LEGISLATIVE COUNCIL

Tuesday, 6 November 2018

The PRESIDENT (Hon. A.L. McLachlan) took the chair at 14:15 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.

Bills

FAIR TRADING (GIFT CARDS) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

LATE PAYMENT OF GOVERNMENT DEBTS (INTEREST) (AUTOMATIC PAYMENT OF INTEREST) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

FAIR TRADING (TICKET SCALPING) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

PAYROLL TAX (EXEMPTION FOR SMALL BUSINESS) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

TERRORISM (POLICE POWERS) (USE OF FORCE) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

NATIONAL GAS (SOUTH AUSTRALIA) (CAPACITY TRADING AND AUCTIONS) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

PETROLEUM AND GEOTHERMAL ENERGY (BAN ON HYDRAULIC FRACTURING) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

Parliamentary Procedure

PAPERS

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Reports, 2017-18—
- Administration of the Freedom of Information Act 1991
- Club One—Gaming Machines Act 1992
- Electoral Commission of South Australia

Equal Opportunity Commission
Independent Commissioner Against Corruption and the Office for Public Integrity
Independent Gambling Authority
Judicial Conduct Commissioner
Legal Practitioners Disciplinary Tribunal
Legal Services Commission of South Australia
Office of the Public Advocate
Privacy Committee of South Australia
Return of Authorisations Issued under section 52C(1) of the Controlled Substances Act 1984
Return of Authorisations Issued to Enter Premises under Section 83C(1) of the Summary Offences Act 1953
Return of Authorisations Issued to Enter Premises under Section 83C(3) of the Summary Offences Act 1953
The Public Trustee
Regulation under the following Act—
Superannuation Funds Management Corporation of South Australia Act 1995—
Legal Services Commission

By the Treasurer (Hon. R.I. Lucas) on behalf of the Minister for Trade, Tourism and Investment (Hon. D.W. Ridgway)—

Australian Energy Market Commission—Report, 2017-18

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

Additional Reporting Obligations of the Department for Child Protection Report dated 1 November 2018

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

Reports, 2017-18—
Adelaide Film Festival
TechInSA
Regulation under the following Act—
Advance Care Directives Act 2013—Interstate Advance Care Directives and Corresponding Laws

Ministerial Statement

CORRECTIONAL SERVICES MONITORING DEVICE OUTAGE

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:20): I table a copy of a ministerial statement relating to the Correctional Services monitoring device outage made in another place by the Minister for Police, Emergency Services and Correctional Services.

TAFE SA, ASQA INTERIM REPORT

The Hon. R.I. LUCAS (Treasurer) (14:20): I table a copy of a ministerial statement, entitled TAFE SA 2018 ASQA Interim Report, made today in another place by the Minister for Education.

Question Time

SHOP TRADING HOURS

The Hon. K.J. MAHER (Leader of the Opposition) (14:25): I seek leave to make a brief explanation before asking questions of the Treasurer regarding shop trading hours.

Leave granted.

The Hon. K.J. MAHER: As revealed by Leon Byner on his FIVEaa radio show, the owner of a retail shopping complex can regulate opening hours under the Retail and Commercial Leases

Act. The Labor Party has received significant concerns from small business operators that, if the Treasurer grants his exemption to allow shops to trade on Boxing Day, retail shopping complex owners will force small businesses to open. This will have a significant impact on the families who run these businesses, who would otherwise be spending time with their families but instead will be forced to work.

The Treasurer is representing Boxing Day trading as free choice, but really this will just add pressure on small business owners in those shopping complexes to open. My questions to Treasurer are:

1. How is the Treasurer going to ensure that Boxing Day trading will be voluntary for small business owners in shopping centre complexes?

2. Will the Treasurer guarantee that small business owners won't be forced to open by shopping centre owners?

The Hon. R.I. LUCAS (Treasurer) (14:26): The government has already had discussions with the major operators of suburban shopping centres, and we have been given assurances that most of the operators of the major suburban shopping centres, including Marion, TTP, Colonnades and a list of others, have already either advised their tenants or are in the process of advising their tenants that their opening is completely voluntary and they won't be compelled to do so.

I think proof positive of that is the gentleman who is the butcher that the opponents of freedom of choice used on Sunday evening on the evening news from Marion, who indicated he was a staunch opponent of trading and indicated he wouldn't be opening. He is in the Marion shopping centre. He said he wasn't going to be opening on Boxing Day. It is again proof positive that much of the scare campaign the union bosses and the shoppies union and their mouthpieces in the state Labor caucus are endeavouring to mount has no substance.

SHOP TRADING HOURS

The Hon. K.J. MAHER (Leader of the Opposition) (14:27): Supplementary arising from the answer: despite the Treasurer claiming that out of the goodness of their hearts there are some suburban shopping centres that won't be forcing small businesses to open, is there any guarantee that that will be continued in the future, and is there a legal way to prevent them from doing it, except some sort of, 'We promise we won't do it this time'?

The Hon. R.I. LUCAS (Treasurer) (14:28): If there was comprehensive legal reform, we could have a look at a range of these particular issues, but of course the union bosses and their spokespersons in the Labor caucus won't even entertain a debate about shop trading hours reform, so the existing law has to be used, as has been used by Labor ministers like minister Rau for many years, in terms of using existing powers and existing shop trading hours legislation.

Certainly, the important point is that the government is taking action to ensure that no trader will be forced to trade on Boxing Day this particular year. We will monitor the situation and look at what, if any, action might need to be taken after considering the merits or otherwise of the Boxing Day trade this coming Boxing Day.

It may well be—I don't think so—that the union bosses and the Labor Party are right, that is, there is no demand for Boxing Day trading in the suburbs. Certainly, it is not my view or the government's view. We think the community is clamouring to be able to trade on Boxing Day, but we will have to make that judgement to see whether the Labor Party and the union bosses are correct or not.

If we make that judgement, if we are prepared to have a look again at some stage in the future at future Boxing Day trading under the existing legislation, we would monitor all these sorts of issues and see what, if anything, might need to be done. Certainly, the initial advice that we have received, coming back to the legal aspect of the question, is that the current structure of that particular piece of legislation has meant that virtually all of the leases that currently exist don't allow landlords to compel their tenants to open during non-core trading hours. In the suburbs, because non-core trading hours haven't included Boxing Day, for example, it hasn't been a feature of the leasing arrangements within those lease agreements.

Putting that aside, the government has taken action. We are not just sitting back. We have indicated that traders shouldn't be forced to trade and workers shouldn't be forced to work. I think all of the major suburban shopping centres that we have currently consulted have indicated that they have taken action already or are in the process of making it quite clear to their traders that they won't be forced to trade. As I said, proof positive is the butcher from Marion, who indicated that he wasn't going to trade. He obviously doesn't believe that he's going to be forced to trade or can be forced to trade.

SHOP TRADING HOURS

The Hon. K.J. MAHER (Leader of the Opposition) (14:30): Supplementary question arising from the original answer: is there a mechanism that the Treasurer could provide in the exemption for Boxing Day trading that would actually protect small business owners, rather than relying on the goodness of the heart of multinational corporations? That is, is there any way, as part of the exemption, that it could be legally enforced that small businesses wouldn't be forced to trade on Boxing Day?

The Hon. R.I. LUCAS (Treasurer) (14:31): If the Leader of the Opposition is now trying to help me draft an exemption in relation to allowing Boxing Day trade, I am happy to accept any unpaid legal advice he wants to offer. Certainly, from the government's viewpoint, we are prepared to look at a range of options, firstly, for this particular decision. But, as I said, we are taking action to ensure that traders won't be forced to trade. If I as minister were, at some stage in the future, to seek to use this particular power for a future Boxing Day, we would monitor the circumstances in relation to this particular Boxing Day.

We would look at what legal advice and other advice we might get to see whether or not, if there were to be a future use of this power, something else might need to be done to, in essence, ensure what the government has indicated its position is, and that is that workers shouldn't be forced to work and traders shouldn't be forced to trade. But, if people want to shop, if traders want to trade and if workers are prepared to work, why should our silly union bosses and Labor-dictated shop trading laws prevent that?

SHOP TRADING HOURS

The Hon. K.J. MAHER (Leader of the Opposition) (14:32): Final supplementary: the Treasurer mentioned in his original answer that the exemption for this current Boxing Day will be monitored. Who will be doing the monitoring and how will that be monitored?

