LEGISLATIVE COUNCIL

Tuesday, 24 August 2021

The PRESIDENT (Hon. J.S.L. Dawkins) took the chair at 14:16 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.

Members

MEMBER, SWEARING IN

The President produced a commission from His Excellency the Governor authorising him to administer the oath of allegiance to members of the Legislative Council.

The President produced a letter from the Clerk of the Assembly of Members notifying that the Assembly of Members of both houses of parliament had elected Ms Heidi Margaret Girolamo to fill the vacancy in the Legislative Council caused by the resignation of the Hon. D.W. Ridgway.

The Hon. Heidi Margaret Girolamo, to whom the oath of allegiance was administered by the President, took her seat in the Legislative Council.

Condolence

MCKEE, HON. C.D.T.

The Hon. R.I. LUCAS (Treasurer) (14:20): By leave, I move:

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

I suspect I might be one of the few members in the chamber who knew Colin McKee, but I perhaps stand corrected in relation to that particular issue. I certainly, in my long time in this place, knew Colin and indeed knew, in a passing fashion, his father, Dave McKee, who was a legendary member of the Australian Labor Party.

The stories of Dave McKee used to rebound around the corridors of parliament. He was known as a boxer and a fighter. The stories were legendary. In the old days of the boxing tents at the country shows, he performed very well in a number of those bouts and made a little bit of money for himself, as I understand it, over the years. He had a long and distinguished career representing his union and the Australian Labor Party and a long period of time in parliament.

Colin McKee was elected as the Labor member for Gilles between 1989 and 1993. Prior to that, he had had 10 years, I think, officially as a Labor organiser or a similar position to that within the Labor organisation. I am not sure whether he was actually the state organiser for all of that period, but certainly for good parts of that particular period. Prior to that, or around about that time, he was also an organiser for the Musicians' Union and was the founding secretary of the Actors and Announcers Equity Association SA division, as it was then known.

The seat of Gilles, which is in and around our current seat of Torrens, during that period of the seventies and eighties oscillated between being a very marginal seat and then gradually over a period of time, with boundary movements, becoming a safe seat for the Australian Labor Party. Jack Slater had been the member prior to Colin being the Australian Labor Party member for Gilles.

During one of the famous Dunstan era elections, in 1975, the seat of Gilles was the seat that Labor held on to by a couple of hundred votes to give it the slimmest of majorities in the House of Assembly. I recall the Liberal Party candidate was Lou Ravesi, a pharmacist of some public standing in the South Australian community and, I think, a state handball champion. It was a fearsome battle, but ultimately the Australian Labor Party prevailed and the Dunstan government continued for another term, and another term again after that.

After a long period of service, both to the union movement and to the Australian Labor Party, Colin was preselected for that particular seat in 1989 but, as with many other members, the landslide of the State Bank election of 1993 meant that all Labor members—virtually all Labor members, I should say; not all, but a significant number of Labor members—no matter the quality of their work in terms of the individual's work within the electorate, were swept aside by the State Bank landslide of 1993 and Colin lost his seat at that particular time.

He went on to do a number of things but he had interests in the hospitality industry, and in my various roles as shadow treasurer and occasionally with responsibility for the gambling industry our paths would cross. When in government our paths would cross occasionally at various industry functions with the Australian Hotels Association.

Colin McKee would be there and he sometimes stood out a little bit, given his background and the background of other members of the hotel industry who might have been involved in particular functions that I attended, but he was always well accepted by his colleagues within the hotel industry. They accepted with good humour the different path that he had followed to become a hotelier, a publican, and to arrive at a similar position as many of them had.

I also occasionally would see him at the Hagar Club with Chris Schacht, Ralph Clarke and a variety of others who met not infrequently in a popular restaurant near the Chinatown district where they continued an involvement in political issues. They claimed to me they were raising funds through their lunches to support nominated candidates that they individually or collectively as a club supported within the Australian Labor Party. They helped direct funding towards those nominated candidates. I would occasionally, by happenstance, wander past full meetings of the club and say g'day to Colin and a variety of others.

I had a degree of involvement and engagement with Colin over the years, both during his brief parliamentary career but more particularly in his latter-day pursuits as a member of the hotel industry. My dealings with Colin were always straightforward, in particular in relation to the interests of the hotel industry. He unashamedly put the views, not only of himself but of his colleagues, in relation to what the hotel industry believed they needed from government, whether it be a Labor government or a Liberal government, in relation to either liquor licensing issues or, more particularly during the last 20 years or so, gambling issues. He obviously had, given his background, an ongoing interest in the music industry and in particular live music and he maintained that ongoing interest through the years.

On behalf of my colleagues—most of whom probably did not know Colin, although one or two of my colleagues would have met Colin at hotel industry functions—we express our condolences at his sad passing and we pass our condolences on to his family, friends and acquaintances. We acknowledge his service to his union, to his party and, for a brief period, through his parliamentary service in this parliament.

The Hon. K.J. MAHER (Leader of the Opposition) (14:28): I rise to second the motion put forward by the Treasurer and to speak on the condolence motion for the late Colin McKee. Originally coming from Port Pirie, Colin brought that country sensibility that is sometimes missing in this parliament. He was elected to the seat of Gilles in the lower house, serving for a term in the north-east suburbs before that seat was abolished at the 1993 election.

Colin was the son of Dunstan era minister for labour and industry David McKee. He was an organiser for the Musicians' Union. He served as secretary for the Actors and Announcers Equity Association, the union for performers in radio, television, theatre and dance, before working in ALP head office as a party official and state organiser. Party officials who go into parliament are some of the best people I know, quite frankly. I suspect that during his time in ALP head office in the 1980s he probably would have received—if they were in fact at all true—some of those anonymous faxes that the Treasurer over the years has been so fond of quoting in this chamber.

He was particularly successful as an ALP organiser, serving in party office with then secretary Chris Schacht; successful in three federal elections, I think, two state elections and a number of by-elections. Not all the by-elections were successful, but some of the losses were such as the once blue ribbon seat of Mitcham, which was won by the Democrats at the time in a by-election, so hardly a devastating result for Labor.

Colin railed against the Liberal Party's attempts to abolish compulsory voting in the late 1980s, calling it out for what it was—a self-interested and undemocratic move. He was a strong believer in the preservation of our environment. In Colin's first speech in parliament in 1990 he outlined the need to explore the differences between demand and need.

In the lead-up to the 1993 election, I can imagine that it was not an easy time to be a Labor member of parliament, facing what turned out to be a devastating wipeout in 1993. Certainly, some members who were not preselected for where they thought they ought to be walked out on the party. Although there were media reports and musings at the time, Colin was not one of them, he remained true to his Labor principles to the core and stayed with the Labor Party, despite not being preselected for the seat for the 1993 election, and I think that is a great tribute to him. Our condolences are with Colin's family and his friends at this difficult time, and we thank him for his service to the Labor Party, the parliament and the state.

The Hon. I.K. HUNTER (14:31): I, too, rise to lend my voice to this condolence motion on Colin McKee. Colin was born and bred a Labor man and stayed true to his principles all the way through his life. It must be difficult for someone who is the son of such a famous father, and who achieved so much in government, in the Dunstan government, to find that when he finally did, after doing his time and a lot of work for the party, gain entry into the parliament on behalf of the ALP he was unceremoniously dumped one election later, which really was the closing of what could have been a brilliant career in politics.

Colin was very unique in the way that he operated as an organiser in party office; in fact, he was working with Terry Cameron in party office for many of those years. He had a unique campaigning style, which occasionally I would have to remonstrate with him about. He was very fond of cars, particularly Jags, and one of his campaigning techniques was to drive through his electorate in his Jaguar, through Holden Hill, Gilles Plains or Hillcrest, and jump out on street corners and talk to people.

I remarked to him several times that that might not be the best campaigning method for that electorate, that he might want to get a banged up Mazda and try to do it in that car instead. But, no, he said, 'You underestimate the aspirational votes in this electorate, and many people use the car, the Jag that I'm driving, as a talking point in opening our discussions.' I had a bit of a win, though, when I persuaded him to leave the boat and trailer off the Jag as he went around the electorate.

He was a character and did things his own way, and when his friend Terry Cameron went off and did the dastardly deed in this chamber and voted against the ALP, he stayed true, and I think that speaks very highly of the man. My condolences to his family as well.

The PRESIDENT: I ask honourable members to stand in their places and carry the motion in silence.

Motion carried by members standing in their places in silence.

Sitting suspended from 14:34 to 14:47.

Members

LEGISLATIVE COUNCIL VACANCY

The PRESIDENT (14:47): I lay on the table the minutes of the Assembly of Members of both houses held this day to fill the vacancy in the Legislative Council caused by the resignation of the Hon. D.W. Ridgway.

Ordered to be published.

Parliamentary Procedure

PAPERS

The following papers were laid on the table:

By the President—

Report of the Auditor-General—Examination of the Community Wastewater Management Systems Program, Report No. 11 of 2021.

By the Treasurer (Hon. R. I. Lucas)—

Corporation By-laws—
District Council of Grant—
No. 1—Permits and Penalties.
No. 2—Local Government Land.
No. 3—Roads.
No. 4—Moveable Signs.
No. 5—Dogs.
Regulations under Act—
Acts Interpretation Act 1915—Audiovisual Meetings.
COVID-19 Emergency Response Act 2020—
Savings and Transitional Matters.
Section 16 Real Property Act.
Criminal Law Consolidation Act 1935—General.
Electricity Act 1996—Principles of Vegetation Clearance.
Justice of the Peace Act 2005—General.
Planning, Development and Infrastructure Act 2016—
Application of Act.
Electricity Infrastructure.
Professional Standards Act 2004—General.
Subordinate Legislation Act 1978—Postponement of Expiry (No 2).
Review of the operation Section 302B of the Local Government Act 1999—Report to Parliament.

By the Minister for Human Services (Hon. J.M.A. Lensink)—

Regulations under Acts—
Wilderness Protection Act 2021—General.

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

Reports, 2020—
Flinders University.
The University of Adelaide.
Torrens University Australia.
University of South Australia.
Reports, 2021—
Training Advocate 2021.
Training and Skills Commission 1 January—30 June 2021.
Regulations under Acts—
Construction Industry Training Fund Act 1993—General.

ANSWERS TABLED

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

Ministerial Statement

IMPAIRMENT ASSESSMENT GUIDELINES

The Hon. R.I. LUCAS (Treasurer) (14:50): I seek leave to make a ministerial statement.

Leave granted.

The Hon. R.I. LUCAS: I rise to give a statement about the publication of amended Impairment Assessment Guidelines under the Return to Work Act 2014. The state government has

today published updated Impairment Assessment Guidelines, incorporating extensive community feedback on several key issues, including ensuring there is no set deduction in benefits for pre-existing injury and protecting workers' choice of assessor.

The Return to Work Act was enacted in 2014 by the former Labor government under then Minister John Rau with bipartisan support and it requires the Treasurer as the responsible minister, rather than parliament, to publish the guidelines. The guidelines, which have not been updated since 2015 and require changes to reflect clinical developments and improve efficiency, fairness and transparency, are used by medical assessors to assess the whole person impairment percentage of injured workers. The WPI rating determines the amount of compensation an injured worker may receive.

I have determined not to pursue changes proposed by ReturnToWorkSA, which for asymptomatic and pre-existing impairments would have resulted in a compulsory one-tenth deduction from a worker's WPI rating. There were many submissions about this proposed change, which did not reveal broad support for the new clause, citing its rigid application. Additionally, there appeared to be confusion about how the requirement was intended to be applied. Therefore, I determined not to make this change.

Another proposed change, which would have meant only surgeons could act as an assessor following surgeries rather than other specialists, such as occupational physicians, has also been rejected. It was recognised that medical assessors who are not necessarily surgeons also have the expertise to undertake such assessments. Moreover, feedback from surgeons did not indicate strong support for this change.

In order to properly consider all of the diverse views on the guidelines, I approved a broader consultation process than required by the legislation. ReturnToWorkSA's closing date for submissions was originally set at 25 June and, subsequent to that, I engaged in further meetings and consultation for a further two-month period. In addition to consulting with 13 medical associations, we invited more than 120 individual accredited impairment assessors, the Law Society of South Australia and the Self Insurers of South Australia to provide submissions.

Over 50 submissions were received during the initial four-week consultation period in May and June of this year. Two information sessions were held by ReturnToWorkSA, which I am advised were well attended. I intend to make all of the submissions received in the initial consultation publicly available, subject to the consent of the authors of the submissions. More than 30 of the over 70 proposed substantive changes were ultimately amended as a result of the submissions made during the initial four-week consultation period and in the weeks after that from groups such as the minister's advisory committee.

The committee contains members nominated by the Australian Medical Association, as well as members nominated by employee and employer associations, including some who, I am advised, are members of the Law Society of South Australia. The committee was granted an extension of time to respond, and ReturnToWorkSA presented another information session specifically for the committee to assist it in preparing its submission. I also intend to make the committee submission publicly available.

Ultimately, the updated guidelines will provide greater clarity for all those involved in the worker's compensation process, in particular workers and doctors. The government has made important changes to improve efficiency and fairness by reducing waiting times for injured workers arranging an appointment with an assessor.

ReturnToWorkSA advised me that, in the 2020-21 financial year, as at 25 May 2021, 1,939 WPI assessments were completed, yet just 12 assessors—that is only 9 per cent of all 129 accredited assessors—completed 56 per cent of assessments. Meanwhile, about 40 per cent of currently accredited assessors had yet to perform a single assessment in the financial year. As a consequence, there have been significant delays for an appointment with certain assessors, sometimes of up to about 12 weeks.

I determined that it was sensible to amend the guidelines to ensure that injured workers would not need to wait any longer than six weeks for an appointment with an assessor. Taking into

account feedback received from the medical and legal community in particular, the updated guidelines also include significant protections to maintain worker choice of assessor, as well as protections to increase transparency in ReturnToWorkSA's interactions with assessors in the course of reviewing reports for compliance with the guidelines.

With regard to the latter issue, attention was drawn to judicial commentary regarding ReturnToWorkSA's compliance functions in cases that have been before the South Australian Employment Tribunal in recent years, such as the matters of Frkic, Canales-Cordova and Palios. The protections the government is introducing in these new guidelines are as follows:

1. Ensuring that ReturnToWorkSA cannot direct a worker to choose a particular assessor to conduct the assessment, unless the worker is unable or unwilling to do so;

2. Ensuring that ReturnToWorkSA cannot direct an assessor to alter their clinical opinion when reviewing the assessor's report for compliance with the guidelines;

3. Ensuring that workers and their representatives are promptly provided with copies of correspondence between ReturnToWorkSA and the assessor when reviewing the assessor's report for compliance with the guidelines;

4. Ensuring that ReturnToWorkSA commence arrangements for the payment of an assessor's report fee as soon as the assessor's initial report is received;

5. Ensuring that a worker's appointment with an assessor is not delayed due to long waiting lists; and

6. Making clear that ReturnToWorkSA cannot delay the booking of a worker's appointment with an assessor, unless agreed with the worker within the six-week time frame requirement.

Finally, I wish to make absolutely clear that the updated guidelines do not raise the 5 per cent threshold or the 30 per cent seriously injured person threshold, which are set in the act and cannot be undone. A copy of the new guidelines is available in the *Government Gazette*.

LEGISLATIVE REVIEW COMMITTEE: TEACHERS REGISTRATION BOARD PETITION

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:58): I table a ministerial statement on the Teachers Registration Board on behalf of the Minister for Education from another place.

Question Time

WHITMORE SQUARE SOUP KITCHEN

The Hon. K.J. MAHER (Leader of the Opposition) (15:07): I seek leave to make a brief explanation before asking a question of the Minister for Human Services regarding homelessness.

Leave granted.

The Hon. K.J. MAHER: On Sunday, the ABC reported on efforts by the Chief Executive of the Department of Human Services to close a soup kitchen for the homeless. The report stated, and I quote, Ms Boswell said 'she made the Sunday afternoon visit in her capacity as the chair of a new taskforce'. My questions to the minister are:

1. When exactly did this new task force resolve that its chair should seek to close the soup kitchen for the homeless?

2. When exactly was the minister first informed that closing a soup kitchen was an agreed priority of this new task force?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:08): I thank the honourable member for his question. Once again, Labor come in here with false information posing as questions without notice. The CE of the Department of Human Services has stated publicly and I would refer the honourable member to Ms Boswell's public statements in which she advised the group that was informally providing services in Whitmore Square that they required a council permit, which she has stated they admitted that they knew to at the time. She has not asked them to close their service.

My understanding is that the council and SAPOL have asked that group to find alternative methods to provide support. I might suggest that there are a range of formal service providers that work extensively with this cohort of people. The Chief Executive of the Department of Human Services has indeed been working across government with a range of other government departments to provide support and assistance to ensure that this cohort of people are safe and getting the support they need.

WHITMORE SQUARE SOUP KITCHEN

The Hon. K.J. MAHER (Leader of the Opposition) (15:09): Supplementary arising from the answer: did the minister have knowledge of or approve of her chief executive having these discussions with the soup kitchen referred to in the ABC report on Sunday?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:09): I was advised that my chief executive had had discussions, and I refer the honourable member to the factual response rather than his misrepresentation of the events that took place.

WHITMORE SQUARE SOUP KITCHEN

The Hon. K.J. MAHER (Leader of the Opposition) (15:10): Further supplementary: when was the minister informed that her chief executive was having discussions with the soup kitchen referred to in the ABC report on Sunday night?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:10): My chief executive told me that she had had a discussion. I can't recall exactly when it was but it was certainly well before the item went to air on Sunday. She keeps me very well briefed on anything that she thinks might be of particular interest, and my view is that I knew her version of the events well before it was aired publicly.

WHITMORE SQUARE SOUP KITCHEN

The Hon. K.J. MAHER (Leader of the Opposition) (15:10): A final supplementary: upon the minister being informed of the proposed actions of her chief executive, well before, as the minister said, the report went to air on Sunday night, did the minister raise any concerns about this course of action?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:11): I fully support my chief executive in what she is involved in. She is a conscientious, hardworking individual. I resent that slurs are being made on her and that the Labor Party is misrepresenting the facts in what conversations have taken place.

HOMELESSNESS

The Hon. K.J. MAHER (Leader of the Opposition) (15:11): My question is to the Minister for Human Services regarding homelessness. Minister, what level of disadvantage and poverty do you think is acceptable for Aboriginal people, currently in Adelaide, to endure under your watch? Secondly, can the minister understand why many senior members of the Aboriginal community believe that the minister and her policies have failed them?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:11): I thank the honourable member for his question, although he needs to be very careful about how he characterises what various stakeholders think about these things, because certainly my advice—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.M.A. LENSINK: My advice as—

Members interjecting:

The PRESIDENT: Order! I ask that the opposition listen to the minister and let her—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.M.A. LENSINK: As I might remind him, as he frequently reminds us, people read *Hansard*. I will just provide a little bit more background in relation to this. Indeed, the chief executive has provided some comments in relation to this which I think is worth providing to the chamber. She stated:

> The recent lockdown and ongoing challenges posed by COVID-19 make it more urgent than ever that we discuss longstanding service models and consider new and better ways of making a truly positive impact for the people we serve.

I think it is worth commending that during the seven-day lockdown that agencies, the non-government sector, the South Australian Housing Authority, the Department of Human Services, and others—I think Renewal SA was also involved in the provision of one of its properties to ensure that we were able to move very quickly and keep people safe.

In relation to the task force, the task force has piloted some innovative service models to fit with the current trend and assist people with health needs, court matters and opportunities to return home. There was recently a fantastic first meeting with APY executive and Kaurna Yerta Aboriginal Corporation members, with support raised for a memorandum of understanding that will make it clear how these two groups can work in partnership.

