1 exceptions do not apply to a spent DSRO. For all purposes the convicted person must be treated as if the conviction had never occurred. The conviction must not be revealed.

This was a groundbreaking reform at the time; however, a review of the legislation, prompted by our LGBTIQA+ round table in 2019, has revealed some deficiencies in the current regime, and I thank the South Australian Rainbow Advocacy Alliance for prompting us, prior to the election, to make the commitment to have the round table and for their ongoing advocacy on this and a number of issues.

This bill makes numerous changes to make the system fairer and more accessible. The bill removes the requirement for a person to complete a 10-year crime free period before they can have their historical homosexual offences spent. While this test is appropriate for other offences spent under the act, it should not apply to historical homosexual offences. The person should be entitled to have the conviction spent because, simply, it was wrong to convict them in the first place. Their subsequent criminal history is therefore irrelevant. It is demeaning to require them to submit evidence of good behaviour in order to have the conviction spent.

The bill also moves applications to spend DSROs into their own section so that it is no longer dealt with in the same section as non-decriminalised sex offences. The two applications are fundamentally different. Non-decriminalised sex offences will continue to be spendable under section 8A at the discretion of a magistrate if no term of imprisonment was imposed for the offence and if the applicant has completed a crime free qualification period. DSROs will be spent under a new section 8B. Most importantly, spending a conviction under section 8B is not a discretionary exercise. If the criteria under the section are made out, the applicant is entitled to have the conviction spent.

The bill also expands the definition of DSRO, allowing more people to access the system for spending decriminalised sex offences. Under the current definition the sexual activity must have occurred between two adults or near-adults. This definition therefore excludes minors who were victims of what would now be considered grooming. Previously, minors could be convicted of homosexual offending, and they are presently unable to spend the conviction, because the sexual activity was not between adults.

The bill remedies this by adding more classes of offences to the definition of DSRO. The expanded definition covers the specific homosexual sex offences repealed in 1972 and 1975 as well as was their common law equivalents. It also covers attempts to commit homosexual offences and contains a power to prescribe more offences by regulation provided the offences involve consensual sexual activity between persons of the same sex. The key feature of these new categories is that they do not require the parties involved to have been adults.

To ensure that only decriminalised sexual conduct is spent under this section, the bill requires the magistrate to be satisfied that the conduct engaged in by the person or constituting the offence would not, at the time an application is considered, constitute an offence under the law of the state.

To make it clear, if an adult male and a minor were previously convicted of the offence of buggery, both might apply to spend their conviction under section 8B; however, only the minor would meet the test of this conduct no longer constituting an offence. The adult could still be convicted today of unlawful sexual intercourse and therefore would not be entitled to have the conviction spent under section 8B.

The bill also allows for spending homosexuality related offences other than sex offences. In the past, homosexual people would be charged with general offensive behaviour crimes for conduct such as showing affection with a person of the same sex in public or wearing clothing considered inappropriate for their sex. These are not sex offences and therefore can currently be spent automatically after completing the crime free qualification period. However, these spent convictions are still subject to the exceptions in schedule 1 and therefore not properly protected from disclosure.

The bill will introduce a new section 8C to allow persons to apply to have a conviction for a public decency and morality offence spent by order of a magistrate, which will give people who were convicted of these offences enhanced privacy protections. Applicants will be entitled to have the conviction spent if they can show that (1) the person would not have been charged with the offence but for the fact that the conduct was suspected of being, or being connected to, homosexual activity; and (2) the conduct would not, at the time an application is considered, constitute an offence under the law of the state.

This test will allow the magistrate to consider the context and background of the offending, for example, if the charge was offensive behaviour the magistrate will consider whether the conduct would still be considered offensive today. In most cases, it will not, as in contemporary Australian society two men or two women holding hands in public is no longer regarded as offensive or immoral. Once spent by a magistrate's order, these offences will not be subject to the exceptions in schedule 1. Finally—

**The PRESIDENT:** Take your time.

**The Hon. J.M.A. LENSINK:** Thank you. Hard to believe some things, Mr President. Finally, the bill provides that specified next of kin or legal representatives may apply to spend the historical homosexual conviction of a deceased or incapacitated person. This amendment follows national best practice; every other jurisdiction allows applications to clear a homosexual offence from the record of a deceased person, and most also allow applications on behalf of incapacitated persons. It can be of great personal comfort for the surviving partner or family to be able to remove the conviction. I commend the bill to members and seek leave to insert the explanation of clauses into *Hansard* without my reading them.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Spent Convictions Act 2009

4—Amendment of long title

This clause amends the long title of the Act consequential on the amendments contained in the measure.

5—Amendment of section 3—Preliminary

This clause amends the definition of *designated sex-related offence* to add to the categories of offences that are designated sex-related offences for the purposes of the Act. The proposed additions are:

- an offence against section 69, 70 or 71 (other than section 70(1)(b) or (c)) of the *Criminal Law Consolidation Act 1935* before its repeal by the *Criminal Law Consolidation Act Amendment Act 1972* (No 94 of 1972);
- an offence against section 69 (other than section 69(1)(b)(ii) or (iii)) of the *Criminal Law Consolidation Act 1935* before its repeal by the *Criminal Law (Sexual Offences) Amendment Act 1975* (No 66 of 1975);
- an offence against any other provision, prescribed by regulation, that involves consensual sexual activity between persons of the same sex;
- an offence against the common law substantially corresponding to an offence referred to above or an offence referred to in paragraph (a);

- an offence of attempting, or of conspiracy or incitement, to commit an offence mentioned in a paragraph of the definition of designated sex-related offence.

This clause amends the definition of *eligible sex offence* to remove the current reference to designated sex-related offences. This amendment is consequential on the inclusion of proposed section 8B in clause 8 under which designated sex-related offences will be separately considered.

This clause inserts a new definition of *prescribed public decency offence* which means an offence against public decency or morality by which homosexual behaviour could be punished (but does not include a sex offence). This amendment is consequential on the inclusion of proposed section 8C in clause 8.

6—Amendment of section 5—Scope of Act

This clause amends section 5 of the Act consequentially on the amendments proposed in clause 8.

7—Amendment of section 8A—Spent conviction for eligible sex offence

This clause amends section 8A of the Act to remove references to designated sex-related offences which are to be considered under proposed section 8B in clause 8.

8—Insertion of sections 8B and 8C

This clause inserts new sections 8B and 8C.

New section 8B provides for convictions for an offence to be spent on order by a magistrate if the magistrate is satisfied that—

(a) the offence is a designated sex-related offence; and

(b) the conduct engaged in by the convicted person or constituting the offence would not, at the time the application is considered, constitute an offence under the law of the State.

New section 8C provides for convictions for an offence to be spent on order by a magistrate if the magistrate is satisfied that—

(a) the offence is a prescribed public decency offence; and

(b) the convicted person would not have been charged with the offence but for the fact that the conduct engaged in by the person or constituting the offence was suspected of being, or being connected to, homosexual activity; and

(c) the conduct engaged in by the convicted person or constituting the offence would not, at the time the application is considered, constitute an offence under the law of the State.

9—Variation of Schedule 1—Exclusions

This clause amends clause a1 of Schedule 1—

(a) to substitute a reference to section 8A with a reference to 8B consequential to clause 8; and

(b) to provide that where an order is made under new section 8C that a conviction for a prescribed public decency offence is spent, the exclusions set out in Schedule 1 do not apply in respect of the offence.

10—Variation of Schedule 2—Provisions relating to proceedings before a qualified magistrate

This clause amends Schedule 2 of the Act—

(a) to specify the persons who, in addition to a convicted person, may apply for a spent conviction order to be made in respect of a conviction for a designated sex-related offence or a prescribed public decency offence; and

(b) to make other amendments consequential on the measure.

Debate adjourned on motion of Hon. I.K. Hunter.

## STATUTES AMENDMENT (ABOLITION OF DEFENCE OF PROVOCATION AND RELATED MATTERS) BILL

*Introduction and First Reading*

**The Hon. J.M.A. LENSINK (Minister for Human Services) (15:31):** obtained leave and introduced a bill for an act to amend the Bail Act 1985, the Criminal Law Consolidation Act 1935, the Evidence Act 1929 and the Sentencing Act 2017. Read a first time.

*Second Reading*

**The Hon. J.M.A. LENSINK (Minister for Human Services) (15:32):** I move:

That this bill be now read a second time.

I am pleased to introduce the Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Bill 2020. This bill implements the preferred recommendations in stage 1 and stage 2 reports of the South Australian Law Reform Institute (SALRI), entitled 'The Provoking Operation of Provocation'. The SALRI reports recommended that the common law defence of provocation should be abolished. At common law, if successfully raised provocation operates as a partial defence, reducing murder to manslaughter. The defence has been criticised for being complex, gender-biased and encouraging victim blaming.

It is at odds with community expectations that, regardless of the degree of provocation, ordinary people should not resort to lethal violence. Sometimes referred to as the gay panic defence, it has been controversial in its use by accused persons who have perpetrated violence against members of the gay community. Notwithstanding that the defence was rarely successful in this context, this aspect of its operation is offensive and unacceptable. The defence has had some limited utility in the case of women who, having been the victims of prolonged family violence, finally retaliate against their abuser. Absent the defence, these women may be convicted of murder and face a mandatory sentence of life imprisonment, and a mandatory minimum non-parole period of 20 years.

In line with the recommendations in the SALRI reports, the bill addresses this issue by ensuring that evidence of family violence and the circumstances surrounding it can be taken into account both at trial, particularly in the context of defences of self-defence and duress where the dynamics of a domestic relationship may be especially relevant and in sentencing, including in relation to murder.

It seeks to strike a balance between ensuring the changes to the law operate fairly and practically, and that they do so without unintended consequences. To this end, the bill contains amendments to the Criminal Law Consolidation Act 1935, the Evidence Act 1929, the Sentencing Act 2017 and the Bail Act 1985.

The common law defences of provocation, duress, necessity and marital coercion are abolished by clause 6 of the bill, inserting new section 14B into the CLCA. Duress and necessity are replaced by statutory provisions, the latter called sudden or extraordinary emergency in clause 8. These sit with the provisions regarding self-defence and defence of property in part 3, division 2, now renamed Defences.

The new statutory defences of duress and sudden or extraordinary emergency reflect the common law. They do not operate as defences in relation to murder or related offences such as attempted murder, conspiring or soliciting to commit murder, aiding or abetting murder, and such other offences as may be prescribed by regulation the future.

Clause 7 of the bill amends section 15B of the CLCA. That section currently provides that, while defensive action needs to be proportionate to the threat, this requirement does not necessarily mean that the force used by the defendant cannot exceed the force used against them. Clause 7 adds to this by providing that, where the defensive action is taken in circumstances of family violence, the question of proportionality is to be determined having regard to any evidence of family violence before the court.

This provision ensures that the history and dynamics of the relationship between the accused and the alleged victim are placed before the jury. Further, it clarifies that the CLCA provisions are to be construed by reference to definitions of the terms 'circumstances of family violence' and 'evidence of family violence' inserted in the Evidence Act by this bill.

Clause 9 abolishes part 9, division 13 of the CLCA and, with it, section 328A. That section contained a defence of marital coercion for certain offences committed by a wife in the presence of and under the coercion of her husband.

Clause 10 inserts a new division—part 3, division 4—into the Evidence Act. Part 3 of the Evidence Act currently comprises three divisions dealing with rules of evidence in general cases, sexual cases and the admissibility of evidence showing discreditable conduct or disposition. New division 4 provides guidance to the courts in dealing with offences committed in circumstances of family violence. Key concepts, such as circumstances of family violence, abuse and member of a

person's family, are defined to assist courts trying and sentencing for such offences. There is an inclusive definition of what amounts to evidence of family violence.

Expert evidence relating to the nature and effect of family violence, called social framework evidence, can be admitted in prescribed proceedings to provide context to the experience of victims of family violence. Prescribed proceedings are those where a defendant asserts the offence occurred in circumstances of family violence and self-defence, duress or sudden or extraordinary emergency are raised by the defendant. New section 34Y requires a judge to identify and explain the purposes for which evidence of family violence may or may not be used.

Clause 11 of the bill contains a further amendment to the Evidence Act. It allows section 69A to allow for a court to make a suppression order in relation to evidence given by or relating to a defendant where that evidence relates to family violence suffered by a defendant and is of a humiliating or degrading nature.

Clause 12 of the bill amends section 48 of the Sentencing Act. Section 47(5)(b) of the Sentencing Act provides that the mandatory minimum non-parole period for murder is 20 years. Section 47(5)(d) provides that the mandatory minimum non-parole period for serious offences against the person is four-fifths of the head sentence. Serious offences against the person are major indictable offences that result in the death or total incapacity of the victim or conspiracy to commit or aiding and abetting the commission of such an offence.

Currently, these mandatory minimum non-parole periods can only be departed from where special reasons exist. Section 48(3) contains an exhaustive list of special reasons. The amendments to section 48 will allow a sentencing court to depart from the 20-year mandatory minimum non-parole period for murder or four-fifths of the head sentence for serious offences against the person in exceptional circumstances.

Exceptional circumstances may include each of the three factors that currently constitute special reasons as well as an additional factor, namely, that the offence was committed in circumstances of family violence. It is no longer an exhaustive list.

Finally, clause 4 of the bill amends the Bail Act 1985 to provide that there is a presumption against bail being granted to persons accused of murder. They will have to establish exceptional circumstances in order to justify a grant of bail. This change is being made to ensure consistency with how the persons accused of other serious offences are treated in relation to bail.

Taken as a whole, the bill will impact positively on the community by removing defences that are out of step with community expectations, in particular by abolishing the defences of provocation and marital coercion and by giving the courts greater flexibility to consider defensive actions taken in the context of family violence as mitigating circumstances in sentencing. It ensures that the issues of domestic violence can be properly ventilated in courts by creating special evidentiary provisions relating to evidence of family violence.

These provisions put the impact upon victims of domestic violence front and centre of criminal trials and ensure that both the trier of fact and the sentencing court must have regard to such evidence. The bill will also ensure the defendants who have themselves been a victim of domestic violence may be afforded the protection of a suppression order in respect of evidence relating to that domestic violence that is humiliating or degrading in its nature, whether that evidence is given by the defendant or another witness. I commend the bill to members and seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Bail Act 1985*

4—Amendment of section 10A—Presumption against bail in certain cases

This clause amends section 10A of the principal Act to include murder in the list of offences where there is a presumption against bail.

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

5—Amendment of heading to Part 3 Division 2

This clause makes a consequential amendment to the heading to Part 3 Division 2 of the principal Act.

6—Insertion of section 14B

This clause inserts new section 14B into the principal Act, abolishing the specified common law defences.

7—Amendment of section 15B—Reasonable proportionality

This clause amends section 15B of the principal Act to require a court, in determining whether particular conduct was reasonably proportionate to a particular threat, where a defendant asserts that an offence occurred in circumstances of family violence, to have regard to any evidence of family violence admitted in the course of the trial for the offence.

8—Insertion of sections 15D and 15E

This clause inserts new sections 15D and 15E into the principal Act, codifying the common law defences of duress and necessity abolished by clause 6.

9—Repeal of Part 9 Division 13

This clause repeals Part 9 Division 13 of the principal Act, made redundant by the provisions of this measure.

Part 4—Amendment of *Evidence Act 1929*

10—Insertion of Part 3 Division 4

This clause inserts a new Division 4 into Part 3 of the *Evidence Act 1929* as follows:

Division 4—Evidence in proceedings where circumstances of family violence

34U—Interpretation

This proposed section defines terms used in the Division.

34V—Circumstances of family violence

This proposed section sets out the meaning of an offence being committed, or other event occurring, in circumstances of family violence. This meaning applies to all Acts in the absence of a contrary intention.

34W—Evidence of family violence

This proposed section sets out what is evidence of family violence. This meaning applies to all Acts in the absence of a contrary intention.

34X—Certain expert evidence relating to nature and effect of family violence to be admissible

This proposed section allows expert evidence of the nature and effect of family violence to be admissible in certain legal proceedings.

34Y—Trial directions relating to evidence of family violence

This proposed section requires a judge to identify and explain the purpose for which evidence of family violence may, and may not, be used if admitted in the trial of an offence committed in circumstances of family violence.

11—Amendment of section 69A—Suppression orders

This clause amends section 69A of the principal Act to allow a court to make suppression orders in relation to certain evidence relating to family violence.

Part 5—Amendment of *Sentencing Act 2017*

12—Amendment of section 48—Mandatory minimum non-parole periods and proportionality

This clause amends section 48 of the principal Act to allow a sentencing court to set a lower non-parole period than that required under section 47 of that Act in prescribed or exceptional circumstances. Exceptional circumstances may include the commission of an offence in specified circumstances of family violence.

Debate adjourned on motion of Hon. I.K. Hunter.

## HEALTH PRACTITIONER REGULATION NATIONAL LAW (SOUTH AUSTRALIA) (TELEPHARMACY) AMENDMENT BILL

*Introduction and First Reading*

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:41):** Obtained leave and introduced a bill for an act to amend the Health Practitioner Regulation National Law (South Australia) Act 2010. Read a first time.

*Second Reading*

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:42):** I move:

That this bill be now read a second time.

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

Leave granted.

I rise today to introduce the Health Practitioner Regulation National Law (South Australia) (Telepharmacy) Amendment Bill 2020.

The purpose of this bill is to make permanent the legal provisions for the authorising of telepharmacy in South Australia. Similar temporary provisions were supported by members as part of the COVID-19 Emergency Response (Further Measures) (No.2) Amendment Bill. These provisions were extended with the passage of the COVID-19 Emergency Response (Expiry and Rent) Amendment Bill 2020 and are set to expire on 6 February 2021.

Telepharmacy is the provision of pharmaceutical care and products to a patient through the use of video and audio telecommunication, where the pharmacist is not physically present in a pharmacy. This also includes the provision of medicines where the pharmacist is not able to receive and/or provide the medicine to the patient personally, and therefore the provision of medicines is achieved through the use of telecommunications and information technologies to patients at a distance.