The Hon. R.I. LUCAS (Treasurer) (14:32): I will be personally engaged in monitoring, but SafeWork SA obviously are the agency of government that monitor—there will be public monitoring, clearly. In terms of the information we collect, I am sure there will be publicly available information from traders in relation to whether or not the government's view is correct—that is, that large numbers of people want to shop on Boxing Day—or whether the view of the union bosses and the Labor Party is correct in that there is no demand for Boxing Day trading in the suburbs. If the Labor Party and the union bosses are correct and no-one turns up on Boxing Day in the suburbs, I suspect that a lot of the traders and those who might support it might cool a little bit in relation to their particular position on this issue.

From the government's viewpoint, we are prepared to make that judgement. Ultimately, as the minister responsible and as the person who has the sole power to issue the exemption, I will need to make the judgements in relation to what information is available. I am very happy to accept any information that the Leader of the Opposition or the union bosses who control the Labor caucus are prepared to forward to the government in terms of how they see the merits or otherwise of Boxing Day trade this coming Boxing Day. We will collect all the information that we can and, ultimately, it will rest on my shoulders to make a judgement about the success or otherwise of Boxing Day trading in the suburbs.

SHOP TRADING HOURS

The Hon. F. PANGALLO (14:34): Supplementary: will the minister use his discretion to deregulate shopping hours on days or weekends other than scheduled public holidays?

The Hon. R.I. LUCAS (Treasurer) (14:34): I have announced that I am already doing that. Consistent with the decision that minister Rau and previous ministers under the Labor government adopted, we have announced, and will gazette this Thursday, extended trading hours in the days leading up to Christmas. The normal course of events is that there is extended trading on all the Sundays in December, and I have announced that I intend to continue with that, but former Labor ministers have used the power to have extended trading for three weeknights, so two Thursdays and a Friday in the week leading up to Christmas. Consistent with what minister Rau did, I have decided to extend trading hours.

There is the occasional example where traders have used one of those extended trading hours, which allows them to trade through to midnight; instead of closing at 9 o'clock on weeknights, to offer one night/day/night of 24-hour trading. Clearly, whilst they will have the power to do that for all three nights—and they had the power under minister Rau's use of the exemption—most of them did not do that, did not see that there was the demand for the 24-hour trading, but we have seen under minister Rau's exemptions the occasional use by a couple of the outlets to have, I think, one example of 24-hour trading on a weekday/weeknight in the period leading up to Christmas.

So the answer to the question is yes. Equally, because the member's question was broader than that—just not Christmas; he was asking the question generally—as the member would be familiar, Mr Roger Drake, a very successful South Australia businessman, with whom I met recently and had a very cordial meeting, requested an exemption for one of his stores on Goodwood Road to trade for extended hours for seven or 10 days during the Royal Adelaide Show, both on the Sunday and the weekend and through the week, so that would be consistent with the honourable member's question. I was very pleased to agree to Mr Roger Drake's request for extended trading hours, and I gave that approval under this particular exemption.

The member will be familiar with the example of the Thebarton Foodland, where again I used that power of exemption for trading, which was again through extended hours, not just for weekends but through the week as well, from recollection. The answer to the member's question is yes, consistent with minister Rau's previous use of it I propose to use the power occasionally, and consistent with my own practice in relation to Mr Drake and the Thebarton Foodland or IGA example that we have done previously, on a case-by-case basis I will make a judgement in relation to the potential use of that exemption power.

SHOP TRADING HOURS

The Hon. C.M. SCRIVEN (14:38): Supplementary: have there been any changes to the approval process for extended trading in the Sundays leading up to Christmas this year?

The Hon. R.I. LUCAS (Treasurer) (14:38): I am not sure I exactly understand the member's question. The approval process is governed by the legislation, so no, the legislation has not changed. We sought to change the legislation and the parliament defeated that. The legislation governs the approval process, so the broad legislative underwriting of this process has not changed.

On this particular occasion, in relation to Christmas trading hours I wrote to a range of the stakeholders, including the union bosses in the shoppies union, seeking their views in relation to Christmas trading hours. I received a range of submissions, but the union bosses from the shoppies union did not respond. I was quite clear: I knew the views of the union bosses of the shoppies union in relation to trading hours. From that viewpoint, the process wasn't really the approval process; it was the consultation process. It was slightly different.

I understand that possibly under the former Labor government the shoppies union and the union bosses might have had a much greater say or a veto power perhaps in terms of what they approved and what they didn't approve. Unsurprisingly, we are quite happy to consult the union bosses at the shoppies union, but we don't subscribe to the view that they control the new Liberal government in the same way they controlled the former Labor government.

SHOP TRADING HOURS

The Hon. F. PANGALLO (14:40): Will the Treasurer give an assurance that he will not use his discretion for a trial of deregulated hours outside the holiday periods and special periods?

The Hon. R.I. LUCAS (Treasurer) (14:40): I can't give the member the assurance along the lines he has given for the reasons I have outlined—that is, when Mr Roger Drake or his equivalent comes to me and asks for something which is completely out of the blue, to say, 'I would like to have extended trading hours for one of my stores for this particular reason,' I will consider Mr Drake's submissions to me on merit. I can't give a blanket assurance because I don't know when Mr Drake or Mr Romeo or one of the IGAs or Foodlands might come to me and ask for extended trading hours in particular circumstances.

But if the import of the member's question is, 'Would I seek to subvert the whole rationale underlying of the Shop Trading Hours Act through the use of exemptions?', then clearly I wouldn't use the power that way, because that would be inconsistent with the shop trading legislation. The shop trading hours legislation makes it quite clear that, whilst ministers do have this power to exempt, and they are quite extensive, it cannot be used by ministers—I don't have the exact words—essentially to undermine the whole rationale and purpose of the legislation.

Indeed, one of the great ironies of this particular power is that a former minister, Graham Ingerson, who is now one of the lobbyists opposing shop trading legislation on behalf of Mr Drake and the IGAs and the Foodlands, back in the late nineties used this particular power to try to provide for extended Sunday trading, I think, throughout all of the city areas at the time. That was eventually fought by the union bosses in the shoppies union and it was eventually defeated in the High Court because it did undermine the rationale for the legislation.

Former minister Ingerson's use of it was way too broad and too expansive. My use of it is very similar to the use that minister Rau has used it for in the past—that is, it is specific, to a purpose and it is judged on a case-by-case merit basis. You have my assurance I will continue to make those sorts of judgements on a case-by-case and merit-based basis.

SHOP TRADING HOURS

The Hon. E.S. BOURKE (14:42): Supplementary arising: I just wanted to confirm that the Treasurer hasn't received any correspondence from the SDA regarding the submission regarding the extended shop trading hours.

The Hon. R.I. LUCAS (Treasurer) (14:43): Unless something has arrived in the last 24 or 48 hours; I have seen lots of tweets and public statements, but in terms of correspondence I haven't. Certainly, whenever the cut-off date was for responses to the consultation and for the week or so afterwards, the shoppies union didn't respond to our request for comment on Christmas trading hours. Up until the last 48 hours I still hadn't received any correspondence from my very good friend Josh Peak or indeed any of the other union bosses that represent the shoppies union. As I said, directly through them and their public statements and through their mouthpieces in the Labor Party, I am well aware of the position of the shoppies union on trading hours legislation.

SHOP TRADING HOURS

The Hon. E.S. BOURKE (14:44): Can the Treasurer please confirm the closing date for the submissions?

The Hon. R.I. LUCAS (Treasurer) (14:44): I will have to take that on notice. It was a number of weeks ago. It was a Friday, but the exact date I am happy to take on notice and bring back an answer to that.

SHOP TRADING HOURS

The Hon. E.S. BOURKE (14:44): Can the Treasurer please confirm if it was before 5 October?

The Hon. R.I. LUCAS (Treasurer) (14:44): No, I can't. I will take it on notice and bring back the exact date at the close of consultation.

SHOP TRADING HOURS

The Hon. E.S. BOURKE (14:44): Can the Treasurer please confirm his email address?