Elders agreed they, and their respective board members, need to be at the table to work in collaboration with government agencies when service mapping conversations occur. The task force was in the process of identifying and contacting relevant services, including those not part of the funded service system, to discuss service models and new approaches. A lot of that is very much in government-speak but what it speaks to is that the government is very serious about working with Aboriginal people in deep discussion with elders. I know that the Aboriginal division of DPC has also been involved in this task force work, and we are working for positive outcomes for people to keep them safe.

HOMELESSNESS

The Hon. K.J. MAHER (Leader of the Opposition) (15:14): Supplementary: minister, do you consider there have been any failings of this government in providing services for Aboriginal people who are in Adelaide from remote or regional areas?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:14): That's a very broad question. We have been working incredibly hard—

The Hon. K.J. Maher interjecting:

The PRESIDENT: Order!

The Hon. J.M.A. LENSINK: We have been working incredibly hard. There is a range of cohorts who come here from various communities who have been in Adelaide, and we have been working to address all of those. I think in the budget we announced that there had been funding provided for some of the women and children to help them return home. Last year, during COVID, for the women and children we provided during that extended period a camp, which was run by Baptist Care. Those are just some of the initiatives that we have been involved in in trying to assist Aboriginal people who are here either for health reasons or for other reasons, to ensure that they are safe.

HOMELESSNESS

The Hon. K.J. MAHER (Leader of the Opposition) (15:15): Final supplementary: does the minister think that everything that can possibly be done is being done and there is nothing more to do?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:15): There is always more that we can do, and we are trying to make sure that we deliver services—

The Hon. K.J. Maher: What aren't you doing?

The PRESIDENT: The leader has asked a supplementary question. He should listen to the answer.

The Hon. J.M.A. LENSINK: —in culturally appropriate ways, which is why we have been engaging with those communities to seek their advice on how they would like services delivered.

HOMELESSNESS

The Hon. K.J. MAHER (Leader of the Opposition) (15:16): My question is to the Minister for Human Services regarding homelessness. Minister, what role does your chief executive have in relation to the design, awarding or monitoring of contracts for the Homelessness Alliances model?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:16): This is one of those glass jaw moments for the Labor Party—none. It's a separate agency. Don't you know that?

The Hon. K.J. MAHER: Supplementary, sir.

The PRESIDENT: It's very hard to get a supplementary out of 'None'. The Hon. Mr Hood has the call.

STATE FINANCES

The Hon. D.G.E. HOOD (15:16): My question is to the Treasurer. Can the Treasurer update the council on any recent commentary by rating agencies on the state's finances?

Members interjecting:

The PRESIDENT: Order! I had trouble hearing that question, so I am going to ask the Hon. Mr Hood to ask it again.

Members interjecting:

The PRESIDENT: Order! The Minister for Human Services and the Leader of the Opposition, if you want to have a conversation, you can take it outside.

The Hon. D.G.E. HOOD: As I said, my question is to the Treasurer. Can the Treasurer update the house on any recent commentary by rating agencies on the state's finances?

The Hon. R.I. LUCAS (Treasurer) (15:17): I thank the honourable member for the question. I think it has already been publicly reported that the first rating agency to maintain the state's credit rating was Moody's, but since the parliament last sat the Fitch rating agency has issued its rating action commentary on South Australia's finances under the heading 'Fitch affirms South Australia at "AA"; Outlook Stable'.

In simple terms, it has maintained its existing credit rating for South Australia, which is a huge benefit for the taxpayers of South Australia. The commentary included in that ratings report is as follows:

> The affirmation—

that is, of the AA—

> is supported by our reassessment of the state's risk profile to 'Stronger', from 'High Midrange', which offsets a debt sustainability score that has been lowered to 'a', from 'aa'. This results in a Standalone Credit Profile (SCP) of 'aa'—

which is a maintenance of the existing rating with a stable outlook. In further commentary, Fitch notes:

> …the 'Stronger' risk profile assessment offsets the higher debt burden and enables the 'aa' SCP to be retained.

Under the subheading of Risk Profile 'Stronger', they comment:

> This results in us raising South Australia's risk profile to 'Stronger', from 'High Midrange', and reflects a negligible risk relative to international peers that the issuer's ability to cover debt servicing with its operating balance will weaken over our 2021-2025 forecast period due to a drop in revenue, higher expenditure or an unanticipated rise in liabilities or debt-servicing requirements.

Put simply, Fitch, in commentary in relation to our financial position, looking at our revenue, the way we manage our expenditure and our rise in liabilities, comments that there is a negligible risk relative to international peers, given the state's finances.

Under the important metric of expenditure sustainability, the agency comments that they have rated South Australia as stronger. In that they comment as follows:

> South Australia has a good record of control over its expenditure growth generally at or below the revenue growth trend.

Further on in the same section:

> The state remains committed to fiscal discipline, including implementing a number of cost efficiency measures and achieving annual budgetary surpluses. This will be key over the medium term amid budgetary pressure from the pandemic as the state commits additional funding to its health response and economic stimulus measures. Co-funding arrangements with the federal government will provide budgetary support.

In summary, Fitch, as the second of the rating agencies to provide commentary, have commented, first, on the government's management of expenditure, it has had a look at our debt management profile and, importantly, has maintained the credit rating for the state.

The remaining important credit rating agency that has yet to finalise its commentary on the state's rating is Standard and Poor's. We anticipate in the next few weeks that they will bring down their final commentary on the state's budget and economic performance, and we will be in a position to update the house on Standard and Poor's assessment of the state's budget circumstances.

HOVE LEVEL CROSSING

The Hon. J.A. DARLEY (15:21): My question is to the Treasurer, representing the Minister for Infrastructure and Transport. Following the South Australian government's decision not to proceed with the controversial Hove-Brighton Road project, can the minister advise whether a re-elected Marshall government in 2022 would resurrect this project?

The Hon. R.I. LUCAS (Treasurer) (15:21): No, we will not be resurrecting the Hove project, which started off at $170 million and, in its various alternative options, capped out at $450 million. The government will not be, should it be re-elected, reviving the Hove crossing project as described.

WHITMORE SQUARE SOUP KITCHEN

The Hon. C.M. SCRIVEN (15:22): My question is to the Minister for Human Services regarding homelessness. Exactly what immunity or indemnity does your chief executive have from any legal costs or legal matters that arise from her alleged attempt to close a soup kitchen for the homeless?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:22): I am a bit sort of bewildered and befuddled by this line of questioning, because, quite frankly—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.M.A. LENSINK: —it is just bizarre, it is really bizarre. I have already outlined that the Labor Party have, in the way they are putting these questions, not got the facts correct at all, so how can someone need indemnity in relation to something they haven't done? I am not even sure how to answer that question—I might phone a friend, Mr President.

The PRESIDENT: Supplementary, the deputy leader.

WHITMORE SQUARE SOUP KITCHEN

The Hon. C.M. SCRIVEN (15:23): Is the minister saying that she does not believe the ABC report, or is she accusing the ABC of making up the entire report?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:23): I did not say that at all. Once again, Labor are masters at trying to put words in people's mouths.

Members interjecting:

The PRESIDENT: Order, leader! The Leader of the Opposition is out of order.

The Hon. J.M.A. LENSINK: The chief executive of DHS has put her account of what took place. I believe her and that is the end of the matter, as far as I am concerned.

WHITMORE SQUARE SOUP KITCHEN

The Hon. C.M. SCRIVEN (15:23): Supplementary arising from the original answer: so is the minister saying that she is unaware of what indemnification may apply, or is she just not willing to even consider that question and reveal her own ignorance?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:24): I am more than happy to reveal in my ignorance that I have not asked that question, so therefore I haven't received an answer.

Parliamentary Procedure

VISITORS

The PRESIDENT: Before calling the Hon. Ms Lee, I acknowledge the presence in the gallery of Mr Ralph Clarke, former member of the House of Assembly.

Question Time

WOMEN IN LEADERSHIP

The Hon. J.S. LEE (15:24): On this auspicious day when we welcome a female MLC into this chamber in the Hon. Heidi Girolamo, my question to the Minister for Human Services is regarding women.

The Hon. I.K. HUNTER: Point of order.

The PRESIDENT: Order! The honourable member will resume her seat.

The Hon. I.K. HUNTER: The honourable member has been around long enough to know that if she is going to enter into a diatribe, she needs to seek leave to make a contribution.

The PRESIDENT: I was about to remind the honourable member that she is either asking a question or seeking leave to make an explanation. I am sure the Hon. Ms Lee will do one or the other.

The Hon. J.S. LEE: I am launching into the question, Mr President.

The PRESIDENT: Are you seeking leave to make an explanation?

The Hon. J.S. LEE: No.

Members interjecting:

The PRESIDENT: Order! I can't actually hear. The Hon. Ms Lee, if she is making an explanation, needs to seek leave to do so, or ask the question.

The Hon. I.K. Hunter: How long have you been here?

The PRESIDENT: Order!

The Hon. I.K. Hunter: You know better than that.

The PRESIDENT: Order!

Members interjecting:

The Hon. J.S. LEE: I am launching into the question.

Members interjecting:

The PRESIDENT: If the honourable member is going to make an explanation before asking a question, then she does need to seek leave to do so.

The Hon. J.S. LEE: I would like to ask a question of the Minister for Human Services regarding women on this day. Can the minister outline to the council how the Marshall Liberal government's new women's strategy will support women's employment, economic security and leadership opportunities when we also support women in parliament?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:26): I thank the honourable member for her question and I do wish to also acknowledge our newest member of the Legislative Council, Mrs Heidi Girolamo—hopefully I have pronounced it correctly—in responding to this and indeed we do welcome women into leadership.

The Hon. K.J. Maher: You don't know your colleague's name?

The PRESIDENT: Order!

The Hon. K.J. Maher: What's your name again?

The PRESIDENT: Order!

The Hon. J.M.A. LENSINK: I was just trying to pronounce it right. What's wrong with you people today?

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order!

The Hon. J.M.A. LENSINK: That's it, keep going. Keep going.

The PRESIDENT: Proceed, minister.

The Hon. J.M.A. LENSINK: They are still laughing, Mr President.

Members interjecting:

The PRESIDENT: Order! I am listening to the minister.

The Hon. J.M.A. LENSINK: Indeed, it has been our great pleasure to launch the advancing women's leadership and economic participation strategy in South Australia, which was one of our election commitments coming into 2018 and has unfortunately been delayed by COVID. As honourable members would well know from the many times that I have addressed question time in relation to domestic and family violence, there has also been a range of things that we took to the election which we have implemented.

I think it's important, in terms of women's participation and leadership and financial wellbeing, that we note that when women have independence they have choices. That is very important and a number of us know experiences from our mothers who went before us about choices that they didn't have, which we now have, and we still have some way to go.

This strategy is front and centre in that space. It has three pillars, one being employment and entrepreneurship. The second pillar is leadership and recognition and the third pillar is financial wellbeing, which I think are all self-evident as to why those are important. Together with the refreshed Premier's Council for Women, one of the tasks is to consult and advise government about how we can take the strategy forward and move things forward.

We have heard a lot during COVID about the disproportionate impact on women. I think it is very pleasing, actually, in South Australia that we know that women's participation in employment is at very good levels. The minister for employment is always lauding to me. He likes to tap me on the shoulder at cabinet and tell me how well women are doing and the initiatives in his space, particularly in non-traditional areas where he is promoting women's participation in those areas. There is a focus on STEM, of course, and we are working on an action plan that we hope to release in coming weeks that will work to the next level.

On 31 August, there is an action day on the gender pay gap. In South Australia, the gender pay gap is 8.3 per cent, which is obviously something we are looking to close, but I do note that it is lower than the national level, which is in the order of some 14 per cent. There are many actions that we will be taking through this strategy. We will be releasing a grants round to support it, and we look forward to many of the items arising from it.

PATIENT CARE, ROYAL ADELAIDE HOSPITAL

The Hon. F. PANGALLO (15:30): I seek leave to make a brief explanation before asking a question of the Minister for Health and Wellbeing about the treatment of mental health and disability patients in the Royal Adelaide Hospital.

Leave granted.

The Hon. F. PANGALLO: On ABC radio this morning, Kelly Vincent, a former member of the Legislative Council and well-known and highly respected disability advocate, gave a harrowing account of her treatment after being admitted into the Royal Adelaide Hospital for various health issues, including mental health. Ms Vincent recounted that she had to wait three days to be bathed and even to have her teeth cleaned. She said that she felt powerless and helpless. The treatment has again raised questions about the care of mental health patients in the RAH. My question to the minister is: what action is he going to take to address the concerns raised by Ms Vincent?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:31): I thank the honourable member for his question. First of all, let me stress that I apologise to Ms Vincent that the care that she was provided did not meet her needs and for the distress it caused her and her family.

On the way the honourable member structured his question, my understanding of what Kelly said on the radio this morning was not that her concern was primarily about the mental health care she received but the disability support she received while she was receiving mental health care. In that regard, it is an ongoing challenge for health systems around Australia to make sure that they support people with disability to be able to access the range of health services they are entitled to, including mental health services.

SA Health hospitals need to engage their disability liaison officers and staff within the ward to support people with disability to be able to be accommodated in the hospitals. I appreciate that that is not without challenges. People with disability have very diverse needs, and particularly in some of the smaller facilities and country hospitals they may not have the specialised equipment that some of the metropolitan hospitals might have to help support people with disability.

I also acknowledge that that challenge is exacerbated by the COVID environment. Hospitals often have to put into place arrangements to ensure the safety of both the staff and the patients in the context of COVID. There is a particular problem with the interface between the NDIS and the hospitals in relation to support workers. My recollection is that in this morning's comment Kelly mentioned that, during a previous experience, a previous episode of health care, the hospital itself provided the support worker that she needed to receive the support she needed while she was receiving health care.

My recollection of this morning's comments is that she has a support worker but that the agency of the support worker doesn't allow its support workers to work in hospitals. I have also heard of situations where the disability workers and their agency are happy to work in hospitals but the hospitals are not willing to provide them access. So there is a lot of work to be done to make sure that people with disabilities are provided holistic care so that they can have genuine health access and they can genuinely, in a dignified way, receive the care that they need.

My understanding is that Kelly's concerns about the care she received were not about the mental health care she was getting from the team in the ward but that the demeaning nature of her situation in not being able to access toilets and so forth was disrupting her recovery, and I can fully understand that.

It is certainly an issue that this government is actively pursuing through the health ministers meetings. We are next month engaging the federal minister for disability, Linda Reynolds. One of the key focuses is how can we better improve the interface between the NDIS and the health system? The basic position of the NDIS, as I understand it—and the disability minister might correct me—is that the NDIS view is that it is not their responsibility to provide support for patients in public hospitals.

I think we need to be flexible because sometimes support workers for people with a disability can have extremely specialised skills, and to be able to maintain the continuity of support when a person transitions into health care can often be extremely valuable. So I think we need to have some

flexibility. That is something I will be keen to talk to Minister Reynolds about, not necessarily on 17 September, because there are some—shall we say there is no shortage of issues that need to be unpacked in this area.

I must say I am looking forward to that meeting very much, doubly because of the reports of the honourable Minister for Human Services, who has spoken highly of the leadership of Minister Reynolds in the NDIS portfolio since she was appointed to it.

Certainly, I thought that the Hon. Kelly Vincent's contribution on the ABC this morning was characteristic of Kelly's strong, effective advocacy—a very rational presentation of the issues. I am certainly glad to hear that the clinicians at the Royal Adelaide Hospital have already been in touch, as I understand it. I have been advised that they have been in touch with Kelly Vincent, looking for an opportunity to talk further to her about her experience. SA Health always seeks to do better for the people of South Australia.

The PRESIDENT: The Hon. Mr Pangallo has a supplementary.

PATIENT CARE, ROYAL ADELAIDE HOSPITAL

The Hon. F. PANGALLO (15:37): Was a support worker from the hospital offered to Ms Vincent?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:37): Again, I am only relying on my recollection of this morning's statement. I took it that the private sector agency wasn't willing to allow their support worker to go in and that a support worker wasn't offered by the hospital.

PATIENT CARE, ROYAL ADELAIDE HOSPITAL

The Hon. I.K. HUNTER (15:37): Supplementary: why was the patient, the Hon. Kelly Vincent, not assisted to bathe or brush her teeth? Is the minister saying it is not the staff's responsibility to assist a patient in such a way?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:37): I find that an offensive implication. I did not say that.

WHITMORE SQUARE SOUP KITCHEN

The Hon. E.S. BOURKE (15:37): My question is to the Minister for Human Services regarding homelessness. Exactly what authority does the Chief Executive of the Department of Human Services have to enforce Adelaide City Council by-laws or policies, and what formal request was made to the Chief Executive of the Department of Human Services by the city council to take action on their behalf regarding a street kitchen on Whitmore Square?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:38): I think the facts of this case have been outlined in the public domain, both through media reports and through my recounting of the chief executive's response to this in that she had mentioned to the group that were informally providing services in Whitmore Square that they were required to have a permit. Her recollection is that they said that they were aware that they needed to have a permit. Those rules are something that are a matter for the Adelaide City Council. Unbeknownst to her at the time, the Adelaide City Council had already approached the organisation to advise them.

REPAT HEALTH PRECINCT

The Hon. T.J. STEPHENS (15:39): My question is to the Minister for Health and Wellbeing. Can the minister update the council on returning surgery to the Repat?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:39): I would like to thank the honourable member for his question. At the last election, the Marshall Liberal government committed to returning surgery to the site of the much loved Repatriation General Hospital. That was the hospital that Labor said they would never close but did. That was the hospital that was closed by the Leader of the Opposition in the other place, the former Labor health minister, Mr Peter Malinauskas.

On Sunday, I had the pleasure to visit the Repat Health Precinct with the Premier and the local member for Elder, Carolyn Power, to announce that we are delivering on this promise.

SA Health carried out an extensive process to identify a preferred partner. Nexus Hospitals was selected as the government's partner in delivering a range of surgeries to South Australia's public patients. Public patients will be able to access services such as ophthalmology; orthopaedics; plastics and reconstructive surgery; urology; colonoscopy; ear, nose and throat; and general surgery.

The Hon. I.K. Hunter interjecting:

The PRESIDENT: The Hon. Mr Hunter!

The Hon. S.G. WADE: The Nexus site—

The Hon. I.K. Hunter interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: The Nexus site will be at the heart of the site, including the footprint of the old theatres, and will include a multi-deck car park with the capability for more than 350 staff and consumers to use. To complement surgery, Nexus will also provide a 20-chair renal dialysis unit, a GP clinic and other allied health services from the facility. The Marshall Liberal government—

Members interjecting:

The PRESIDENT: Order!

The Hon. I.K. Hunter interjecting:

The PRESIDENT: Order, the Hon. Mr Hunter! I am tempted to say you should replace your mask.

The Hon. S.G. WADE: The Marshall Liberal government is continuing to invest in the future of our health system—

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order on both sides! I am trying to listen to the minister. Minister, proceed.

The Hon. S.G. WADE: Thank you, Mr President.

Members interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: I am just slightly amused. What the Hon. Ms Girolamo will find is there is an inverse relationship between the Labor Party's embarrassment and their noise.

Members interjecting:

The Hon. S.G. WADE: And here we go again. Mention the Repat—

Members interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: —and it just brings on an epileptic response, particularly from the Hon. Ian Hunter.

The Hon. I.K. Hunter interjecting:

The PRESIDENT: Order, the Hon. Mr Hunter!

The Hon. S.G. WADE: He loves the Repat and he is embarrassed to hell about it.

The Hon. I.K. Hunter interjecting:

The PRESIDENT: The Hon. Mr Hunter!

The Hon. S.G. WADE: The Hon. Mr Hunter might be delighted to hear that we are investing, in partnership with the federal government, $115 million to revitalise the Repat. Nexus and HammondCare are investing further millions and millions of dollars so that the total investment, public and private, on that sale—

Members interjecting:

The PRESIDENT: Order, the Hon. Mr Hunter!

The Hon. S.G. WADE: —is more than $200 million.