In 2004, telepharmacy was provided in South Australia as part of the national trial to enable provision of care to rural and remote communities. More recently, telepharmacy has been provided on the understanding that it is not prohibited under the Health Practitioner Regulation National Law (South Australia) Act 2010. This Bill will consolidate the legislative base and provide the Pharmacy Regulation Authority of South Australia with clear and express powers to authorise telepharmacy arrangements under strict conditions.

Clarifying the powers of the regulatory authority will also provide assurance to the communities that rely on these services. Telepharmacy services have been provided successfully in limited regional locations, which include Cleve, Cowell, Kimba, Crystal Brook, Laura and Gladstone.

Under the provisions of the National Law the Pharmacy Regulation Authority of South Australia (PRASA) is responsible for the administration of Part 4 of the National Law, which concerns pharmacy.

PRASA is established under section 27 of the National Law and has a number of functions including the registration of pharmacy premises, depots and pharmacy services providers, ensuring compliance with the National Law and preparing, endorsing and publishing codes of conduct which also have to be approved by the Minister.

This bill will clarify the law in regard to the authorisation of the remote attendance of a pharmacist by PRASA. Since the National Law came into operation telepharmacy has continued on the understanding that it is not prohibited by that Act. This bill will provide PRASA with clear and express powers to authorise telepharmacy arrangements under strict conditions.

This bill includes two additional provisions to those included in the temporary COVID-19 Acts.

Firstly, PRASA may only authorise the provision of telepharmacy services where the authorisation is necessary to ensure that pharmacy services are available to people who otherwise would not have direct and timely access to these services. This addresses any perceived potential for new business models for routine delivery of pharmacy services.

PRASA recognise that best practice is for a pharmacist to provide professional pharmacy services in-person to a patient. However, in the event that a pharmacy is unable to open and maintain essential pharmacy services, for example, due to an outbreak of COVID-19 from within their staff cohort, telepharmacy services may provide a safe and appropriate option and allow isolated South Australian populations to continue to access pharmacy services without the physical presence of a pharmacist. Community pharmacists play an important role in the delivery of medication and other services to customers and continuity of service is imperative.

Secondly, a pharmacy services provider must ensure that a relevant code of conduct is complied with when providing services remotely. The Pharmacy Regulation Authority of South Australia has developed a code of conduct for this purpose.

A broad range of stakeholders were consulted about this bill, including medical and pharmacy groups, and no concerns have been raised.

The Commonwealth Government has moved to enable provision of medication review services through telehealth systems during the COVID-19 pandemic to ensure vulnerable patients can receive pharmacist-delivered support while remaining isolated from COVID-19. This supports the safety of patients and pharmacists, and ensures continuity of care. Technology is enabling the enhancement of the safety and quality of healthcare for the community through access to pharmacy services where they would otherwise be unavailable.

It is important that this framework is established permanently and I commend this bill to all members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Health Practitioner Regulation National Law (South Australia) Act 2010

4—Amendment of section 43—Supervision of pharmacies by pharmacists

This clause amends section 43 of the Act to provide that the requirement under section 43(1) that a pharmacist is in attendance and available for consultation while the pharmacy is open to the public does not apply in circumstances where—

(a) the person is authorised by the Authority to operate the pharmacy business without a pharmacist being physically in attendance at the pharmacy; and

(b) a pharmacist is, by means of Internet or other electronic communication (other than communication of a kind specified by the Authority), in attendance during any period the pharmacy business is operating and is available for consultation by members of the public.

The proposed amendment provides that the Authority must not grant an authorisation for this exemption to apply unless satisfied that—

(a) the authorisation is necessary to ensure that pharmacy services are available to persons who would not otherwise have direct and timely access to such services; and

(b) a pharmacy services provider providing pharmacy services as part of the operation of the pharmacy business without a pharmacist being physically in attendance at the pharmacy has taken all reasonable steps to ensure that the provider will, at all times, comply with a code of conduct applying to the provider under this Act in respect of such operation.

5—Amendment of section 46—Conditions

This clause amends section 46 of the Act to provide that a condition of the registration of a pharmacy that is inconsistent with section 43(1a) (as proposed to be inserted by clause 4) will, to the extent of the inconsistency, be taken to be modified to give effect to that section.

Debate adjourned on motion of Hon. I.K. Hunter.

## HEALTH CARE (GOVERNANCE) AMENDMENT BILL

*Second Reading*

Adjourned debate on second reading (resumed on motion).

**The Hon. T.A. FRANKS (15:44):** I rise on behalf the Greens to speak broadly in support of the legislation before us today, though there are some issues of concern that I will mention later on. It is certainly welcome to see the reintroduction of this bill. The government has kept some of the amendments previously passed by this chamber, and in particular the principle for the operation of the act, to ensure it is inclusive of primary healthcare networks, Aboriginal and Torres Strait health services and public health services provided in local government, aged care and disability; that service agreements specify that each health service provider must operate programs that promote the provision of health care for Aboriginal and Torres straight Islander people; and that the functions

of an LHN governing board include ensuring that their LHN operates programs that promote preventative and primary health care, including the preventative and primary health care of Aboriginal and Torres Strait Islander people within those local communities.

During the debate on this matter last year, I, on behalf of the Greens and indeed in alliance with various stakeholders in this field, voiced our concerns about the dissolution of the Health Performance Council. While the government has brought the bill back and with the amendments passed by this chamber previously, it seems that we have still not made headway on key points of contention amongst those stakeholders, and indeed voiced today by the Greens.

Many of those stakeholders—and I will note particularly headed up by the South Australian Council of Social Service—have continued to raise their concerns about the removal of the Health Performance Council for various reasons and I think it is important that those matters are addressed. The removal of the Health Performance Council results in a lack of independent monitoring, data analysis and reporting, as well as community or consumer engagement mechanisms. Currently, the data routinely collected and stored by the Health Performance Council is a valuable resource and could be used more effectively and transparently to inform both clinicians and consumers and enable the scrutiny and accountability of system performance.

By collecting and using this data independently, as a state we are actually able to examine the efficacy of care across the state for different user groups. With the dissolution of the Health Performance Council, I believe concerns remain regarding the lack of monitoring, data analysis and reporting as well as of course that community and consumer engagement mechanism. We must also note the importance of accessing and using a reliable evidence base in the form of good quality information and data analytics in order to design and implement sound health policy and implementation strategies informed by that consumer engagement and input.

As I did during the previous debate, I want to be clear that the Greens' intention is that we will not support moves to abolish the Health Performance Council until we see what is to be put in its place in greater detail, and even then we reserve our rights should those two roles not in fact be complementary and positive for the best health outcomes for our state. I do note that as a result of the debate last time around, an additional function of the chief executive of the Department for Health and Wellbeing was included in the bill and that involves engaging with consumer representatives and other interested parties in the development of healthcare policy, planning and service delivery.

This acknowledgement of the need to consult with consumers is important and welcome; however, under this bill we are still lacking that independent consumer voice as well as independent oversight. The does need to be addressed. I understand from debate previously on this bill, the minister believes input from those consumers will be picked up at the local level in our health system at the LHN level, but the Greens remain unconvinced that this will eventuate; in fact, at least uncertain that this will be the case.

In a modern health system, the time has long since passed where consumers were treated as simply passive recipients of that health service. We know that the consumer voice is vital to ensure that we get the best health services possible, but the voice needs to be real well resourced, respected and embedded in the system—explicitly embedded in our system.

With that, I conclude that the Greens support the broad intention of this bill and will support the second reading; however, we do hope that this chamber will address these ongoing issues around the Health Performance Council and that consumer voice matter that I have raised as we move through the committee stage.

Debate adjourned on motion of Hon. I.K. Hunter.

## STATUTES AMENDMENT (LOCAL GOVERNMENT REVIEW) BILL

*Second Reading*

**The Hon. R.I. LUCAS (Treasurer) (15:51):** 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 Statutes Amendment (Local Government Review) Bill 2020 represents the most significant changes to our local government system that have been brought forward in a single Bill since Parliament passed the Local Government Act at the end of the last century.

The Bill proposes to amend almost every Chapter in the Local Government Act, along with the Local Government (Elections) Act, the City of Adelaide Act and five other pieces of legislation that interact with the system of local government.

While the reforms are wide-ranging, they have all been developed within the context of councils as our local governments. It's often said that councils are the closest sphere of government to the community. They are delivering the services that are part of our day to day lives. Our council members are people from our local area—often living just down the road.

Because of this, it can be easy to lose sight of the fact that councils are governments, just like State and Federal Government. They are elected to make serious decisions about the services they provide and the taxes they raise to fund them—and they have both the powers and responsibilities that this requires.

And like all governments, councils make these decisions within an ecosystem that needs to be as robust as possible. This ecosystem includes integrity agencies, media oversight, councils' own internal processes, support provided to councils by their administration; and most importantly, the interaction with and oversight by councils' communities and ratepayers.

It is all of these parts working together that help councils to make the best decisions for their constituents, when the services that communities most value are provided through the wisest use of ratepayer dollars.

These reforms therefore aim to 'tune up' critical parts of the local government system, to improve the quality and level of both oversight and support that is provided to our local councils.

From the start, the local government reform program has focused on four key areas where it was clear that improvements to the practice and the system of local government is needed.

These areas are—

- Stronger council member capacity and better conduct—helping our council members to perform their roles to the best of their ability, and ensuring that the right measures are in place to deal with conduct issues when they arise.
- Lower costs and enhanced financial accountability—enhancing financial accountability and improving efficiency within the local government sector by delivering greater confidence in council audits, improving council decision-making, financial reporting, and making information about council financial performance more accessible to both council members and communities.
- Efficient and transparent local government representation—improvements to an election process that is fair, transparent, run independently, that provides the right information at the right time, and encourages participation from potential council members and voters alike.
- Simpler regulation—improvements to rules and regulations that seek to protect the interests of the community, by making sure that councils operate with transparency and accountability, and that their decisions and actions are, and are seen to be, in the public interest.

Before I detail reforms in these areas, I would like to take this opportunity to place on record my sincere thanks to the many people and organisations that have contributed to this Bill through reference groups, working groups, attending intensive reform sessions, by providing ideas for reform and making submissions on reform proposals, participating in consultation, or by generally making their ideas and views known to me and the Office of Local Government.

This has included consistent representation from the Independent Commissioner Against Corruption, the Ombudsman, the Auditor-General and the Electoral Commission of South Australia. I thank all of these bodies for sharing their knowledge and experience of our local government system.

Most particularly, I acknowledge the time and efforts of many in the local government sector that have provided considered ideas, suggestions for reform and comments on proposed reform.

This includes the Local Government Association, many individual councils and council mayors and members, council chief executive officers and professional organisations, particularly the Governance Policy Officers' Network, the Finance Managers' Group and the SA Local Government Auditors' Group. All have taken time from their busy work lives to contribute to, comment on—and improve—the reforms within this Bill.

Finally, I thank the Office of Local Government within the Department for Infrastructure and Transport, the Office of Parliamentary Counsel, and all public servants who have worked hard to deliver this Bill to the House.

I now turn to the key reforms in the four reform areas that I have outlined above.

The first of these reform areas is stronger council member capacity and better conduct. The reforms in this area respond to a clear need to improve the system that is in place to manage the conduct of council members when, from time to time, it does not meet the high expectations that people have of their local elected representatives.

The chief reform to this area is a new approach to the definition of conduct matters within the Local Government Act. The Bill proposes that Chapter 5 Part 4 of the Act will make a clear distinction between council member behaviour and council member integrity.

This will assist councils, council members and members of the public to better understand what matters are poor behaviour that should be dealt with at a council level in the first instance, and what matters could affect the integrity of a council member's decisions, and should therefore be dealt with by an independent body.

This more clearly delineated approach will replace the current general approach to conduct, and the Code of Conduct in regulations. While the Minister will have the ability to publish Behavioural Standards to be observed by members of council, it is not anticipated that these will be as prescriptive as the current Code. Additionally, councils will have the ability to determine their own policies that they, as a group of elected representatives, think will support appropriate behaviour.

Integrity matters will also be clearly spelt out in the Act, rather than being split between the Act and the Code of Conduct. These include conflict of interest, proper management of confidential information, and of gifts and benefits. This last matter has also been significantly simplified from the current provisions within the Code of Conduct, with an expectation that council members can use their judgement to determine what is appropriate to accept, rather than following more prescriptive provisions in the regulations.

While the Bill makes a clear distinction between integrity matters and behavioural matters, it also recognises there needs to be a better way to deal with poor behaviour that is repeated, despite a council's best effort to change it, or that is sufficiently serious to pose a risk to health and safety or to a council's proper functioning.

To deal with these issues, the Bill creates a 'Behavioural Standards Panel'. This will consist of three suitably qualified people, appointed by the Minister and the Local Government Association that will consider complaints lodged by councils about repeated or serious behavioural matters. The Bill provides the Panel with the flexibility to investigate and resolve these matters, so that this can happen quickly and effectively.

Importantly, the Bill also provides the Panel—and the Ombudsman, who retains a role in the investigation of integrity matters—with an expanded range of sanctions to apply if necessary, including the suspension of members.

The Bill also provides further tools for councils in managing behavioural issues or non-compliance with statutory requirements by council members by providing for council level suspensions in certain circumstances. These relate to a council member's non-compliance with requirements in relation to submitting returns for the register of interests, mandatory training, and to address a situation where there is an intervention order in place against a council member and the protected person is another member or a council employee.

Other reforms in this area include a simplification of the conflict of interest provisions, to assist council members to more easily determine when they have a conflict, and to deal with it appropriately. The Bill maintains the current approach in the Act that defines material conflicts—those where the matter on hand would result in a benefit or loss to the member, from less significant conflicts, but simplifies the definition of the latter from 'actual' and 'perceived' to a clearer 'general' conflict.

As is currently the case, members will be required to leave the room when they have a material conflict, but can make their own call as to whether they can remain for discussion and decisions on general conflicts. Members will still be required to manage general conflicts in a transparent and accountable way and to inform the meeting how they intend to deal with it.

I also now highlight some other significant reforms in this area.

One of them is in relation to the management of sexual harassment. The Bill includes an amendment to the *Equal Opportunity Act 1984* to include council members as persons against whom it is unlawful for a council member to sexually harass. As is the case now for council officers and employees, this will enable other council members to lodge complaints with the Equal Opportunity Commission.

The Bill also includes an amendment to the *Local Government Act 1999* to include a requirement for council chief executive officers to ensure that employees are protected from sexual harassment by members of the council or other employees and that appropriate processes exist for dealing with complaints of employees relating to sexual harassment. This simply clarifies the existing responsibilities for council CEOs to ensure that workplaces are safe from sexual harassment for all council employees.

No council employee or member should have to tolerate sexual harassment and should have easy recourse to appropriate avenues to address any instances that may occur.

The Bill also proposes a range of reforms to improve the relationship between a council and its chief executive officer, given the critical importance of this relationship to the proper functioning of a council. These reforms include a requirement for councils to receive and consider independent advice on the employment and management of a chief executive officer. The Bill also proposes that the South Australian Remuneration Tribunal should set salaries for council

chief executive officers, to provide assurances to communities that CEOs are paid appropriately for the work that they do.

The second reform area is lower costs and enhanced financial accountability. These reforms are focused on improving the quality of information and advice that is provided to councils, their administrations and their communities. This advice is critical when councils are fulfilling their responsibilities to manage their financial position, and, most importantly, when they make a decision about the rates that their community will pay.

Councils will now be required to receive and consider advice from an independent body every three years on their long-term financial plans and revenue decisions over this period. The Essential Services Commission of South Australia (ESCOSA) will perform this function, unless another body is prescribed

This rate monitoring scheme has two key purposes.

The first is to support councils to make decisions relating to their annual business plans and budgets in the context of their ten-year financial plans and infrastructure and asset management plans. These plans are critical documents for councils, as they lay out how councils are proposing to manage their financial position and performance over the longer term. They should always be the foundation of decisions made by councils on their proposed revenue and expenditure each year.

Of course, councils do not have to implement what is set out in their long-term financial plans without variation. Circumstances change – as this year has shown more clearly than any other. It's important, though, that any material variations from a long term financial plan are made for good reason; that the impact of variations on the councils' financial position and performance are managed appropriately, and that variations are implemented in a way that addresses the impact they may have on their ratepayers.

The other purpose is to ensure that the decisions councils' make on financial contributions made by ratepayers to the provision of services and infrastructure—chiefly through council rates—is appropriate within the context of these long-term plans. Councils may be in a financial position where they could reasonably use their reserves, or other sensible financing means instead of rate increases, and ESCOSA's advice could be that they should do so. There is also a reasonable expectation that councils will seek to ensure value for money for their ratepayers through finding efficiencies rather than continually paying for increased costs through increased rates.

Because the rate monitoring system is based on councils' long-term financial plans and infrastructure and asset management plans, these existing documents will also be the basis of the information that is provided to ESCOSA. This will prevent the need to give ESCOSA the information it needs to provide high quality advice from becoming an administrative burden for councils.

Most importantly, all councils must include the ESCOSA advice in their draft annual business plans every year, and, if they are not implementing this advice, clearly explain to their communities why they are not.

This means that whenever a ratepayer is considering their councils' draft annual business plan, they will be able to see what this advice is and how their council is responding to it, while their council is consulting on its plan. This will give them the information they need to properly understand and engage with their councils on these critical decisions.

Councils must also include both the advice and their response in their final annual business plans, so their final decisions on these matters are also clear.

The intention of this reform is to give ratepayers greater confidence that the rates they pay are what is necessary for their councils to provide the services they value.

The other key source of advice for councils will be through an expanded role for their existing audit committees. The Bill proposes to extend the work of these critical bodies into 'audit and risk committees' to provide independent assurance and advice to the council on accounting, financial management, internal controls, risk management and governance matters.

To ensure the independence of this advice, the Bill requires that all audit committees consist of a majority of independent members. This is not a step that has been taken lightly. The Government is aware of some councils' concerns about the resource implications of replacing council members with independent members on their committees.