The Hon. R.I. LUCAS (Treasurer) (14:44): I'm not sure where else this is heading, whether the honourable member wants my personal home phone number or mobile phone number, but if this

is of particular interest to the honourable member, my email address is Rob.Lucas@sa.gov.au. Some people, for reasons that other people in the community have pointed out, still tend to use the parliament email address, which is Rob.Lucas@parliament.sa.gov.au. The ministerial one, the correct one, I suspect is on my website, my media releases, my business card and everywhere else. I am sure Joshie and the boys and girls at the shoppies union have got copies of my email addresses. They probably even have my telephone number.

The PRESIDENT: The Hon. Ms Bourke, it is the last supplementary on this line.

SHOP TRADING HOURS

The Hon. E.S. BOURKE (14:46): Is there a general email address that this may have been sent to, i.e., Treasurer.dtf@sa.gov.au?

The Hon. R.I. LUCAS (Treasurer) (14:46): Well, there are other email addresses, but I don't know. That's not my email address, but there may well be other—

The Hon. K.J. Maher interjecting:

The PRESIDENT: Leader of the Opposition, please don't give advice out loud to your own members. Technical discussions should remain private to the Labor Party.

The Hon. R.I. LUCAS: If, ultimately, the shoppies union have sent a submission to some other email address or something, I'm sure they'll write to me and claim that they did so, or whatever it is, but my office has advised me that I have not received a submission. The email and/or letter that went to the individual stakeholders who were being consulted made it clear where the responses should go. Might I say, just about everybody else who received the letter managed to find a way of getting their submission back to me as the responsible minister.

The PRESIDENT: The Hon. Ms Scriven, this is probably going to be the last supplementary on this topic, I think.

SHOP TRADING HOURS

The Hon. C.M. SCRIVEN (14:47): This is to clarify the Treasurer's early answer in regard to changes to the approval process. Is the minister saying that he has made no changes administratively to the method of approval for Sunday trading in the weeks leading up to Christmas?

The Hon. R.I. LUCAS (Treasurer) (14:47): What I said—and I can only repeat it—is that the underlying premise of making these decisions is the shop trading legislation. That hasn't changed. In terms of the actual consultation process, I did change the consultation process. I understand I did. I am not entirely familiar with what the Labor Party used to do, but the process I adopted was to write to stakeholders and say, 'What say you about Christmas trading hours suggestions?'

My understanding was, but I wasn't actively engaged at the time—and you can speak to the union bosses, the shoppies union and former ministers—that there was a different sort of consultation process under the Labor government, where the shoppies union had much greater say and much greater power in relation to what was approved and what was not approved; that is, in essence, to use my phrase, they had a de facto veto right. That is, if the shoppies union didn't agree to something, then the Labor Party and the Labor government wouldn't agree to it either.

Under the new Liberal government, the shoppies union, unsurprisingly, don't have the same control that they might have had under the former Labor government. The consultation process was different, but in terms of what governs the approval process, which was the member's question, that's the shop trading hours legislation, and that stays the same, obviously, because there's been no change to the legislation.

SHOP TRADING HOURS

The Hon. C.M. SCRIVEN (14:49): I seek leave to make a brief explanation before asking a question of the Treasurer regarding shop trading hours.

Leave granted.

The Hon. C.M. SCRIVEN: The Christmas period is an important time for families to spend together. Retail traders and workers should be able to spend time with their families, but the Boxing Day trading exemption that the Treasurer plans on introducing will mean many families will miss out on spending quality time together. My questions are:

1. How is the Treasurer ensuring that workers will not be forced to work on Boxing Day if they do not want to?

2. Will the Treasurer guarantee that workers will not be forced to work on Boxing Day unless they want to?

The Hon. R.I. LUCAS (Treasurer) (14:49): The exemption that will be gazetted this Thursday, on which I have already made a decision, will make it quite clear that workers will not be forced to work on Boxing Day.

The Hon. C.M. Scriven: Is that a guarantee?

The Hon. R.I. LUCAS: That is the exemption I am giving. The advice I received, as I issued the exemption, was that conditions can be placed on the exemption, and one of the conditions of the exemption is that workers cannot be forced to work on Boxing Day. That will be a condition of the exemption.

SHOP TRADING HOURS

The Hon. C.M. SCRIVEN (14:50): A supplementary: will that condition include a provision that workers can't be penalised for not working on Boxing Day?

The Hon. R.I. LUCAS (Treasurer) (14:50): The provision will be as I have explained it; that is, workers cannot be forced to work on Boxing Day. It is as simple as that. The essential argument that has been used is that workers might be forced to work against their wishes. I might say that I am intrigued as to why a worker in Marion is of greater concern to Labor members and the shoppies union than a worker in the Adelaide CBD or Mount Barker. Workers in the CBD and workers in Mount Barker also have families; the honourable member might find that surprising, but they also have families.

Part of the arrangement is that shops are allowed to open on Boxing Day in the CBD, in Mount Barker, in Victor Harbor and Mount Gambier. As I said, and for the edification of the honourable member, those workers also have families, so I am intrigued by the notion that the workers at Marion are in some way different to the workers in the Adelaide CBD. It might surprise the honourable member that a lot of the workers in the Adelaide CBD don't actually live in the CBD, they might actually live in Marion or some of the suburbs as well and they travel into the city to work.

This issue of whether workers are forced to work or traders are forced to trade is an existing issue in relation to the CBD, Mount Barker and virtually all of regional South Australia, with the potential exception of Millicent, so the challenge I put to Labor members, the shoppies union and others is: why do we have two classes of workers in South Australia? Why is there a class of workers who work in the CBD or Mount Barker who, from the Labor Party's viewpoint, have fewer rights or entitlements, if you listen to their argument, than a worker at Marion or Tea Tree Gully?

All we are saying is that it has actually worked pretty well in the CBD, it has worked pretty well in Mount Barker and Mount Gambier and Murray Bridge. We think it can work pretty well in Marion and Tea Tree Plaza and Colonnades and Munno Para.

SHOP TRADING HOURS

The Hon. C.M. SCRIVEN (14:53): A further supplementary: will the Treasurer be working in his office on Boxing Day? If not, why does he deserve a public holiday when small traders and retail workers do not? Is he saying they are second-class citizens, since he used the 'class' term?

The Hon. R.I. LUCAS (Treasurer) (14:53): No, I won't be working in my office on Boxing Day. However, my very able Premier will be representing me in relation to Boxing Day. This is a silly argument that the Labor Party and some others utilise. One can use this argument about working on Saturdays and Sundays. I don't sit in my office on Saturdays and Sundays either but, by and large, for most of the year I am available for telephone calls and media interviews and a range of other

things, whether that be at home or at community-based functions. This might surprise the honourable member, who hasn't been a minister, but you don't actually sit in your ministerial office all the time.

SHOP TRADING HOURS

The Hon. E.S. BOURKE (14:54): I seek leave to make a brief explanation before asking a question of the Treasurer regarding shop trading hours.

Leave granted.

Members interjecting:

The Hon. E.S. BOURKE: I know, we're so lucky. In yesterday's *Advertiser*, Lord Mayor Martin Haese raised concerns that the decision to extend Boxing Day trading to suburbs would impact on CBD businesses and on Adelaide's vibrancy. The Lord Mayor repeated these concerns on Leon Byner's FIVEaa program this morning. My questions to the Treasurer are:

1. What notification did the Treasurer provide the Rundle Mall association, traders and other stakeholders, apart from the front page of *The Advertiser*, that suburban stores would be able to trade on Boxing Day?

2. What does the Treasurer think the impact on CBD traders will be as a result of extending Boxing Day trading to stores in the suburbs?

3. In response to the correspondence you issued to stakeholders seeking submissions in relation to extended trading hours for non-exempt shops for the 2018 Christmas trading period, which stakeholders wrote back in support of extending trading on Boxing Day to the suburbs?

The Hon. R.I. LUCAS (Treasurer) (14:55): I am well aware of the position of the Rundle Mall traders, the Lord Mayor and others. Over the last 12 to 18 months, I have had a series of discussions with interested stakeholders about shop trading reform. This is not something the new Liberal government has hidden; this is something we have been arguing for for many, many years. We took it to previous elections and we took it to the most recent election.

We were up-front, open, transparent and accountable about our policy, and over the last 12 to 18 months I met with Mr Joy and his then CEO in relation to shop trading hours. They made it quite clear that they wanted the monopoly position, at least in relation to the metropolitan area, for the CBD maintained. They saw it was in the best interests of the CBD, and I can understand why they would want the monopoly position to be maintained.