Members interjecting:

The PRESIDENT: The Hon. Mr Hunter will come to order.

The Hon. S.G. WADE: The embarrassment of the Hon. Mr Hunter will continue as I tell him about the fact that this initiative is in direct contrast to Labor's plans to privatise the site. They had a contract on the sale to ACH. That sounds to me like privatisation.

ST KILDA MANGROVES

The Hon. T.A. FRANKS (15:42): I seek leave to make a brief explanation before addressing a question on the topic of the wastewater unit of SA Health and the septic tanks out at St Kilda to the Minister for Health and Wellbeing.

Leave granted.

The Hon. T.A. FRANKS: The issues regarding the ongoing hypersaline water leaks from the ponds owned by Buckland Dry Creek Pty Ltd at the St Kilda mangroves continue. Hypersaline groundwater is now swamping residents in St Kilda. Apart from killing garden and street trees, it is now eating away at infrastructure, including septic tanks, posing a serious health hazard.

There are concerns about how this rising hypersaline line groundwater is affecting the septic tanks of residents, with some tanks already struggling and needing to be pumped out. There are further concerns that the salty water will eat away at the concrete structure of the tanks, causing them to start to collapse and leach the contents directly into the ground. My question to the minister is: what is the wastewater management unit of SA Health doing about this matter to ensure that the rising hypersaline groundwater doesn't either erode and destroy the septic tanks in St Kilda, or indeed how are they going to manage the health risks that result?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:44): I thank the honourable member for her question. I was waiting to hear an explanation as to whether or not the issues had been raised with SA Health. I have not personally been briefed on it. I hope those concerns have been raised with SA Health and I will certainly seek information as to any information that public health might be able to provide.

HOMELESSNESS

The Hon. J.E. HANSON (15:44): My question is to the Minister for Human Services regarding homelessness. Minister, given the comments from your chief executive that the task force—the one that your chief executive chairs—was set up to, and I quote, 'reduce antisocial and sometimes violent behaviour associated with visitors to Adelaide from remote Aboriginal communities'.

My first question is: who exactly is responsible for the delivery of the Return to Country program in the Adelaide CBD? My second question, related to that, is: how is the ongoing confusion about responsibility for helping visitors to the CBD, who come from remote communities and then wish to return home, contributing to the problems of homelessness services in the Adelaide CBD?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:45): I thank the honourable member for his question. From memory, there are four of them—and I get them mixed up all the time—I think there is at least a Return to Country service provided by Uniting Communities SA, or one of the Unitings. My understanding is that that is an ongoing program that they are funded to do.

Regarding the issue of remote visitors, there is a range of cohorts so we do have some families who have been here. There are some from APY and various communities in the Northern Territory. There are people, of course, who often come to Adelaide for health treatment as well. So there is a range of different cohorts who may be in Adelaide for various reasons. That is why we have made sure that this cross-agency task force is looking closely at consulting with elders to try to ensure that we are providing the best possible services for people when they are here.

In terms of homelessness, there is some contribution to homelessness, particularly within the city but I think there are issues even in parts of regional South Australia—for instance, in Port Augusta I think the visitor numbers swell at times and that puts pressure on some of those systems. We are working through as many of those ways of assisting people and providing support and trying to ensure they are safe, particularly with health risks when there has been a COVID outbreak, and working through the range of issues with as many agencies across government and in the non-government sector as possible.

HOMELESSNESS

The Hon. J.E. HANSON (15:47): Supplementary question following from that answer: is the minister suggesting that if you are a homeless Aboriginal person and you can't be assisted in Return to Country because you are in the CBD and therefore you are not covered by the contracts provided there, that you have to travel to another geographical zone to get help? Shouldn't the task force actually be targeted at making sure that does not have to happen and the person can just get the Return to Country help in the CBD area?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:48): I am not sure how the honourable member drew that conclusion at all from what I said. What we are doing is working with community to identify different cohorts and different solutions to those particular cohorts. I think anybody who has anything to do with this area of public policy acknowledges that it can be quite complex and therefore we are grateful that the elders particularly have been advising the government in this regard.

LABOUR FORCE FIGURES

The Hon. D.G.E. HOOD (15:48): My question is again to the Treasurer: can the Treasurer update the chamber on the most recent labour force figures for South Australia?

The Hon. R.I. LUCAS (Treasurer) (15:49): Since the parliament last convened we have the valuable information provided by two sets of employment figures, the labour force figures and the Single Touch Payroll—

Members interjecting:

The Hon. R.I. LUCAS: —which members wait for with bated breath every fortnight, Mr President.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I know that the opposition, even occasionally, likes to hear good news about the state's economy.

Members interjecting:

The PRESIDENT: I would like to hear the news, whatever it is, but I am having trouble with that at the moment.

Members interjecting:

The PRESIDENT: Order! The opposition frontbench will come to order.

The Hon. E.S. Bourke interjecting:

The PRESIDENT: The Hon. Ms Bourke, order!

The Hon. R.I. LUCAS: Whatever she is saying. Let me first refer to the labour force figures, which, as we know, fluctuate wildly and widely in terms of their monthly figures. I think, as I have recounted to the house on a number of occasions, we had the best unemployment figures in November/December. Within three months we were the worst, and then we have oscillated from worst to in the middle of the pack.

In the last oscillation, the last fluctuation for the July unemployment figures, we saw a very significant reduction in the state's unemployment rate measured by the labour force, from 5.3 per cent down to 4.7 per cent, and a national unemployment rate of 4.6 per cent, so a very significant reduction in the state's unemployment rate. I am sure even the pessimists—

The Hon. I.K. Hunter interjecting:

The PRESIDENT: The Hon. Mr Hunter!

The Hon. I.K. Hunter interjecting:

The PRESIDENT: Order, the Hon. Mr Hunter!

The Hon. R.I. LUCAS: —on the opposition bench will be delighted at hearing the labour force figures, particularly when one looks at just five years ago, when that unemployment rate was 6.3 per cent, so a very significant reduction during the term of this particular government.

As I have often recounted to the house, the Single Touch Payroll figures do have some inherent advantages, and I am pleased to be able to report that—

Members interjecting:

The PRESIDENT: I am not sure the Treasurer is being helped by the conversation by his ministerial colleagues.

The Hon. R.I. LUCAS: They have heard these figures, Mr President, but let me recount them to the other members. I recount them every cabinet meeting to them, so they are well familiar with these figures. The most recent figures for the latest fortnight indicate that when compared to the absolute low of the pandemic last year in April, there has been a 14.5 per cent growth in South Australia's employment or Single Touch Payroll (STP) jobs, the second highest of all the states and territories in the nation.

Only Western Australia is marginally ahead at 14.7 per cent, so a very significant growth. In New South Wales, understandably, given their problems, the growth rate in jobs is just 8.5 per cent. The national figure is at 11.3 per cent. South Australia's job growth rate, measured by the Single Touch Payroll at 14.5 per cent, is again some cause for optimism for even the pessimists sitting on the opposition benches.

KINDRED LIVING AGED CARE

The Hon. F. PANGALLO (15:52): I seek leave to make a brief explanation before asking a question of the Minister for Health and Wellbeing about the Kindred Living aged-care facility in Whyalla.

Leave granted.

The Hon. F. PANGALLO: Kindred Living recently made a decision to close one of its three facilities in Whyalla, the Annie Lockwood Court Hostel, placing 37 aged-care residents in jeopardy of losing their position, many of them high dependency residents, with a deadline this Friday. Under the federal act, Kindred cannot actually close the facility until all the residents have been relocated, something that is proving difficult with the lack of aged-care beds in Whyalla and neighbouring towns.

As of today, I am told about 20 of the 37 residents remain in Annie Lockwood. One former resident has been moved into another facility run by Kindred, the Yeltana Nursing Home, and is being forced to share a room with a dementia patient. Another has been relocated to Cummins, some 250 kilometres away, while another has been forced to move to Port Augusta, about 75 kilometres away. This is causing distress to both the residents and their families.

My question to the minister is: what is the state government doing to assist these residents, if it can? What has been the focus of talks between the state government and the federal government, and do you think it's fair that elderly residents are virtually being evicted from their homes due to the problems being experienced at Kindred Living?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:54): I thank the honourable member for his question. I am surprised at the tail to his explanation because I thought that he acknowledged in his question that the residents of this facility are entitled, under commonwealth law, to security of tenure. That is my understanding. I don't know in what sense he thinks they are being evicted. I certainly appreciate they are facing a very challenging situation but I don't think it is appropriate to say they are being evicted.

Kindred Living is the sole provider of residential aged-care services in Whyalla and, as the honourable member has indicated, it will close its Annie Lockwood Court facility on 30 August 2021. The Flinders and Upper North Local Health Network, which is part of the SA Health family of country local health networks, has a positive working relationship with Kindred Living and will provide liaison and support to Kindred Living to try to find appropriate placements for displaced residents in SA Health-operated residential aged-care facilities and, for that matter, any other facilities we can identify.

The honourable member indicated what liaison there has been with the commonwealth. I can indicate that in recent weeks the Flinders and Upper North Local Health Network has been having weekly meetings with the commonwealth government and the Office for Ageing Well. The Office for Ageing Well is a state government agency. The focus of those meetings is to support Kindred Living and to monitor the impact of the pending closure on the community and acute health services.

Also, I indicate that I appreciate greatly the personal interest of the federal minister for aged care (whatever name the federal minister has at the moment) the Hon. Richard Colbeck for his interest in supporting the care of the current residents of Annie Lockwood Court. Annie Lockwood Court has 52 beds and post closure Whyalla will have a total of 114 residential aged-care beds, which is a total capacity of 166.

I am told that commonwealth modelling indicates that in order to meet demand Whyalla requires 160 residential beds. With the closure of Annie Lockwood, Whyalla is in a situation of having a shortage of beds. Residential aged care is both regulated by and funded by the commonwealth government and we look forward to the commonwealth government working with the community of Whyalla and the region to ensure that the area has good residential aged-care capacity going forward.

In the short term, of course, the challenge is in relation to the current residents of Annie Lockwood. I am advised that, of the residents remaining at Annie Lockwood, 12 have been allocated places at other Kindred Living facilities in Whyalla. Kindred Living intends to negotiate beds outside of Whyalla for eight residents who are amenable to relocation. The remaining nine residents, I am advised, are not willing to transfer and will continue to be cared for at Annie Lockwood until suitable alternative accommodation can be found.

The Aged Rights Advocacy Service has been actively involved in discussions and negotiations in relation to Annie Lockwood residents and ARAS will continue to support Kindred Living residents throughout the transition.

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

KINDRED LIVING AGED CARE

The Hon. F. PANGALLO (15:58): Does the minister have concerns that the loss of aged-care beds in the Whyalla region will now place a strain on the Whyalla Hospital to accommodate elderly people seeking respite care or seeking beds?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:58): The quality of residential aged-care facilities in any particular community is a significant issue for local health services. We rely on residential aged-care facility operators to maintain high-quality health and other

care so that people can continue to maintain good quality of life and maintain good health, and also that they maintain a workforce which has the skills to be able to deal with health issues that are appropriately dealt with in the RACF environment.

I certainly have concerns that sometimes residential aged-care facilities transfer people to hospitals when they would be more appropriately cared for in the residential aged-care facility. I have already indicated that I am concerned about the fact that, with the closure of Annie Lockwood, there will be a shortfall of supply in terms of demand, but that is likely to lead to, at least in the short term, people receiving care outside of Whyalla, so therefore the impact, if we can successfully place residents in quality residential aged-care facilities, we would hope that they would not need to therefore receive a higher level of care from hospitals.

FOOD VAN

The Hon. I. PNEVMATIKOS (16:00): My question is to the Minister for Human Services regarding homelessness. Given reported comments from the minister's chief executive that a food van was 'fostering dependence among a section of the Aboriginal community', does the minister share her chief executive's views, which tend to suggest that people should not depend on food to survive?

The Hon. J.M.A. LENSINK (Minister for Human Services) (16:01): I thank the honourable member for her question. I am not quite sure what the Labor Party had for lunch today. Their line of questioning—anyway, I probably shouldn't reflect on their line of questioning, but it certainly does beggar belief. I think it is important in this portfolio that we are always mindful of assisting people who are vulnerable and treating them with a strengths-based approach, and that is certainly something I emphasise with both the agencies I deal with, whether it is the Department of Human Services or the South Australian Housing Authority, in that we are all about people having the same opportunities as everybody else.

For those who might fall on hard times, we appreciate that they might want to get back to a place, whether they have experienced homelessness or the like, and get back to living full and independent lives. Those comments are entirely consistent with that, and I think I have heard many people in the homelessness sector say over time that if you provide someone with just a roof over their head for the night and food that is not necessarily fixing the problem.

We are all about reforming our services so that they are looking to people's strengths, not assuming that they don't have capacity to do anything for themselves, and that is what the homelessness reforms in particular are about in South Australia, what we have called a housing first approach, so that we get people into a property and they get the support they need.

We have the new service that is operating in the inner western suburbs, which is all about providing people with supports as they need them, that particular cohort often having either mental health issues or drug and alcohol problems. We are about assisting people in their situation to get on with leading full lives. There are some services that may want to provide that band-aid, and certainly into the future I think we need to respect people's capacity and independence and their wish to participate fully in the community.

SOCIAL HOUSING

The Hon. N.J. CENTOFANTI (16:03): My question is to the Minister for Human Services regarding social housing. Can the minister please update the council on how changes to eligibility criteria for social housing will help support South Australia's most vulnerable?

The Hon. J.M.A. LENSINK (Minister for Human Services) (16:03): I thank the honourable member for her question and for her interest in this area. The South Australian government has taken the step of revising our income and asset limits for people to register for public and community housing, or social housing as it is collectively known, to bring these into line with community expectations and closer into line with what is done in other jurisdictions.

We had a situation which existed for some time and nobody could actually explain it to me, even though I asked, why somebody who has a single household could have close to half a million dollars in assets—except for a property—so half a million dollars in the bank and still access our public housing register. What that has meant is that there have been expectations for people who

have been eligible to get onto the register that they may in fact be entitled to a house and may actually achieve one in some time, which, as we know, demand is greater than the supply that we have.

I might remind honourable members, particularly if the Labor Party wants to take issue with this, that they sold some 7½ thousand properties in their time in office, which has meant that we are not able to support everybody who is on the category 1 list, which is the people who are most in need. So we have revised those asset and income limits, particularly now that they were much more generous than any other jurisdiction in Australia.

It's also about transparency for people, being honest with people about, if they were to register, whether they were likely to be able to become a public Housing Trust tenant. I think a lot of people who are in public housing are very supportive of this change to the income and asset limits. In fact, I think it was on the ABC that a lady was interviewed who had gone through an extended period of financial challenge who, like me, found it hard to believe that people could have assets of such high level and still be able to access a public housing property.

Since we have come to office, we have actually been able to reduce the public housing list, with some 4,000 people on the category 1 list.

The Hon. C.M. Scriven: So it's about the list, it's not about anyone getting a house.

The Hon. J.M.A. LENSINK: This is before the asset and income limits changed. The honourable member probably wasn't listening because those people who would have been able to register under the old system wouldn't have been category 1 anyway. The category 1 waiting list—

Members interjecting:

The PRESIDENT: Order! The honourable Leader of the Opposition is out of order!

The Hon. K.J. Maher interjecting:

The PRESIDENT: Order! Minister, proceed.

The Hon. J.M.A. LENSINK: The category 1 waiting list under Labor was some 4,000 people; it is now down to 3,290-ish. The total waiting list, including all categories, under Labor was in the order of 20,000; it is now down to 16,600. We believe we have a system which is much more oriented—

Members interjecting:

The PRESIDENT: Order! I am sure the minister is going to conclude her answer in the near future. However, I would like to hear that conclusion and I can't.

Members interjecting:

The PRESIDENT: The Hon. Mr Wortley is out of order.

The Hon. J.M.A. LENSINK: I could keep going all afternoon on this subject, Mr President, but I won't. The assets of the trust are being managed much better. There are people who are receiving support who need it the most and we continue to provide support to those people who need it the most. I might also add—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.M.A. LENSINK: —there is an impact on the staff who work for the agency.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.M.A. LENSINK: Some of them have advised me they have asked for this reform for years and it didn't happen. So they are greatly relieved because the system is now much more transparent and people's expectations are more realistic.

Members interjecting:

The PRESIDENT: Order! Question time—

Members interjecting:

The PRESIDENT: Order! Question time has concluded. The Hon. Ms Franks is on her feet.

Members interjecting:

The PRESIDENT: Order, minister!

Members interjecting:

The PRESIDENT: Order! There will be no conversations across the chamber. There is a member on her feet.

Personal Explanation

ST KILDA MANGROVES

The Hon. T.A. FRANKS (16:09): I seek leave to make a personal explanation.

Leave granted.

The Hon. T.A. FRANKS: During question time, the Minister for Health and Wellbeing reflected on whether or not the issues I raised in my question had been raised with the government previously. They were, some seven weeks ago, at a public meeting on 7 June. They were raised with the Department for Environment and Water, the EPA and the Department for Energy and Mining by Salisbury council and stakeholders at that public meeting. It is now seven weeks on.

Parliamentary Procedure

STANDING ORDERS SUSPENSION

The Hon. R.I. LUCAS (Treasurer) (16:09): I move:

That standing orders be so far suspended as to enable me to move a motion without notice concerning the replacement of a member on the select committees on: Wage Theft in South Australia; Findings of the Murray-Darling Basin Royal Commission and Productivity Commission as they relate to the Decisions of the South Australian Government; Matters Relating to the Timber Industry in the Limestone Coast; Damage, Harm or Adverse Outcomes Resulting from ICAC Investigations; Statutes Amendment (Repeal of Sex Work Offences) Bill; and Privatisation of Public Services in South Australia; and the Budget and Finance Committee, in place of the Hon. D.W. Ridgway (resigned).

Motion carried.

The PRESIDENT: I note the absolute majority.

Parliamentary Committees

SELECT COMMITTEE ON WAGE THEFT IN SOUTH AUSTRALIA

The Hon. R.I. LUCAS (Treasurer) (16:10): I move:

That the Hon. H.M. Girolamo be appointed to the committee in place of the Hon. D.W. Ridgway (resigned).

Motion carried.

SELECT COMMITTEE ON FINDINGS OF THE MURRAY-DARLING BASIN ROYAL COMMISSION AND PRODUCTIVITY COMMISSION AS THEY RELATE TO THE DECISIONS OF THE SOUTH AUSTRALIAN GOVERNMENT

The Hon. R.I. LUCAS (Treasurer) (16:10): I move:

That the Hon. H.M. Girolamo be appointed to the committee in place of the Hon. D.W. Ridgway (resigned).

Motion carried.

SELECT COMMITTEE ON MATTERS RELATING TO THE TIMBER INDUSTRY IN THE LIMESTONE COAST

The Hon. R.I. LUCAS (Treasurer) (16:10): I move:

That the Hon. H.M. Girolamo be appointed to the committee in place of the Hon. D.W. Ridgway (resigned).

Motion carried.

SELECT COMMITTEE ON DAMAGE, HARM OR ADVERSE OUTCOMES RESULTING FROM ICAC INVESTIGATIONS

The Hon. R.I. LUCAS (Treasurer) (16:10): I move:

That the Hon. H.M. Girolamo be appointed to the committee in place of the Hon. D.W. Ridgway (resigned).

Motion carried.

SELECT COMMITTEE ON STATUTES AMENDMENT (REPEAL OF SEX WORK OFFENCES) BILL

The Hon. R.I. LUCAS (Treasurer) (16:10): I move:

That the Hon. H.M. Girolamo be appointed to the committee in place of the Hon. D.W. Ridgway (resigned).

Motion carried.

SELECT COMMITTEE ON THE PRIVATISATION OF PUBLIC SERVICES IN SOUTH AUSTRALIA

The Hon. R.I. LUCAS (Treasurer) (16:10): I move:

That the Hon. H.M. Girolamo be appointed to the committee in place of the Hon. D.W. Ridgway, (resigned).