However, the Bill does provide councils with the capacity to form regional audit and risk committees (noting that it is, of course, open to councils to 'share' members through administrative arrangements without formalising a regional committee). I also draw members' attention to the fact that the requirement for audit and risk committees to have between three and five members will remain unchanged. Therefore, councils may choose to maintain a smaller committee to generate some cost savings.

Chiefly, however, the Government is of the view that engaging quality, independent, audit and risk committee members is a relatively small investment in an arrangement that is critical to providing councils and their communities with assurances that their council is managed in a financially appropriate and sustainable way.

Over the decade that audit committees have been in place, they have become an integral part of councils' management, relied on by both council bodies and their administration to be a source of support, sound advice, oversight and assurance. It is time to take the next step towards independent and skilled oversight.

Finally, in this reform area, I note the Bill's proposal that councils transition away from using site, or unimproved, valuations as the basis of their rating. Currently, only seven councils use site value as the basis of rating. The Bill proposes a consistent approach across the State. If passed, this will take some time for these seven councils to make this change, and anticipate that any commencement will therefore be delayed to enable a smooth transition to the new scheme.

The third reform area is efficient and transparent local government representation. Like all governments, councils are elected. Voters in local government elections choose who they want to represent them, to lead their communities, and to make decisions about the services that are provided to these communities, and how these services are delivered and paid for.

Every four years, periodic local government elections are held in South Australia, with a number of supplementary elections held across the intervening years, as needed. This cycle provides an opportunity for us to regularly review and improve local government elections, and, accordingly, this Bill puts forward a number of these improvements.

Along with amendments to elections timelines that specifically address postal voting, the Bill also proposes a greater role for the Electoral Commission of South Australia in the nomination process. It will become the single body to receive nominations and publish information on candidates and their disclosure of campaign gifts—all online. This will provide a more convenient, centralised service for both candidates and voters, with access to information ahead of the close of polls.

The Bill also introduces some new requirements for candidates to release information that is of critical interest to voters—any political or other organisational representation; whether they live in the area they are contesting, and large campaign gifts and donations that they receive (expected to be gifts that are more than $2,500 in value).

The Bill also includes changes to the supplementary election process, in response to concerns expressed by the sector that these were becoming an increasing burden, particularly when vacancies are created either soon after, or soon before, an election.

Where a vacancy has been created less than 12 months following a periodic election, the Bill provides removes the need to a supplementary election process and instead appoints the last excluded nominated person for that election, provided that they are both still eligible and willing to serve.

The Bill also provides to an improved process to manage supplementary elections that result from casual vacates during the term of a council. Where a second (or more) vacancy is created before the close of nominations in a supplementary election that is underway, the Electoral Commission of South Australia will be able to run that election to enable electors to fill the vacancies. If a vacancy is created after the close on nominations and up to 12 months from the end of a supplementary election, the Bill provides for the use of the well-support appointment of the last excluded person. As per the periodic election process discussed earlier, the last excluded person must be still be both eligible and willing to serve.

The Bill also extends the period immediately before a periodic election in which a supplementary election is not necessary for to a full twelve months, and allows those councils without wards and with more than 9 members to carry an additional vacancy.

Along with improvements to the election process the Bill also contains some two significant reforms to councils' representation itself. The first of these will be a requirement for all councils to consist of no more than 12 elected members. Currently, 14 of our councils have more than 12 members. Our largest council has 18 members, which, I note is not far off half of the numbers in this place where our entire State is represented.

The other change to councils' representative structure is a requirement for all councils to have a directly elected mayor. At this time, 15 councils elect a leader from within their own ranks. While this structure has served them well for many decades, it is now time for a consistent approach across the State that fully recognises the important leadership role of mayors, and provides all South Australians with an opportunity to directly vote for this critical position.

Finally, in this reform area, the Bill introduces restrictions on the display of electoral advertising posters, or 'corflutes', in response to a call from the local government sector for stronger regulation in the use of these signs. The Bill prevents a person from exhibiting a corflute on a public road, including any structure, fixture or vegetation on a public road, except in circumstances prescribed by the regulations, during a local government election.

At the LGA Annual General Meeting on 31 October 2019, councils requested the LGA to advocate for stronger regulation of corflute signs.

The LGA has stated that councils identified many problems with the use of 'corflute' election signs during recent Commonwealth, State and local government elections, including the loss of roadside amenity, diminished roadside safety, potential damage to roadside infrastructure, and the significant council resourcing required for enforcement.

Candidates in local government elections also have varying degrees of resources Many council candidates simply do not have the resources to print and display corflutes, and they should not be disadvantaged because of this.

Furthermore, ballot papers that are distributed to voters in local government elections include information on all candidates, and under the reforms in the Bill ECSA will manage a single, central website providing a much greater range information about each candidate. Voters do not have to see corflutes to understand who is standing in their elections.

Finally, the fourth reform area is simpler regulation. This reform program has provided an opportunity to look at the requirements that apply to councils in the Local Government Act, and ensure that they deliver public benefit with minimal impact on councils' resources. The Bill proposes real improvements to a range of council processes.

I understand that when the Act first commenced the requirement for councils to have public consultation polices was a novel concept. However, the Bill contains a more modern approach to community engagement that will see a single community engagement charter replace the current rigid public consultation requirements scattered throughout the Act that require councils to undertake the same specific, regulated processes regardless of the matter at hand.

The community engagement charter will be unpinned by good engagement principles. It will allow for a more flexible and principles-based approach to community consultation that can be tailored to what a council is consulting on. However, while it can set out principles and performance outcomes that are to apply, it can also specify mandatory requirements. I expect that the community engagement charter will establish these specific requirements when councils are considering their strategic planning, their rating policies and other important decisions.

The community engagement charter will be established by the Minister, but its development will be a collaborative effort with the LGA, councils and communities. The Bill also provides for Parliamentary scrutiny of the charter.

In line with a more streamlined approach to community engagement, the Bill also removes a large number of specific provisions throughout the Act that require a council to provide information to its community in a variety of ways. This multitude of specific requirements will be replaced by a single list of information and documents that a council must make available on its website.

Councils will be required to provide printed copies of this material on request and may charge a fee for doing so. This simplifies the management of council information while ensuring that members of the community who can't access material online can still access what they need in a way that is most practical for them

The Bill replaces 'informal gatherings or discussions' with a simpler scheme of 'information and briefing sessions'. These new sessions will enable councils to more easily discuss and better understand their business, but will also retain the expectation that these sessions cannot be used to obtain, or effectively obtain decisions that should be made in a public council meeting.

Councils will also need to let their communities know what they have met to discuss, and whether these sessions have been open to the public. The Bill strikes a balance between enabling council members to be well briefed and properly informed and making sure that critical decisions are debated and decided in an open chamber.

The Bill also establishes a much more effective process when a council is considering to remove the community land status of land. Currently, councils must seek the Minister's approval for all such proposals, regardless of their size and impact. Under the new scheme, only more significant proposals will require Ministerial approval. These proposals will include those instances where a council is proposing to sell or dispose of land that is currently used for a public purpose or as a community open space, where more detailed analysis and greater oversight is appropriate.

The Bill also allows the Minister to set conditions for these approvals, to ensure that the land is used for the purpose that a council has planned, particularly given the importance that this future use has on the decision regarding its approval.

The Bill will remove the current scheme that requires councils to provide permits for mobile food vendors and establishes detailed requirements for councils to maintain policies and location rules that apply specifically to these businesses. The Bill also clarifies the interaction of planning legislation and authorisations to alter public roads that are granted by councils.

The Bill will also simplify the registers of interest that council members must maintain. The process of submitting registers will be streamlined and registers will be required to be published online in full rather than only an extract of the register as is currently the case.

This responds to concerns that the current publication requirement is administratively burdensome. There will, of course, be an exemption so that councils are not required to publish residential addresses or any other suppressed address, to ensure that members' safety is not compromised.

In closing I note again the importance of this Bill to our councils and their communities. While it proposes many changes to councils and their operations, it is at its core an opportunity to provide the most important people in our local government system—our ratepayers and communities—with a greater sense of trust and confidence in our councils; through stronger support; greater consistency, accountability and transparency; and better value for money.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

The short title of the Bill is the Statutes Amendment (Local Government Review) Act 2020.

2—Commencement

Commencement is by proclamation. Section 7(5) of the *Acts Interpretation Act 1915* is disapplied.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of Local Government Act 1999

4—Amendment of section 3—Objects

The objects of the Act are amended.

5—Amendment of section 4—Interpretation

These amendments relate to various definitions and interpretative provisions for the purposes of the measure. Key definitions include *behavioural standards*, *community engagement charter* and *integrity provision*.

In relation to the definition of Commission—a reference in this Act to the Commission or the South Australian Local Government Boundaries Commission is a reference to the South Australian Local Government Grants Commission.

6—Amendment of section 6—Principal role of council

The provision relating to the principal role of a council is amended.

7—Amendment of section 7—Functions of council

The provision relating to the functions of a council is amended.

8—Amendment of section 8—Principles to be observed by council

The provision relating to the principles to be observed by a council is amended.

9—Insertion of section 11A

Section 11A is inserted:

11A—Number of members

A council must not be comprised of more than 12 members. Transitional provisions relating to the implementation of the maximum number of members are provided for.

10—Amendment of section 12—Composition and wards

Amendments relating to the representation report are included. Changes relating to public consultation on the representation report reflect the proposed establishment of the community engagement charter.

Certain amendments (including the deletion of subsections (11a) to (11d)) are consequential on the proposed amendment relating to councils only having a mayor as the principal member.

11—Amendment of section 13—Status of council or change of various names

The requirement relating to publishing a notice in a newspaper is deleted.

12—Amendment of section 26—Principles

See the change to the definition of *Commission*.

13—Amendment of section 44—Delegations

Power to delegate to a joint planning board is included.

The other amendment is a *consequential inspection and publication amendment*: a reference in this report to a *consequential inspection and publication amendment* is a reference to the amendments deleting various provisions in the Act relating to making documents available for inspection at council offices and for copies of the documents to be provided on payment of a fee. Instead, section 132 provides for publication and access to such documents.

14—Amendment of section 45—Principal office

This amendment is consequential on the establishment of the community engagement charter.

15—Amendment of section 48—Prudential requirements for certain activities

16—Amendment of section 49—Contracts and tenders policies

These amendments are consequential inspection and publication amendments.

17—Substitution of Chapter 4 Part 5

Chapter 4 Part 5 is substituted:

Part 5—Community engagement

50—Community engagement charter

The Minister must establish a community engagement charter for the purposes of the Act. The charter is modelled on the community engagement charter under the *Planning, Development and Infrastructure Act 2016*. It will relate to community consultation and participation with respect to any decision, activity or process where compliance with the charter is required by the Act, any other circumstance where compliance with the charter is required by the Act and may relate to any other circumstances, or provide for any other matter, determined by the Minister.

The charter will be published in the Gazette and on a website determined by the Minister and will be disallowable in the same way as a regulation is under the *Subordinate Legislation Act 1978*.

50A—Council community engagement policy

A council must prepare and adopt a community engagement policy relating to community engagement for the purposes of the Act.

The policy must be consistent with the charter and will relate to community engagement in decisions, activities or processes of the council.

18—Amendment of section 51—Principal member of council

These amendments relate to councils having a mayor as the principal member (rather than the option of a mayor or a chairperson).

19—Amendment of section 54—Casual vacancies

One amendment is consequential on new section 55A. Other amendments are technical.

20—Amendment of section 55—Specific requirements if member disqualified

A penalty is increased. The other amendments are consequential.

21—Insertion of section 55A

Section 55A is inserted:

55A—Leave of absence—council member contesting election

This section makes provision to deal with the situation where a member of a council stands as a candidate for election as a member of State Parliament—basically, the member will be taken to have been granted leave of absence from the office of member of the council from the date on which nominations for the election close until the result of the election is publicly declared.

22—Amendment of section 58—Specific roles of principal member

Provisions relating to the role of the principal member of a council are amended.

23—Amendment of section 59—Roles of members of councils

Provisions relating to the role of members of councils are amended.

24—Substitution of heading to Chapter 5 Part 4

The heading to Chapter 5 Part 4 is substituted.

25—Substitution of heading to Chapter 5 Part 4 Division 1

The heading to Chapter 5 Part 4 Division 1 is substituted.

26—Insertion of Subdivision heading

A heading to Subdivision 1 is inserted.

27—Amendment of section 62—General duties

Penalty provisions are deleted. Other amendments provide for certain integrity provisions (a defined term) that apply to council members—these are relevant to complaints against members under Chapter 13. Other amendments are consequential.

28—Repeal of section 63

Section 63, which provided for the Code of Conduct for members, is repealed.

29—Substitution of heading to Chapter 5 Part 4 Division 2

The heading to Chapter 5 Part 4 Division 2 is substituted with a Subdivision heading.

30—Amendment of Chapter 5 Part 4 Division 2

This amendment is consequential on the redesignation of this Division as a Subdivision.

31—Amendment of section 64—Interpretation

The deletion of the definition of *return period* is consequential.

32—Amendment of section 67—Form and content of returns

A penalty provision is deleted. The other amendment is technical.

33—Amendment of section 68—Register of Interests

Provision is made for suspension of a member for failure to submit a return for the purposes of the Subdivision. Disqualification by SACAT may follow if the suspension continues for a prescribed period.

34—Amendment of section 69—Provision of false information

A penalty provision is deleted.

35—Amendment of section 70—Publication of Register

Provision is made for the chief executive officer of a council to publish the Register on a website (except certain details).

36—Amendment of section 71—Restriction on publication

The penalty is increased.

37—Insertion of Chapter 5 Part 4 Division 1 Subdivision 3

Chapter 5 Part 4 Division 1 Subdivision 3 is inserted:

Subdivision 3—Gifts and benefits

72A—Register of gifts and benefits

The provisions relating to a register of gifts and benefits for members are inserted into the Act.

38—Substitution of Chapter 5 Part 4 Division 3

Chapter 5 Part 4 Division 3 is substituted:

Subdivision 4—Conflicts of interest

73—Preliminary

New Subdivision 4 provides for conflicts of interest as a Subdivision in substantially the same terms as much of the current Division, although certain changes are proposed. Certain requirements apply to general conflicts of interest, while other requirements apply to material conflicts of interest.

74—General conflicts of interest

75—Material conflicts of interest

75A—Exemptions and other matters

75B—Dealing with general conflicts of interest

75C—Dealing with material conflicts of interest

75D—Application of Subdivision to members and meetings of committees and subsidiaries

39—Insertion of Chapter 5 Part 4 Division 2

Chapter 5 Part 4 Division 2

Division 2—Member behaviour

75E—Behavioural standards

The Minister may establish standards of behaviour to be observed by members of councils. While Chapter 5 Part 4 Division 1 relates to member integrity, the behavioural standards will relate to member behaviour.

The behavioural standards will be published in the Gazette and on a website determined by the Minister and will be disallowable in the same way as a regulation is under the *Subordinate Legislation Act 1978*.

75F—Council behavioural support policies

A council may prepare behavioural support policies designed to support appropriate behaviour by members of the council.

A policy may specify directions relating to behaviour that must be observed by members of the council and set out guidelines relating to compliance by members with the behavioural standards.

Division 3—Health and safety duties

75G—Health and safety duties

Certain health and safety duties are imposed on council members, including the requirement to comply with any reasonable direction that is given by a responsible person (a defined term) for the purposes of ensuring that the member's acts or omissions do not adversely affect the health and safety of other members of the council or employees of the council. The duties are in addition to and do not limit the *Work Health and Safety Act 2012*.

40—Amendment of section 76—Allowances

The LGA is authorised to recover the reasonable costs incurred by the Remuneration Tribunal (which are payable by the LGA) under the section as a debt from relevant councils. Another amendment inserts 'the ratio of members to ratepayers' into the list in subsection (3). Other amendments are technical.

41—Amendment of section 77—Reimbursement of expenses

42—Repeal of section 78A

Section 78A is repealed.

43—Amendment of section 79—Register of allowances and benefits

These amendments are consequential inspection and publication amendments.

44—Amendment of section 80A—Training and development

These amendments relate to the training and development policy of councils and mandatory training and development for members. Significantly, a member of a council who fails to comply with the prescribed mandatory requirements, must be suspended from office, unless the member satisfies the chief executive officer that there were good reasons for the failure to comply. Provision is made in relation to suspensions and for an application to be made to SACAT for disqualification of the member if the suspension continues for a period of more than the prescribed period.

45—Insertion of Chapter 5 Part 7

Chapter 5 Part 7 is inserted:

Part 7—Other matters

80B—Suspension—member of council subject to intervention order

Provision is made for a member of a council to be suspended from office if the member is subject to an interim intervention order where a person protected by the order is another member, or an employee, of the council.

If a member of a council is subject to a final intervention order where a person protected by the order is another member, or an employee, of the council, the member is suspended from the office of member of the council (by operation of the provision). An application may be made to SACAT for disqualification of the member if the suspension continues for a period of more than the prescribed period.

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

One amendment is technical. The other is a consequential inspection and publication amendment.

47—Amendment of section 84—Public notice of council meetings

These amendments relate to inspection and publication of the notice and agenda for council meetings.

48—Amendment of section 85—Quorum

A member of a council who is suspended from, or on leave of absence from, the office of member of the council is not to be counted in the total number of members of the council for the purposes of calculating quorum.

49—Amendment of section 86—Procedure at meetings

The presiding member is given certain powers relating to members who behave in an improper or disorderly manner or cause an interruption or interrupt another member who is speaking at a meeting.

Another amendment is consequential.

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

This amendment is technical.

51—Amendment of section 88—Public notice of committee meetings

These amendments relate to inspection and publication of the notice and agenda for council committee meetings.

52—Amendment of section 90—Meetings to be held in public except in special circumstances

The provisions relating to 'informal gatherings' are repealed (see below). A new basis for a confidentiality order is included.