Equally, at some time over the last 12 to 18 months, certainly prior to the election, I spoke with Martin Haese and indeed some others associated with the Adelaide city council again who supported the monopoly position continuing for the CBD and its traders. That is unsurprising. Their position has been publicly known for some time, and I was well aware of it.

To answer the honourable member's question as to whether I gave prior notice to stakeholders—prior to announcing the decision—the answer is no. Unlike the former Labor government, we didn't have a nod and a wink with individual, favoured stakeholders, such as the union bosses at the shoppies union or others. We sought consultation in terms of various people's views on Christmas trading hours. I considered those and then, using the powers of exemption that minister Rau and others had used previously, I made the decision and announced it without giving prior notice to either Rundle Mall traders, the union bosses, the shoppies union or indeed anybody else.

SHOP TRADING HOURS

The Hon. E.S. BOURKE (14:58): Supplementary: do you think it's appropriate to not provide any advice to those businesses that are going to be impacted by you extending the trading hours? So small businesses in South Australia, don't you think they had a right to know that you were going to extend the trading hours into the suburbs?

The Hon. R.I. LUCAS (Treasurer) (14:58): What I think everyone in the community, including the small business traders, had the right to know was for me, consistently with broadly the past practice, to give plenty of notice in relation to the decision the government had taken.

The advice I had received was that, in and around about early November or sometimes the very last week of October, former ministers—Labor ministers generally—had advised what the Christmas trading hours provisions were because, not unreasonably, traders need to know what particular extended trading hours were going to be permitted or not. They need to organise rosters, people who are working need to organise their family arrangements and those sorts of things, so, not unreasonably, you should give as much time as possible. That's why we made the decision as quickly as we could.

So, yes, we do believe that people should get as much notice as they can. That is why we took the decision as early as we could in terms of considering the submissions we had received, clearly, from my viewpoint, in terms of sensibly using the powers that I have, seeking legal advice in terms of what the extent of those particular powers might be and then ultimately making a decision.

The PRESIDENT: The Hon. Ms Bourke, a further supplementary?

SHOP TRADING HOURS

The Hon. E.S. BOURKE (14:59): Sorry, just to clarify because it wasn't actually provided—

The Hon. R.I. Lucas: You don't have to apologise; I'm enjoying this.

The Hon. E.S. BOURKE: No—so am I.

The Hon. R.I. Lucas: You don't have to apologise.

The Hon. E.S. BOURKE: I am not apologising.

The Hon. R.I. Lucas: You said, 'I'm sorry.'

The Hon. E.S. BOURKE: It's just a nervous tic I have.

Members interjecting:

The PRESIDENT: The honourable member was apologising to me, the Hon. Mr Lucas.

The Hon. R.I. Lucas: She was apologising to you, was she?

The PRESIDENT: Yes.

The Hon. E.S. BOURKE: Yes.

The PRESIDENT: The Hon. Ms Bourke, ask the question.

The Hon. R.I. Lucas: You don't have to apologise to the President either.

The Hon. E.S. BOURKE: I must have missed your list of stores that provided support. I know you said that generally there was support, but I don't know if you could provide those listings of the people who wrote to you in abundance seeking to be able to trade on Boxing Day?

The Hon. R.I. LUCAS (Treasurer) (15:00): I am happy to take that particular question on notice. In relation to one of the earlier questions, I think the closing date for submissions might have been 5 October, if that's a Friday, but if it's not that particular date I will correct that when I bring back any other answers that I might have.

SHOP TRADING HOURS

The Hon. T.J. STEPHENS (15:01): A supplementary question: Treasurer, have you had any representations from the good people of Streaky Bay, which is the home of Kerrin McEvoy, who won the Melbourne Cup today?

The Hon. R.I. LUCAS (Treasurer) (15:01): Not in the last 24 hours, but certainly over the last 12 to 18 months we have had submissions from a whole variety of people, I suspect some including Streaky Bay. If Kerrin McEvoy is one, what a great result that is for South Australia. If only I could have seen the race, Mr President, I would have been even happier.

The Hon. T.A. Franks interjecting:

The PRESIDENT: The Hon. Ms Lee, you have the call.

CHANGING PLACES

The Hon. J.S. LEE (15:02): My question is to the Minister for Human Services about an initiative for people living with a disability. Can the minister please provide an update to the council on the progress of the rollout of Changing Places toilets and the marvellous Marveloos in South Australia, and can the minister please outline the significant benefits for people living with a disability?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:02): I thank the honourable member for her question and for her interest in this area. Can I start by paying tribute to the Hon. Kelly Vincent, who was a strong advocate for Changing Places in South Australia. I also acknowledge that, through her advocacy, $1.7 million was committed by the former government to develop 15 Changing Places toilets and to purchase two transportable Marveloos.

Changing Places provides an accessible toilet design, including a height-adjustable, adult-sized change table, a tracking hoist system, non-slip flooring and increased space to accommodate a person in a wheelchair and up to two carers. Clearly, they are for people with significant disabilities to enable them to receive services in dignity, as opposed to facilities that are not up to scratch. I think that all of us who are parents, who may have experienced changing their child on a toilet floor, know that it is really not ideal. So, as part of the inclusion and extending services to people with disabilities, it is appropriate that fully accessible Changing Places are rolled out in this state.

While there are currently no facilities built to Changing Places specifications in South Australia, there are some close to these standards, including at the Elizabeth City Centre, the Adelaide Central Market and the Adelaide Aquatics Centre at North Adelaide. On 5 January 2018, it was announced that four new Changing Places would be built at Adelaide Oval, Rundle Mall, the new U City development on Franklin Street and at Glenelg. It was also announced that the state government would purchase two Marveloos for major public events, which are accessible toilets that meet the same standard as Changing Places, and are transportable.

I am pleased that Changing Places contracts have been finalised with the City of Adelaide for a facility in James Place, with a contribution of $100,000 from the state government, and the Adelaide Oval Stadium Management Authority, with a contribution of $50,000. A further announcement was made on 31 January this year that funding would be allocated to the regional councils of Mount Gambier, Victor Harbor, Port Lincoln and Whyalla for the 2018-19 year. A grants process is planned for the remaining two years of Changing Places funding.

In May 2018, all local councils were invited to submit an expression of interest to manage a Marveloo. An industry brief was held on 18 September to inform interested councils and not-for-profit organisations about applying for funding to manage a Marveloo, and a request for proposal was opened on the Tenders SA website and closed on 16 October 2018. The evaluation team is going to meet this month to assess their applications. Again, I thank the honourable member for her question and look forward to the further rollout of these important facilities.

LAND TAX

The Hon. J.A. DARLEY (15:05): I seek leave to make a brief explanation before asking the Treasurer a question about land tax.

Leave granted.

The Hon. J.A. DARLEY: In the budget this year it was advised that land tax relief will be provided as of 1 July 2020, with the tax-free threshold increasing from $369,000 to $450,000 and the top rate of land tax being reduced from 3.7 per cent to 2.9 per cent, resulting in a reduction in total land tax receipts of approximately $20 million. Can the minister advise of any reason or reasons why the estimated land tax receipts in the following financial year 2021-22 are likely to rise by $17 million?

The Hon. R.I. LUCAS (Treasurer) (15:06): I am happy to take the question on notice but I suspect the answer is that as a result of valuation increases which are being initiated by the Valuer-General under a program—partially, I should say, under a program initiated by the former government in terms of the revaluation initiative. I suspect that is in large part what is driving the

potential increases in land tax, even though there will be a significant reduction in the rate of land tax that is being levied by the government at that particular top rate from 2020 onwards.

I am happy to take the question and bring back a more detailed response but I think the simple response is that clearly the government's actions in the budget will lead to a reduced collection of land tax but if, at the same time, overall valuations are increasing or a significant number of those valuations are increasing, then even the reduced land tax regime that the government has announced will lead to increases in revenue from the mere fact of the impact of that particular initiative on valuations across the state.

SHOP TRADING HOURS

The Hon. K.J. MAHER (Leader of the Opposition) (15:07): I seek leave to make a brief explanation before asking the Treasurer a question about shop trading hours.

Leave granted.