Motion carried.

BUDGET AND FINANCE COMMITTEE

The Hon. R.I. LUCAS (Treasurer) (16:11): I move:

That the Hon. H.M. Girolamo be appointed to the committee in place of the Hon. D.W. Ridgway, (resigned).

Motion carried.

Parliamentary Procedure

STANDING ORDERS SUSPENSION

The Hon. R.I. LUCAS (Treasurer) (16:11): I move:

That standing orders be so far suspended as to enable me to move a motion without notice concerning the appointment of a member to the Statutory Authorities Review Committee and the Crime and Public Integrity Policy Committee.

Motion carried.

Parliamentary Committees

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. R.I. LUCAS (Treasurer) (16:11): I move:

That pursuant to section 21(3) of the Parliamentary Committees Act 1991 the Hon. H.M. Girolamo be appointed to the committee in place of the Hon. D.W. Ridgway (resigned).

Motion carried.

CRIME AND PUBLIC INTEGRITY POLICY COMMITTEE

The Hon. R.I. LUCAS (Treasurer) (16:11): I move:

That pursuant to section 21(3) of the Parliamentary Committees Act 1991 the Hon. H.M. Girolamo be appointed to the committee in place of the Hon. D.W. Ridgway (resigned).

Motion carried.

Bills

BURIAL AND CREMATION (INTERMENT RIGHTS) AMENDMENT BILL

Introduction and First Reading

The Hon. R.I. LUCAS (Treasurer) (16:12): Obtained leave and introduced a bill for an act to amend the Burial and Cremation Act 2013. Read a first time.

Second Reading

The Hon. R.I. LUCAS (Treasurer) (16:13): I move:

That this bill be now read a second time.

I am pleased to introduce the Burial and Cremation (Interment Rights) Amendment Bill 2021. This bill strengthens the enforceability of interment rights issued under the Burial and Cremation Act 2013.

Clause 3 of the bill contains offences that provide protection for cremated remains that have been interred in an interment site. In particular, it makes it an offence to remove cremated remains without the consent of the interment right holder or their representative. The maximum penalty of $10,000 would apply in respect of the offences in clause 3. The offences would not apply where cremated remains have been interred directly in the ground.

A relevant authority for a cemetery or natural burial ground can temporarily remove remains where it is necessary to do so for the improvement or embellishment of the cemetery or for maintenance or repair work to be undertaken.

Clause 4 of the bill amends section 35 of the Burial and Cremation Act to make it clear that an interment right can be enforced against the relevant authority for the cemetery or natural burial ground in respect of which it was issued.

The government has moved to act after some interment right holders had experienced difficulties in having their rights honoured when the cemetery in which they hold an interment right has changed hands.

It is hard to overstate the emotional—not to mention financial—burden this could have on families and loved ones. There are significant penalties for authorities that fail to comply with their obligations, with maximum penalties for breaching the laws set at $10,000 for an individual or $20,000 for a body corporate.

New section 35(5) makes it abundantly clear that these obligations apply to the person or body responsible for administering a cemetery or natural burial ground, regardless of when the interment right was issued or whether it was issued by a previous person or body responsible for administering the cemetery or natural burial ground.

It is not a defence for a defendant to be unaware of the existence of the interment right when they assumed administration of the cemetery or natural burial ground, unless they can prove that they took reasonable steps to identify interment rights in existence when they took over.

Clauses 5, 6 and 7 contain technical amendments to the Burial and Cremation Act. Clause 5 contains a clarifying amendment to section 38 of the act to refer to 'the person who held the interment right immediately before its expiry'. It is that person who has the right to reclaim a memorial from the relevant cemetery authority.

Clause 6 makes a minor technical amendment to section 39 which deals with ownership of memorials to remove an unnecessary reference to 'or other place of interment'.

Clause 7 amends section 42(1)(a)(ii) to correct an incorrect reference to an 'interment site' that should refer to an 'interment right in an interment site'.

The changes in clauses 3 and 4 of the bill will give people certainty that when they purchase an interment right it will be honoured and when they place their loved one's cremated remains in an interment site they will remain there unless the interment right holder or their representative consents to their removal.

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—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Burial and Cremation Act 2013*

3—Amendment of section 13—Offences

This clause amends section 13 to create a new offence of removing cremated remains from an interment site in a cemetery or natural burial ground, or re-interring in a cemetery or natural burial ground cremated remains that have been removed from an interment site (or causing, suffering or permitting such acts) while an interment right is in force in relation to the interment site unless authorised to do so by the interment right holder, or if the interment right holder has died, a person referred to in section 35(1).

The proposed maximum penalty for the offence is $10,000. The offence will not apply to cremated remains interred directly in the ground. It will also not apply to the removal or re-interment of cremated remains by a relevant authority for a cemetery or natural burial ground if it is done to enable the carrying out of improvement or embellishment works in the cemetery or natural burial ground, or maintenance or repairs in the cemetery or natural burial ground.

4—Amendment of section 35—Exercise and enforcement of interment rights

This clause amends section 35 to make it clear that an interment right may be enforced against the relevant authority for the cemetery or natural burial ground in respect of which the interment right was issued.

It also makes it an offence for the relevant authority for a cemetery or natural burial ground to fail to comply with its obligations under an interment right issued in respect of the cemetery or natural burial ground. The proposed maximum penalty is $10,000 if the offender is a natural person and $20,000 if the offender is a body corporate.

It will not be a defence to a charge of an offence that the defendant was not aware of the existence of the interment right when the defendant assumed the administration of the cemetery or natural burial ground unless the defendant proves that the defendant took reasonable steps to identify interment rights in existence at the time that the defendant assumed the administration of the cemetery or natural burial ground.

A further provision makes it clear that section 35 applies to the person or body for the time being responsible for the administration of the cemetery or natural burial ground regardless of when the interment right was issued, and regardless of whether the interment right was issued by that person or body or by some other person or body.

5—Amendment of section 38—Re-use of interment sites

This clause amends section 38 so that it refers to the former holder of an interment right where an interment right has expired.

6—Amendment of section 39—Ownership of memorial

This clause makes a minor technical amendment to section 39.

7—Amendment of section 42—Power of relevant authority to dispose of unclaimed memorial

This clause amends section 42 to correct a reference in subsection (1)(a)(i).

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

CIVIL LIABILITY (INSTITUTIONAL CHILD ABUSE LIABILITY) AMENDMENT BILL

Introduction and First Reading

The Hon. R.I. LUCAS (Treasurer) (16:17): Obtained leave and introduced a bill for an act to amend the Civil Liability Act 1936. Read a first time.

Second Reading

The Hon. R.I. LUCAS (Treasurer) (16:17): I move:

That this bill be now read a second time.

The government is pleased to introduce the Civil Liability (Institutional Child Abuse Liability) Amendment Bill 2021. The bill introduces four important reforms for institutional child abuse victims/survivors. The bill will reverse the onus of proof in negligence cases, codify and expand the definition of vicarious liability, assist in identifying a proper defendant, and enable the setting aside of previous settlements. These reforms are based on, and consequential to, recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse.

In September 2015, the Royal Commission released its Redress and Civil Litigation report, which included 99 recommendations to alleviate the impact of past institutional child sexual abuse on victims, and to prevent future abuse. The bulk of those recommendations related to the establishment, funding and operation of a national redress scheme and have been implemented.

The National Redress Scheme came into operation on 1 July 2018. On 1 February 2019, people who were abused in South Australian government institutions became eligible for redress under the scheme. The remaining recommendations in the redress and civil litigation report are aimed at improving civil litigation systems for those victims/survivors who wish to seek compensation through a civil claim. The amendments contained in this bill implement these remaining recommendations.

These reforms have been developed through broad consultation with stakeholders, including various government agencies, the courts and legal organisations, children's advocates, community service providers, religious organisations and peak bodies for schools, childcare centres and foster care agencies.

It is worth highlighting that while the recommendations made by the royal commission were limited to sexual abuse, following consultation the government has determined to extend provisions in the bill to include serious physical abuse and related psychological abuse committed in an institutional context.

The bill amends the Civil Liability Act 1936 by inserting new part 7A and part 7B. The first reform will reverse the onus of proof. One option for survivors seeking compensation against an institution is to commence an action in negligence. However, uncertainty can arise around the existence of a duty of care outside of well established categories.

The burden of establishing that an institution failed to exercise reasonable care can be particularly difficult for victims of abuse to prove, especially in respect of historical abuse. The royal commission was satisfied that institutions are in a better position to prove the steps it took to prevent abuse. They generally have better access to records and witnesses capable of giving evidence about its behaviour at the time the abuse occurred.

Division 2 of part 7A introduces a legislative duty on institutions to take all reasonable steps to prevent the abuse of a child by a person associated with the institution while the child is under its care, supervision, control or authority. This makes clear that, in an action in negligence, a duty of care is owed by the institution and is one that cannot be circumvented through delegation.

In addition, division 2 of part 7A introduces a reverse onus of proof in relation to breaches of the legislative duty. Generally, a plaintiff must establish all elements of a claim in negligence, including that the defendant failed to take reasonable care to prevent the harm. The bill reverses this onus, providing that the institution is taken to have breached its duty of care unless the institution proves it took all reasonable steps to prevent the abuse. The bill prescribes a non-exhaustive list of matters that are relevant in deciding whether the institution took all reasonable steps to prevent the abuse. In line with the royal commission recommendations, division 2 of part 7A applies only to abuse that occurs after its commencement.

Reform two will codify and expand vicarious ability. Division 3 of part 7A addresses the vicarious liability of institutions. Vicarious liability is a common law doctrine that imposes no-fault liability on employers for the wrongdoing of employees committed in the course of employment.

The royal commission recommended imposing a non-delegable duty—another kind of no-fault liability—on certain institutions for institutional child sexual abuse. The intent of the royal commission recommendation was to override the common law position that non-delegable duties do not extend to liability for intentional criminal conduct. However, the High Court case of Prince Alfred

College Incorporated and ADC [2016] HCA 37 has since made clear that the correct approach to consider the no-fault liability of an organisation for the intentional wrongdoing of its employees is through vicarious liability.

The court also articulated a clear test for determining an organisation's vicarious liability for child abuse perpetrated by an employee. Division 3 of part 7A implements the intent of the royal commission's recommendations but does so in a manner that is consistent with what has now been identified as the preferable legal approach to no-fault ability in these cases.

Section 50G of the bill codifies the High Court's approach in relation to vicarious liability. In short, an institution will be vicariously liable for abuse committed by an employee if:

- the apparent performance by the employee of a role in which the institution placed the employee supplied the occasion for the abuse to occur, and
- the employee took advantage of that occasion to abuse the child.

In determining whether the institution supplied the occasion for the abuse, the court is to take into account whether the institution placed the employee in a position in which the employee had:

- authority, power or control over the child,
- the trust of the child, or
- the ability to achieve intimacy with the child.

The common law in Australia has limited vicarious liability to acts of employees. This has presented a major obstacle for survivors who suffered abuse at the hands of other persons placed in a position of trust or authority but who were not technically employees of an organisation.

The bill addresses this unfairness by extending the vicarious liability of institutions to abuse committed by persons who are akin to an employee of the institution. Again, in line with the recommendations of the royal commission, division 3 of part 7A will only apply to abuse committed after its commencement.

The third reform will assist in identifying a proper defendant. One of the major obstacles faced by survivors in attempting to seek compensation is identifying a proper defendant against whom to commence litigation. This is particularly an issue with unincorporated associations as they lack legal personality, and consequently cannot sue or be sued.

This was the difficulty encountered by the plaintiff in the New South Wales case of Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Ellis (2007) 70 NSWLR 565. Mr Ellis alleged abuse at the hands of a priest in the archdiocese and commenced legal action against several defendants, including the Trustees of the Roman Catholic Church, which was incorporated under New South Wales legislation. However, the trustees who held and controlled the church property were found to be not vicariously liable given their lack of oversight of the alleged offending priest.

As a result, unincorporated associations have been able to avoid liability for abuse committed against children in their care despite in some cases holding significant assets in an associated trust. Divisions 4, 5 and 6 of part 7A address the liability of unincorporated associations and their office holders. These provisions enable an abuse claim to be commenced against the unincorporated institution through the nomination of an appropriate defendant, such as an associated trust, with sufficient assets to satisfy the potential liability. It also enables a claim to be commenced against the current office holder where a cause of action existed against the former office holder. The current office holder will not be held personally liable but may satisfy liability over the assets of the institution or of an associated trust.

Another limitation that was highlighted in the Ellis case but was not addressed in the royal commission's recommendations was the difficulties arising from the lack of perpetual succession in unincorporated institutions and its officers. Division 6 of part 2 provides for the continuity of the institutions and officers, including by enabling action to be taken against successor institutions following a change in structure such as a merger. These changes will apply to abuse committed

before or after commencement of the bill, enabling victims to take action against unincorporated institutions for historical abuse.

Section 50T declares sections 50K and 50Q as corporations legislation displacement provisions. South Australia, along with all other states, has referred powers to the commonwealth in respect of corporations law. The Corporations Agreement 2002, which sets out the rights and obligations of parties in relation to the administration of the corporations scheme, requires state legislation to expressly indicate where it is inconsistent with the national law and to declare the inconsistent provisions as being excluded from the national law. It is necessary to make such a declaration in relation to 50K and 50Q as they affect the rights, duties and liabilities of trustees with respect to their dealings with trust property and have the potential to be inconsistent with aspects of the Corporations Act 2001.

Reform 4 allows for the setting aside of previous settlements. The Limitation of Actions (Child Abuse) Amendment Act 2018, which came into operation on 1 February 2019, retrospectively removed any time limitation for commencing child abuse actions. The government has heard concerns that victims who settled their claims prior to 1 February 2019 may have done so on unfair terms on the understanding that the limitation period would preclude them from being able to commence or maintain proceedings. Similarly, victims who, prior to commencement of this bill, have been precluded from taking legal action against an unincorporated institution may have entered into settlements on unfair terms given these institutions have been shielded from liability.

Should the bill pass the parliament, those victims who reached unfair settlements on the understanding that they had no legal right to sue may wish to seek to have those agreements set aside. Part 7B of the bill enables these categories of victims to commence proceedings in respect of their child abuse claim and to apply to the court to set aside the settlement agreement.

The court may set aside the agreement if it is just and reasonable to do so. Section 50W(3) sets out the factors that may be considered by the court. These factors focus on the extent to which the limitation period or barriers to identifying a proper defendant materially contributed to the applicant's decision to enter into the agreement, as well as the circumstances in which the agreement was negotiated and entered into. The court may also consider any other matter it considers relevant.

The intent of part 7B is to address unfairness that has resulted from the application of legal barriers that have or will be removed retrospectively. It is not intended to provide a broader mechanism for victims to relitigate matters that have been settled on terms that they now consider to be disadvantageous. The bill attempts to strike the appropriate balance between the interests of finality and giving recourse to victims who historically have been prevented from seeking justice due to unfairness in the operation of the law.

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 *Civil Liability Act 1936*

4—Insertion of Parts 7A and 7B

This clause inserts new Parts 7A and 7B into the principal Act as follows:

Part 7A—Child abuse—liability of institutions

Division 1—Preliminary

50A—Interpretation

This section defines terms and phrases used in Part 7A.

50B—Meaning of associated trust

This section sets out what an associated trust is in Part 7A.

50C—When persons are associated with institution

This section sets out when a person is, and is not, associated with an institution for the purposes of Part 7A.

50D—Application of Part

This section explains that Divisions 1, 4, 5 and 6 of Part 7A apply to a cause of action regardless of whether it arose before or after the commencement of the Part and that the Part binds the Crown in all capacities (as far as permitted).

Division 2—Duty of institutions to prevent child abuse

50E—Duty to prevent child abuse

This section imposes a duty on institutions to take reasonable steps to prevent child abuse by a person associated with the institution in certain circumstances.

50F—Proof of whether duty was breached

This section provides that an institution is taken to have breached its duty to take reasonable steps to prevent child abuse by a person associated with the institution unless the institution proves it took reasonable steps to prevent it. It also sets out the matters that are relevant to whether an institution took reasonable steps to prevent the abuse.

Division 3—Vicarious liability of institutions

50G—Institutions vicariously liable for abuse of child by employee

This section sets out the circumstances in which an institution is vicariously liable for child abuse perpetrated by an employee.

Division 4—Liability of particular institutions and office holders

50H—Liability of incorporated institution that was unincorporated at time of abuse

This section provides that a proceeding for a cause of action in respect of child abuse may be commenced or continued against an institution that was unincorporated at the time of abuse in certain circumstances.

50I—Liability of current office holder of unincorporated institution

This section provides that a proceeding for a cause of action in respect of child abuse may be commenced or continued against a current officer holder in an institution in certain circumstances.

50J—Claim against unincorporated institution and nomination of appropriate defendant

This section allows a proceeding for an abuse claim to be commenced against an institution that is an unincorporated body and allows the institution to nominate a person as an appropriate defendant for the purposes of an abuse claim against it and also allows a court to order that the trustee of a trust is the institution's nominee in certain circumstances.

50K—Proceeding against nominee of unincorporated institution

This section sets out what applies to a proceeding against a nominee of an unincorporated institution (for example, anything done by the institution is taken to have been done by the nominee).

Division 5—Satisfaction of liability

50L—Assets available to satisfy liability of institution

This section allows an institution to satisfy liability under a judgment in, or settlement of, an abuse claim out of assets of the institution and assets of an associated trust.

50M—Assets available to satisfy liability of nominee

This section allows an institution's nominee who is the trustee of an associated trust of the institution to satisfy the liability under a judgment in, or settlement of, an abuse claim out of the assets of the trust and assets of the institution.

It also allows an institution's nominee who is not the trustee of an associated trust of the institution to satisfy the liability under a judgment in, or settlement of, an abuse claim out of its assets and assets of the institution.

50N—Assets available to satisfy liability of current office holder

This section provides that a current office holder is not personally liable under a judgment in, or settlement of, an abuse claim but may satisfy the liability out of the assets of the institution and the assets of an associated trust.

50O—Satisfaction of liability by trustee of associated trust

This section enables the trustee of an associated trust to pay an amount in satisfaction of the liability of an institution, nominee or current office holder and to realise assets of the trust for that purpose.

It also provides that:

- the trustee may be indemnified out of the trust property for the satisfaction of the liability despite any limitation on a right of indemnity of the trustee;
- the liability of the trustee as the institution's nominee is limited to the value of the trust property;
- the trustee is not liable for a breach of trust for doing anything authorised by the section.

50P—References to liability

This section provides that a reference to liability in Part 7A Division 5 includes costs associated with proceedings for the relevant abuse claim.

Division 6—Miscellaneous

50Q—Entities may act despite other laws and duties

This section enables certain entities to act under Part 7A Division 5 and to consent to being an institution's nominee despite another law, term of a trust or duty.

50R—Continuity of institutions

This section provides that an institution may be liable under Part 7A Division 4 if it is substantially the same as it was at the time when the cause of action accrued and sets out when an institution may be considered substantially the same.

It also provides that, if there is no institution that is the same, or substantially the same, as the institution, a relevant successor of the institution may be taken to be the same institution and sets out when an institution is a relevant successor and what happens if more than 1 institution is a relevant successor.

50S—Continuity of offices

This section provides that an office holder may be liable in accordance with section 50I if the office is substantially the same as it was when the relevant cause of action accrued and if there is no current office that is the same, or substantially the same, then the current head of the institution is taken to be the current office holder.

50T—Corporations Act displacement

This section declares that sections 50K to 50Q are Corporations legislation displacement provisions in relation to the Corporations legislation generally.

50U—Proceedings despite previous judgment

This section enables proceedings in accordance with Part 7A to be commenced against a person or institution, if leave of the court is granted on the basis that it is just and reasonable to do so, even if a judgment was given that the person or institution was not an appropriate defendant in relation to the cause of action before the Part commenced.