53—Insertion of section 90A—Information or briefing sessions

New section 90A is inserted. It replaces the current provisions relating to 'informal gatherings':

90A—Information or briefing sessions

Provision is made in relation to a council or chief executive officer holding or arranging for the holding of an *information or briefing session* (not being a formal meeting of a council or council committee) to which more than 1 member of the council or a council committee are invited to attend or be involved in for the purposes of providing information or a briefing to attendees. The provision imposes certain requirements relating to such sessions.

54—Amendment of section 91—Minutes and release of documents

These amendments are consequential inspection and publication amendments.

55—Amendment of section 92—Access to meetings and documents—code of practice

These amendments are both consequential inspection and publication amendments and also consequential on the establishment of the community engagement charter.

56—Amendment of section 93—Meetings of electors

One amendment changes the requirement to give notice by advertisement in a newspaper circulating in the area to notice on a website. The other relates to councils only having a mayor as the principal member.

57—Repeal of section 94A

Section 94A is repealed (as a consequential inspection and publication amendment).

58—Amendment of section 97—Vacancy in office

These amendments relate to the termination of the appointment of a chief executive officer. One amendment provides that before terminating an appointment on a ground referred to in subsection (1)(a)(i), (iv) or (v) or (1)(b), a council must have regard to advice from a qualified independent person (which is defined).

59—Amendment of section 98—Appointment procedures

Certain amendments relate to the selection process for appointing a chief executive officer. The other changes the requirement to give notice by advertisement in a newspaper circulating in the State to notice on a website.

60—Amendment of section 99—Role of chief executive officer

Certain matters are added to the list relating to the role of chief executive officer.

61—Insertion of section 99A

Section 99A is inserted:

99A—Remuneration of chief executive officer

The Remuneration Tribunal will determine (from time to time) the minimum and maximum remuneration that may be paid or provided to chief executive officers of councils. The council will determine the remuneration (within that range). Other provisions relate to the jurisdiction, procedures and costs of the Remuneration Tribunal, as well as the ability of the LGA to recover its costs under the section from relevant councils.

62—Insertion of section 102A

Section 102A is inserted:

102A—Chief executive officer—performance review

Requirements relating to councils reviewing the performance of chief executive officers are provided for.

63—Amendment of section 105—Register of remuneration, salaries and benefits

These amendments are consequential inspection and publication amendments.

64—Amendment of section 107—General principles of human resource management

The amendment includes in the list of principles an additional principle relating to protecting employees from sexual harassment.

65—Substitution of heading to Chapter 7 Part 4

The heading to Chapter 7 Part 4 is substituted.

66—Substitution of heading to Chapter 7 Part 4 Division 1

The heading to Chapter 7 Part 4 Division 1 is substituted.

67—Insertion of Subdivision heading

A heading to Subdivision 1 is inserted.

68—Amendment of section 108—Interpretation

This amendment is consequential.

69—Amendment of section 109—General duty and compliance

Provision is made that an employee of a council must comply with the integrity provisions relating to employees (and disciplinary action may result in the event of a breach).

70—Repeal of section 110

Section 110, which provided for the Code of Conduct for employees, is repealed.

71—Amendment of section 110A—Duty to protect confidential information

The offence provision relating to protecting confidential information is amended consistently with the equivalent provision for members.

72—Substitution of heading to Chapter 7 Part 4 Division 2

The heading to Chapter 7 Part 4 Division 2 is substituted with a Subdivision heading.

73—Amendment of Chapter 7 Part 4 Division 2

This amendment is consequential.

74—Amendment of section 117—Provision of false information

75—Amendment of section 119—Restrictions on disclosure

Penalty provisions are deleted.

76—Insertion of Chapter 7 Part 4 Division 1 Subdivision 2A

New Subdivision 2A is inserted:

Subdivision 2A—Gifts and benefits

119A—Register of gifts and benefits

The provisions relating to the register of gifts and benefits for employees are relocated from the regulations into the Act.

77—Substitution of heading to Chapter 7 Part 4 Division 3

The heading to Chapter 7 Part 4 Division 3 is substituted with a Subdivision heading.

78—Amendment of section 120—Conflict of interest

Certain amendments are for consistency with the equivalent amendments for members, including the deletion of penalty provisions.

79—Insertion of Chapter 7 Part 4 Division 2

Chapter 7 Part 4 Division 2 is inserted:

Division 2—Employee behaviour

120A—Behavioural standards

A council may prepare and adopt employee behavioural standards that specify standards of behaviour to be observed by employees and provide for any other matter relating to behaviour of employees. Provision is made in relation to compliance with such standards and procedures for keeping the standards under review.

80—Amendment of section 122—Strategic management plans

Councils are required to prepare a funding plan.

Provision is made for a process of councils providing information on *relevant matter* (which is defined in the measure) relating to long-term financial plans and infrastructure and asset management plans to the designated authority and then receiving advice from the authority relating to the appropriateness of the relevant matters in the context of those plans (as well as advice on any other aspect of the long-term financial plans and infrastructure and asset management plans). The advice is required to be published by a council in its annual business plan. The designated authority is authorised to recover from a council its reasonable costs in performing its functions under this section in relation to the council.

Other amendments are technical. One relates to the establishment of the community engagement charter.

81—Amendment of section 123—Annual business plans and budgets

Certain amendments relate to procedures where a council proposes to make significant amendments from its draft annual business plan.

Another amendment relates to the establishment of the community engagement charter. Other amendments are technical.

82—Amendment of heading to Chapter 8 Part 3 Division 2

The heading to Chapter 8 Part 3 Division 2 is amended.

83—Amendment of section 125—Internal control policies

The policies, practices and procedures of internal financial control of a council (under section 125(1) of the Act) must comply with a standard or document (such as a model relating to financial controls) adopted by the regulations. Requirements for councils to have appropriate policies, systems and procedures relating to risk management are provided for.

84—Insertion of section 125A

Section 125A is inserted:

125A—Internal audit functions

A requirement for the chief executive officer of a council that has an internal audit function to consult with the relevant audit and risk committee before appointing a person to be primarily responsible for the internal audit function is provided for. That person must report directly to the audit and risk committee in relation to the internal audit function.

85—Amendment of section 126—Audit and risk committee

Key amendments relate to the membership of a council audit and risk committee, its functions and reporting requirements. One amendment provides for the purpose of an audit and risk committee.

86—Insertion of section 126A

Section 126A is inserted:

126A—Regional audit and risk committee

Provision is made for two or more councils to establish a regional audit and risk committee. Key amendments relate to the membership of a regional audit and risk committee, its functions and

reporting requirements. One amendment provides for the purpose of a regional audit and risk committee.

87—Amendment of section 127—Financial statements

This amendment is a consequential inspection and publication amendment.

88—Amendment of section 128—Auditor

Requirements relating to a firm that has held office as auditor of a council for 5 successive financial years are imposed. Other amendments are consequential.

89—Amendment of section 129—Conduct of audit

90—Amendment of section 130A—Other investigations

These amendments are consequential.

91—Amendment of section 131—Annual report to be prepared and adopted

This amendment is a consequential inspection and publication amendment.

92—Insertion of section 131A

Section 131A is inserted:

131A—Provision of information to Minister

This section provides for councils to provide certain information to the Minister for publication by the Minister.

93—Amendment of section 132—Access to documents

Provision is made for councils to publish a document referred to in Schedule 5 on a website determined by the chief executive officer of the council and provide a printed copy on request (for a fee, if charged by the council). Other amendments are consequential.

94—Amendment of section 147—Rateability of land

This amendment is consequential on the amendments relating to rating on the basis of site value.

95—Amendment of section 151—Basis of rating

One amendments relates to rating on the basis of site value. Another amendment relates to the establishment of the community engagement charter. Other amendments are consequential inspection and publication amendments.

96—Amendment of section 153—Declaration of general rate (including differential general rates)

This amendment is consequential.

97—Amendment of section 156—Basis of differential rates

These amendments are all consequential on the establishment of the community engagement charter and the inspection and publication amendments.

98—Substitution of section 170

Section 170 is inserted:

170—Notice of declaration of rates

This is a consequential amendment relating to the giving of public notice.

99—Amendment of section 181—Payment of rates—general principles

100—Amendment of section 184—Sale of land for non-payment of rates

These amendments are technical or consequential.

101—Amendment of section 188—Fees and charges

This amendment is a consequential inspection and publication amendment.

102—Amendment of section 193—Classification

These amendments are all consequential on the establishment of the community engagement charter and the inspection and publication amendments.

103—Amendment of section 194—Revocation of classification of land as community land etc

Amendments are made to the process by which a council may revoke the classification of land as community land in accordance with this section. In particular, power is included for the Governor to make certain defined amendments to Schedule 8 (which provides for certain land to be community land) from time to time by regulation.

104—Insertion of sections 194A and 194B

New sections 194A and 194B are inserted:

194A—Revocation of community land classification requiring Ministerial approval—process

This section sets out the process for the revocation of any community land classification that requires Ministerial approval.

194B—Revocation of community land classification of other land—process

This section sets out the process for the revocation of any other community land classification.

105—Amendment of section 196—Management plans

106—Amendment of section 197—Public consultation on proposed management plan

107—Amendment of section 202—Alienation of community land by lease or licence

108—Amendment of section 207—Register

109—Amendment of section 219—Power to assign name, or change name, of road or public place

These amendments are consequential.

110—Amendment of section 221—Alteration of road

Amendments are made in relation to alterations of public roads approved as part of development authorisations under the *Planning, Development and Infrastructure Act 2016*.

111—Amendment of section 222—Permits for business purposes

The requirement that a council must grant a permit for a mobile food vending business is repealed.

Subsections (6a) to (6c) (to be inserted by the *Planning, Development and Infrastructure Act 2016*) are repealed.

112—Amendment of section 223—Public consultation

113—Amendment of section 224—Conditions of authorisation or permit

114—Repeal of section 224A

115—Amendment of section 225—Cancellation of authorisation or permit

116—Repeal of section 225A

These amendments are consequential.

117—Repeal of section 225B

Section 225B is repealed.

118—Amendment of section 226—Moveable signs

An offence relating to exhibiting an electoral advertising poster relating to a local government election on a public road (except in circumstances prescribed by the regulations) is provided for.

Other amendments are consequential.

119—Amendment of section 231—Register

120—Amendment of section 232—Trees

These amendments are consequential.

121—Amendment of section 234AA—Interaction with processes associated with development authorisations

These amendments are consequential.

122—Amendment of section 234A—Prohibition of traffic or closure of streets or roads

This amendment is technical.

123—Amendment of section 237—Removal of vehicles

These amendments are consequential.

124—Amendment of section 246—Power to make by-laws

One amendment increases the maximum penalty for breach of a by-law to $1 250. Other amendments are consequential.

125—Amendment of section 249—Passing by-laws

126—Amendment of section 250—Model by-laws

127—Amendment of section 252—Register of by-laws and certified copies

128—Amendment of section 259—Councils to develop policies

These amendments are consequential.

129—Insertion of Chapter 13 Part A1

Chapter 13 Part A1 is inserted and relates to behaviour of members (as opposed to integrity of members). Division 1 provides for councils to deal with allegations that a member of a council has contravened or failed to comply with Chapter 5 Part 4 Division 2 (the Ministerial behavioural standards and council behavioural support policies). Division 2 establishes the Behavioural Standards Panel. Provision is made for the Panel to inquire into and take action in relation to complaints referred to Panel. These complaints must relate to *misbehaviour*, *repeated misbehaviour* or *serious misbehaviour* (all of which are defined) by a member of a council and only certain persons and bodies may refer matters to the Panel. Provisions is made relating to the referral of matters to the Office of Public Integrity by a council or the Panel in certain circumstances.

Part A1—Member behaviour

Division 1—Council to deal with member behaviour

262A—Complaints

262B—Behaviour management policy

262C—Action

262D—Reasons

Division 2—Behavioural standards panel

Subdivision 1—Preliminary

262E—Preliminary

Subdivision 2—Behavioural standards panel

262F—Establishment and constitution

262G—Conditions of membership

262H—Acting member

262I—Meetings of Panel

262J—Remuneration and expenses

262K—Staff

262L—Validity of acts of Panel

262M—Costs

262N—Functions

262O—Delegation

262P—Annual report

Subdivision 3—Inquiries and action on complaints referred to Panel

262Q—Referral

262R—Proceedings of Panel

262S—Assessment

262T—Inquiries

262U—Powers relating to inquiries

262V—Dispute resolution

262W—Action

262X—Reports on inquiries

Division 3—Miscellaneous

262Y—Referral of complaint to OPI

130—Amendment of heading to Chapter 13 Part 1

The heading to Chapter 13 Part 1 is amended to reflect the fact that Part 1 is to relate to integrity of council members.

131—Repeal of section 263

This amendment is consequential.

132—Amendment of section 263A—Investigations by Ombudsman

These amendments relate to the fact that the Ombudsman will investigate matters that involve a contravention of, or failure to comply with, an integrity provision by a member of a council.

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

Amendments are made to the powers of the Ombudsman following investigation of a matter.

134—Amendment of section 264—Complaint lodged with SACAT

These amendments provide that a complaint against a member of a council may be lodged with SACAT under this section on the ground of failure to comply with an integrity provision, misbehaviour, repeated misbehaviour or serious misbehaviour or for certain failures to comply with recommendations or orders of the Ombudsman or Panel. Consequential amendments are made to certain preconditions that apply before a complaint may be made.

135—Amendment of section 265—Hearing by SACAT

This amendment is consequential.

136—Amendment of section 267—Outcome of proceedings

Amendments are made to SACAT's power to make orders on a complaint. Another amendment is consequential.

137—Repeal of section 269

A spent provision is repealed.

138—Amendment of section 270—Procedures for review of decisions and requests for services

One amendment imposes a time limit for applying for a review under the section. A fee may be imposed on the application. Another amendment provides that no provision may be made under the section for a review of a decision of a council to refuse to deal with, or determine to take no further action in relation to, a complaint under Part A1 Division 1 by a person who is dissatisfied with the decision or relating to a recommendation of the Ombudsman under Chapter 13 Part 1.

139—Amendment of section 273—Action on report

The list of persons who may provide the Minister with a report on which action may be taken under the section is expanded to include the Behavioural Standards Panel and an administrator of a council. Other amendments are consequential.

140—Amendment of section 279—Service of documents by councils etc

141—Amendment of section 280—Service of documents on councils

These amendments are technical.

142—Amendment of section 303—Regulations

An amendment is made to the regulation making powers to include power to make savings and transitional regulations for the purposes of the measure.

143—Amendment of Schedule 1A—Implementation of Stormwater Management Agreement

144—Amendment of Schedule 2—Provisions applicable to subsidiaries

These amendments are technical or consequential.

145—Amendment of Schedule 3—Register of Interests—Form of returns

Various technical amendments are made to the requirements relating to the Register of Interests.

146—Amendment of Schedule 4—Material to be included in annual report of council

147—Amendment of Schedule 5—Documents to be made available by councils

These amendments are consequential.

148—Amendment of Schedule 8—Provisions relating to specific land

Schedule 8, clause 13(5), definition of *Gawler Park Lands and Pioneer Park*—delete the definition and substitute:

*Gawler Park Lands* means the whole of the land comprised in Certificate of Title Register Book Volume 6182 Folio 891;

*Pioneer Park* means the whole of the land comprised in Certificate of Title Register Book Volume 5846 Folio 672 and Volume 5846 Folio 673.

149—Insertion of Schedule 9

Schedule 9 is inserted:

Schedule 9—Suspension of members

The Schedule makes provision in relation to the suspension of members under various provisions in the Act.

150—Transitional provisions

Certain fundamental transitional provisions are included for the purposes of the measure.

Part 3—Amendment of Local Government (Elections) Act 1999

151—Amendment of section 4—Preliminary

This clause replaces the definition of *public notice* so that it has the same meaning as in section 4(1aa) of the *Local Government Act 1999*.

152—Substitution of section 5

This clause replaces the current provision dealing with how often periodic elections will be held and when voting will close with a provision that states that periodic elections will continue to be held at intervals of 4 years and that voting closes on the second to last, rather than last, business day before the second Saturday of November in 2022 and so on.

153—Amendment of section 6—Supplementary elections

This clause amends the circumstances in which a supplementary election will not be held to fill a casual vacancy such that a supplementary election will not be held if:

- the vacancy occurs within 12 months before polling day for a periodic election or general election if the date of the polling day is known at the time the vacancy occurs; or
- there are no more than 2 vacancies in a council of 9 or more offices (excluding the office of mayor) or there is only 1 vacancy in a council of less than 9 offices (excluding the office of mayor); or
- the vacancy occurs within 12 months after the conclusion of a periodic election or designated supplementary election (which is defined) or after the close of nominations for but before the conclusion of a designated supplementary election, can be filled in accordance with section 6A and is not for the office of mayor or a member declared elected under section 25(1).

This clause also amends the circumstances in which a supplementary election must be held such that a supplementary election must be held if an additional vacancy occurs more than 12 months before polling day for a periodic election or general election if the date of the polling day is known at the time the vacancy occurs.

It also removes the provision stating that voting in a supplementary election will close at 12 noon on polling day and instead requires that a notice fix the time for voting to close.

154—Insertion of section 6A

This clause inserts section 6A into the Act.

6A—Filling vacancy in certain circumstances

This section allows a casual vacancy to be filled without a supplementary election where section 6(2)(c) applies by determining, in accordance with the regulations, the successful candidate in the most recent election or designated supplementary election for the relevant office to fill the vacancy and whether they are still willing and eligible to be elected and, if not, the next successful candidate and so on until the vacancy is filled.

155—Amendment of section 7—Failure of election in certain cases

This clause includes in section 7 of the Act that an election will be taken to have failed if, between the close of nominations and the close of voting, a nominated candidate becomes ineligible in accordance with section 17 and the election was to fill 1 vacancy or 2 or more candidates become ineligible.

156—Amendment of section 8—Failure or avoidance of supplementary election

These amendments relate to the appointment of persons where not all vacancies are filled in an election.