The Hon. K.J. MAHER: By letter dated 28 September 2018, the Treasurer wrote to interested parties, as he outlined in question time today, in relation to Christmas trading hours, and it states:

> Given Christmas is fast approaching and the passage of the Retail Trading Bill 2018 has not conclusively been determined by Parliament, I invite you to provide a submission in relation to extended shop trading hours for non-exempt shops for the 2018 Christmas shop trading hour period in South Australia.
>
> This will help inform the Government's position on an exemption under the Shop Trading Hours Act 1997 (the Act) to provide additional trading hours for the Christmas period.
>
> Should you wish to provide a submission, please do so by 5.00pm Friday 5 October 2018 to Treasurer.dtf@sa.gov.au.
>
> Yours sincerely,
>
> Hon. Rob Lucas MLC
>
> Treasurer.

Is it still the Treasurer's contention, as he has publicly stated and as he has repeated in the house today, that he received no submission from the SDA to the address nominated by him in his letter?

The Hon. R.I. LUCAS (Treasurer) (15:09): Yes, Mr President.

The PRESIDENT: Leader of the Opposition, supplementary.

SHOP TRADING HOURS

The Hon. K.J. MAHER (Leader of the Opposition) (15:09): Supplementary: if upon checking, the Treasurer did discover that on Friday 5 October 2018 at 2.27pm he did in fact receive an email reply with an attached letter to his request for views about Christmas shop trading hours from the SDA, will he publicly apologise, in the same way that he has castigated the union in public in the media, and will he apologise for misleading the house if he did, in fact, receive a response at 2.27pm on Friday 5 October?

The Hon. R.I. LUCAS (Treasurer) (15:10): I am always happy, if anything I indicate to the house subsequently proves to be incorrect, to immediately correct the record and apologise to those who might have been offended. The clear advice from my office, and from all of those who have been associated with collating the replies to the submission, was that no submission was received from the shoppies union.

As I said, not just in relation to this issue, I am a very reasonable man. If anything I indicate, either publicly or to the house, subsequently proved to be incorrect, I would immediately seek to correct the record and indeed, if I have offended anyone, apologise for that. As I said, that was the very clear and explicit advice, not only soon after the submissions closed but even recently, as I sought to make the final decision, because I thought there may well have been people who missed the deadline and submitted things after the deadline, including the shoppies union.

To be fair, I think there were probably one or two other stakeholders who did not reply or chose not to; they did not have to reply. It was an invitation to them to reply should they so choose.

I inquired prior to making the decision to my office whether we had received any further submissions, and the clear advice I got was that no, we hadn't. As I said, I am a very reasonable person. If anything proves to be incorrect, I will correct the record as soon as I establish that.

The PRESIDENT: Supplementary, Leader of the Opposition.

SHOP TRADING HOURS

The Hon. K.J. MAHER (Leader of the Opposition) (15:11): Further supplementary: the Treasurer said he would correct the record in parliament.

The Hon. R.I. Lucas: I said if it was incorrect.

The Hon. K.J. MAHER: If it was incorrect, he would correct the record in parliament, is what the Treasurer said. Will he also correct the record in the other forums in which he has made these assertions, if it proves out he was not telling the truth?

The Hon. S.G. Wade: 'Proves out'? What does that mean?

The Hon. R.I. LUCAS (Treasurer) (15:12): I am not sure that 'if it proves out' is grammatically correct.

The Hon. S.G. Wade: It must be street talk.

The Hon. R.I. LUCAS: It must be street talk, yes. I will be very happy to correct the record wherever I am asked to correct the record, but certainly in relation to, more importantly the house, if anything I have ever indicated I subsequently establish to be incorrect—not just including this particular issue but any other issue—I would, as is appropriate, correct the record as soon as possible.

SHOP TRADING HOURS

The Hon. K.J. MAHER (Leader of the Opposition) (15:12): Final supplementary: will the Treasurer undertake to check as soon as possible and bring back an answer to the chamber tomorrow?

The Hon. R.I. LUCAS (Treasurer) (15:12): I am always very happy to check any particular issue, question or statement that I make in the house.

REPATRIATION GENERAL HOSPITAL

The Hon. J.S.L. DAWKINS (15:13): My question is directed to the Minister for Health and Wellbeing. Will the minister update the council on the recent steps the state government has taken as it continues to reactivate the Repat site?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:13): I thank the honourable member for his question. The Marshall government is committed to reactivating the Repat site as a genuine health precinct. We will deliver a first-class health and wellbeing precinct that caters to the growing health needs of South Australians. I am pleased to inform the council that the government will be opening 20 new beds at the Repat by the end of the year. The beds are specifically designed for long-stay patients who have completed their medical treatment but are currently forced to stay in acute hospital beds while they are waiting for out-of-hospital support.

We have also announced that a further 20 beds, originally scheduled to close by December 2018, will remain open within the VITA precinct on the Repat site. The 40 beds are a much-needed boost for our health system. The Repat precinct is a far more appropriate environment for patients recovering from medical care who are awaiting placement through a commonwealth scheme such NDIS, or an aged-care placement, rather than sitting in a hospital bed in an acute setting.

It's a better outcome for patients, who will be in a much more conducive environment for their care, and it's a better outcome for acute patients and people coming into hospitals through the emergency department. I have been provided with estimates that for every one of those acute beds that is freed up 10 more acute patients can be accommodated. With 20 new beds in the system, it

means we can expect around 200 patients to be able to access a bed that would otherwise have been unavailable.

Being in an acute bed when you don't need acute hospital treatment is bad for you and it's bad for the system. Our health system needs the Repat reactivated and South Australians want the site reactivated. We know South Australians want this site reactivated because, unlike the former government, we have listened to the community. We listened to the dozens of veterans and their supporters, who spent five winter months on the steps of parliament. We listened to the more than 120,000 signatories of the Save the Repat petition. We listened to the community's demands to retain the Repat site—and this government continues to listen.

More than 1,500 members of the community participated in or responded to the community and stakeholder engagement process to develop a master plan for the reactivation of the Repat site, which commenced in August this year and closed in mid-September. We have released the report from the Repat consultation, which was compiled by an independent community engagement team. The overwhelming consensus is that the Repat site needs to be reactivated. The Marshall government is dedicated to listening to clinicians, the community and key stakeholders as we develop a master plan for the site. The plan will be released in coming months and will be available for public comment.

As part of our early activation of the site, we have ensured the Repat Memorial Chapel remains a place for the community to honour our veterans. I will be attending the Repat's traditional Remembrance Day service this Sunday, and I am delighted that, as we celebrate the centenary of Armistice, we have secured the future of the Repat health precinct, with commemoration of veterans at its heart.

SA HEALTH

The Hon. F. PANGALLO (15:16): I seek leave to make a brief explanation before asking a question of the Minister for Health and Wellbeing, the Hon. Stephen Wade, about SA Health's petty practices.

Leave granted.

The Hon. F. PANGALLO: I have been contacted by two constituents about the service they received from SA Health. One is a critically ill patient in Hampstead Rehabilitation Centre who has difficulty in breathing and is fed intravenously because this patient is unable to swallow anything because it will cause life-threatening lung infections. The condition causes the patient to constantly cough up phlegm, requiring nursing staff to wipe it with tissues. The patient has been told that, because the ward is allocated just six boxes of tissues a week, they must pay for their own supply.

In another matter, a constituent recovering from a broken leg requested to hire a commode. When it was delivered to her home, she and her husband were disgusted by the condition of the chair. It was in a poor state and covered in stains from previous use, raising hygiene concerns. The constituent was told that equipment was not maintained to a standard because of funding cuts.

My question to the minister is: while appreciating the situation of the health budget, are the government such tightwads that it is now policy that patients will need to supply their own incidental items, like tissues and wipes, in our public hospitals and care facilities? Is there a policy regarding the cleanliness of equipment delivered to clients, and does the minister believe it's acceptable that medical hire equipment can be delivered unclean and pose a possible health risk?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:18): I thank the honourable member for his questions. I am more than happy, as always, to follow up concerns from constituents about the quality of care they receive from SA Health, so I will certainly speak to the member and get what details I can about the care that he refers to. First of all, I would like to clarify whether or not it was an SA Health service. We are not large providers of home-based equipment, so I will be keen to identify whether or not it's a public health service. To the extent that the service falls short of community expectations, I will pursue that matter on behalf of the honourable member.