Part 7B—Child abuse—setting aside settlements

50V—Meaning of affected agreement

This section sets out the meaning of an affected agreement for the purposes of Part 7B.

50W—Court may set aside affected agreement

This section enables a person to apply to a court to set aside an affected agreement and commence proceedings on a cause of action to which section 3A of the *Limitation of Actions Act 1936* applies, or in respect of an abuse claim, in a court with sufficient jurisdiction.

The section allows a court to set aside an affected agreement if it is just and reasonable to do so and sets out matters the court may consider. It also allows a court to set aside certain other instruments, orders, judgments etc that give effect to the affected agreement but not certain other instruments, contracts etc.

The section further provides that evidence of matters in connection with an attempt to negotiate settlement of the dispute to which the affected agreement relates may be adduced as evidence in proceedings under this section despite section 67C(1) of the *Evidence Act 1929*.

50X—Effect of setting aside affected agreement

This section provides that an affected agreement and anything else set aside under Part 7B is void and sets out other effects of the setting aside of an affected agreement.

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

STATUTES AMENDMENT (CHILD SEXUAL ABUSE) BILL

Introduction and First Reading

The Hon. R.I. LUCAS (Treasurer) (16:29): Obtained leave and introduced a bill for an act to amend the Criminal Law Consolidation Act 1935, the Criminal Procedure Act 1921, the Evidence Act 1929, the Sentencing Act 2017, the Summary Offences Act 1953, and the Young Offenders Act 1993. Read a first time.

Second Reading

The Hon. R.I. LUCAS (Treasurer) (16:30): I move:

That this bill be now read a second time.

The government is pleased to introduce the Statutes Amendment (Child Sexual Abuse) Bill 2021. The bill introduces a number of important reforms proposed by the Royal Commission into Institutional Responses to Child Sexual Abuse. The royal commission was established in 2013 and undertook five years of inquiry into institutional responses to instances and allegations of child sexual abuse. The royal commission delivered four sets of recommendations, one of which was contained in the Criminal Justice Report tabled in federal parliament on 14 August 2017.

Many of the report's recommendations are already in place in South Australia; however, a number still require legislative reform to be implemented. The bill amends various acts to implement the required legislative reforms recommended by the report. As well as implementing recommendations from the report the bill makes additional amendments aimed at assisting domestic abuse victims in the criminal justice system.

Turning now to the provisions of the bill. Part 2 of the bill contains amendments to the Criminal Law Consolidation Act 1935. Clauses 4, 5 and 6 of the bill amend the CLCA in line with recommendation 29 to provide for similar age or reasonable belief defence for the offences of unlawful sexual intercourse, indecent assault, where the victim is under 17 and consents, and procuring a child to commit indecent assault.

The similar age defence applies where the victim was 17 or over and the defendant was under the age of 18 at the time of the offence, or believed on reasonable grounds that the victim was of or above the age of 18. The defence is limited to defendants who are in a position of authority by virtue of providing religious, sporting, musical or other instructions to the victim. The wide definition of position of authority under the CLCA means that there may be young people who provide this kind of instruction who should have a similar age consent defence available to them.

Clause 7 of the bill creates new offences of failing to report and failing to protect a child from child sexual abuse in line with recommendations 33 and 36. New section 64A provides that it is an offence if a prescribed person knows, suspects or should have suspected that another person has previously engaged in the sexual abuse of a child and the child is under 18, or the alleged abuser is still employed by the institution or another institution, or the sexual abuse occurred in the preceding 10 years and refuses or fails to report that abuse to the police.

The offence also applies where the prescribed person is engaging or is likely to engage in sexual abuse of a child. A prescribed person is defined to be an employee of an institution. In these circumstances the employee is required to report child sexual abuse by another employee of the

institution. Under the new section 64 definition, an institution is an entity, whether private or public, that operates facilities or provides services to children who are in their care, supervision or control. This includes medical and religious institutions.

A prescribed person also includes providers of out-of-home care, commonly known as foster carers, who care for the child in premises other than the child's home. The foster carer receives or may receive financial or other assistance in relation to the care provided. In these circumstances an out-of-home carer is required to report child sexual abuse by another out-of-home carer. This is in recognition of the position of trust that foster carers are placed in when they take on the care of children who are under the guardianship or custody of the chief executive. The provisions of new section 64 operate retrospectively in certain circumstances.

Under new section 64A(5) it is a reasonable excuse not to make a report where a report has already been made under section 31 of the Children and Young People (Safety) Act 2017. No criminal or civil liability lies for reporting a matter in good faith under new section 64A and the prescribed person cannot be liable for professional misconduct. The identity of the reporter is protected as if he or she made the report under the Children and Young People (Safety) Act 2017 and he or she has the same protection from victimisation.

Clause 7 of the bill inserts new section 65 to create a criminal offence of failing to protect a child from sexual abuse in line with recommendation 36. New section 65 provides it is an offence if a prescribed person knows that there is a substantial risk that another person will engage in the sexual abuse of a child who is under the age of 17, or in relation to whom the abuser is in a position of authority, and the employee has the power or responsibility to reduce or remove that risk but negligently fails to do so.

In the case of a prescribed person who is an employee of an institution, the employee is required to protect a child from sexual abuse by another employee of the institution. Where the prescribed person is a foster carer, the obligation is to protect a child from sexual abuse by another foster carer.

In line with recommendation 83, clause 8 of the bill makes retrospective section 73 of the CLCA, which abolishes the presumption that a boy under the age of 14 is incapable of having sexual intercourse. South Australia was the first jurisdiction to abolish the presumption that a boy under the age of 14 is incapable of having sexual intercourse, which originated in the English common law in the 1700s. This provision did not operate retrospectively and has been recognised as having the potential to protect an alleged perpetrator from being charged and convicted of historical sex offences.

Turning now to the amendments to the Criminal Procedure Act 1921 contained in part 3 of the bill, there are a number of recommendations which aimed at alleviating the need for child sexual abuse victims to attend court, where they are again confronted by their abuser and often experience significant distress during cross-examination. Consistent with these recommendations, clause 9 of the bill amends section 111 of the Criminal Procedure Act to allow for the admission of audio or audiovisual recordings of interviews with victims of both sexual and domestic abuse at committal, instead of relying on written statements.

Clause 10 of the bill amends section 114(3) of the Criminal Procedure Act. Under the current law, if a witness is a victim of an alleged sexual offence, has a cognitive impairment that adversely affects their capacity to give a coherent account of experiences or respond rationally to questions, or is under 14, then the court must not grant permission to call a witness for oral examination in committal proceedings unless satisfied that the interests of justice cannot be adequately served except by doing so. Clause 10 expands this provision to also include victims of an alleged offence involving domestic abuse.

In line with recommendation 79, clause 11 of the bill amends section 157 of the Criminal Procedure Act to give the DPP the right to bring an interlocutory appeal against a pre-trial ruling that has the effect of terminating or substantially weakening the prosecution's case. This clause can apply to other situations in the interests of justice. The DPP's current right of appeal is very limited, and the absence of such a right has led to unfavourable outcomes in the courts. The defendant already has

a right to appeal interlocutory decisions at the completion of the trial under the Criminal Procedure Act.

Turning now to the amendments to the Evidence Act 1929 contained in part 4 of the bill, in line with recommendations 52 and 53 clause 13(2) of the bill amends section 12AB of the Evidence Act to expand the categories of witnesses who may give evidence at a pre-trial special hearing. This provision will now include the following: all child sexual abuse victims no matter what their age at the time of the trial; any other witness in a child sexual offence trial who is a child, is vulnerable or a person who the court is satisfied should be allowed to give evidence in a manner contemplated by this section; and domestic abuse victims. Such hearings alleviate the need for victims to be confronted by their abuser when they give evidence in court.

In line with recommendations 54 and 60, clauses 13(1)and 14 of the bill allow the court to make orders regarding the manner, duration and type of questions that may be asked of witnesses at pre-trial special hearings and of vulnerable witnesses giving evidence in a trial of child sexual offences. Directions can also be made that certain evidence that contradicts, challenges or discredits a witness's evidence need not be put to the witness. The court may also make directions about the use of aids such as plans and maps that help communicate a question or answer.

In line with recommendation 56, clause 15 of the bill amends section 13C of the Evidence Act to require audiovisual recordings of the evidence for all child sexual abuse victims given in court. Currently, under the Evidence Act, recordings are only required for vulnerable witnesses, which is limited to a child of, or under, the age of 16 years who is the victim of a sexual offence. Such recordings may be relied upon in any subsequent trial or retrial.

Clause 16 of the bill inserts new section 29B into the Evidence Act to abolish Markuleski directions, as recommended in the report. New section 29B provides that in a trial where more than one offence is charged, a trial judge must not direct a jury that its doubt regarding the truthfulness or reliability of the victim's evidence in relation to one charge can be considered when assessing the truthfulness or reliability of the victim's evidence generally or in relation to other charges.

As proposed in recommendation 69, clause 16 of the bill inserts new section 29C into the Evidence Act. This allows for the admission of expert evidence on the development and behaviour of children generally, and the development and behaviour of children who have been victims of sexual offences, or offences similar to sexual offences in proceedings related to child sexual abuse. Such evidence would be useful to the jury to assist them in better understanding the evidence given by child sexual abuse victims.

Clause 17 of the bill amends section 34P of the Evidence Act to increase the admissibility of discreditable conduct evidence. Discreditable conduct comprises a propensity and similarity of account evidence. The royal commission recommended reform to the law governing the admissibility of discreditable conduct evidence. However, South Australian law in this area is well settled and is not necessary to adopt major reform. Instead, a minor amendment has been made, encouraging greater admission of this evidence. In order to admit this kind of evidence, section 34P(2) of the Evidence Act requires that its probative value substantially outweighs the prejudicial effect that it may have on the accused. Clause 17 of the bill removes the word 'substantially'.

Clause 18 inserts new section 65K into the Evidence Act to provide that the fact the information was gained during or in connection with a religious confession does not prevent or otherwise affect the giving of evidence as to, or the disclosure of, the information for the purpose of any civil or criminal proceedings for child sexual abuse. This is consistent with recommendations 33 and 36. A working group was established by the Council of Attorneys-General to consider these recommendations, which proposed principles for reform in this area. The amendments contained in clause 18 of the bill are consistent with these principles for reform, which were subsequently endorsed by the council on 22 November 2019.

Part 5 of the bill amends the Sentencing Act 2017. In line with recommendation 75, clause 19 of the bill amends section 26 of the Sentencing Act to require the court, when setting a single sentence for an offence involving different victims or one committed on different occasions, to indicate the sentence that would have been imposed in respect of each offence.

Clause 21 of the bill enacts recommendation 76 by amending section 68 of the Sentencing Act. Clause 21 requires the court, when sentencing for child sexual abuse offences, to set sentences in accordance with the sentencing standards at the time of sentencing instead of the time of the offending. However, the sentence must be limited to the maximum sentence available at the date when the offence was committed. This clause clarifies and replaces section 68 of the Sentencing Act.

Part 6 of the bill amends the Summary Offences Act 1953. In line with recommendation 52, clause 22 amends section 74EA of the Summary Offences Act to require pre-recorded investigative interviews with police for all child sexual abuse victims, no matter what their age is at trial. There is currently only an obligation to record interviews with children under the age of 14, or for a person with a disability that adversely affects their capacity to give a coherent account of the person's experiences or to respond rationally to questions. Application can be made under the Evidence Act for these recorded interviews to be admitted at trial instead of the witness having to give evidence.

Finally, in line with recommendation 84, part 7 of the bill amends the Young Offenders Act 1993 by inserting new section 19A. This section provides that, for committal proceedings in the Youth Court, an audiovisual record of evidence from the victim of a child sexual offence may be admitted if the recording is of evidence given in earlier criminal proceedings or during an investigative interview under part 17, division 3, of the Summary Offences Act.

In order to admit the recording, the court must be satisfied as to the victim's capacity to give evidence, and the defendant must be given a reasonable opportunity to view the recording. New section 19A also provides that the victim of a child sexual offence cannot be required to give oral evidence at committal, except in the form of an audiovisual record. These provisions are aimed at ensuring the victims of child sexual abuse do not have to give evidence on any additional occasion in circumstances where the accused is a juvenile.

The purpose of this bill is to promote the identification of individuals who sexually abuse children and to ensure their appropriate conviction in the courts. It also seeks to protect and assist child sexual abuse victims through the court process to reduce the trauma that they often suffer. The impact of child sexual abuse can be lifelong, and the impact on their families and the broader community is often felt by subsequent generations. Assisting domestic abuse victims through the court process is also a particular concern, and has been included in this bill as part of the South Australian government's commitment to reform addressing domestic and family violence in South Australia.

I commend the bill to members. I 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 *Criminal Law Consolidation Act 1935*

4—Amendment of section 49—Unlawful sexual intercourse

This clause creates a new defence for a person accused of a 'position of authority' unlawful sexual intercourse offence by virtue of the person providing religious, sporting, musical or other instruction to the victim. The defence will only apply where the victim was 17 at the time of the offence and either the accused was under the age of 18 at the time of the alleged offence or the accused believed the victim was 18 or over.

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

This clause creates a new defence for a person accused of a 'position of authority' indecent assault offence by virtue of the person providing religious, sporting, musical or other instruction to the victim. The defence will only

apply where the victim was 17 at the time of the offence and either the accused was under the age of 18 at the time of the alleged offence or the accused believed the victim was 18 or over.

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

This clause creates a new defence for a person accused of a 'position of authority' offence against section 63B (1)(a), (1)(b)(i) or (3) by virtue of the person providing religious, sporting, musical or other instruction to the victim. The defence will only apply where the victim was 17 at the time of the offence and either the accused was under the age of 18 at the time of the alleged offence or the accused believed the victim was 18 or over.

7—Insertion of Part 3 Division 11B

This clause inserts new offences relating to institutional child sexual abuse as follows:

Division 11B—Institutional and out of home care child sexual abuse

64—Interpretation

This provision defines certain terms used in the Division.

64A—Failure to report suspected child sexual abuse

This provision creates a new offence in certain circumstances where an employee of an institution or provider of out of home care knows, suspects or should have suspected that another person has previously engaged in the sexual abuse of a child or is engaging, or is likely to engage, in the sexual abuse of a child, and refuses or fails to report that to police. The maximum penalty is 3 years imprisonment. It is a defence to a charge of the offence if the defendant had a reasonable excuse for the refusal or failure to report.

65—Failure to protect child from sexual abuse

This provision creates a new offence in certain circumstances where an employee of an institution or provider of out of home care knows that there is a substantial risk that another person will engage in the sexual abuse of a child and has the power or responsibility to reduce or remove that risk but negligently fails to do so. The maximum penalty for the offence is 15 years imprisonment

8—Amendment of section 73—Proof of certain matters

This clause makes the rule that no person will, by reason of their age, be presumed incapable of sexual intercourse retrospective.

Part 3—Amendment of *Criminal Procedure Act 1921*

9—Amendment of section 111—Committal brief etc

Section 111(5) allows a police record of interview or an audiovisual record to be used as a witness statement for certain categories of vulnerable witnesses. This clause amends section 111(6) to include victims of alleged sexual abuse as well as victims of alleged offences involving domestic abuse as witnesses to whom subsection (5) applies.

10—Amendment of section 114—Taking evidence at committal proceedings

This clause amends section 114(3) for consistency to include victims of alleged offences involving domestic abuse as witnesses who cannot be called for oral examination at committal proceedings unless the court is satisfied that the interests of justice cannot be adequately served except by doing so.

11—Amendment of section 157—Right of appeal in criminal cases

This clause allows the Director of Public Prosecutions, with the permission of the Full Court, to appeal against an interlocutory judgement where the interlocutory judgement destroys or substantially weakens any charge and, if correct, is likely to lead to abandonment of that charge or where it is in the interests of justice for the appeal to be permitted.

Part 4—Amendment of *Evidence Act 1929*

12—Amendment of section 4—Interpretation

This clause inserts a definition of *child sexual offence*.

13—Amendment of section 12AB—Pre-trial special hearings

This clause lists a number of kinds of directions that a court may make when making an order for a pre-trial special hearing in relation to a witness in a trial of a charge of a child sexual offence. The clause also provides that, in the case of a trial of a charge of a child sexual offence, the section will apply to an alleged victim of the offence (regardless of their age at the time of the trial), a child, a vulnerable witness or any other witness if the court is satisfied that they should be allowed to give evidence in a manner contemplated by the section.

14—Amendment of section 13A—Special arrangements for protecting vulnerable witnesses when giving evidence in criminal proceedings

This clause provides an equivalent direction making power for courts making an order under section 13A.

15—Amendment of section 13C—Court's power to make audio visual record of evidence of vulnerable witnesses in criminal proceedings

This clause requires that, if a witness is the alleged victim of a child sexual offence, the court must order that an audio visual record be made of a witness's evidence before the court (unless such an order has already been made).

16—Insertion of sections 29B and 29C

This clause inserts new sections as follows:

29B—Prohibited direction in relation to doubts regarding truthfulness or reliability of victim's evidence

This provision prohibits a trial judge from directing a jury that if the jury doubts the truthfulness or reliability of the victim's evidence in relation to a charge, that doubt must be taken into account in assessing the truthfulness or reliability of the victim's evidence generally or in relation to other charges.

29C—Evidence of opinions based on specialised knowledge of child behaviour etc

This provision provides that if a person has specialised knowledge of child development and child behaviour then evidence of that person's opinion that is wholly or substantially based on that specialised knowledge is admissible in proceedings relating to sexual abuse of a child.

17—Amendment of section 34P—Evidence of discreditable conduct

This clause alters the test for admitting discreditable conduct evidence for a permissible use to require that the judge be satisfied that the probative value of the evidence admitted for that use outweighs any prejudicial effect (rather than the current requirement that it 'substantially outweighs' any prejudicial effect).

18—Insertion of Part 7 Division 11

This clause inserts a new Division specifying that no confessional privilege applies in civil or criminal child sexual abuse matters in the State.

Part 5—Amendment of *Sentencing Act 2017*

19—Amendment of section 26—Sentencing for multiple offences

If a court is imposing a single sentence for multiple offences involving different victims or committed on different occasions, this provision will require the court to indicate the sentence that would have been imposed in respect of each offence had the court not imposed a single sentence.

20—Amendment of heading to Part 3 Division 6

This clause deletes a reference to paedophilia and replaces it with a reference to child sexual abuse.

21—Substitution of section 68

This clause inserts a new provision requiring a court that is sentencing an offender in relation to a child sexual offence to have regard to the sentencing practices, principles and guidelines applicable when the sentence is imposed rather than when the offence was committed.

Part 6—Amendment of *Summary Offences Act 1953*

22—Amendment of section 74EA—Application and interpretation

This clause applies the Division on recording interviews with vulnerable witnesses to any person being interviewed as the victim of an alleged child sexual offence.

Part 7—Amendment of *Young Offenders Act 1993*

23—Insertion of section 19A

This clause inserts a new provision allowing the alleged victim of a child sexual offence to give pre-recorded evidence in committal proceedings in the Youth Court and ensuring that the alleged victim cannot be required to give oral evidence for the purposes of the committal proceedings except evidence in the form of such a recording.

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

Motions

RIDGWAY, HON. D.W.

The Hon. R.I. LUCAS (Treasurer) (16:44): I move:

That this council notes and thanks the Hon. David Ridgway for his service to the Legislative Council and the community since his election to the Legislative Council in 2002.

This is a slightly more enjoyable task, rather than reading the second readings of all of the Attorney-General's bills. It does give me great pleasure to speak to this particular motion. In the normal course of events, these sorts of farewell motions are moved prior to the imminent departure of a member from the chamber—not always, but more often than not. It also gives those of us who like to say nice things about a departing member the opportunity to do so, but also gives the member the opportunity to bid his or her farewell to the chamber and thank members for whatever pleasantries they might have shared in their contributions as well.