157—Amendment of section 9—Council may hold polls

The amendments in this clause require the council to fix a day as polling day for a poll by notice published on the council website, rather than in a newspaper circulating in its area, and change the time at which voting at a poll closes where the poll is being held in conjunction with an election to the time determined by the returning officer.

158—Amendment of section 13A—Information, education and publicity for general election

The amendments in this clause provide that councils must inform potential electors in their area of the requirement to apply to be enrolled on the voters roll in accordance with the community engagement charter (which has the same meaning as in the *Local Government Act 1999*).

159—Amendment of section 15—Voters roll

This clause amends section 15 of the Act as follows:

- by allowing the Electoral Commissioner to supply the chief executive officer with a list of the persons who are enrolled as electors for the House of Assembly in respect of a place of residence within the area at any time; and
- by removing the requirement that a copy of the voters roll provided to a nominated candidate be in printed form; and
- by including an offence with a maximum penalty of $10,000 if a person uses a copy of the voters roll, or information in a copy of the roll, for a purpose other than the distribution of matter calculated to affect the result of an election or a purpose related to the holding of such an election.

160—Amendment of section 17—Entitlement to stand for election

This clause removes the concept of a *prescribed person* from section 17 and allows a person who is not the person designated to vote on behalf of a body corporate or group to be nominated to stand for election as a member of a council (subject to certain qualifications such as being above the age of majority and being an officer of the body corporate or a member of the group, or an officer of a body corporate that is a member of the group).

161—Amendment of section 19A—Publication of candidate profiles

This clause deletes the option for a nominated candidate to provide an electoral statement to the LGA, requires the returning officer, rather than the LGA, to publish each candidate's profile on the Internet and deletes the requirement for the returning officer to forward a copy of a candidate profile to the LGA.

162—Substitution of section 21

This clause substitutes section 21 of the Act.

21—Publication etc of valid nominations

This section requires the returning officer to provide a council with a list of all valid nominations relevant to the council's area and publish a list of all valid nominations on the Internet within 24 hours after the close of nominations.

163—Amendment of section 25—Uncontested election

Provision is made for declaring nominated candidates elected in a designated supplementary election where the number of candidates does not exceed the number of persons required to be elected.

164—Amendment of section 27—Publication of electoral material

This clause amends section 27 of the Act as follows:

- by replacing the requirement that printed electoral material contain the address of the printer with a requirement that it contain prescribed information; and
- by inserting a new subsection that excludes the requirement for the name and address of the person who authorises publication of electoral material to be contained in the material if the material is published on the Internet and the name and address of the person is immediately accessible by viewers of the material in accordance with any requirements prescribed by regulation; and

- by inserting a new subsection that provides that a person is not taken to have published electoral material or caused it to be published if it is published by someone else on an Internet site or platform established or controlled by the person unless they directly or indirectly authorised its publication.

165—Amendment of section 28—Publication of misleading material

This clause inserts a new subsection into section 28 of the Act to provide that a person is not taken to have authorised, caused or permitted the publication of electoral material if it is published by someone else on an Internet site or platform established or controlled by the person unless they directly or indirectly authorised its publication. Provision is made for the Supreme Court to order withdrawal of inaccurate and misleading advertising from publication and for a retraction to be published (similar to the *Electoral Act 1985*).

166—Amendment of section 29—Ballot papers

This clause amends the time at which the drawing of lots is to be conducted to 4 pm or soon after on the day of the close of nominations in the case of a periodic election and 12 noon or soon after on the day of the close of nominations in any other case.

167—Amendment of section 31—Special arrangements for issue of voting papers

This clause removes the reference to 'personal' delivery of voting papers in section 31 and provides that voting papers may be delivered in printed or electronic form.

168—Amendment of section 35—Special arrangements for issue of voting papers

This clause removes the reference to 'personal' delivery of voting papers in section 35 and provides that voting papers may be delivered in printed or electronic form.

169—Substitution of heading to Part 9

This clause changes the heading to Part 9 from 'Postal voting' to 'Voting generally'.

170—Amendment of section 37—Postal voting to be used

This clause removes the requirement that delivery and collection of voting papers under Part 8 be personal.

171—Amendment of section 38—Notice of use of postal voting

This clause extends the time by which the returning officer must inform electors that voting will be conducted entirely be means of postal voting to at least 28 days, rather than 21 days, before polling day.

172—Amendment of section 39—Issue of postal voting papers

The time by which voting papers must be issued to voters on the roll is extended to 21 days before polling day and the time by which a person, body corporate or group whose name does not appear on the voters roll but who claims to be entitled to vote must apply to the returning officer for voting papers is extended to 5 pm on the seventh day before polling day.

173—Amendment of section 43—Issue of fresh postal voting papers

The current time frame for an application for the issue of fresh voting papers to be received by the returning officer is deleted and replaced with a requirement that such an application be received by the returning officer not later than 5 pm on the seventh day before polling day.

174—Amendment of section 47—Arranging postal papers

The current time frame for the returning officer to ensure that all voting papers returned for the purposes of an election or poll are made available is deleted and replaced with a requirement that this occur, in the case of a supplementary election or a poll held in conjunction with a supplementary election, as soon as is practicable after the close of voting and, in any other case, on the second day following polling day.

175—Amendment of section 48—Method of counting and provisional declarations

This clause inserts a new subsection into section 48 of the Act to provide that the method of distributing ballot papers in an election with 1 vacancy is the same as the method used when conducting an optional preferential count and provides that the method of distributing votes if a candidate becomes ineligible in accordance with section 17 between the close of nominations and close of voting is the same as if a candidate has died in that period.

176—Amendment of section 55A—Filling vacancy if successful candidate dies

This clause amends the method used to replace a successful candidate who has died between the close of voting at an election and the first meeting of the council after that election, where the election was to fill at least 2 vacancies and no other successful candidate has died, so that the returning officer determines, in accordance with the regulations, the successful candidate in the most recent election for the relevant office to fill the vacancy and whether they are still willing and eligible to be elected and, if not, the next successful candidate and so on until the vacancy is filled.

177—Amendment of section 57—Violence, intimidation, bribery etc

The definition of *bribe* in section 57 is amended to only apply to food, drink or entertainment the value of which is of or above the prescribed value.

178—Insertion of section 69A

This clause inserts new section 69A.

69A—Electoral Commissioner may lodge petition

This section allows the Electoral Commissioner to lodge a petition, signed by the Electoral Commissioner, in the Court of Disputed Returns to dispute the validity of an election on the basis of an error in the recording, scrutiny, counting or recounting of votes and disapplies certain provisions of section 70.

179—Amendment of section 70—Procedure upon petition

This clause changes the wording in section 70(1)(b) of the Act from 'to which the petitioner claims to be entitled' to 'which the petitioner seeks'.

180—Amendment of section 73—Illegal practices and orders that may be made

This clause inserts 2 new subsections into section 73 of the Act which allow an election to be declared void on the ground of the defamation of a candidate or on the ground of publication of misleading material if the Court of Disputed Returns is satisfied, on the balance of probabilities, that the result of the election was affected by the defamation or publication of the material.

181—Substitution of section 80

This clause substitutes section 80 of the Act.

80—Returns for candidates

This section provides that a candidate for election must furnish to the returning officer a campaign donations return and large gifts return in a form and manner determined by the returning officer and within certain time frames.

182—Amendment of section 81—Campaign donations returns

This clause amends section 81 as follows:

- by removing the exception that information about a registered industrial organisation need not be included in a campaign donations return when a gift is made on behalf of the members of such an organisation; and
- by providing that a gift disclosed in a large gifts return need not be included in a campaign donations return; and
- by deleting subsection (3) (the contents of which is to become section 81B and apply to both campaign donations returns and large gifts returns).

183—Insertion of sections 81A and 81B

This clause inserts sections 81A and 81B.

81A—Large gifts returns

This section provides that if a candidate for election receives a gift or gifts from a person during the disclosure period, the total amount or value of which is more than the prescribed amount, the candidate must furnish a return to the returning officer. It also sets out the information that must be included in the return and states that such a return need not be furnished in respect of a private gift made to the candidate.

81B—Disclosure period etc for returns

This section sets out provisions relevant to campaign donations returns and large gifts returns (that are currently in section 81(3) of the Act) such as the disclosure period for the returns, when a candidate is a 'new candidate' and when a gift is a 'private gift'.

184—Amendment of section 82—Certain gifts not to be received

This clause amends section 82(3)(b)(i) of the Act to remove the words ', other than a registered industrial organisation'.

185—Amendment of section 83—Inability to complete return

This clause amends section 83 of the Act so that the reference to the 'chief executive officer' becomes a reference to the 'returning officer'.

186—Amendment of section 84—Amendment of return

This clause amends all references to the 'chief executive officer' in section 84 of the Act to the 'returning officer'.

187—Amendment of section 86—Failure to comply with Division

This clause amends section 86 of the Act so that the reference to the 'chief executive officer' becomes a reference to the 'returning officer' and moves text in brackets in subsection (3) to a note.

188—Amendment of section 87—Public inspection of returns

This clause amends section 87 of the Act to require the returning officer, rather than chief executive officer of a council, to keep at their principal office, and publish on a website after a certain period of time, returns furnished under Part 14 Division 1. It also removes the entitlement of a person to inspect a return at the principal office of a council or obtain a copy of a return for a fee.

189—Amendment of section 89—Requirement to keep proper records

This clause amends the reference to the 'chief executive officer of the council' in section 89 to 'returning officer'.

190—Amendment of section 91A—Conduct of council during election period

This clause moves the requirement that a caretaker policy must prohibit allowing the use of council resources for the advantage of a particular candidate or group of candidates during the election period from the definition of *designated decision* to subsection (2).

191—Amendment of section 93—Regulations

This clause amends the regulation-making provision to allow the regulations to provide that the Electoral Commissioner or a prescribed authority have the discretion to determine, dispense with, regulate or prohibit a matter or thing.

Part 4—Amendment of City of Adelaide Act 1998

192—Amendment of section 4—Interpretation

This clause inserts definitions of *default person*, *eligible person* and *nominated person* into section 4 of the Act.

193—Amendment of section 20—Constitution of Council

This clause removes the prohibition on a person holding office as Lord Mayor for more than 2 consecutive terms.

194—Amendment of section 21—Lord Mayor

This clause inserts additional roles into the list of the roles of the Lord Mayor as principal member of the Council. Other amendments are technical for consistency with the equivalent provision in the *Local Government Act 1999*.

195—Amendment of section 22—Members

This clause inserts additional roles into the list of the roles of a member as a member of the governing body of the Council. Other amendments are technical for consistency with the equivalent provision in the *Local Government Act 1999*.

196—Amendment of section 24—Allowances

These amendments are technical for consistency with the equivalent provision in the *Local Government Act 1999*.

197—Amendment of section 27—Role of chief executive officer

This amendment is technical for consistency with the equivalent provision in the *Local Government Act 1999*.

198—Amendment of Schedule 1—Special provisions for elections and polls

This clause amends Schedule 1 of the Act as follows:

- by ensuring consistency with the amendments to the *Local Government (Elections) Act 1999*; and
- by providing for a scheme for bodies corporate and groups to nominate a person to vote on their behalf or, if no nomination is made, for the Council to nominate a default person to vote on behalf of a body corporate or group.

Part 5—Amendment of Crown Land Management Act 2009

199—Insertion of section 20A

Section 20A is inserted:

20A—Revocation of dedicated land classified as community land

This section sets out that if the dedication of land is revoked under section 19 or the land is withdrawn from the care, control and management of a council under section 20 of the *Crown Land Management Act 2009* the land is deemed not to be classified as community land under the *Local Government Act 1999*.

Part 6—Amendment of Equal Opportunity Act 1984

200—Amendment of section 87—Sexual harassment

The provision making it unlawful for a member of a council to subject to sexual harassment an officer or employee of the council is expanded to include another member of the council.

Part 7—Amendment of Independent Commissioner Against Corruption Act 2012

201—Amendment of section 5—Corruption, misconduct and maladministration

This clause sets out related amendments in connection with the behavioural standards, behavioural management policies, behavioural support policies and the employee behavioural standards (as proposed to be introduced into the *Local Government Act 1999* under the measure. A provision relating to the integrity provisions under the *Local Government Act 1999* being taken to be a code of conduct for the purposes of the *Independent Commissioner Against Corruption Act 2012* is provided for.

Part 8—Amendment of Planning, Development and Infrastructure Act 2016

202—Amendment of section 83—Panels established by joint planning boards or councils

A member of a council appointed as a member of an assessment panel is not required to disclose their financial interests in accordance with Schedule 1 of the *Planning, Development and Infrastructure Act 2016* while the member holds office as a member of a council (on the basis that they disclose interests under the *Local Government Act 1999*).

203—Amendment of section 84—Panels established by Minister

A member of a council appointed as a member of an assessment panel is not required to disclose their financial interests in accordance with Schedule 1 of the *Planning, Development and Infrastructure Act 2016* while the member holds office as a member of a council (on the basis that they disclose interests under the *Local Government Act 1999*).

Part 9—Amendment of Public Finance and Audit Act 1987

204—Amendment of section 4—Interpretation

205—Amendment of section 30—Obligation to assist Auditor-General

These amendments are consequential.

206—Amendment of section 32—Audit etc of publicly funded bodies and projects and local government indemnity schemes

The power to conduct audits and review are added to the existing powers of examination under the section. Certain amendments relate to confidentiality of documents. Other amendments relate to reporting on audits, reviews and examinations. Other amendments are consequential.

207—Amendment of section 34—Powers of Auditor-General to obtain information

This amendment is consequential.

208—Amendment of section 36—Auditor-General's annual report

These amendments are technical or consequential.

Part 10—Amendment of South Australian Local Government Grants Commission Act 1992

209—Amendment of section 19—Information to be supplied to Commission

Section 19(3) is made subject to any relevant provision of the Commonwealth Act or an instrument under that Act.

Debate adjourned on motion of Hon. I.K. Hunter.

## DEFAMATION (MISCELLANEOUS) AMENDMENT BILL

*Second Reading*

**The Hon. R.I. LUCAS (Treasurer) (15:51):** 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.

I am pleased to introduce the Defamation (Miscellaneous) Amendment Bill 2020, which amends the *Defamation Act 2005* and the *Limitation of Actions Act 1936*. The Bill has been developed thanks to significant work and cooperation between all Australian jurisdictions and represents the first substantial amendments to the Defamation Act since it was passed. This is a major milestone in Australian defamation law.

Mr President, the Defamation Act is the South Australian version of the National Model Defamation Provisions, which were adopted in each state and territory in 2005. The Model Defamation Provisions were the result of an immense national effort to create uniform defamation law across Australia.

The Model Defamation Provisions have now been in place for 15 years, however they have not been amended since that time. The case law and experience accumulated during that time has revealed which aspects of the legislation are working well, and which would benefit from being reconsidered, fixed or updated.

To that end, in June 2018 the Council of Attorneys-General agreed to convene a national Defamation Working Party to recommend changes to the model laws. After extensive consideration and two periods of national consultation, the Working Party presented recommended amendments to the Council of Attorneys-General in July 2020. The Council supported the recommended reform and now each state and territory government are taking steps to adopt the reform through their own respective Parliament's.

This Bill contains numerous amendments to the Defamation Act, ranging from small technical changes to significant and innovative reform.

The purpose of all these changes is to ensure that Australia's defamation law continues to meet its main objects as set out in the Defamation Act. These objects are:

(a) to enact provisions to promote uniform laws of defamation in Australia;

(b) to ensure that the law of defamation does not place unreasonable limits on freedom of expression and, in particular, on the publication and discussion of matters of public interest and importance;

(c) to provide effective and fair remedies for persons whose reputations are harmed by the publication of defamatory matter; and

(d) to promote speedy and non-litigious methods of resolving disputes about the publication of defamatory matter.

The national consultation process which was undertaken on defamation reform, found that these objectives are still considered valid and are widely supported, but that some aspects of the law have been failing to achieve them.

The Defamation (Miscellaneous) Amendment Bill 2020 forges a decisive path forward to ensure that defamation law continues to serve the needs of contemporary society.

The Defamation Act already places a strong emphasis on non-litigious methods of resolving defamation disputes. The Act currently has an option for a person who thinks they have been defamed to send a 'concerns notice' to the publisher of the material, setting out their complaint about the alleged defamation.

During the national consultation on defamation reform, many stakeholders supported making this step a mandatory requirement before court action can be commenced.

Clause 9 of the Bill requires a potential plaintiff to send a concerns notice and then serve a waiting period before beginning court action. The waiting period is equivalent to the time the publisher has to make a statutory 'offer to make amends'. By mandating this pre-action step, it is hoped that parties will engage more seriously in pre-action negotiations. Importantly, the Bill contains protections to ensure a plaintiff does not fall foul of the limitation period while completing these steps, and the waiting period can be waived at the discretion of the Court if it is just and reasonable to do so.

Free speech and public interest communication will be better protected through two new defences proposed in this Bill. The first, in clause 15, provides a defence for publications on matters of public interest. When the model defamation provisions were adopted, the defence of qualified privilege was expected to cover public interest journalism. However, since then, experience has shown that it is difficult to apply and is rarely successful in defending public interest publications. To remedy this, the Bill introduces a standalone defence for matters in the public interest, which has been modelled on defences already available in the United Kingdom and New Zealand.

Whilst this defence will of course be useful to the commercial media, it can be used by any person communicating on public interest matters, so long as they can prove they had a reasonable belief that the publication was in the public interest in the circumstances.

The second new defence, in clause 17, provides protection for academic and scientific publications in peer-reviewed journals, ensuring robust discussion can occur on academic and scientific matters.

One of the most significant reforms proposed by this Bill is contained in clause 7, which introduces a serious harm threshold for defamation actions. This new test provides that a publication will not be considered defamatory unless it has caused, or is likely to cause, serious harm to the reputation of the plaintiff.

Defamation law was never meant to be a forum for resolving interpersonal disputes; but rather is designed to ensure a person's public reputation can be protected.