MENTAL HEALTH SERVICES

The Hon. I. PNEVMATIKOS (15:19): I seek leave to make a brief explanation before asking a question of the Minister for Health and Wellbeing regarding mental health clients.

Leave granted.

The Hon. I. PNEVMATIKOS: Yesterday, Anglicare retrenched 43 workers, including a number of expertly trained mental health workers employed under the Personal Helpers and Mentors scheme. They were working with mental health clients. This follows a reduction in funding to this program at the same time that people with mental health are finding it very difficult to transition to the NDIS. My questions to the minister are:

1. What conversations has the minister had with Anglicare about these job and service cuts?

2. Further, has the minister appealed to the federal government to reverse funding cuts so that these mental health workers can keep providing services?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:19): I thank the honourable member for her question, but I must admit that I don't know if the information that underlies her question is actually accurate. It is my understanding that it does not relate to the program she refers to. My understanding is that it relates to the transition of the exceptional needs unit, which unit is a team facility, whatever you like to call it, that sits under the responsibility of the Minister for Human Services.

RESTART A HEART DAY

The Hon. D.G.E. HOOD (15:20): My question is to the Minister for Health and Wellbeing. Will the minister update the chamber on initiatives within the primary care sector?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:20): I thank the honourable member for his question and for his interest in health care. In terms of primary healthcare initiatives, last month we celebrated the international Restart a Heart Day, a day to raise awareness of the importance of hands-on CPR. Paramedics and heart attack survivors took the opportunity to work to highlight the importance of people across the state learning to call, push and shock in the event of a cardiac emergency: call 000; push (meaning use CPR); and shock (apply a defibrillator).

The stark statistic is that only one in 10 South Australians survive a cardiac arrest, but this figure can be significantly improved with bystander CPR and a shock from an automatic external defibrillator. Fifty-eight per cent of witnessed cardiac arrests in South Australia result in bystander CPR. This number has remained relatively unchanged over the past seven years. This figure is particularly unfortunate when an individual suffering a cardiac arrest is more than twice as likely to survive if somebody intervenes in the first few minutes, either with CPR or a defibrillator. For every minute with CPR, the chances of surviving a cardiac arrest are reduced by 10 per cent; after 10 minutes, without it there is little chance of survival at all.

South Australian paramedics and ambulance officers perform a vital service to the community in the work they do, but if more South Australians were trained in these skills it would bring additional and significant benefits. Community groups and businesses are encouraged to acquire a defibrillator and register it. People should be made aware of defibrillator locations and, if they are registered, 000 will alert bystanders. Lives can be saved through increased awareness and simple training.

I take this opportunity to commend the Presiding Officers for the work that has been done in this building to ensure that defibrillators are available. There are four defibrillators located in this building: in Old Parliament House the defibrillator is located on the street level in the atrium entering from the courtyard; in this building proper, on the lower ground floor there is a defibrillator at the stairs next to the loading dock; on the ground floor a defibrillator is located outside the Legislative Council messengers' office; and there is none on the first floor but one on the second floor opposite the lift. I am a bit concerned to note that there are none on the first floor, considering that is the floor I am on.

I had the opportunity myself on Restart a Heart Day to join a heart attack survivor, together with paramedics from SA Ambulance Service, in undertaking CPR training. I would encourage all South Australians to consider undertaking training in CPR, which they can do through the SA Ambulance website, and I thank the Ambulance Service for their support of this initiative.

MINISTERIAL LEGAL ACTION

The Hon. T.A. FRANKS (15:23): My question is to the Treasurer. Has the Minister for Child Protection sought indemnification for the legal action she is currently bringing against the member for Badcoe, the shadow minister for child protection? Has that request, if made, been approved and, if so, to what quantum?

The Hon. R.I. LUCAS (Treasurer) (15:24): No, not to my knowledge. I am not sure whether, if such an application was to be made, it would come to me or to the Attorney-General. In relation to the question, on my understanding—I don't have full line of sight of this issue—the general principles in relation to potential indemnification don't relate to actions that ministers take against others. They relate to indemnification if they are being sued as a result of statements they have made as ministers and they believe that they have been defamed.

That was certainly the practice under the former government, it was certainly the practice under the former Liberal government and it is certainly going to be the practice under this Liberal government. If the actual case to which the honourable member is referring is where a minister of this government believes that they have been defamed by somebody else and they were instituting legal action they wouldn't be entitled to, and therefore they wouldn't seek indemnification from either me, the Attorney-General or indeed anybody else in the government.

I am pretty confident that is an accurate summary of the position. If it is not, I will bring back further information to the honourable member, but I am pretty confident that is an accurate summation of the situation.

ROYAL ADELAIDE HOSPITAL

The Hon. J.E. HANSON (15:25): I seek leave to make a brief explanation before asking a question of the Minister for Health and Wellbeing regarding a sleep unit at the RAH.

Leave granted.

The Hon. J.E. HANSON: Yesterday, the minister was presented with a petition from 2,000 South Australians calling upon him to re-establish the sleep unit at the RAH. This unit helps diagnose and treat life-threatening breathing conditions. Before the election, there was an agreement with the clinicians for the sleep unit to be re-established by using four beds in the medical day treatment unit at marginal cost. This was confirmed again by SA Health after the election. My question to the minister is: why has the government gone back on the previous SA Health commitment to establish the sleep unit in the medical day treatment unit at the RAH?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:26): You would think that the Labor Party would desist from setting itself with a target mark on it, trying to highlight the deficiencies in the establishment of the new Royal Adelaide Hospital. There was a sleep laboratory at the old Royal Adelaide Hospital, yet the former Labor government over 10 years designed and built a hospital, at a cost of $2.4 billion, and did not have a dedicated sleep laboratory in that facility.

This government is now faced with yet another opportunity to try to fix up Labor's mess, and what do we get from Labor? Constant carping and constant criticism of the government trying to make the best of a very bad situation. Not only did they build a PPP, a privatisation initiative, that cost $2.4 billion to build and will cost us $11 billion over the remaining 29 years, but the Labor Party wants to take, time after time, the opportunity to highlight its own failings in delivering health services. Yet all they can do when this government is workmanlike, getting on with the job of fixing the mess, is to carp and carp and carp.

The Hon. J.E. HANSON: Point of order: my question related to a petition that was handed to the minister. My question related to a record of whether or not it is going to be established within the facility. What I haven't heard is anything relating to those, only to previous governments. I am just wondering if this government actually wants to outline what it is doing.

The PRESIDENT: The Hon. Mr Hanson, I give the minister some latitude. I am sure, now that you have pointed out the requirements of your question, he will come to it. Minister.

The Hon. S.G. WADE: Of course, I was talking about the sleep unit at the Royal Adelaide Hospital. That's what the question was about. If the member doesn't want to hear about the failings of the party that he is a member of and that this government is committed to fixing, they don't have the right to even put themselves up as an alternative government.

Let's be very clear that the RAH was not designed to include an inpatient elective sleep service. Retrofitting a four-bed sleep laboratory is very expensive. It is an option that is being looked at. The report on that service has been provided to the CEO of CALHN and is currently under investigation. A briefing will be provided to me in due course after the CEO has the opportunity to consider it.

Bills

PUBLIC INTEREST DISCLOSURE BILL

Second Reading

Adjourned debate on second reading.

(Continued from 23 October 2018.)

The Hon. R.I. LUCAS (Treasurer) (15:29): I think all members who wanted to speak have spoken, so on behalf of the government I thank honourable members for their contribution to the bill. There are a number of amendments, and I think there may well have been a slightly revised version of an amendment tabled this afternoon. I look forward to the debate in the committee stage.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. K.J. MAHER: I suspect there will be ready answers because these are questions that have been asked regularly at clause 1 on Attorney-General's bills: who had the government consulted with in the preparation of this bill, what submissions were provided and what was the tenor of those submissions?

The Hon. R.I. LUCAS: My advice is that, because this bill was so similar to the bill the former Labor government introduced, no further consultation was deemed to be necessary because the former Labor government, one would assume, would have conducted wide consultation with all interested stakeholders. Because it was so similar to the bill introduced by the former Labor government, the consultation the former government had undertaken was relied upon in terms of the introduction of this piece.

The Hon. C. BONAROS: I have a question in relation to how information regarding the bill is going to be provided to public servants. What sort of education campaign are we going to have around this new piece of legislation?