That has not been possible in the circumstances of the Hon. Mr Ridgway and so I have moved this motion. He has indicated to me that, having listened to all the nice things that people might say about him, he may well provide a short response, which, when I close the debate in a number of weeks, I will be able to place on the public record as his thanks to the contributions during this particular debate.

For those of us who have known the Hon. Mr Ridgway for some period of time they know a little of his back story. Born in Wolseley in the South-East, he attended Bordertown High School, where he tells me he was an outstanding student. I am not sure that was necessarily a view shared by either his peers or some of his teachers, but nevertheless he seemed to enjoy his school days and youthful years in the South-East. He played cricket and a range of other sports. Having seen some of the photographs of a young Mr Ridgway, I can understand he was the blonde bombshell of the Bordertown High School—on the male side of the equation anyway. For those who know the Hon. Mr Ridgway now with no hair, let alone any colour of hair, he was certainly very blonde during, I would imagine, most of his youthful days.

Upon leaving school, as many from the farming communities did, he became active in SA Rural Youth. He became president of SA Rural Youth and, as the Hon. Mr Malinauskas might have alluded to in an earlier contribution today, then enjoyed a six-month study tour of the United Kingdom as part of that role with Rural Youth. I know he continues to maintain, even to this day, many strong friendships from his Rural Youth days. We would often run into people whom he says were old contacts, or acquaintances, let me put it that way, from his Rural Youth days and he is able to always tell a story about each individual that he has met along the way.

Thankfully for all of us, and the Hon. Mr Ridgway I am sure, he met his wife Meredith relatively early and many of those rough edges that the Hon. Mr Ridgway might have had in those youthful days were refined and honed to turn him into the product that we saw when he eventually entered the Legislative Council. I do note Meredith's banking and financial background, which has stood her and them in very strong stead in terms of running their previous horticultural business, and even to this day. The Hon. Mr Ridgway is going to be well set up with Meredith with him in the United Kingdom in his new challenge.

For those of us who knew David as he sought higher office within the Liberal Party, he ran a very successful horticultural business. He has indicated that it was the largest producer of gladioli bulbs in Australia and New Zealand at that particular time, which meant that there were many occasions, when he had a surplus of gladioli, that all and sundry, for any reason, were likely to get gifts of gladioli at Liberal Party meetings or indeed other community functions as well.

David was elected to the Legislative Council in 2002. His first speech to the chamber notes that he was elected at the same time as the Hon. Gail Gago, the Hon. John Gazzola, the Hon. Andrew Evans and, of course, my parliamentary colleague the Hon. Terry Stephens. With the Hon. Mr Ridgway's departure, the only one of the gang left is the Hon. Mr Stephens. There is a reasonable degree of turnover because at least three of those have been gone for many years from the Legislative Council.

As I said, David was elected in 2002. The Hon. Mr Ridgway's career might have been cruelly cut short at the time of his very first speech to the parliament because, as I am sure all members are aware, most are very nervous when they give their first speech to the parliament. It can be a daunting experience, I guess, standing up for the first time in the Legislative Council and giving a speech, no matter what your background has been. He obviously had a background in Rural Youth, but no matter

what your background—whether it is the city council, politics, business, or whatever it is—standing up among strangers and colleagues in the Legislative Council, with everyone looking at you, to give your first speech can be a daunting experience.

As I said, his career might have been cruelly cut short at that first speech because, being very nervous, he mispronounced the term 'lamb cuts', which did not come out quite right when he actually mentioned the phrase. Only one or two of his friends and colleagues actually noticed the slip of the tongue. Thankfully, Hansard's tidy-up job, which was the deletion of a single consonant from what might have been said, meant that *Hansard* still records the first speech as 'lamb cuts'.

My only advice to members giving a first speech is perhaps not to use the phrase 'lamb cuts' in your first speech, if you are at all nervous, or indeed anything else that remotely resembles that. Nevertheless, David is eternally grateful for Hansard—Hansard generally tidies up our messes somewhere along the way. Twenty years later, the story can be told as he has now gone, and as I said it did not cut short a promising career way back in 2002.

David Ridgway has been a friend and colleague of mine for those 20 years. I did not know much of David's background prior to that because, whilst I am from the South-East, I am from the real part of the South-East, which is Mount Gambier and not that Bordertown area, so our paths did not cross until just before he sought preselection. It would have been during the period that he was a member of the state executive of the Liberal Party and various other bodies when our paths would have crossed as he sought preselection.

David served in a number of positions during his parliamentary career. After coming in in 2002, the bulk of his career, the first 16 years, was spent in opposition. He was a parliamentary secretary for a period, he was a leader of the opposition for a long period of time and he held many different shadow ministry portfolios over that period of time. I probably will not do justice to recording all of them but, in quickly looking at Wikipedia and his parliamentary record and others, it looks like he covered portfolios such as the environment and conservation, the River Murray, urban development and planning, police, primary industries, tourism, regional development, agriculture, food and fisheries, and forests, in various iterations at various points in time during his career.

Given the fact that we have just replaced him on about ten committees with the outstanding new member, Heidi Girolamo, I will not list the committees that he has participated in over his long period of parliamentary service, suffice it to say that the record shows that he has participated in a very large number of parliamentary committees during his period in opposition.

In government, he was delighted to be appointed by new Premier Marshall to a senior ministry position. He started off with trade, tourism and investment and ended up in trade and investment for the bulk of his time in the ministry before he took the opportunity offered to him of this new role as Agent General in London.

Knowing David's background, I believe that his long experience in life, both in running a business and his knowledge of regional and rural communities, his time in rural youth and then his 20 years in public life and public service have provided him with as good a background as anybody for the challenges that he is going to confront on behalf of the state of South Australia.

Given his portfolios of trade and investment in particular, at a time when so many new opportunities are going to open up with the United Kingdom and also, frankly, with Europe with new trade agreements, someone with his background and his experience in terms of trade and investment, you could not think of a better set of skills in relation to that.

The other set of skills that I have always admired in David, even through his long years in opposition, is that the Hon. Mr Ridgway is a remarkable networker. He has the capacity to speak with people from all sorts of backgrounds, the capacity to put them at ease and the capacity to gather information, to impart information and, frankly, to network and create those sorts of contacts and networks over a long period of time. It served him well in opposition and in government and in parliament generally, but it is going to serve him well in terms of serving the interests of South Australian companies and businesses and individuals in terms of trade and investment opportunities in London.

I know that in the short period between his resignation from the Legislative Council and when he flies out on Thursday of this week to London with his family and the dog, I understand—although I think the dog is going a couple of weeks later—he spent that number of weeks meeting with any number of South Australian businesses in the defence and security area and in the food and wine area.

A number of companies or representatives of companies have said to me that they have met recently with the Hon. Mr Ridgway in relation to learning about them and their export contemplations in terms of exporting product and services to the UK or to Europe. He has been actively engaged in preparing to hit the ground running when he arrives in London.

Not all of my colleagues are going to have the opportunity to speak; I think some will. For those who do not, I know that I speak on their behalf—not just current colleagues, because he has served with many others who have now retired, but I am sure I speak on behalf of past colleagues as well—in thanking David Ridgway for his contribution to public life and in particular his contribution in this parliament and in particular to this chamber, the Legislative Council.

We wish him, Meredith and the family all the very best in the future challenges that lie ahead of them in London. We know that he will serve in that post with distinction. We look forward to the occasions when he might get back and visit with us again.

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

Parliamentary Committees

BUDGET AND FINANCE COMMITTEE

The Hon. R.I. LUCAS (Treasurer) (16:59): I move:

That the time for bringing up the report of the committee be extended to Tuesday 16 November 2021.

Motion carried.

Bills

CHILDREN AND YOUNG PEOPLE (OVERSIGHT AND ADVOCACY BODIES) (COMMISSIONER FOR ABORIGINAL CHILDREN AND YOUNG PEOPLE) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 10 June 2021.)

The Hon. E.S. BOURKE (17:00): I rise today to speak to the Children and Young People (Oversight and Advocacy Bodies) (Commissioner for Aboriginal Children and Young People) Amendment Bill 2020. I note that I will be the lead speaker for the opposition on this bill.

The bill provides the legislative framework for the role of the Commissioner for Aboriginal Children and Young People. Labor supports this bill and the role of the commissioner, and we had flagged introducing a similar position prior to the last election. My colleague in the other place the shadow child protection minister and member for Reynell, Katrine Hildyard, had proposed a small number of amendments as a way of strengthening the commissioner's role. However, following assurances by the government that these measures could be achieved administratively, without the need for the additional clauses, we are happy to support the proposed legislation as it stands.

The role of Commissioner for Aboriginal Children and Young People includes, but is not limited to, the promotion of the rights, development and wellbeing of Aboriginal children in South Australia. Fundamentally, it is about providing another layer of care, oversight and advocacy for Aboriginal children who by many measures are continuing to fall through the cracks. Essentially, it is about giving Aboriginal children a voice, one that will be heard by governments and their agencies, police and the courts, and non-government organisations and institutions.

The commissioner's role is one that was desperately needed, given one in 11 Aboriginal children in South Australia are now in state care, or, as a proportion of the total population of children in care, 36.7 per cent, or 1,519 children in state care in South Australia, are Aboriginal. The Guardian

for Children and Young People's recent report shows that this number is growing. It stated, 'There is a continued worsening rate of Aboriginal children and young people being drawn into the child protection system, indicating South Australia will not meet its Closing the Gap target without significant reforms.'

The same report showed that just 23.3 per cent of Aboriginal offenders are being diverted away from the courts, compared to 55.6 per cent of non-Aboriginal youths, the lowest number since records began. This means Aboriginal children and young people are now 22.7 times more likely to be in detention in South Australia than non-Aboriginal children are. Meanwhile, the number of Aboriginal children in care who enter the youth justice system continues to grow.

Appointed in December 2018, inaugural commissioner, April Lawrie, is dedicated to improving the lives of Aboriginal children and young people. Since her appointment, I understand Ms Lawrie has raised a number of important issues impacting Aboriginal children and young people. She has been a strong advocate for awareness about these issues and for resolutions to what are often complex problems.

Commissioner Lawrie has used her independent position to promote the rights and wellbeing of Aboriginal children and young people in South Australia. This includes monitoring the government's adherence to the Aboriginal Child Placement Principle, which dictates that authorities must consider placing an Aboriginal child within their family or cultural group before placing them in a non-Aboriginal family. Currently, just 31 per cent of Aboriginal children in care are being placed within their family and kinship group.

Alongside Commissioner Lawrie, the Commissioner for Aboriginal Engagement, Dr Roger Thomas, has also highlighted the lack of focus on supporting Aboriginal children and families in his report to the parliament last year. It is clear that much more needs to be done in terms of early intervention and prevention. Recent tinkering by the government with the Aboriginal Family Scoping Unit and the Infant Therapeutic Reunification Service has not helped. Young Aboriginal women must be engaged early in their pregnancies so that they have the appropriate supports around them as they raise their children. Aboriginal families and communities must also be engaged with and enabled to lead processes to support vulnerable children and their families.

I am confident that the commissioner will continue to focus our attention on these and other issues impacting Aboriginal children and young people. I know my colleague in the other place, the member for Reynell, is particularly grateful for the wealth of knowledge, compassion and understanding that she brings to this critical role, and she thanks her, as do I, for the ongoing and extraordinary support that she has given through this role.

The Hon. J.A. DARLEY (17:05): I rise to speak in support of the bill establishing the Commissioner for Aboriginal Children and Young People under the proposed amendment to the legislation. Clearly, the disproportionate representation of Aboriginal children and young people in areas of disadvantage requires determined action and advocacy to support their rights. The government is to be commended for establishing the position of commissioner in this legislation to advocate for the inclusion and rights of Aboriginal children and young people.

Specifically, the minister advised that the commissioner is required to consult with and engage Aboriginal children and young people and their families and communities. I foreshadow an amendment to section 201(3) changing the word 'should' to 'will' to reflect the minister's statement in his second reading speech to which I concur. Any further action of government to enhance the voice of Aboriginal people in the decision-making process is to be commended.

The Hon. T.A. FRANKS (17:06): I rise on behalf of the Greens to support this bill. The Children and Young People (Oversight and Advocacy Bodies) (Commissioner for Aboriginal Children and Young People) Amendment Bill 2020 is a long time in the making and it is very much welcomed by the Greens.

This bill amends the Children and Young People (Oversight and Advocacy Bodies) Act 2016 and establishes the position of the Commissioner for Aboriginal Children and Young People in legislation. We welcome that. It has previously been the Greens who have sought to amend that particular act, when it was in its formative stages, to introduce an Aboriginal children's commissioner position. We also welcomed the announcement of the then Marshall Liberal opposition to support an

Aboriginal children's commissioner and take that to the last state election and enshrine this position into practice that we now enshrine into law.

The transitional provisions of this bill will provide that particular appointment—and I note the fine work of Commissioner April Lawrie to date—to ensure that the commissioner will continue under this act until the end of her current contract on 3 December this year, and also includes provisions that set out the commissioner's independence, functions and powers to conduct systemic, own-motion inquiries with respect to Aboriginal children and young people. These are very welcome things and the Greens commend this piece of legislation before us to enshrine these powers.

The bill will also require that a person who is appointed to be the Commissioner for Aboriginal Children and Young People must be an Aboriginal person. This also applies to a person appointed to be an acting commissioner. The bill, of course, will outline the following functions of the commissioner: promoting and advocating for the rights and interests of all Aboriginal children and young people or a particular group of Aboriginal children and young people in our state; and promoting the participation by Aboriginal children and young people in the making of decisions that affect their lives.

The Greens, as a party, have four pillars. It is well-known that we are a party that stands for environmental sustainability and social justice but our other pillars are peace and non-violence and grassroots democracy. They are enshrined in the belief that people should have a say in the decisions that affect them and this piece of legislation enshrines that in this particular commissioner's role. The bill also provides that the commissioner advise and make recommendations to ministers, state authorities and other bodies, including non-government bodies, on matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level.

It will also inquire, under section 20M, into matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level, whether a governmental system or otherwise, and it will assist in ensuring that the state, as part of the commonwealth, satisfies its international obligations in respect of Aboriginal children and young people. It will also ensure and provide for the commissioner to undertake all commission research into topics related to Aboriginal children and young people, as well as giving the ability to prepare and publish reports on matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level. Finally, it will undertake such other functions as may be conferred on the Commissioner for Aboriginal Children and Young People by or under the act or in any other act.

This is indeed an historic day, a welcome day. It is something that we have seen put into practice, most pleasingly so, under the term of this government. It is also very commendable that I believe all parties represented in this parliament now support having an Aboriginal children and young people commissioner and we will hopefully very shortly see that independence of that advocacy enshrined in our statutes.

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

STATUTES AMENDMENT (IDENTITY THEFT) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 22 June 2021.)

The Hon. R.I. LUCAS (Treasurer) (17:11): I thank members for their contributions during the second reading stage. I would like to take this opportunity to make some comments in response to the second reading contributions of the shadow attorney-general and to correct misunderstanding of some aspects of the amendments.

The shadow attorney-general has proposed an amendment to clause 8 of the bill that would effectively undo the point of the proposed new section 144D(a) of the Criminal Law Consolidation Act 1935. That amendment will be opposed. I will explain why in more detail when we come to dealing with his proposed amendment to that clause.

I will, however, use this opportunity to answer some of the questions that the shadow attorney-general asked in relation to how proposed section 144D(a) would apply. The shadow attorney-general asked whether someone who was unaware that they had received personal identification information pertaining to another person would have a reasonable excuse. Contrary to what the honourable member suggested, this is not a strict liability offence. Knowledge is still required. If the surrounding circumstances support the person's contention that they were unaware they had the information, they would not have the requisite knowledge to commit the offence. They would, in any event, have a reasonable excuse.

In the case of someone who has been sent information and has not opened the file, it will depend on the circumstances. If there is evidence to show that they deliberately purchased stolen or fake identity information, the fact that they have not opened the file yet would not be a reasonable excuse. Alternatively, if the information was sent to them in error, they had no prior knowledge of it and they deleted or destroyed it upon discovering what it was, the offence will not be made out.

In terms of expired identification information, again it will depend on the facts and circumstances. If the expired information is nevertheless personal identification information of another person, it is likely to be covered by the proposed offence in section 144D(a). On the other hand, if the information is old and out of date or pertains to a person long deceased, it will not be covered. The police would obviously apply common sense in their approach to such issues on a case-by-case basis.

As to whether the other person's identity details need to be correct, this will very much depend on the circumstances of the case. If the false information was deliberately created and possessed by a person, that may well satisfy a court that the offence has been made out. If there is an error in the information but it still identifies a person, again that may be sufficient. If the error is so fundamental as to render the information useless, a court may not be satisfied that the offence has been made out.

For the most part, the identity information targeted by thieves, such as tax file, passport, driver's licence and Medicare numbers, does not contain incorrect information. The shadow attorney-general will also move an amendment that would remove clause 9 of the bill. This amendment will also be opposed and again I will explain in more detail why it will be opposed when we come to dealing with the clause.

Bill read a second time.

Committee Stage

In committee.

Clauses 1 to 3 passed.

Clause 4.

The Hon. K.J. MAHER: Clause 4 changes some of the definitions of what constitutes personal identification information. Can I ask the Treasurer, and this becomes important as we go further into the bill, what the definitions of information are, not just in relation to the changes to the definition of personal identification information but personal identification information as would be currently captured under the already existing section 144A of the Criminal Law Consolidation Act.

If certain things are captured as personal identification information then the increase in penalties, the change in the way offences can be charged and as it applies to minors, I think becomes important. This is one in particular where I would ask that the Treasurer be able to give an answer to the committee. I, for one, would not be comfortable with this being, 'We'll get back to you,' because it does influence how I think certainly myself and others in the chamber might look at further clauses.

Section 144A in part 5A, the identity theft part of the Criminal Law Consolidation Act, has a definition of personal identification information. Part A has eight separate subclauses for a natural person. Part B has three separate subclauses for a body corporate. Under the eight already in there for a natural person and the three already in there for a body corporate, as well as the extra three that are being proposed to be put in by amendment, does personal identification information include an IP address or a MAC address?

These are addresses which organisations like banks or social media platforms often use to identify people and to flag if they are logging in from an unexpected place or are sometimes used by law enforcement to track down people who are suspected of committing crimes online. In particular, I am wondering if, under the current section 144A, personal identification information, which in the case of a natural person is subclause (8): 'a series of numbers or letters (or a combination of both) intended for use as a means of personal identification'. Does an IP address and/or MAC address come under that definition?

The Hon. R.I. LUCAS: My advice is that it is hard to answer that question at this stage without the leader being more definitive about the extent to which the addresses he is talking about identifies individuals. If it identifies an individual person, then it is potentially covered, but the issue is whether it actually identifies an individual person as an individual, and that is really the basis of it. The leader will need to proffer his views as to whether or not an IP address does that.

The Hon. K.J. MAHER: With the greatest respect to the Treasurer, I do not think it is up to myself as shadow attorney-general to come up with an answer or to proffer my own views about it. It is a fundamental tenet of our criminal law that people who are subjected to the criminal law know the laws we are living by. I do not think it is up to a member of the opposition to decide whether this law applies in a particular set of circumstances. It is entirely reasonable that people whose behaviour we are seeking to regulate by the laws we make here have some certainty about what we are doing.

An internet protocol or IP address is used by a network to identify a device on the network. It is also used to identify a location on the internet. The title location usually changes every time you check into the internet. However, you usually have to pay a fee for a static IP address, if the owner of an account lives in Adelaide and uses the account in Adelaide for an IP-based address. In terms of a media access control address (or a MAC address), they are unique identifying numbers used by a network to identify unique network devices. It is important as we go through. We are significantly increasing criminal penalties—we are talking about criminal penalties of up to five years. It is reasonable that people have an understanding, particularly body corporates, of what behaviour, what information is captured by this.