However, in today's social media age, interpersonal disputes are often played out online, in full view of Facebook friends or twitter followers. Whilst the common perception of a defamation action is a celebrity or politician suing a media company, a recent study by the University of Sydney's Centre for Media Transition found that only 1 in 5 defamation plaintiffs were public figures and only 1 in 4 defendants ran a media business.

Under the current law, minor instances of defamation can still attract an award of damages. The defendant may attempt to rely on the defence of triviality, however this requires proof that, in the circumstances of the publication, the plaintiff was unlikely to sustain *any* harm. It is not enough to establish that the publication caused only slight or insubstantial harm.

A minor defamation case may work its way through the court and can result in an award of a small amount of monetary damages, but the cost to the court system of running that case will far outstrip the damages awarded.

This does not immediately mean it is not worth the court's time; many legal actions result in small awards but are of course, worthwhile.

However, it does warrant an examination of whether court action is the best way to deal with such disputes, and in this case we have concluded that it is not.

In response, the Bill proposes to lift the threshold on what is considered an actionable defamation case. The plaintiff must demonstrate that the harm or potential harm to their personal reputation is serious.

The Bill contains mechanisms whereby parties can apply for the determination of the serious harm element before the trial begins, allowing early dismissal of minor cases, if appropriate.

'Serious harm' is to be assessed in the circumstances of the particular case and, for natural persons, it does not have to involve financial loss. It is intended that this threshold will filter out minor cases that are more in the nature of interpersonal rather than legal disputes. This might include accusations that were not widely published or were mild in nature. This test has been modelled on a similar provision in the United Kingdom.

The defence of triviality will be abolished by clause 19 of the Bill, as it will be superseded by the new serious harm test.

Another way the Bill addresses advances in technology is through the introduction of a single publication rule by Part 2 of the Schedule. The *Limitation of Actions Act 1936* provides a one-year limitation period for defamation actions, which may be extended to up to three years by court order. However, the effect of relevant case law is that each time an internet publication is downloaded, a new limitation period begins, thereby allowing a plaintiff to sue the publication for as long as it remains available online. For example, an internet article that has been online since 2015 can still be the subject of a legal action in 2020 provided it was downloaded just once in the previous year.

The proposed single publication rule provides that the limitation period begins the first time a publication is made publicly available and is unaffected by subsequent publications of substantially the same content.

The Bill provides some additional safeguards to prevent unintended harsh effects of this rule.

First, the limitation period may start again if the manner of a subsequent publication is materially different from the manner of the first publication. Second, the test for extending the limitation period has been softened slightly to allow the courts to take into account a wider range of circumstances. However, the upper limit remains three years from the date of first publication.

The Bill will also reform how monetary damages are awarded in defamation cases. The Defamation Act currently caps the amount of damages that a court may award for non-economic loss, which compensates for loss of reputation and hurt feelings.

The cap is adjusted annually, and currently sits at $421,000. The cap is intended to ensure that a defamation plaintiff receives appropriate and proportional damages in relation to their non-economic loss. Compensation for actual loss of earnings is awarded separately and is not capped.

The cap is still considered an important aspect of the law and the Bill makes changes to ensure that it operates as intended and that it cannot be circumvented by legal loopholes.

Clause 20 of the Bill provides that the cap should be interpreted as a 'range' of damages for non-economic loss, in which the top of the cap represents the appropriate award for the most serious types of defamation. The Victorian Court of Appeal has previously held that the cap is a simple cut-off that bears no relationship to the seriousness of the case; the Council of Attorneys-General wants to address this ruling.

Under the law proposed by the Bill, the cap may not be exceeded under any circumstances, however if the defendant's conduct was particularly harmful then a separate award of aggravated damages may still be awarded. However, the two parts of the award need to be separate and transparent.

Clause 13 of the Bill will also prevent plaintiffs circumventing the cap on damages. Currently the cap applies to each legal action, and so if the plaintiff brings more than one action in relation to the same matter, they may be able to circumvent the cap.

At the moment, there is no rule against suing related parties separately in relation to the same publication. For example, a plaintiff could sue the author of a newspaper article in one action, and the owner of the newspaper in another, doubling up on court time and avoiding the full application of the cap. To address this, the Bill amends the rules on multiple proceedings to require the leave of the court to bring further proceedings in relation to the publication of the same or like matter by the same or associated defendants.

Some of the more minor amendments in the Bill include:

- Clause 5, which broadens how employees are counted when determining if a corporation is small enough to be eligible to sue in defamation;
- Clause 6, which will allow the Court to decide questions of costs if a defamation action ends due to the death of a party;
- Clauses 10 to 12, which clarify the requirements for making a valid offer to make amends;
- Clause 14, which simplifies the contextual truth defence;
- Clause 18, which sets out how the basis for an opinion must be presented to make out the honest opinion defence.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Defamation Act 2005*

4—Amendment of section 4—Interpretation

This clause inserts definitions for the purposes of the measure.

5—Amendment of section 9—Certain corporations do not have cause of action for defamation

Currently, section 9 does not define the term employee, so the term would have its ordinary meaning. The ordinary meaning of the term does not include persons who provide services other than under a contract of service. For example, it does not include independent contractors and other non-employees even though they may have major roles in the operations of the corporation. This clause inserts a broad definition of *employee*.

This clause also replaces references to related corporations with references to associated entities (within the meaning of section 50AAA of the *Corporations Act 2001* of the Commonwealth).

6—Amendment of section 10—No cause of action for defamation of, or against, deceased persons

This clause provides that section 10 does not prevent a court, if it considers it in the interests of justice to do so, from determining the question of costs for proceedings discontinued because of the section.

7—Insertion of section 10A

This clause inserts new section 10A which provides for it to be an element of the cause of action for defamation for the plaintiff to prove the publication of the defamatory matter has caused, or is likely to cause, serious harm to the reputation of the plaintiff. Also, excluded corporations suing for defamation must prove serious financial loss. In addition, a procedure is set out for determining whether the element is established.

8—Amendment of heading to Part 3 Division 1

This clause amends the heading to Part 3 Division 1 consequential on the amendments in clause 9.

9—Insertion of sections 12A and 12B

This clause inserts new sections 12A and 12B dealing with the requirements for concerns notices in defamation proceedings. Proposed section 12A provides for the form and content of concerns notices. Proposed section 12B provides (with exception by permission of the court) that an aggrieved person cannot commence defamation proceedings unless the person has given the proposed defendant a concerns notice in respect of the matter concerned, the imputations to be relied on by the person in the proposed proceedings were particularised in the concerns notice and the applicable period for an offer to make amends has elapsed.

10—Amendment of section 14—When offer to make amends may be made

This clause amends section 14 to provide for an extended period beyond 28 days of a concerns notice being given if further particulars for the concerns notice have been requested.

11—Amendment of section 15—Content of offer to make amends

This clause amends section 15 to:

(a) require an offer to make amends to be open for at least 28 days commencing on the day the offer is made; and

(b) enable an offer to make amends to include an offer to publish, or join in publishing, a clarification of, or additional information about, the matter in question as an alternative to a reasonable correction; and

(c) relocates provisions concerning offers to redress the harm sustained by the aggrieved person to make it clear that the inclusion of these matters is not mandatory.

12—Amendment of section 18—Effect of failure to accept reasonable offer to make amends

This clause amends section 18 to:

(a) alter the first precondition so that the offer must be made as soon as reasonably practicable after the publisher was given a concerns notice in respect of the matter (and, in any event, within the applicable period for an offer to make amends); and

(b) alter the second precondition so that the defence can be relied on if the publisher remains ready and willing to carry out the terms of the offer during the trial.

13—Substitution of section 21

This clause proposes to substitute section 21 to recast the section so that it also requires the permission of the court to bring defamation proceedings against associates of the previous defendant. These are persons who, at the time of the publication by the previous defendant, were—

(a) employees of the defendant, or

(b) persons publishing matter as contractors of the defendant, or

(c) associated entities of the defendant (or employees or contractors of these associated entities).

14—Substitution of section 24

This clause proposes to substitute section 24 to reformulate the defence of contextual truth to make it clear that, in order to establish the defence, a defendant may plead back substantially true imputations originally pleaded by the plaintiff.

15—Insertion of section 27A

This clause inserts new section 27A to provide a defence if the defendant proves that—

(a) the matter concerns an issue of public interest; and

(b) the defendant reasonably believed that the publication of the matter was in the public interest.

16—Amendment of section 28—Defence of qualified privilege for provision of certain information

This clause amends section 28 to recast the factors that may be taken into account in determining whether the defence is established so as to minimise duplication with the factors for the new public interest defence. As with the new public interest defence, the purpose of these factors is to provide some non-exhaustive guidance to the court. Not all, or any, of these factors must be satisfied.

17—Insertion of section 28A

This clause inserts new section 28A to provide a defence of scientific or academic peer review if the defendant proves that—

(a) the matter was published in a scientific or academic journal (whether published in electronic form or otherwise); and

(b) the matter relates to a scientific or academic issue; and

(c) an independent review of the matter's scientific or academic merit was carried out before the matter was published in the journal by—

(i) the editor of the journal if the editor has expertise in the scientific or academic issue concerned; or

(ii) one or more persons with expertise in the scientific or academic issue concerned.

18—Amendment of section 29—Defences of honest opinion

This clause amends section 29 to clarify the circumstances in which an opinion is *based on proper material* (see section 29(1)(c)).

19—Repeal of section 31

This clause repeals section 31 (defence of triviality) consequential on the inclusion of new section 10A. It is proposed that the onus will now be on the plaintiff to prove serious harm in order to bring a successful action for defamation. Accordingly, there is no need for the defendant to prove the harm was trivial.

20—Amendment of section 33—Damages for non-economic loss limited

This clause amends section 33 to—

(a) confirm that the maximum amount sets a scale or range rather than a cap, with the maximum amount to be awarded only in a most serious case, and

(b) require awards of aggravated damages to be made separately to awards of damages for non-economic loss so that the scale or range for damages for non-economic loss continues to apply for non-economic loss even if aggravated damages are awarded.

21—Amendment of section 41—Giving of notices and other documents

This clause amends section 41 to allow notices and other documents to be sent to an email address specified by the recipient for the giving or service of documents.

Schedule 1—Related amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of Limitation of Actions Act 1936

2—Amendment of section 37—Defamation proceedings generally to be commenced within 1 year

This clause amends section 37 of the *Limitation of Actions Act 1936* to make provision for the extension of the limitation period consequential on the amendments made to the *Defamation Act 2005* in respect of concerns notices.

3—Insertion of sections 37A, 37B and 37C

This clause inserts 3 new provisions into the *Limitation of Actions Act 1936*—

(a) section 37A—to provide for a single accrual date of the limitation period where more than 1 publication contain substantially the same imputations giving rise to a cause of action for defamation; and

(b) section 37B—to permit the court to extend the limitation period to a period of up to 3 years running from the date of the alleged publication of the matter if the plaintiff satisfies the court that it is just and reasonable to allow an action to proceed; and

(c) section 37C—to provide that, for the purposes of determining the limitation period, the date of publication of a matter in electronic form is to be determined by reference to the day on which the matter was first uploaded for access or sent electronically to a recipient.

Part 3—Transitional provisions

4—Transitional provisions—*Defamation Act 2005*

This clause provides that an amendment made to the *Defamation Act 2005* by this measure applies only in relation to the publication of defamatory matter after the commencement of the measure.

5—Transitional provisions—Limitation of Actions Act 1936

This clause provides transitional provision in respect of the amendments made to the *Limitation of Actions Act 1936* by the measure.

Debate adjourned on motion of Hon. I.K. Hunter.

## AUTOMATED EXTERNAL DEFIBRILLATORS (PUBLIC ACCESS) BILL

*Second Reading*

Adjourned debate on second reading.

(Continued from 4 March 2020.)

**The Hon. J.E. HANSON (15:53):** I rise to speak on the Automated External Defibrillators (Public Access) Bill 2020 and indicate that I am the opposition's lead speaker on this bill. In regard to this bill, I foreshadow that I do have an amendment, which I am presenting, and I will address that at the back end of my comments.

We know that with immediate assistance somebody suffering a cardiac arrest can survive. Widespread public access to automated external defibrillators (AEDs) is a crucial way that we can prevent deaths by cardiac arrest. An AED, according to the Heart Foundation, is a portable electronic device that diagnoses life-threatening abnormal heart rhythms that can cause a cardiac arrest. An AED might be able to treat these abnormal heart rhythms by giving an electric shock to effectively restart the heart to its normal rhythm and that is known as the defibrillation.

There is a crucial fact about AEDs that is not universally known. Indeed, if you go out and put this past most people and you ask them to have a shock, they will probably be somewhat resistant. The fact is an AED cannot actually do any harm to someone who is unconscious. The device only distributes an electric shock if it is required.

AEDs are extremely user-friendly and they guide users every step of the way in administering them. Despite their ability to prevent death by a cardiac arrest, AEDs are not widely prevalent in South Australia. Even where they are prevalent, there is not always prominent signage to make people aware of their existence.

In summary, the bill Mr Pangallo has introduced is a bill that seeks to roll out the installation of AEDs across a large range of buildings in South Australia. The bill requires various types of public buildings and all new large commercial buildings to install a publicly accessible AED with clear signage. The bill also requires all emergency service vehicles, trains and any other vehicle prescribed by the regulations to install an AED.

The buildings that will be required to install AEDs within 12 months of enactment of the legislation will include, for instance, sporting clubs, schools, aged-care facilities and other government buildings. In addition, all new renovated large commercial buildings will be required to install one AED for every 200 square metres of their floor space. There is a penalty of $20,000 for noncompliance with these requirements.

The bill further imposes on the health minister requirements to establish a public AED register, create an app for locating AEDs, implement a public awareness strategy for AEDs and establish an AED training scheme for individuals required to complete first-aid training under the legislation.

Our position is that we support the need to expand AED access across our community. We welcome and commend the Hon. Frank Pangallo on bringing this legislation to the council. We also appreciate him holding what I understand was a very entertaining briefing for members of parliament yesterday, attended by St John's Australia and advocates Greg Page and Ironman Guy Leach. Unfortunately, I missed my photo with the Yellow Wiggle, Frank. I am very disappointed, mate, but that is okay, it is alright, I am getting over it. I do not need to mention it on *Hansard*. Oh, I have.

I note that in Parliament House we have multiple defibrillators available for members of parliament and staff. The simple fact is, if it is good enough for us to have access to these life-saving machines, then in reality it should be good for others who are in buildings around our state that are not parliament.

We do recognise that there is a cost involved in the legislation for community groups and other organisations in the community, but we have concerns that without support there would be a cost. We believe the government should be providing assistance for implementing this legislation, not simply relying on community groups to do that alone.

We are therefore moving some amendments that will require the Minister for Health and Wellbeing to report back to both houses of parliament. The minister should report on how the government plans to support affected organisations with the installation of AEDs, as required by this legislation. The minister should outline what support will be provided, how the community groups and others will be able to access that support and what the total quantum will be that is provided.

We are open to other amendments or considerations in the detail of the legislation, and ultimately we will support its passage through the council. Because of this impost on affected organisations, we want to ensure that the government is actively involved in assisting those affected by the implementation of this legislation and ensure that they are accountable in parliament essentially for how well they do or do not do.

We congratulate the Hon. Frank Pangallo for his advocacy of this important topic and bringing this legislation to parliament, albeit he did not introduce me to the Yellow Wiggle. We hope that the council will support our amendment and the government will support funding to provide these AEDs and make them available. As I said, we are open to considering any further amendments or consideration the government or other members may wish to contribute.

**The Hon. M.C. PARNELL (15:58):** I would like to start as well by congratulating the Hon. Frank Pangallo for bringing this bill to the chamber and also for hosting a very informative session yesterday morning about CPR and AEDs. As has been mentioned, two special guests were Mr Greg Page, better known as the original Yellow Wiggle, and Guy Leach, former Australian Ironman champion. Both had valuable stories to tell, one as the survivor of a heart attack who benefited from the availability of a nearby AED machine, and the other as a first responder who did not have access to an AED and whose friend might possibly have survived had a machine been available. The survival rate in cases where an AED machine is available can be around 70 per cent compared with only 10 per cent of cases where only CPR is available.

In general discussion afterwards with Guy Leech I mentioned to him that I was a regular participant in parkrun (or at least I was before the COVID pandemic shut down events such as that) and I pointed out that there is now always an AED machine at the start of each event, down on the banks of the River Torrens, and he reminded me that that was one of his initiatives. He was the one who got the AEDs into the parkrun movement. I think that is an excellent initiative, and I congratulated him for that.

These events get hundreds of participants and they mostly are not elite athletes; they are mostly just ordinary folk who are keen to keep fit. However, even so, strenuous exercise and strenuous activities are two-edged swords. They keep us fit and they keep our heart healthy, but they do impose stress and so having the security of knowing that there is an AED machine nearby should be encouraging to all participants, even those who are out of shape. I did make a mental note at the time to check whether the other three running clubs that I am a member of also have AED machines at their events; that is, the South Australian Road Runners Club, Trail Running SA and Ultra Runners SA.

It is now a matter of public record that I had my own heart issues last year which resulted in me spending Easter in hospital and receiving a quadruple heart bypass. My condition emerged not long after starting a 10-kilometre run but, luckily, I was less than a kilometre from home, and I was able to walk home and get a lift down to Flinders Medical Centre, which is only five minutes from my home. I say that because proximity to assistance is certainly a great advantage in cases where time is of the essence, particularly matters of the heart.

In fact, Guy Leech's defibrillator distribution business is known as Heart180, recognising the importance of getting an AED machine to a patient within 180 seconds, or three minutes, of a heart attack. It is a bold and ambitious plan but it is certain to save lives. I point out that my particular episode was not dramatic. I was able to walk home and get driven to hospital, no ambulance required, but the point is that being close to help can make all the difference.

I received an email on Monday from the Heart Foundation, Imelda Lynch, the CEO for South Australia and the Northern Territory. She starts her letter with:

> The Heart Foundation supports the bill to make Automatic External Defibrillators (AED) mandatory in South Australia introduced by Hon. Frank Pangallo MLC.