The Hon. R.I. LUCAS: My advice is that, upon passage of the legislation through the parliament, the Attorney-General's Department, in consultation with the ICAC commissioner and his staff, more particularly with the Office of the Commissioner for Public Sector Employment, will work together on an appropriate commencement date for the program. In part, that will be guided by the need for public sector employees to be provided with information about the new legislation.

The final shape and nature of the communication program and education materials for public servants has not been concluded yet. One will need to wait for the passage of legislation to see exactly what needs to be communicated before you can make those decisions. I think the honourable member would understand that. Once the parliament has agreed on what it wants to see enacted then the public sector can respond accordingly. Those three agencies will work together in terms of

what is an appropriate communication/education program to ensure public servants, in particular, are properly educated about the new roles and responsibilities under the legislation.

The Hon. K.J. MAHER: That raises some important points. Will ministers and their staff be provided with training about what constitutes appropriate disclosures and how to deal with them?

The Hon. R.I. LUCAS: I think, as the honourable member would probably appreciate, having been a former minister, the answer is that that would be an important part of the education and communications program, particularly for staff working in ministers' offices. I am not sure whether it will go as far as becoming formalised, as might be inferred from a training program, but the provision of communication and educative materials being made available to ministerial staff, and indeed to ministers, would certainly be part of the overall program as well.

The Hon. K.J. MAHER: In addition to the penalties dealt with in the legislation, will consideration be given for the introduction of codes of conduct or similar documents for those who do not deal appropriately with disclosures, particularly in relation to ministers and their staff?

The Hon. R.I. LUCAS: There is certainly a code of conduct for public servants. I need to take advice—I do not have an immediate response—as to whether the code of conduct that applies to public servants automatically applies to ministerial contract staff. I suspect the answer is no.

I know, as a minister in the new government, that one of the issues we are considering is the notion of a code of conduct for ministerial staff. I am not sure that under the former government there was actually a code of conduct specifically relating to ministerial contract staff, but that is an issue we will take on advisement and consider what an appropriate response would be.

I suspect those who are seconded into ministerial offices are, by and large, public servants, and I suspect the code of conduct that relates to public servants generally would probably apply to those public servants who are seconded into ministerial offices. I guess the special group is that handful of people who are ministerial contract staff; that is, they have a contract with the premier of the day. It may well be that there was no existing code of conduct for them under the former government.

It is an issue that, as a minister in the new government, I have applied my mind to, and I will be considering what options, if any, there might be in that area.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. M.C. PARNELL: To assist the committee, there are two amendments that were filed in my name and there are two amendments filed in the name of the Treasurer. The issue is in relation to the definition of 'journalist' and, whilst my amendments were filed some four months ago, my recollection is that it was generally agreed that the definition of 'journalist' in this legislation should be the same as the definition of 'journalist' in the shield laws legislation that we passed some little while ago. As a consequence of that I do not intend to move either of my amendments and will be supporting the Treasurer's amendments which, I understand, ensure that those two definitions are consistent.

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

Amendment No 1 [Treasurer–1]—

Page 3, line 29 [clause 4(1), definition of *journalist*]—

Delete '(subject to a regulation made under subsection (2))'

In doing so can I agree substantially with the statements that have just been made by my friend and colleague the Hon. Mr Parnell. This amendment and amendment No. 2 in my name simply seek to make the definition of 'journalist' in this bill consistent with the definition that was agreed to by this place in relation to the journalist shield laws. So I just repeat exactly what the Hon. Mr Parnell has indicated.

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

Amendment carried.

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

Amendment No 2 [Treasurer–1]—

Page 4, lines 34 and 35 [clause 4(2)]—Delete subclause (2)

This amendment is consequential on the first.

Amendment carried; clause as amended passed.

Clause 5.

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

Amendment No 1 [Maher–1]—

Page 5, line 1 [clause 5(1)(b)]—Delete 'public officer' and substitute 'person'

Amendment No 2 [Maher–1]—

Page 5, line 14 [clause 5(4)]—Delete 'public officer' and substitute 'person'

Amendment No 3 [Maher–1]—

Page 5, line 16 [clause 5(4)]—Delete 'public officer' and substitute 'person'

This is one where if there are reasonable explanations I am happy to either withdraw or not support my amendments, and there may be reasonable explanations, but I guess this is a good time to tease those out.

Under clause 5 the bill provides immunity for appropriate disclosures of public interest information. There are two types of information that can be disclosed: firstly, in relation to the disclosure of environmental and health information, and under the scheme it is 'a person' who makes a disclosure of environmental and health information who is granted immunity for appropriate disclosure, but when it comes to the disclosure of public administration information it is only a 'public officer' who is afforded that protection.

One example that has occurred to the opposition is if there is a contract to supply stationery to a government department, and there is someone within government, a public officer under the definition, who thinks that there is inappropriate public administration, that public officer who reveals the information about this stationery contract gets the protection of immunity, but if it was someone in the private sector who was supplying the stationery who made that disclosure, they are not afforded that protection. So it does not provide the same incentive for someone who would tend to reveal the same information about impropriety because they are in the private sector rather than the public sector. We are wondering if there is a policy rationale for the two different definitions for the different things, and is that an example that could be the case?

The Hon. R.I. LUCAS: The government's position is to oppose, and I have a lengthy explanation as to why. I am happy to put that on the record and then perhaps, if that still has not convinced the Leader of the Opposition, I am happy to take further more specific questions.

The reasons for the government opposing are as follows. One of the reasons for reviewing the Whistleblowers Protection Act was that having enacted the ICAC Act the legislation did not align with or recognise that new integrity measure. Under the ICAC Act any person can report conduct that the person reasonably suspects involves corruption or misconduct or maladministration in public administration to the Office for Public Integrity. A public officer is obliged to report conduct that he or she reasonably suspects raises a potential issue of corruption or serious or systemic misconduct or maladministration in public administration. The bill and the ICAC share policy objectives and operate in the same area. They should operate in a complementary manner to enhance integrity in public administration.

One of the criticisms of the Whistleblowers Protection Act, when reviewed by Mr Lander in 2014, was that it captured many kinds of whistleblowers. The argument that whistleblower protection should be available for the broad range of complainants was made as early as 1991 by the Queensland Electoral and Administrative Review Commission reporting in the wake of the Fitzgerald

Commission, and South Australia adopted this approach in 1993, but Queensland did so only in part. Since then, three other jurisdictions have adopted the broad approach but in doing so did not need to consider the operation of coexisting integrity legislation.

The decision to confine the protections under the proposed legislation is based on the recommendation of the Hon. Bruce Lander QC in his report on the review of the Whistleblowers Protection Act 1993. In his review, Mr Lander specifically considered the question of whether the protection should apply to any person who makes a disclosure of public information in relation to conduct in the public sector and concluded that they were not needed because, first, a member of the public does not need special encouragement to make a disclosure about unacceptable conduct in public administration because he or she is unlikely to be subject to organisational pressure to refrain from reporting the unacceptable conduct.

Secondly, a public officer is more vulnerable than a member of the public to the kind of victimisation that the legislation seeks to prevent; that is, a member of the public is unlikely to lose his or her job, suffer demotion or face disciplinary action as a consequence of making a disclosure about unacceptable conduct in public administration. Thirdly, members of the public may make a complaint about unacceptable conduct in public administration to the Office for Public Integrity or the Ombudsman and enjoy an appropriate level of protection. Both the ICAC Act and the Ombudsman Act contain provisions concerning a duty to inform a complainant about an outcome of a complaint.

That said, the bill does contain provisions for reporting by any person where the matter concerns a substantial risk to public health or damage to the environment. This was a specific recommendation based on the fact that the wrongdoing will not necessarily be restricted to conduct carried out in the public sector and the person with knowledge of the wrongdoing may not be a public officer. This is consistent with the legislation of other jurisdictions. The amendment is not necessary, in the view of the government, and will affect the complementary operation of the proposed legislation with the ICAC Act. It is for those reasons that the government is opposing this particular amendment.

The Hon. M.C. PARNELL: The opposition posed a reasonable question as to why there appeared to be different provisions for public servants and non-public servants, but I think the minister has given a reasonable explanation based on the work of Commissioner Lander. One of the things that he has told us just now rings true to me, and that is that non-public servants are not going to face the same level of potential discrimination within the Public Service if they do not work there. There is less harm that can be done to them and, therefore, less need for whistleblowers' protection rules to apply. On balance, to keep legislation consistent, I do not think the opposition has made the case for these three amendments, and the Greens will not be supporting them.