The Hon. R.I. LUCAS: On the basis of that explanation the honourable member has indicated, if the IP address he says will identify a device, my advice is that that would not be covered because it has to identify an individual. The member would be aware that, if it identifies a device, anyone could be operating a particular device. On the explanation the member has just given, if it does not identify an individual but just identifies a device—the honourable member's device might be used by him on occasions, it might be used by a member of his family, it might be used by a friend or a colleague. The clarification he has now indicated is that, if that is not identifying an individual, then these provisions, I am advised, are not going to apply.

The Hon. K.J. MAHER: Again, to be clear, if a set of numbers or letters identifies an individual device, and that device is owned by a particular person, the Treasurer is saying—and this will be important for the courts to interpret this—that is not necessarily identifying the person, because of the extra link you have to make. If there is an extra link you have to make, it is not identifying a person?

The Hon. R.I. LUCAS: That is the advice I have received, and that is that a device could be used by a range of individuals. I can only repeat what I just said before; that is, if the Hon. Mr Maher has a device, he might be using it, but a member of his family might also be entitled to use it with his agreement. He might also agree that a member of his staff on occasions might be able to use his device if he is using that device in his office. That issue, as described by the Hon. Mr Maher, provides some greater clarity in relation to the issue.

The Hon. K.J. MAHER: Again, for the sake of clarity, for the sake of the police who will have to enforce this and for the courts that will decide on prosecutions, can the minister state clearly that internet protocol addresses and media access control addresses will not be considered personal identification information for the purposes of this act and these amendments?

The Hon. R.I. LUCAS: I can add nothing further. It is the same question the member has put to me. I cannot add any further information than what I have already conveyed, based on the advice that I have received.

Clause passed.

Clauses 5 to 7 passed.

Clause 8.

The Hon. K.J. MAHER: Before moving my amendment, I will ask some questions on the clause. Can I check with the Treasurer, just so the committee understands this correctly, in effect, what this amendment seeks to do is to make possession of personal identification information a criminal offence. So you do not have to be doing anything with it, you do not have to have an intention to commit any crime, but merely possessing it then becomes a criminal offence whether or not you are going to do anything nefarious with it.

The Hon. R.I. LUCAS: I can only refer the honourable member to the second reading reply which I gave. I outlined in some detail there that that blunt description of what the member thinks this clause provides is not an accurate description. On behalf of the Attorney-General, I outlined why the Attorney-General and the government believes that your understanding of this particular provision is inaccurate and I outlined the reasons on behalf of the Attorney-General as to why the Attorney-General and the government do not believe your interpretation is accurate.

The Hon. K.J. MAHER: Can I check, is it the Treasurer's contention that it is not the mere possession, you have to have some sort of intent to do wrongdoing with it; is that what the Treasurer is saying?

The Hon. R.I. LUCAS: What I am saying is what I have read on behalf of the Attorney-General in the reply to the second reading. When the member moves his amendment, I have a very long three-page explanation which will provide in graphic detail the reasons why the government believes the member's interpretation is incorrect. When he moves the amendment, I can place on the record and he can listen to the response from the government and the Attorney-General in relation to the amendment. That might assist some of these issues. He can then return to questions in relation to the issue.

The Hon. K.J. MAHER: I thank the Treasurer but this is a pretty fundamental threshold question. Under what the government is proposing, does someone have to have some sort of intent to use the information they have for any sort of wrongdoing?

The Hon. R.I. LUCAS: I am told the answer to that is, in short, yes, it is a reverse onus offence, not a strict liability offence. I am sure that makes sense to you.

The Hon. K.J. MAHER: I thank the Treasurer, but I am not sure it goes near to answering the question. Can the Treasurer point out whereabouts in clause 8 it says that you have to not just be in possession of it but be intending for some sort of wrongdoing? If the Treasurer can point me to anywhere in here that says that, I would be most grateful.

The Hon. R.I. LUCAS: I will now put on the government's response, which does include a response to that and indeed many other areas. Whilst he has not formally moved his amendment, the government is going to oppose the amendment, if and when it is moved, and for these reasons it will answer some of the questions the member is putting to me.

The amendment would remove the reverse evidentiary burden in the proposed new offence in section 144DA of possessing another person's personal identification information without reasonable excuse. It would mean that the prosecution would have to prove an absence of reasonable excuse beyond reasonable doubt.

There are, no doubt, many reasons why a person may be in possession of another person's identity information. For the most part, those reasons will be entirely proper and reasonable. However, in an increasing number of cases, criminals, or would-be criminals, are obtaining other people's identity information for nefarious purposes. Stolen identity materials can be used to open fake accounts, take out loans, purchase goods or services, or in some cases be traded as a commodity in their own right on the dark web to be used by others for criminal purposes.

For example, in the course of a recent drug bust in the western suburbs of Adelaide, police arrested four offenders allegedly in possession of approximately 119 identity cards, including credit and debit bank cards, Medicare cards and driver's licences. When a person has someone else's

identity information, it is a matter particularly within their knowledge as to why they do so. The onus on them to provide a reasonable excuse will be easily displaced if they have one. It is not placing an unreasonable burden on them to ask them why they have the information and to expect them to provide an explanation.

The police will then exercise their discretion, as they currently do in thousands of other instances every day, in deciding whether the excuse is reasonable in the circumstances, whether further investigation is needed or whether the offence should be charged. Where a charge is laid, it will ultimately be a matter for a court to decide whether the offence has been made out. This is clearly an area where the law is struggling to keep up with criminals who are finding it much easier to engage in crimes that can be committed online utilising fake or stolen identity information.

Statistics show that, although the rates of property theft are dropping, the rate of fraud, deception and related offences is increasing. For example, SAPOL's crime statistics from May 2021 record a significant drop in total offences against property of 20 per cent, while there was a 9 per cent increase in fraud, deception and related offences. This has been mirrored around Australia and around the world.

South Australia was the first jurisdiction in Australia to introduce specific provisions in its criminal law regarding identity theft. Other jurisdictions subsequently enacted offences similar to ours. Although the other jurisdictions have not yet enacted a reverse onus offence such as this, as they grapple with this increasing problem in their own jurisdiction they may well follow our lead again.

The Commissioner of Police specifically asked for this provision to be included, noting that identity theft is often a precursor to more serious offending involving the use of credit cards, loans or other identification in the name of the victim. He noted that it can be difficult to prove the intent of a person in possession of another person's identity information, and that a reverse evidentiary burden would be beneficial in terms of enabling police to nip in the bud more serious offending involving stolen identity information.

If proposed section 144DA was amended as the honourable member proposes, it would effectively duplicate the existing section 144D insofar as that section already makes it an offence to possess prohibited material, namely, material that enables a person to assume a false identity or to claim ownership of another's funds, credit and so forth. It is not correct to describe proposed section 144DA as a strict liability offence. Rather, it is a reverse onus offence, where the onus is placed on a defendant to show a reasonable excuse on the balance of probabilities. That onus will be easily displaced if there is a legitimate reason.

There are a range of other offences in our criminal statues in similar terms. For example, section 33LA of the Controlled Substances Act 1984 provides that a person who, without reasonable excuse (proof of which lies on the person), has possession of any prescribed equipment is guilty of an offence. The two-year maximum penalty for a basic offence equates to the penalty proposed in section 144DA.

The regulations under the Controlled Substances Act prescribe equipment such as certain types of light bulbs, lighting equipment, air filters and so forth. Ordinary people who are in possession of such equipment may be called upon to explain why they need such equipment and, upon provision of a reasonable excuse or explanation, that would be the end of the matter.

The government bill proposes a reverse onus provision in section 144DA similar to these existing provisions. It places the onus for providing an explanation on the individual found with someone else's identity information. Where there is a good explanation, that will be the end of the matter. Those who will be caught by this provision are the criminals who purchase or steal other people's identity information for illicit purposes and who will not be able to provide a reasonable excuse for possessing it.

I encourage honourable members to oppose the amendment when it is moved by the shadow attorney-general and preserve the integrity of proposed section 144DA.

The Hon. K.J. MAHER: I thank the Treasurer. Once again, it has not addressed the question I asked, which I think the Treasurer thought it might address. I might ask very simply again: under the current act that the Treasurer referred to, for an offence of having personal identification

information, it has to be made out that you are using it for a criminal purpose or to commit a serious criminal offence. These are the two different ways that the current legislation are characterised. Under what is being proposed here, does the prosecution in any way have to show that you have any criminal intent at all with the information that you have?

The Hon. R.I. LUCAS: Again, I refer to the answer that I provided in relation to the second reading reply. Contrary to what the honourable member suggests, this is not a strict liability offence; knowledge is still required.

The Hon. K.J. MAHER: I think the Treasurer is misunderstanding the question. I understand and accept that. That certainly was not necessarily in line with the briefing that we had, but I accept that. The Treasurer has explained that and it is useful, so that when these things come to be interpreted later on it is an offence that does not just require the act. It is mens rea; knowledge is required. But that is not my question, with respect, Treasurer. My question is: is there any requirement anywhere in this offence for someone to have an intention to do something with information with criminal purpose or criminal intent, or is it just the mere possession of it that gives rise to the offence?

The Hon. R.I. LUCAS: I am advised that the answer to that question is that it is the mere possession. You have to know that you have it and you do not have a reasonable excuse for it.

The Hon. K.J. MAHER: I thank the Treasurer. Fifteen minutes ago an answer like that could have got us to where we are now, but I thank him for it now. The Treasurer mentioned that other states do not have a mere possession offence as is being proposed here. I think he is right that other states around Australia require not just that you have something in your possession but that you intend to do something with it that is wrong and which our legislation already provides for. The Treasurer is right: there is not another jurisdiction in Australia that has mere possession of personal identity information as an offence. Is there any place else in world that criminalises, as the Treasurer has conceded, mere possession?

The Hon. R.I. LUCAS: I am advised that our research has not involved research around the world.

The Hon. K.J. MAHER: Can the Treasurer confirm that there is nowhere else in Australia that criminalises possession? Is that what he said earlier?

The Hon. R.I. LUCAS: My advice is that that is what the situation was when it was considered when this briefing was done a month or so ago.

The Hon. K.J. MAHER: I thank the Treasurer. Can the Treasurer confirm that, if someone was arrested and interviewed in relation to this potential new offence and they declined to answer questions, by declining to answer questions about why they had personal identification information would it be that they are not offering up a reasonable excuse and that declining to answer questions could find them convicted. Is that correct?

The Hon. R.I. LUCAS: I am advised that, clearly, if you do not answer the question you have not provided a reasonable excuse. In the end, this is a judgement call the police would have to make, as outlined in the reply I gave on behalf of the Attorney-General. There are other issues they have to address, but, on the surface of it, if the requirement is that you have to provide a reasonable excuse as to why you might have 119 separate ID cards sitting in your top drawer at home, or something, and you cannot provide a reasonable excuse for that and you refuse to answer questions, then it is probably indicative that the police might be inclined to think you are up to no good.

The Hon. K.J. MAHER: I think that is part of the problem here; I think the Treasurer has nailed it by saying 'it is probably the case that you might be'. This is not one where it being probably the case means you are not going to be convicted. You will be convicted in the example the Treasurer has given.

I note the Treasurer gave the example of 119 IDs. This does not say you need over 100, over 20 or even over two. Treasurer, could you potentially be convicted due to having one piece of personal identification information—to make out this offence?

The Hon. R.I. LUCAS: My advice is it is identity theft if you have stolen somebody's identity—one, two, whatever: 119, whatever. If you have stolen somebody else's identity, then you are potentially open to provisions of the legislation.

The Hon. K.J. MAHER: I think it is astonishing from the party that represents individual freedoms and restraint from the tyranny of government. Maybe it is that the Attorney-General, as apparently she often does, did not inform the party room of the exact nature and effect of this legislation.

As the Treasurer said, if you have one single piece of personal identification information—it may be a driver's licence number written down somewhere that you have taken for some reason—and you elect not to provide answers to the police, as is almost always your right when you are charged with a criminal offence, then potentially you can be charged and convicted, as the Treasurer has outlined, under this offence being proposed by the Liberal Party.

Can the Treasurer outline: can the person who is potentially being charged with having one single driver's licence written down on a piece of paper in their top drawer have to know who the information belongs to—that is, whose driver's licence the one single bit of information they have is?

The Hon. R.I. LUCAS: Sorry, can you repeat that question?

The Hon. K.J. MAHER: I was gathering that maybe the question would need to be repeated. That person who has one single piece of personal identification information—a driver's licence written down, for example, in their top drawer, and as the Treasurer had said it could be 119 in their top drawer, or it could be one—does that person who has that information and who is capable of being charged under this amendment need to know who the information belongs to, that is, whose driver's licence number that is? Alternatively, if it is just a random driver's licence number, are they capable of being charged under this offence?

The Hon. R.I. LUCAS: If you are a criminal, you do not need to know the person that you have stolen the identity card from. They do not have to prove that they knew the person or did not know the person. If you are a criminal and you are stealing identity information—credit cards or drivers' licences—you might not know who the person is when you stole the information. I know the honourable member is trying vainly to drum up support for his amendment, but you do not have to know the name of the person you have stolen the identity card from. It is just a question where, if you are a criminal, if you are stealing someone's identity and you have a capacity to be able to access credit cards or engage in a variety of other fraudulent activity, you can cause great harm to the individual even if you do not know them.

The Hon. K.J. MAHER: Again, I will rephrase the question to be abundantly clear for the Treasurer. I am not suggesting that the person who might be charged with the offence would have to actually know that person. If, however, they have got a driver's licence number, for example, do they have to know who that relates to—not that they know that person personally, but if you have one driver's licence number, you do not need to know the name of the person to whom that driver's licence in your top drawer relates?

The Hon. R.I. LUCAS: Again, if you are stealing identities, you do not have to know the name or who it identifies with or who it happens to be. If you have stolen it, you cannot actually explain a reasonable question as to why you have somebody else's driver's licence or credit card when it is clearly not yours. That is what these provisions are designed to try to have a closer look at. As I outlined in the response on behalf of the Attorney-General, the police commissioner has said that these are distressing crimes. They are growing, they are difficult to prosecute and the police commissioner has sought additional powers to which the government has agreed.

The CHAIR: We are getting fairly close to when the leader might move his amendment.

The Hon. K.J. MAHER: Just a couple more things. The government has chosen to put in clause 8 the concept of reasonable excuse in relation to having personal identification information. The Treasurer has outlined that if you have just one piece of information you can be charged, and if you elect not to answer at an interview that means that you are not proffering a reasonable excuse and can be charged. When the government chose to put reasonable excuse in this clause, what

were some of the reasonable excuses the government had in their mind that might be able to be offered?

The Hon. R.I. LUCAS: I am constantly advised by my adviser that there is always a charging discretion on behalf of the police in relation to these issues. As I instanced, a similar provision was incorporated in the controlled substances legislation. I do not know but I think there is probably a good chance it might have been introduced by a government of your persuasion, given that we had been out of office for so long.

As I outlined in that particular explanation, with a common product where someone could give a reasonable excuse as to why they might want an air filter or a whole variety of other things, if they can give that reasonable excuse, the police do not proceed with charging. That is an existing provision in the legislation. But having got the answers, if there are 25 of them—or whatever the quantities are that are required for it to be illegal activity—the police, under the existing provisions of similar provisions in the controlled substances legislation, make a decision as to whether it is a reasonable excuse or not. It is impossible to quantify all the reasonable excuses that might be there.

I would imagine, for example, if I am somewhere and have my daughter's driver's licence sitting in my top drawer, and you ask me why I have it and I say my daughter has gone overseas and has left it with me, that is a reasonable excuse. I am not going to go through and quantify every potential reasonable excuse there might be—that is just impossible. I am told the similar provisions that the member is concerned about were incorporated by his government in 2011 in the Controlled Substances Act, so these provisions mirror provisions his party has already supported and endorsed in the Controlled Substances Act for precisely the same reasons.

The Hon. K.J. MAHER: I think this is the final area I want to traverse before moving the amendment. As I understand it, the offence is in relation to personal identification information. If a person has in their possession a mix of personal identification information and public identification information, if they have some elements in their position that are personal, can they be charged on all elements they have, including the public elements of that, or can they not be used as part of the charge or particularised in what they are being charged with?

The Hon. R.I. LUCAS: My advice is, if you are going to be charged, it is going to be stuff that is not public. It is a bit hard to contemplate how you could charge someone with having publicly available information. I am not sure what sort of circumstances the honourable member's fertile mind is turning to. If it is publicly available information, it is a bit hard to contemplate how someone would have offended by accessing publicly available information. This is designed for private information that is not meant to be shared publicly.

The Hon. K.J. MAHER: That is understood. If someone has in their possession both publicly available information, which is an amendment to the bill that I think was made at the suggestion of the Law Society to the government's original bill, and it is a combination of public and private—a spreadsheet that includes things that are largely private identification information but includes some public identification information—under what the government is proposing, could that be used as part of the evidence in a charge against this, those small elements of what is otherwise personal information being the public part?

The Hon. R.I. LUCAS: It is the same question that the member put to me 30 seconds ago and I cannot give him any different response to the one that I am advised I gave him to the similarly worded question 30 seconds ago.

The Hon. K.J. MAHER: Having got to that point, sir, I will move the amendment standing in my name:

Amendment No 1 [Maher–1]—

Page 4, lines 16 to 29 [clause 8, inserted section 144DA(3)]—Delete subsection (3) and substitute:

(3) Despite section 5B, in proceedings for an offence against subsection (1) the prosecution will be required to prove that the defendant had possession of the relevant material without reasonable excuse.

If I may speak to it briefly, the Treasurer has outlined objections to the amendment which I think has been helpful in the way that we have gone through this committee stage. I think the Treasurer

characterised it correctly: we are seeking to not be as draconian as what is being proposed by this, as the Treasurer admits today. It took some time because I can understand his reluctance to actually spell it out to the committee. It took five or 10 minutes for the Treasurer to outline, yes, this is a mere possession offence.

You can have this information without any intention whatsoever to do anything wrong with it, to commit any criminal intent, any wrongdoing whatsoever. It is that strict liability, mere possession of having, as the Treasurer said, one piece of information potentially written down in your top drawer, one driver's licence detail with no intention to do anything wrong with it, but if you choose to exercise your right not to answer questions and not provide reasonable excuse, then you are committing an offence with a maximum penalty of two years in prison.

The Treasurer has further outlined that there is no other jurisdiction in Australia that criminalises the possession of one piece of identification, personal identification information, and we have had a look and we cannot find anywhere else in the world that does this. The Treasurer said that they are not aware of it—they may not have conducted as an exhaustive search, but they are not aware of any jurisdiction around the globe that does this either. On that basis, we cannot support the amendment in this form and I recommend the amendment that we have put in, a very slight amendment in its place, to the chamber.

The Hon. R.I. LUCAS: I will not prolong the debate but I just again highlight the fact that a provision of very similar nature was incorporated by the honourable member's government in the 2011 Controlled Substances Act, so that inoffensive equipment such as light bulbs, lighting equipment, air filters and the like—if someone possesses those and if they cannot give a reasonable excuse—if they give a reasonable excuse then they are okay as to why they have light bulbs, lighting equipment and air filters; if they cannot give a reasonable excuse then they can be prosecuted, if they cannot give a reasonable excuse that they are just using it for household purposes.

If they are using it for a whole variety of unlawful or illegal purposes there is a charging discretion for the police to lodge a charge. It is exactly the same principle the Labor government incorporated in 2011 into the controlled substances legislation. The honourable member was not railing against that particular piece of legislation. The same principles are being used here to try to protect people who, frankly, are having their personal identity stolen, causing great distress to them and great financial loss. The police commissioner is saying that we are struggling to keep up with trying to prosecute these people. This is a genuine endeavour to try to prosecute.