I will not read the whole letter but it points out that in Australia less than one in 10 people who have a sudden cardiac arrest outside of a hospital survive. That is a very poor survival rate. Anything we can do to increase that survival rate has to be a good thing.

The Hon. Frank Pangallo's bill is certainly ambitious but that ambition is absolutely necessary. He is right, I think, to start with public buildings, public transport and other places where lots of people gather, because that is where these devices are most likely to be needed. I am very happy to be supporting the bill.

**The Hon. S.G. WADE (Minister for Health and Wellbeing) (16:03):** I rise to speak on the Automated External Defibrillators (Public Access) Bill 2020 and indicate that I will be the lead speaker for the government. The bill proposes to require the mandatory installation of automated external defibrillators (AEDs) in a range of buildings and vehicles. This includes requiring external defibrillators in public buildings, schools, tertiary institutions, prescribed sporting facilities, retirement villages, caravan parks, casinos, theatres and correctional facilities, as well as emergency service vehicles.

I thank the Hon. Frank Pangallo for his passion and advocacy to increase the prevalence of AEDS in our community, and his commitment to save the lives of South Australians. I also thank the honourable member for organising yesterday's briefing and demonstration of AEDs and cardiopulmonary resuscitation.

Unfortunately, I was unable to attend due to another engagement, but I am advised it was an excellent demonstration by Shauna from St John. There were contributions from Greg Page, better known as the 'Yellow Wiggle', and Guy Leech, a former Australian Ironman surf lifesaving champion, both of whom shared their personal testimonies, which were both informative and insightful.

I note the information that the honourable member has circulated on the importance of AEDs in saving lives, which includes the story of Rod Hutchinson, who rowed at the 1962 Commonwealth Games and has remained a keen rower his entire life. Rod had a heart attack out of the water while training in an eight-seater. His crew were able to get to shore and perform CPR, but it was a quick-thinking motorist who raced to the local IGA, knowing it had an AED available. The AED saved Rod's life.

I acknowledge the many stakeholders and campaigns dedicated to raising community awareness of and access to life-saving defibrillators, from Guy Leech's Heart180 campaign that aims to have a defib within 180 seconds for any Australian suffering a sudden cardiac arrest to the annual Restart a Heart Day on 16 October, which of course is tomorrow. I also thank the Heart Foundation for their representations in relation to the bill.

Sudden cardiac arrests affect more than 1,800 people each year in South Australia, with only one in 10 surviving. The most recent information about cardiac arrest in South Australia is published in the South Australian Ambulance Service Cardiac Arrest Registry Summary Report 2016-17. The report highlights that in a 12-month period 863 patients required resuscitation by SAAS, and 18 per cent of patients were in a public place. Of the 863 patients, 63 had received bystander resuscitation before SAAS arrived, including 18 patients who had an AED used as part of the bystander resuscitation response. Of these 18 patients, 72 per cent survived.

AEDs are installed on a voluntary basis in many public locations. The cost to purchase, install and maintain AEDs is the responsibility of the organisation or business. By installing AEDs in publicly accessible locations, such as a foyer or a building, members of the public are able to access an AED when attempting bystander resuscitation. SA Ambulance Service is already conducting an awareness campaign to increase the voluntary installation and registration of publicly accessible AEDs on its AED register. I understand there are currently around 1,000 devices on the register.

When members of the public call 000 to request emergency medical assistance, the SA Ambulance dispatch officers use the register to direct members of the public to the closest AED. The government is active in increasing awareness of and access to AEDs. However, we will not be supporting the bill today due to a number of significant limitations. For example, we believe that the locations are not well defined. Many would already have AEDs installed, and the bill lacks clarity in managing the costs imposed on private businesses.

The bill does not currently assign responsibility for the maintenance of an installed AED. The focus of the bill is also on the purchase and installation and lacks a focus on the installed AED being accessible to the public. Clarity is required on how such an extensive system would be monitored for compliance to ensure that all additional AEDs are accessible and operational for the public.

As an example of the complexities of public policy in this area, Eldercare has written to me to voice their opposition to the compulsory installation of AEDs in residential aged-care facilities. They highlight the complexities around an AED possibly being used by visitors, contractors, volunteers and other people who are not well informed of the risk of trying to resuscitate somebody who may have a 'do not resuscitate' order in place or clear end-of-life plans that do not involve active resuscitation.

Again, I reiterate that the government strongly supports broad community use of both CPR and AEDs. I commend the honourable member for his passion and work in this area, and I look forward to ongoing discussions on how we can continue efforts to educate and inspire South Australians to act so that many Australians dying from cardiac arrests may have their lives saved. However, we respectfully consider that this bill is not the best next step.

**The Hon. F. PANGALLO (16:09):** I would like to thank all the members for their contribution to this bill and also thank the members of parliament and staff who yesterday attended the demonstration of an AED and CPR by St John and heard those compelling life-and-death experiences of my guests who came over from Sydney to show their support, the original yellow Wiggle, Greg Page, and the original ironman, Guy Leech, who explained his passion to try to get AEDs installed for use within three minutes of somebody suffering a cardiac arrest.

Survival rates decrease by about 7 to 10 per cent with every minute that defibrillation is delayed. SA Ambulance figures show that 95 per cent of all cardiac arrests will die before they get to hospital, so every second counts. Just in the 13 or so minutes that we have been in the chamber discussing this bill, one person has died of cardiac arrest somewhere in Australia. Just think about that. There are about 48 a day, and 8,000 die a year as a result of cardiac arrests. We now have the ability, using this cost-effective technology, to reduce those figures significantly.

Tomorrow is Restart a Heart Day. Just this week, the health and wellbeing minister stood up to speak about the lifesaving importance of using defibrillators and CPR and also having them in our community. I am greatly disappointed and totally dismayed that today the government refuses to support this bill and particularly because of what the minister has said. That can only make me think that some of those words he used the other day were perhaps empty ones.

It has been clearly shown that these devices save lives. For example, an AED applied soon after an incident—within that three to eight minute window; if that person is revived and conscious when they are taken to hospital, they might not even required to be ventilated in an ICU. Their recovery will be quicker and they can return to work sooner. That is a win-win for our bursting-at-the-seams health system and for employers.

It also kills the malarkey I read in *The Advertiser* this morning that if my bill was passed it would impose costs on business. The LGA gave me the same lame line. But I will commend the City of Adelaide, which has around 28 dotted around the city, including on the Torrens Riverbank; and Norwood and St Peters council, which have put two in their streets. I have seen them inside council offices that I have visited. They appreciate the value of having them, just like having mandatory fire extinguishers that may also rarely be used.

They cost under $2,000, and I am certain there are plenty of innovative businesses in this state that could easily find ways to raise the money to buy one. There are good corporate citizens out there who are willingly installing them: Coles, Woolworths, Bunnings, Officeworks and the AHA,

one group we do not normally see eye to eye with because of their gaming machines, but I will commend them and their CEO, Ian Horne, for their program to roll out more than 300 defibrillators.

They are not whingeing about the cost. They can see the intrinsic value in them. You cannot put a price on lives, but that is what this government is doing right now. Imagine not putting seatbelts or airbags in cars and not making helmets mandatory for motorcyclists and cyclists because they would be an additional financial cost. Sorry, but that argument of not wanting to burden businesses with extra costs is totally nonsensical, and it would go against overwhelming community support I know exists. I have not received one complaint or objection, save from the government, about what I am proposing.

Just to paraphrase the Premier this morning, when he accused the opposition of being whingers, knockers and blockers, well, you could not get any more hypocritical than that remark. Whinging, knocking and blocking is exactly what they did in the House of Assembly with my colleague the Hon. Connie Bonaros's life-saving initiative on having warning labels affixed to LPG bottles. They blocked debate. They used every excuse they could find to gag something designed to avoid further loss of life, and they are doing it here today with this bill—whinging, knocking and blocking—probably, as with Connie's bill, because it is not their bill, but that is politics for you.

I would also like to note that the always forward-thinking member for Florey, Frances Bedford, attempted similar legislation to mine about three years ago, without much success, but we are still knocking on the door. I do not particularly care who puts up this bill, and if the minister tells me that he intends to do it in a reformed way I would gladly support him to the hilt, just as we did with CCTV cameras in aged care.

Talking about aged care, I will certainly reject Eldercare's concerns about having AEDs in aged-care facilities because it may contravene any existing advance care directives that could be there for any of the residents. Residents are not the only ones in aged-care facilities and they all do not have advance care directives, so it is ludicrous that Eldercare would even put up such a suggestion that it may impact on these aged-care directives. Quite simply, they have numerous staff in there, they have people who come and go in nursing homes who could fall victim to a cardiac arrest, so it is important that they have one there.

As my colleagues have pointed out, they are quite harmless. They are such sophisticated technology that they will only stimulate a heart back to life if they detect the need for it. I must say that I have also heard some dopey remarks come from some government members while we have been attempting to garner support for this. One was that they could not trust a stranger to apply one of these things on them—and they used the term 'things'.

As I have pointed out, they are harmless. In South Australia there is no legal barrier to using an AED and the Civil Liability Act of 1936, the good Samaritan clause, safeguards individuals who aid in a life-threatening emergency. This law ensures that a good Samaritan cannot be sued while aiding someone in an emergency unless their ability to exercise due care was affected by either alcohol or a recreational drug.

The provisions are clear and unambiguous. Another ignorant and misinformed comment from the government today was a fear that it could result in fewer people being trained in CPR. Honestly, I had to read it twice to make sure my eyes were not playing tricks. I will exonerate the minister for being responsible for this flippant dismissal, because I am sure that he of all people would be aware (or should be aware) of the facts, unlike the person who gave that sloppy and unresearched quote to *The Advertiser*'s Liz Henson.

Had they been to the demonstration yesterday, they would have seen that CPR and defibrillators work together. The devices speak through the steps to the user, including applying CPR, particularly if the first shock did not restart the heart. This bill requires and encourages training in CPR. Therefore, it goes without saying that the more AEDs you have in the community the more people will be able to apply CPR than can now.

I will use the perfect example—and I have used it in my second reading explanation—of Kangaroo Island, where one of the resident doctors, Dr Tim Leeuwenburg, has overseen the rollout of almost 50 AEDs, and in doing so they have achieved a stunning 25 per cent of the island's population being able to perform the CPR procedure.

The bill will also see AEDs in schools, enabling students from year 6 upwards to learn CPR. So, minister, we are encouraging and promoting training in CPR, not the opposite. If the government wanted more people to learn CPR, they could follow the innovative lead of countries like Switzerland, Germany, Norway and Denmark, which require first-aid training before driver's licences are issued.

Another feature of this bill is the register of where these devices are located, either on a website, an app or, as the minister has pointed out, when someone calls 000. Adopting an app called GoodSAM not only provides this information but can alert passers-by with the app who have been trained in the use of CPR and AEDs. It works very successfully in Victoria and Europe, yet I am told that this government is opposed to its introduction here. Why on earth would you do something like that?

Thank you for the opportunity to sum up. I do hope the government gives this bill further consideration in the other place, should it reach there.

Bill read a second time.

*Committee Stage*

In committee.

Clause 1 passed.

Clause 2.

**The Hon. J.E. HANSON:** I move:

Amendment No 1 [Hanson–1]—

Page 2, lines 6 to 8—Delete clause 2 and substitute:

2—Commencement

(1) Subject to subsection (2), this Act comes into operation 12 months after the day on which it is assented to by the Governor.

(2) Sections 1, 2 and 16A come into operation on assent.

The purpose of the clause, as I outlined in my original speech, is essentially going to how we are seeking further governance over what the bill is seeking to do. You will see that my next amendment comes in at 16A, where the minister must provide a report. Essentially, the operation date is somewhat reflective of exactly what we are also doing in regard to 16A, so these two effectively tie in together.

**The Hon. F. PANGALLO:** I rise to say that SA-Best supports the amendment from the Hon. Mr Hanson and the opposition.

Amendment carried; clause as amended passed.

Clause 3 passed.

Clause 4.

**The Hon. F. PANGALLO:** I move:

Amendment No 1 [Pangallo–1]—

Page 4, line 28 [clause 4(i)]—After 'authorised' insert', other than a venue where the only gambling authorised is the selling and buying of lottery tickets'

In the definitions of 'buildings', the designated buildings or facilities listed are public, sporting, school and education facilities, correctional institutions, a retirement village, an aged-care facility, caravan park, residential park with more than 12 residents, a casino or gambling facility, a theatre, and I have just added there, under 'authorised', 'where the only gambling authorised is the selling and buying of lottery tickets'.

**The Hon. M.C. PARNELL:** I rise to support the amendment. I think the member's list of designated buildings or facilities makes sense. They are places where large numbers of people gather. That includes casinos or other venues where gambling is authorised. As I understand the honourable member's amendment, there are places where gambling is authorised that might not

attract a lot of people. It might be a very tiny country store that has four customers a day but they happen to sell lottery tickets, so they would technically be caught up in that definition which is why the honourable member's amendment to exclude such venues from the definition of designated buildings makes a lot of sense.

Amendment carried; clause as amended passed.

Clauses 5 to 16 passed.

New clause 16A.

**The Hon. J.E. HANSON:** I move:

Amendment No 2 [Hanson–1]—

Page 10, after line 2—Insert:

16A—Report

(1) The Minister must prepare a report on how the Government will provide support to persons who are required by this Act to install an Automated External Defibrillator.

(2) The Minister must, within 6 months of the commencement of this section, have copies of the report laid before both Houses of Parliament.

(3) In this section—

*Minister* means the Minister responsible for the administration of the *Health Care Act 2008*.

This amendment is not going to shock anyone, but it is close to Frank's heart. The reason for this amendment is that, essentially, there is a recognition that there is a cost in this legislation for community groups and other organisations in the community, so we have some concerns about support. There is essentially going to be a cost that some may not be able to bear.

We believe the government should be providing some assistance with the implementation of this legislation and not relying solely on community groups; therefore, this amendment tied to the previous one we have already moved requires the Minister for Health and Wellbeing to report back to both houses of parliament. The report should be on how the government plans to support the affected organisations with the installation of AEDs as required by the legislation, and that is foreshadowed in the amendment.

**The Hon. F. PANGALLO:** I rise to say that SA-Best will support the amendment of the Hon. Justin Hanson.

New clause inserted.

Title passed.

Bill reported with amendment.

*Third Reading*

**The Hon. F. PANGALLO (16:31):** I move:

That this bill be now read a third time.

Bill read a third time and passed.

*Motions*

## NUCLEAR WASTE

Adjourned debate on motion of Hon. M.C. Parnell:

That this council—

1. Notes the petition signed by 909 residents of South Australia tabled in the Legislative Council on 5 March 2020 concerning the integrity of South Australia’s legal prohibition against the building of nuclear waste dumps in this state;

2. Notes the decision by the federal government to locate a temporary intermediate-level nuclear waste storage facility and a permanent low-level nuclear waste disposal facility at Kimba on Eyre Peninsula;

3. Notes the intention of the federal government to legislate to override the South Australian Nuclear Waste Storage Facility (Prohibition) Act 2000; and

4. Calls on all members of the South Australian parliament to uphold the integrity of our state legislation by opposing the federal government's plans for a nuclear waste dump at Kimba or anywhere else in South Australia.

(Continued from 8 April 2020.)

**The Hon. K.J. MAHER (Leader of the Opposition) (16:32):** I rise today in support of this motion and thank the Hon. Mark Parnell for bringing it to this place. In terms of the proposed nuclear waste facility in South Australia, it is widely recognised by many that the selection process was fundamentally flawed. It had little regard for the impact on local communities that have been put in the spotlight, it had little regard for the division that has been created within those communities and, certainly, from much of the correspondence and discussion that has occurred with me, it had no regard for the wishes of the traditional owners, the Barngarla people.

The opposition believes traditional owners and native title holders must be central to any process such as the selection of this site. When Premier Weatherill had a royal commission into the nuclear fuel cycle and South Australia's participation in it, in the end, one of the three preconditions for any further engagement in that issue was a right of veto to traditional owners, and clearly, that is not what has happened here. Traditional owners and native title holders were excluded from the vote in relation to the site and the federal government has fought traditional owners every step of the way through the court process in South Australia.

A federal parliamentary committee noted the very deliberate actions to attempt to remove judicial review rights from this, which would further erode the Barngarla people and the general Kimba community's possibility of testing in the courts the shocking process that led to the site selection. Research conducted by the Australian Institute shows that South Australians overwhelmingly support the Barngarla people having a much bigger say in the process. As I said, we believe that the process, in the way that this site was selected, was completely and entirely flawed and we support the motion of the Hon. Mark Parnell.

**The Hon. T.A. FRANKS (16:34):** I rise to support this motion moved, quite rightly, by my colleague the Hon. Mark Parnell so it will come as no surprise that the Greens are unanimous in their support of this motion. The treatment, particularly of the Barngarla people, in this debate has been utterly appalling. Indeed, the federal government proposing to essentially ignore our state laws and deliberately ignore the traditional owners of this land has been an absolute travesty, trampling over our democracy.

Late last year, for example, we learnt that residents in any of the South Australian communities that were originally shortlisted for this dumpsite were told that if they wanted to attend the community consultation meetings they had to sign a supposed code of conduct that banned them from taking notes and, further, that observers needed to be approved and they 'cannot repeat or share the individual ideas or views of committee members' and 'they cannot repeat confidential information or try to interject in committee discussions'. This was very far removed from a transparent process, a democratic process or a respectful process.

It has been said by the federal government that there is support from the South Australian community for this. They cite the vote of those in Kimba. They fail to cite the 100 per cent vote against of the Barngarla people. One hundred per cent against in my book is no community consent. They fail to respect the state laws. They fail to respect the royal commission process that indicated the position of South Australia towards these sorts of proposals. Indeed, the project cannot be allowed to proceed.

South Australia has held firm for 20 years that we are not Australia's dumping ground. We will not store nuclear waste in this way. We cannot stand by and let the federal government overturn our state laws nor turn that part of our state into a dumping ground for this dangerous waste, particularly as it is 100 per cent against the wishes of the traditional owners.

**The Hon. J.M.A. LENSINK (Minister for Human Services) (16:37):** I will make a few remarks in relation to this motion, which the government does not support. On 1 February 2020, the Australian government announced it had selected a site for the proposed national radioactive waste management facility at Napandee on the Eyre Peninsula near the Kimba township. The facility will dispose of Australia's national low-level, and temporarily store the nation's medium-level, radioactive waste while a separate intermediate-level waste disposal facility is developed.

The Australian government is pursuing the development of the site for the facility under the National Radioactive Waste Management Act of 2012. South Australia has in operation the Nuclear Waste Storage Facility (Prohibition) Act of 2000, which impacts on the state's ability to provide assistance or support to the Australian government in relation to liaison and coordination for the development of the facility. The site has met the commonwealth's criteria that it be volunteered by the landowner, be technically suitable and be broadly supported by the local community.

I understand that there has been a Senate committee that has recommended that the bill be passed without amendment. The committee has recommended ongoing consultation with the traditional owners of the land, the Barngarla people, which this government does support and encourage. The facility is intended to dispose of this waste, which is currently stored in more than 100 sites across Australia. Notably, it is not intended to store high-level radioactive waste or radioactive waste produced by other countries.

I acknowledge that there is a diverse range of views on the project in the broader community. While there are some within those communities who are opposed to the project, there are others equally forthright in their support. This government believes that it is important that radioactive wastes are dealt with properly, professionally and safely in one central, secure location and has previously stated that it will not oppose the establishment of a facility in South Australia if there is a willing host community. Given the level of broad support in the community for the Napandee site, the government is committed to continuing to work with commonwealth counterparts to progress this nationally important work.

**The Hon. M.C. PARNELL (16:40):** I thank the Hon. Kyam Maher, my colleague the Hon. Tammy Franks and the Hon. Michelle Lensink for their contributions. I am pleased that I believe this motion has majority support in this chamber today. I have spoken about the issue of nuclear waste in this place many, many times before. I think if we were to drill down to the key issues, we find that some people are appalled by this project because of the process that has been followed, other people are worried about the actual physical project, the merits of the project, if you like, and there are other people like me who are concerned about both aspects.

When we look at the process, as my colleague the Hon. Tammy Franks and the Hon. Kyam Maher have pointed out, this notion of a willing host community only works if you exclude all of the traditional owners. As has been pointed out, the Barngarla people voted 100 per cent against the nuclear waste dump on their traditional lands. Had their votes been included, then certainly the outcome of the council-run ballot would have been very different.

The other aspect of the process that many people, including myself, are very worried about is the fact that the commonwealth government is proposing to legislate to prevent citizens of this country exercising their legal right to challenge administrative decisions. The idea of legislating to say that no-one is allowed to go to the umpire—it does not matter whether the decision-maker has broken the law, no-one is allowed to go to the umpire—that these are unimpeachable decisions in an important issue such as this is unacceptable. That bill before the Senate needs to be defeated and soundly defeated.

When I called for this matter to be brought for a vote today, our expectation was that the Senate was going to deal with this bill last week. As it turned out, the bill was not reached. Some people kindly suggest that the Senate ran out of time. I expect it is more likely that the government does not have the numbers and so they did not bring the bill on for a vote. I hope that situation remains, because it is an appalling piece of legislation.

I will mention again briefly—I think I mentioned this before—that the law in South Australia that prohibits nuclear waste dumps includes a provision, section 14 from memory, which I will paraphrase: if those dastardly feds try to foist a nuclear waste dump on us, there must be a

South Australian parliamentary inquiry. I am paraphrasing the provisions of the act, but that is basically what it says. That inquiry will be conducted by the Environment, Resources and Development Committee of this parliament. I serve on that committee. I hope that we do not have to have that inquiry, because I hope the Senate does their job and throws out the government's bill.

In relation to the process, it is one thing and an important thing for the traditional owners to have been denied a say, but so, too, were all of those communities through which nuclear waste will be transported. We know that the distance from Lucas Heights to Kimba is about 1,700 kilometres. Nuclear waste could travel by road or it could travel by sea, but ultimately it is going to be passing through many communities, perhaps South Australian port communities, perhaps Whyalla, perhaps Port Lincoln, who knows?

If it is transported by road, it will be going through other regional communities as well. Were any of those people consulted? Were any of them asked what they thought about being on a thoroughfare for nuclear waste being transported 1,700 kilometres across the country unnecessarily? No, they were not asked. This is certainly a major failing in terms of the process the government has gone through.

In terms of the merits of a national nuclear waste dump, this is a case, I think, of spin that would do Donald Trump proud, the way that the government has spun this. Their argument has been that if you or anyone you know has ever accessed nuclear medicine, therefore you must support a nuclear waste dump at Kimba. Nothing could be further from the truth. The main waste that is going to end up in this national repository is not, in fact, medical waste from hospitals because we know from considerable experience that the number one strategy for managing medical nuclear waste is the principle called 'delay and decay'.

You have to think about it like this: most of the radioactive isotopes that are used in medicine are short-lived. We do not inject people with things that are going to be toxic to them for tens of years or hundreds of years. They are very short-lived radioactive isotopes. Most of the waste that is generated does end up, as people have said, in hospital basements where it is stored for a short period of time until the radiation levels have dropped to such a level that they can be taken to the tip. They are taken to the municipal tip and they are put into landfill. There is not going to be a steady stream of vans or trucks driving from hospitals to Kimba. It is just not going to happen.

What we do know, though, is that Kimba will be used for dangerous, intermediate-level nuclear waste. Again, people are saying, 'We have to put it somewhere.' I agree, we do have to put it somewhere, and that place is called Lucas Heights. This is what the CEO of ARPANSA, the nuclear regulator, said to the Senate inquiry in June this year, 'Waste can be safely stored at Lucas Heights for decades to come.' There is no pressing case for moving dangerous intermediate-level nuclear waste away from a federally-controlled site with Federal Police around the clock and moving it to Kimba in South Australia. There is no reason at all to be doing that, especially given that it is regarded as an interim storage rather than a permanent disposal. It needs to stay where it is at Lucas Heights.

If we do want to responsibly manage our domestic nuclear waste—which we do; I absolutely agree; it is our waste, it is our problem—this is a very different debate to taking the rest of the world's high-level nuclear waste. That was a debate we had under the previous government. This is Australian waste and it is our responsibility, but the best way to advance responsible radioactive waste management is to halt this flawed Kimba plan in favour of an expert, independent review which is based on evidence and global best practice.

As people have pointed out, radioactive waste lasts longer than politicians, and so there is this pressing need to get it right. The motion that we are voting on today, the action point if you like, is paragraph 4 which states:

> That this council calls on all members of the South Australian parliament to uphold the integrity of our state legislation by opposing the federal government's plans for a nuclear waste dump at Kimba or anywhere else in South Australia.

I hope that a majority of the chamber will support that sentiment today.

Motion carried.

*Bills*

## HEALTH CARE (SAFE ACCESS) AMENDMENT BILL

*Second Reading*

**The Hon. T.A. FRANKS (16:48):** I move:

That this bill be now read a second time.

The bill seeks to legislate for safe access zones around abortion health care in this state. It is not the first time nor is it even the second time that this chamber has debated this matter, but I hope it will be the final time to ensure that we provide that a person has the right to access legal reproductive services without fear, intimidation or harassment and that people in our state have the right to access these vital health services without having their privacy compromised.

It is also time that, finally, this parliament ensures that the staff, the workers in these places, in our state where abortions are performed, have the right to enter and leave their workplace safely every day without being obstructed, without being interfered with, hindered or harassed.

By providing for these healthcare safe access zones around premises that perform abortions, this bill will ensure that those seeking healthcare and the staff who provide that care can access those premises safely without experiencing anxiety, stress, fear or the trauma that can occur when they encounter anti-abortion groups or individuals outside those premises.

Some members of our community of course have very deeply held views about abortion and are opposed to the practice of abortion. That is their right. They are free to express those views. This bill does not prevent people from holding or expressing those views; however, expressing your deeply held views does not carry with it a free pass or a right to subject others to fear and intimidation.

This bill will entitle women and those accompanying them to access vital healthcare services in a safe and confidential manner without the threat of harassment. It will enable staff to access their workplace without being verbally abused, obstructed or threatened and without having their privacy compromised.

This bill contends that it is not reasonable for anti-abortion groups or individuals to target women at the very time and in the very place they seek to access an abortion health service or to target the health service workers with behaviours that are prohibited in this bill. That will enable safe entry and egress to these health services.

The impact of such actions on those who seek to use these health services is indeed something that must be viewed in the context of their own personal circumstances. Many attending these health services are already feeling quite distressed, anxious and fearful, perhaps about an unplanned pregnancy or a procedure that they are about to undergo. To be fearful that they also have to run the gauntlet of protest is further traumatic and further a burden, and we could and should ensure this parliament provides protection against that at the most difficult time in some people's lives. To be confronted by anti-abortion individuals or protests by groups at that time is of course going to lead to further trauma in these vulnerable patients.

It is also quite intimidating and demeaning for women to have to run the gauntlet simply to access a health service. Indeed, we know that the general aim of anti-abortion groups is to deter women from accessing these abortion services. The High Court has found that protections like those afforded in this bill—of safe access zones, where protections for patients and health workers alike ensure that there is not the ability to harass and intimidate a person providing or accessing a legal health service—is something that has already been done in most jurisdictions of this country. South Australia yet again lags in terms of these types of law reform.

Previously, when I have brought similar content matter to that which is in the bill before us in this particular debate, I have noted that only South Australia and Western Australia do not have safe access zones around abortion healthcare in terms of the Australian standard. I note that in Western Australia the Labor government has now moved for safe access zones in that state. I certainly hope that we are not the last state to legislate to ensure that protection for these patients.

The behaviour around these reproductive health services is conduct that can cause fear, anxiety and intimidation. Indeed, that is why this bill seeks to prohibit certain behaviours and defines those prohibited behaviours as:

(a) to threaten, intimidate or harass another person; or

(b) to obstruct another person approaching, entering or leaving protected premises; or

(c) to record (by any means whatsoever) images of a person approaching, entering or leaving protected premises; or

(d) to communicate by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving protected premises and that is reasonably likely to cause distress or anxiety;

Indeed, that is actually quite a high bar to set, and it is a bar and a standard that will be addressed by law enforcement. Should a person or a worker in these services feel that those prohibited behaviours are being enacted within the safe access zone of 150 metres around an abortion health service, then the police will be able to use their discretion to stop those behaviours.

In the first instance they will ask the person to leave the 150-metre safe access zone. Should that person refused to leave and continue with the prohibited behaviours then they will be facing potential fines of up to $10,000 or possibly imprisonment for 12 months. That is a penalty that is in keeping with the penalties around the country in most other jurisdictions of this nation.

We have seen in this place this week a bill to ensure that abortion is removed from the criminal code. We know that at least twice a year groups such as 40 Days for Life organise and target the Pregnancy Advisory Centre at Woodville, in particular for what they call silent prayer vigils for 40 days around those services. We know that because this parliament has failed to provide protection for patients, and yet again in the coming months patients will be required to run the gauntlet, we now also know, at a time when there are heightened feelings about abortion law reform in this state.

I think we have actually failed those particular patients by waiting so long to act on these safe access zones, so I do intend to see this bill progressed as swiftly as possible within the processes of a respectful parliament. I note that we have had this debate before in this place, that similar bills have passed this council previously and the SALRI report, some 550-plus pages of extensive work and consultations, is there to inform each and every member of this council with their deliberations.

I refer members of the council to recommendations 49 through 56 of the SALRI report and indeed chapter 18, which deals specifically with ensuring that South Australia has safe access zones to protect patients and healthcare workers alike. I would hope that members will be ready, willing and able to effect the swift passage of this legislation in coming sitting weeks.

To that end, I intend to take this to at least a second reading vote on 11 November. I would note that already there have been two tabled amendments circulated. I note that the Hon. Dennis Hood has an amendment for a review of the legislation, and to me that seems somewhat uncontroversial. I also note that the Hon. Nicola Centofanti has an amendment, similar to one that was debated in the other place, about ensuring silent prayer is not seen as a prohibited behaviour.

I would draw members' attention to the work particularly of the Castan Centre, which has specialised in observing how silent prayer is indeed used to threaten, intimidate or harass other people who are accessing reproductive health services in Australia. I note that this bill in and of itself does not actually prohibit silent prayer. It does prohibit behaviours, as I outlined, that are designed to threaten, intimidate or harass, that are surely behaviours that I would not imagine anyone would be looking to perpetuate in any parliament of the nation. It is not a right to threaten, intimidate or harass.

This bill does not prohibit silent prayer, but by ensuring that the bill affords the protections against prohibited behaviour, to include an exemption for silent prayer would, I believe, denigrate those who do hold a Christian faith or a faith that supports prayer, because I do not know of any religion that wants to threaten, intimidate or harass through the use of prayer.

By giving silent prayer a special dispensation from those prohibited behaviours, I think we open a very frightening Pandora's box, if you like, that allows religion and religious practice to be

contorted into something quite ugly if we are saying that it is okay to use silent prayer to threaten, intimidate or harass. That is to me not what prayer is about.

I think I have put on the record before that I am agnostic. I am not an atheist, as some possibly assume, and I am also not a monotheist. I am not averse to the right, ability and power of prayer, but I certainly will not stand by while people use words and supposed rights to pray to threaten, intimidate or harass, and I would hope that other members of this council will see the same.

To that end, I also offer members the ability to talk to those who have specialised in the role of silent prayer around abortion health care and the way it has been weaponised, if you like. The Castan Law Centre is ready, willing and able to provide either direct briefings or, should members be interested, we can hold an online parliamentary briefing to find out more.

I and Nat Cook, the member for Hurtle Vale, who co-sponsored this bill and introduced it in another place, already offered such an opportunity to members of parliament, but we are happy to run that again, and we look forward, hopefully, to the passage of this bill on 11 November.

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

## ELECTORAL (MISCELLANEOUS) AMENDMENT BILL

*Introduction and First Reading*

Received from the House of Assembly and read a first time.

*Parliamentary Procedure*

## APPROPRIATION BILL 2020

The House of Assembly requested that the Legislative Council give permission to the Treasurer, the Hon. R.I. Lucas MLC, to attend at the table of the House of Assembly on Tuesday 10 November 2020, for the purpose of giving a speech in relation to the Appropriation Bill.

**The Hon. R.I. LUCAS (Treasurer) (17:04):** I move:

That the Legislative Council grant leave to the Treasurer, the Hon. R.I. Lucas MLC, to attend at the table in the House of Assembly on Tuesday 10 November 2020 for the purpose of giving a speech in relation to the Appropriation Bill, if he thinks fit.

Motion carried.

At 17:08 the council adjourned until Tuesday 10 November 2020 at 14:15.

*Answers to Questions*

**POLICE, SOCIAL MEDIA**

In reply to **the Hon. T.A. FRANKS** (8 September 2020).

**The Hon. S.G. WADE (Minister for Health and Wellbeing):** The Minister for Police has been advised:

1. Making a statement of clarification depends on the post and the comments made.

SAPOL's Media Unit staff address comments directly by providing information when a statement is not factual.

Posts and comments may also be left for community interaction, providing it does not breach SAPOLs standards.

This allows for community correction of facts and ongoing community discussion. SAPOL's Media Unit may choose not to make a comment to ensure a current investigation is not impeded.

2. Correcting posts may be undertaken as required.

Upon request from within or outside of SAPOL, the Media Unit is able to post a retraction or correction of fact.

3. SAPOL does not accept threatening, disrespectful, insulting, obscene, racist or defamatory comments.

Efforts are constantly made to ensure that comments of this nature are not visible on the page. SAPOL utilise a profanity and banned word list. Facebook does not allow the adjudication of comments prior to being uploaded to their posts.

**CORONAVIRUS VACCINE**

In reply to **the Hon. F. PANGALLO** (8 September 2020).

**The Hon. S.G. WADE (Minister for Health and Wellbeing):** I have been advised:

Details of the commonwealth government's agreement with AstraZeneca for the potential supply of a COVID-19 vaccine, including liability indemnification, are commercial-in-confidence.

However, such contractual agreements with individual companies cannot stop individuals seeking to litigate, should an individual seek to do so in the future.

The Therapeutic Goods Administration (TGA) is responsible for assessing potential vaccines for safety and effectiveness. Once registered by the TGA, a COVID-19 vaccine will continue to be closely examined after introduction through ongoing surveillance activities and monitoring of adverse events.

**AGED-CARE CCTV TRIAL**

In reply to **the Hon. F. PANGALLO** (10 September 2020).

**The Hon. S.G. WADE (Minister for Health and Wellbeing):** I have been advised:

1. The 12-month pilot project in two sites has been budgeted at $785,000 (GST excl.), which includes the equipment, monitoring and independent evaluation.

2. This information is commercial-in-confidence.

3. Under the terms of contract, Sturdie Trade Services Pty Ltd is responsible for delivering the independent monitoring.

4. This information is commercial-in-confidence.

5. The combined SA government and commonwealth government investment is budgeted at $785,000 (GST excl.) for the 12 month pilot, which includes the equipment, monitoring and independent evaluation.

6. As of 10 September 2020, $462,000 (GST excl.) of the commonwealth government funding has been spent.

**WOMEN'S AND CHILDREN'S HOSPITAL**

In reply to **the Hon. C.M. SCRIVEN** (22 September 2020).

**The Hon. S.G. WADE (Minister for Health and Wellbeing):** I have been advised:

There are a total 117.9 FTE pathology related and 48.1 FTE pharmacy related staff at the Women's and Children's Hospital.

**MENTAL HEALTH SERVICES**

In reply to **the Hon. F. PANGALLO** (23 September 2020).

**The Hon. S.G. WADE (Minister for Health and Wellbeing):** I have been advised:

There have been extensive investigations of this incident by the relevant bodies. These could not be concluded until the outcome of the coronial inquest but it is expected that they will be finalised in the near future.