The Hon. R.A. SIMMS: The Greens do not want to get involved in a law and order bidding war between the two major parties. I will let the Hon. Mr Lucas and the Hon. Kyam Maher duke that one out. However, we will be supporting the amendment moved by the Labor Party.

I am very concerned to hear about this potential for South Australia to be used as some kind of test lab for an approach to the law that has not happened in our own country or, indeed, anywhere around the world. South Australia should not be used as a guinea pig to pilot some new approach to this matter where we see a reverse onus offence being implemented with respect to identity theft. I think the Hon. Kyam Maher has identified some issues through his questioning that need to be taken into consideration. I do not find the government's response to be satisfactory in that regard and so we will be supporting the Labor Party's amendment.

The committee divided on the amendment:

Ayes.....12
Noes 7
Majority 5

AYES

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

NOES

Centofanti, N.J.	Girolamo, H.M.	Hood, D.G.E.
Lee, J.S.	Lucas, R.I. (teller)	Stephens, T.J.
Wade, S.G.		

Amendment thus carried; clause as amended passed.

Clause 9.

The Hon. K.J. MAHER: I oppose this clause. I will ask a question of the Treasurer, which is an important one to start with. The Treasurer outlined, for the last clause that we debated, the genesis of why we were debating that, namely, that it was something that was requested by the police commissioner. Can the Treasurer outline whether the clause we are currently debating, clause 9, was a request of the police or the police commissioner, or was it something that came from the Attorney-General or her office rather than the police commissioner?

The Hon. R.I. LUCAS: My advice is that this was not originally suggested by the police, although it has been supported by the police.

The Hon. K.J. MAHER: I thank the Treasurer. From where was this developed? If the other elements of the bill we have talked about were at the request of the police, at whose request was this?

The Hon. R.I. LUCAS: The legislation was the responsibility of the Attorney-General and officers who advise the Attorney-General. The government does not only bring forward legislative reforms suggested by the police commissioner. We have an Attorney-General, who is the senior law officer in the state. We have senior legal people who advise her. So it did not come through the police route but came through the legal and Attorney-General route, and that is entirely proper.

The Hon. K.J. MAHER: I think it is telling that this was not a suggestion of the police, because in effect this criminalises children for behaviour that was not previously a criminal offence. We have seen this before with things that have been the genesis of the Attorney-General's mind, when early on in this term of parliament there was the massive and draconian increase in penalties for possession of cannabis where the Attorney-General proposed, rather than the possibility of an expiation fee—and I cannot remember whether it was two, three or five years that the Attorney-General was proposing under that legislation a couple of years ago—that kids making a dumb mistake of possessing cannabis could potentially be thrown into jail for a number of years.

This chamber, except for the government, rejected that. It was draconian. I have to say the public support on talk-back radio and other mediums after that was against the government. It was a bridge too far and out of line with community expectations. This proposal to criminalise dumb mistakes of kids I think falls into that category again.

For someone using their older brother or sister's ID to gain access to an R18 computer game or publication—the Treasurer will correct me if I am wrong—the penalties are increasing under these amendments from three to five years potentially. To put a kid in gaol for a dumb mistake, as it was last time when it was the Attorney-General's great idea—as the Treasurer said, this did not come through the police like the other parts of the bill. This was the Attorney-General's brainchild, her great idea to potentially throw children in gaol by criminalising something that a young person should not be doing. But to suggest that using an older sibling's identification to try to buy a computer game is now worthy of gaol time I think is a bridge way too far.

The Hon. R.I. LUCAS: Let me just respond to that. I will read the full explanation as to why the government supports clause 9 and opposes the opposition's position, in response to that suggestion from the Leader of the Opposition. The discussions with senior police suggested a youth with no prior offending who accessed online gambling or R18+ products with a fake ID would most likely be dealt with under the minor offence provisions of the Young Offenders Act and receive an informal caution.

Police anticipate the bill will assist them in nipping in the bud bad behaviour before the youth escalates to more serious crime. Removing this clause from the bill, as proposed by the opposition,

will eliminate the ability for police to address youth offending for identity theft. So the notion that a young person is going to be thrown in gaol, as suggested by the Leader of the Opposition, is disputed by police.

In terms of why the government will oppose the opposition's position, which is to oppose the clause, is as follows: the amendment would remove the proposed changes to the existing section 144F of the Criminal Law Consolidation Act. The act currently provides, in effect, that the other identity theft provisions in part 5A of the Criminal Law Consolidation Act do not apply to a misrepresentation by a minor for the purpose of obtaining alcohol, tobacco or any other product or service not lawfully available to a person under the age of 18.

Since these provisions were enacted in 2003—so nearly 18 years ago—many things that were only available if you physically attended at a place to purchase them are now available online. This includes online gambling services and video games, films and other publications that have been classified as only suitable for persons over the age of 18 due to their extreme violence content or explicit sexual content.

The intent of the amendment to section 144F is to roll back the breadth of the exemption in relation to products or services accessed by minors using another person's identity information. It would mean that minors who utilised another person's identity information to access online gambling products or R18+ games, films or publications, would not be totally excluded from the operation of these provisions.

There were a number of suggestions made by the shadow attorney-general during his second reading speech that I wish to correct. Young offenders are dealt with as minors, not as adults, in accordance with the Young Offenders Act 1993. I will speak briefly regarding the operation of the Young Offenders Act to assist members. The Young Offenders Act applies to young people aged 10 to 17 who transgress the criminal law.

The act sets out a special regime for young offenders and is designed to allow the police and Youth Court significant discretion in dealing with different types of offending and to take into account the youth's situation. The emphasis is against detention wherever possible, and only for the most serious or repeat offending. Under the act, a youth cannot be sentenced to detention for a period longer than three years' detention for any crime unless they are tried as an adult.

Specifically, in relation to the bill, discussions with senior police suggest a youth with no prior offending who accessed online gambling or R18+ products with a fake ID would be most likely to be dealt with under the minor offence provisions of the Young Offenders Act and receive an informal caution. Of course, the action taken by police will completely depend on the circumstances of the case. Repeat offending, or offending coupled with other very serious offences, may result in a formal caution, a family conference or be brought before a Youth Court magistrate or judge.

The bill's proposed changes to section 144F of the Criminal Law Consolidation Act enable police and, if necessary, courts, to use their discretion to identify an identity theft issue at an early stage and in an age appropriate way. Police anticipate the bill will assist them in nipping in the bud bad behaviour before the youth escalates to more serious crime.

Removing this clause from the bill, as proposed by the opposition, will eliminate the ability for police to address youth offending for identity theft. The Attorney hopes this further explanation will assist members and more clearly explains the reasons for an intent behind the bill. The Attorney encourages people to oppose the amendment being moved by the Leader of the Opposition.

The Hon. K.J. MAHER: I might just run through that quickly. I have six or seven pages of questions to go through, in what others might find excruciating detail, in relation to tobacco, liquor, licensed premises, computer games, exhibition of films, film sales, publications, online gaming, betting and in-person gaming and how they apply and how that works, because I am not sure the government has thought that out. But I do not think I will do that.

The explanation we have been given was very similar to one to a couple of years ago, where we were assured, 'Yes, we are putting in the potential for long times in detention or gaol for children, but don’t worry about it; the police probably won’t charge most kids with these sorts of offences and,

even if they do, they won't be thrown into detention for more than three years, unless they're tried as an adult.' That gives absolutely no comfort whatsoever about criminalising this behaviour.

Rather than go through another hour-and-a-half of questions, I am going to not move an amendment but take the action of opposing this clause entirely. Having a kid face three years in detention for a stupid mistake I think is completely unreasonable and completely out of step with what the community expects. As the Treasurer said, this is a creation of the Attorney's doing, not the police's doing, and I think it is overreach in the extreme.

The Hon. R.A. SIMMS: I rise to indicate that the Greens will also be opposing this provision. I thank the Hon. Kyam Maher for exposing this. We share the concerns that have been expressed by the Labor Party and others in this place in relation to the impact that this provision could potentially have. I do not think that it is acceptable to simply say, as the honourable Treasurer has, 'Well, these are the provisions in place, but police say they're not likely to use them.' There are lots of examples in our criminal justice system where the police certainly use the provisions that are available to them to their full extent. I do not agree with the idea of giving them, in effect, a blank cheque with respect to how this kind of conduct is dealt with.

It is worth pointing out that whilst of course the Greens do not want to see people who are under-age accessing R18+ films or R18 video games, I am sure that that conduct is commonplace in the community. It would not be unusual to think of a situation where a young person might try to access those videos or games online, using a credit card of dad or an older sibling, or whatever.

The idea that the way that conduct is managed is through such serious criminal sanction is, I think, very alarming. I think that is something that would alarm many people in our community who share the concerns of the government around not wanting to see young people accessing this material. We know that that is not the way to manage this sort of behaviour. Rather than nipping this in the bud, as the government contends, what we know is that when you criminalise behaviour of young people in this way you actually set them on a path where they continue to interact with the criminal justice system, and young offenders can grow up to become adult offenders.

Our focus here in this place should be doing everything we can to prevent young people from falling into our justice system. I am concerned that what the government is proposing is draconian and out of step with community values, and so the Greens will not be supporting it.

The Hon. F. PANGALLO: We will be supporting the opposition on this one. Again, I would echo the words of the Hon. Kyam Maher and also the Hon. Robert Simms. I distinctly remember the debate we had—I think it may have been last year—about the draconian aspects of making children liable to such severe penalties. I do not think that is the type of society we want, particularly if kids have made a simple error.

Many of us have known, and I know, of instances where kids have been silly enough to take an adult's credit card, or whatever, to go to order an item. It may not necessarily have been an item that was banned, but they do that and they do it innocently, and then the consequences here would be far more severe. Also, I am just not convinced by what the government says, that they may get a warning or may get off with just a slap on the wrist. I am not convinced by that at all, so we will be opposing it.

The Hon. J.A. DARLEY: I believe this provision is extreme, and I will be opposing it.

The Hon. R.I. LUCAS: The government is disappointed to hear that and will be dividing on this particular provision. The notion that the majority of members in this chamber are, in essence, not allowing law enforcement to crack down on young people accessing sexually explicit R18+ material, which the government has made it quite clear that this is designed to try to crack down on, and the fact that a majority of members in this chamber are going to oppose a provision which the police are supporting to crack down on young people accessing sexually explicit R18+ video and gaming material, is abhorrent to the government. It is the reason the government has introduced this particular provision or one of the reasons why the government has introduced the provisions in the bill.

Whilst we acknowledge that the opposition and the crossbenchers are all united to oppose the government's intentions in this, this is an issue that the government is prepared to fight for, and we will divide on this particular amendment and take the battle up in the court of public opinion.

The Hon. T.A. FRANKS: I ask the government, given their statement to this place: is it their proposal that a young person buying a copy or reading a copy of *American Psycho* should be somehow criminalised?

The Hon. R.I. LUCAS: I have already outlined what the government has indicated. Contrary to what the Hon. Mr Simms indicated—he was suggesting the government had said, 'Well, we're not going to use these provisions'—the provisions are outlined and the potential use of them is outlined in the response I gave on behalf of the Attorney-General. These will be issues that police will have to make judgement calls about and, as they say—I will repeat it again here: discussion suggests that youth with no prior offending who have accessed online gambling or R18+ products with a fake ID would be most likely dealt with under the minor offence provisions of the Young Offenders Act and receive an informal caution.

So it is not that the provisions are not going to be used. It will be utilised in that particular way. So I do not think it was fair of Hon. Mr Simms to characterise my responses as saying that the government was saying, 'Here's a new proposal, and we're not going to use it.' It is going to be used, but it will be utilised in a certain way is the police's response.

I understand the position the opposition and the crossbenchers are adopting. It is just not one that the Attorney-General and the government agrees with. As I said, the notion that young people might not be open to the use of this scheme to try to prevent them or discourage them from accessing sexually explicit R18+ material which adults have access to is something that we do not believe should be supported, and we are surprised that a majority of members in this chamber would be supporting a provision along those lines.

The Hon. T.A. FRANKS: Just following up on my question, I note in terms of the ratings of popular movies at the moment, *The Suicide Squad*, produced in 2021, is on Amazon Prime rated as R18+. I have taken my daughter to see this twice in the last month. Should she access the same movie via Amazon Prime that we went to Hoyts to watch, will she be criminalised?

The Hon. R.I. LUCAS: The honourable member does not understand the provisions of the bill. It is the theft of identity that is potentially criminalised or is an offence—

The Hon. T.A. Franks interjecting:

The Hon. R.I. LUCAS: I understand completely the question. I am just saying the honourable member does not understand the provision of the bill. It is a question of whether or not someone steals someone else's identity to access products or services, and in this case we are talking about stealing someone else's identity and accessing sexually explicit R18+ material.

Now, I am not going to enter into the debate about what any adult takes their child to in terms of particular movies or whatever it is. That is a decision for the adults and the families. All I am seeking to do is explain the rationale behind the government's amendment and the Attorney-General's explanation for the reasons why the amendment ought to have been supported.

The Hon. T.A. FRANKS: This is the last instalment on this particular line of questioning. I would like to clarify that perhaps the honourable minister does not understand teenagers and their ability to access your credit card to download a movie. If it is on Amazon Prime, with perhaps an American 18+ rating rather than an Australian one—because you can legally take a teenager to see this movie at Hoyts right now but online it has a different rating—should that teenager take a credit card, as they do, to stream some movies, as they do, they will in fact be committing a criminal offence according to the desire of this Marshall Liberal government.

The Hon. R.I. LUCAS: I acknowledge the numbers; we might as well get on with the vote. All I can say to the Hon. Ms Franks is I have actually had four teenage children, slightly more than she has.

The Hon. K.J. MAHER: I think it is important to point out that this is eerily similar to the possession of cannabis debate we had when the Attorney-General came out with draconian laws to

punish children, out of her own mind. Under the Classification (Publications, Films and Computer Games) Act there are already fines, expiation notices, of $750 for things like computer games and films, so it is not like these are being introduced now because there is nothing there to do it at the moment—there is. Just as with the cannabis debate, it is the Attorney who wants to have the threat of gaol time that is the difference here, as it was before.

The committee divided on the clause:

Ayes 7
Noes..... 12
Majority..... 5

AYES

Centofanti, N.J.	Girolamo, H.M.	Hood, D.G.E.
Lee, J.S.	Lucas, R.I. (teller)	Stephens, T.J.
Wade, S.G.		

NOES

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

PAIRS

Lensink, J.M.A.	Bonaros, C.

Clause thus negatived.

Remaining clauses (10 to12) and title passed.

Bill reported with amendment.

Third Reading

The Hon. R.I. LUCAS (Treasurer) (18:26): I move:

That this bill be now read a third time.

Bill read a third time and passed.

At 18:27 the council adjourned until Wednesday 25 August 2021 at 14:15.

Answers to Questions

LEGAL PROFESSION CONDUCT COMMISSIONER

15 The Hon. F. PANGALLO (24 June 2021). Will the Attorney-General advise:

1. Is it correct that Mr Greg May, in his capacity as the Legal Profession Conduct Commissioner, sits at the pinnacle of the legal profession in South Australia in terms of, amongst other things, the maintenance of professional standards and conduct of legal practitioners, and therefore must be of impeccable integrity with an unblemished reputation in the profession so as to maintain the respect of the profession and the public's confidence in the legal profession and the justice system?

2. Whether or not the Legal Profession Conduct Commissioner and his staff are immune from the consequences of breaches of the law and in particular from breaches of the Public Sector (Honesty and Accountability) Act 1995 (SA) ('PSHA Act') and if so, how so?

3. If not, then is it correct that Mr Greg May, having been found by a majority judgment of the Full Court to have contravened s17 of the PSHA Act five (5) times, that he is liable to be charged for such breaches, and if not why not?

4. If she intends to initiate an investigation into these five (5) breaches of s17 of the PSHA Act by Mr May as found by the Full Court? If so, what action will she take specifically? And if not, why not? Can she also please advise if the scope of any such inquiry will extend to any other circumstances in which Mr May may have been in a position of conflict of interest and whether or not in those circumstances Mr May complied with s17 of the PSHA Act? And if not why not?

5. If those breaches were made out, will the penalty for such breaches as outlined in the PSHA Act apply to Mr May? If not, why not?

6. If she is going to initiate an investigation as to why Mr May failed to disclose all but one of the breaches of s17 of the PSHA Act to, amongst other departments, the Office of the Attorney General and the Office of Public Integrity and why Mr May failed to disclose any of the said breaches of s17 of the PSHA Act in his Annual Reports. If not, why not?

7. What action if any is proposed to be taken against the former members of the board and Commissioner May in light of the recent findings of the Full Court in Viscariello v Legal Profession Conduct Commissioner [2021] SASCFC 24 delivered on 14 May 2021 to the effect that Mr Viscariello's complaints were unreasonably delayed over a period of some 12 years and that Commissioner May was not entitled to ignore the long history of delays in investigating Mr Viscariello's complaints by the board (noting that Mr May was carrying out the same functions of the former board which Mr May replaced). If no action is to be taken, why not?

8. Given these circumstances—

   (a) Why has Mr May not yet been asked to resign?

   (b) Why has Mr May not tendered his resignation?

   (c) What action, including disciplinary action, has been taken against Mr May concerning his aforesaid conduct; and if none has been taken, why not?

   (d) Why does Mr May seemingly continue to enjoy the confidence of the Attorney-General and the government?

9. Does the Attorney-General intend to conduct an independent impartial inquiry (by people outside the state) into the circumstances of the some 12-year delay in investigating Mr Viscariello's complaints, the five breaches of the PSHA Act as found by the majority of the Full Court, and other acts and omissions of the board and subsequently of Mr May which, but for the operation of the transitional provisions which took effect on 1 July 2014 as found by the Full Court, were likely to have been found to amount to poor or maladministration as alleged by Mr Viscariello and as was referred to in the judgments of Hinton J and the Full Court. If the Attorney-General does not intend to establish such an inquiry, why not?

The Hon. R.I. LUCAS (Treasurer): The Attorney-General has advised:

In the course of his duties, the commissioner identified a potential conflict of interest. He immediately disclosed this to the former Attorney-General and delegated his powers in order to avoid the potential conflict. The only error by the commissioner was that he did not have written approval of the former Attorney-General to delegate his powers at the time of doing so. Appropriate delegations were subsequently obtained. The Full Court found that the commissioner's course of action in this matter 'was perfectly proper in the circumstances as it was 'conducive to the efficient discharge of administrative functions'', and that there was 'no basis for finding maladministration' in the matter. The Full Court declined to make a declaration of unlawfulness with respect to the conduct.

All public sector staff are subject to the provisions of Public Sector (Honesty and Accountability) Act 1995 (the PSHA Act). However I am not responsible for administering the PSHA Act, and do not have the power to initiate an investigation or inquiry into the matter. Nor do I consider it necessary.'

Viscariello v Legal Profession Conduct Commissioner [2021] SASCFC 24 [74].

Viscariello v Legal Profession Conduct Commissioner [2021] SASCFC 24 [105].

Viscariello v Legal Profession Conduct Commissioner [2017] SASCFC 98 [255-256].

EDUCATION DEPARTMENT

17 The Hon. T.A. FRANKS (20 July 2021).

1. Was the Minister for Education aware that the former chief executive of the Department of the Premier and Cabinet, Mr Jim McDowell, was a member of the Board of Governors of St Peter's college while he was chief executive?

2. Is there any legal obligation on a school where child abuse has taken place to refund any school fees that have been paid by the family of the abuse victim(s)? If not, should there be and is this something the government has, is, or will consider?

The Hon. S.G. WADE (Minister for Health and Wellbeing): The Minister for Education has advised:

1. Yes.

2. The Education and Children's Services Act 2019 authorises the principal to waive, reduce, and refund a materials and services charge. This is to be dealt with confidentially between the principal and the parent. The Department for Education can assist the family in terms of discussions with the school.