The Hon. K.J. MAHER: As I foreshadowed, this is not a set of amendments we felt exceptionally strongly about, but we were keen to have the reasons put on the public record, in *Hansard*. Given the explanation that has been given, I can indicate that we will not be pursuing those amendments, and I seek leave to withdraw the amendments insofar as I need to withdraw the number of amendments that I moved.

Leave granted; amendments withdrawn.

Clause passed.

Clause 6.

The Hon. C. BONAROS: I move:

Amendment No 1 [Bonaros–1]—

Page 6, line 28 [clause 6(b)(iii)(B)]—Delete '120' and substitute '90'

Perhaps if it assists, amendment No. 2 also deals with the same issue, so I may just speak to them together. Basically, what these amendments do is reduce the period of time from 120 days down to 90 days before a whistleblower can go to a journalist or to a member of parliament, where they do not receive notification of the outcome of the action taken of their disclosure. It is certainly SA-Best's view that 120 days is too long to receive a response of the outcome of the action to be taken. We note that, especially in some situations, wrongdoing may be of such gravity and urgency that disclosure to a journalist or a parliamentarian is justified and needs to be done in a reasonable time.

We consider that 90 days is sufficient and certainly more reasonable than 120 days for a response to be received by the investigating authority of action taken.

The Hon. R.I. LUCAS: The Attorney-General, being a very reasonable minister, is very happy to support the amendments.

The CHAIR: The Hon. Ms Bonaros, can I ask you to move No. 2 as well, and then we will do them together.

The Hon. C. BONAROS: I move:

Amendment No 2 [Bonaros–1]—

Page 6, line 30 [clause 6(b)(iii)(B)]—Delete '120' and substitute '90'

Amendments carried; clause as amended passed.

Clause 7 passed.

Clause 8.

The Hon. C. BONAROS: Can I indicate that I will not be moving amendment No. 3 [Bonaros-1] or amendment No. 5 [Bonaros-1] but I will be moving amendment No. 4 [Bonaros-1]. I move:

Amendment No 4 [Bonaros–1]—

Page 8, line 2 [clause 8(1)]—Delete '$10,000 or imprisonment for 1 year' and substitute:

$20,000 or imprisonment for 2 years

The amendment increases the penalty under clause 8 of the bill up to $20,000 or two years' imprisonment in cases where the identity of a whistleblower is knowingly divulged. That is double that currently provided for in the bill. This amendment and, indeed, a number of other amendments which I will be moving are intended to provide some consistency with the penalties covering whistleblower protections in our federal legislation to recognise the severity of divulging that sort of information. In essence, all I am doing is doubling what the government has proposed and that will bring our legislation in line with federal legislation.

The Hon. R.I. LUCAS: Again, the government is prepared to support this particular amendment.

Amendment carried; clause as amended passed.

Clause 9.

The Hon. C. BONAROS: I move:

Amendment No 6 [Bonaros–1]—

Page 8, line 27 [clause 9(5)]—Delete '$10,000' and substitute:

$20,000 or imprisonment for 2 years

Again, the amendment simply increases those penalties for the victimisation offence up to $20,000 and two years' imprisonment, consistent with the previous amendment that I just moved and consistent with federal legislation covering the same issue.

The Hon. R.I. LUCAS: The government is prepared to support this amendment as well.

Amendment carried.

The Hon. C. BONAROS: I move:

Amendment No 7 [Bonaros–1]—

Page 8, line 33 [clause 9(7), definition of *detriment*, (a)—

Delete paragraph (a) and substitute:

(a) loss or damage (including damage to reputation); or

(aa) injury or harm (including psychological harm); or

The amendment expands the definition of 'detriment' under clause 9 of the bill, consistent with a definition, again, that exists at the commonwealth level in the commonwealth bill. Whilst we note that the list is inclusive and not exhaustive, we are of the view that it is of benefit to broaden the scope of injury, damage or loss, and that is what this amendment aims to do.

The Hon. R.I. LUCAS: There is only a limit to the level of support at the Attorney-General's. In this particular case, the government's position is to oppose this amendment for the following reasons. The government does not support this amendment. The definition of 'detriment' is the same as that contained in the victimisation offence in the Independent Commissioner Against Corruption Act, and the two, in the government's view, should remain consistent due to the similar subject matter and public policy objectives.

Paragraph (a) currently provides that 'detriment' includes injury, loss or damage. This is deliberately broad and does not include further specific examples, so that the court retains a broad discretion to determine what is considered 'detriment' for the purposes of the section. The government considers that the current definition is appropriate. For those reasons, we are opposing this particular amendment.

The Hon. K.J. MAHER: I rise to indicate that on this particular amendment the government will be supporting the SA-Best amendments filed.

The Hon. R.I. Lucas: The opposition.

The Hon. K.J. MAHER: The opposition will be supporting the SA-Best amendments filed. It does not further limit what 'detriment' means. It arguably could broaden what it means. We do not think it does any harm, and for those reasons we will be supporting the amendment.

The Hon. M.C. PARNELL: The Greens too are supporting these amendments. I take what other members have said, that the definitions are inclusive and so we are actually further expanding on what is included. I take the Treasurer's point that we have a battle of consistency here. The Hon. Connie Bonaros wants us to be consistent with the commonwealth laws, and the honourable Treasurer wants us to be consistent with the ICAC legislation.

I have a solution, because the Greens are here to help. We have, just in the last few months, had a standing committee that looked at the ICAC legislation, and the ICAC legislation will be coming back before us, I fully expect, in a very short period of time. That would be, I put to the council, the ideal opportunity to further reform the ICAC legislation to be consistent with the Public Interest Disclosure Bill, if the amendment that looks as if it has the numbers to pass now ultimately finds favour in the lower house. We can make them consistent, but it might require the government having a bit of a look at the ICAC legislation, which I fully expect we will see either before the end of this year or early next year.

Amendment carried.

The Hon. C. BONAROS: I move:

Amendment No 8 [Bonaros–1]—

Page 8, after line 37—After subclause (7) insert:

(8) For the purposes of this section, a *threat* of reprisal may be—

(a) express or implied; or

(b) conditional or unconditional,

and in any proceedings dealing with an act of victimisation (including proceedings for an offence against subsection (5)) it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

Again, this amendment clarifies 'threat' for the purposes of this section, namely, clause 9—Victimisation. It clarifies that a threat to cause detriment need not be express or unconditional but may also be implied or conditional. In addition, it clarifies that it is not necessary for a person seeking an order to prove that he or she has actually feared that that threat would be carried out. I think the Hon. Mark Parnell has made a very wise suggestion to the council in terms of how we can consider

this. Given the last amendment, I would suggest that we also support this amendment. If we need to review these clauses, we can do that if and when the ICAC bill is presented before the council again.

The Hon. K.J. MAHER: The opposition, for similar reasons as previously outlined, will be supporting this and may indeed support the suggestions that have been made to have consistency amongst state acts as well as consistency with federal acts.

The Hon. R.I. LUCAS: For similar reasons, the government is opposing the amendment. As noted in relation to the previous amendment, the victimisation offence in the bill is consistent with the victimisation offence in the Independent Commissioner Against Corruption Act, and the government is of the view that it should remain that way. The government considers that there is no need to be prescriptive in the legislation. It is also unclear how a court would make this determination when there is no need to prove fear that the threat would be carried out.

The Hon. M.C. PARNELL: The Greens will be supporting this amendment as well. In fact, I think the case for this amendment is, if anything, even stronger than the other one that we have just dealt with. Whilst we need to be careful about the evidence that we have, because a lot of it is in the realm of speculation, my guess would be that the sorts of threats are likely to be subtle. They are likely to be couched in terms of, 'You might want to be careful,' or, 'If a certain thing happens, a certain consequence might flow.' They are unlikely to be, 'If you do this, I will do this to you.'

I imagine that in the realm we are talking about—in the public sector, for example—a whistleblower coming forward would be leaned on, initially probably in quite subtle terms, and I think we need to be able to pick up that behaviour. So clarifying that threats can be either expressed or implied and that they can be conditional or unconditional makes sense. It might be said that that is how it would be interpreted anyway, but the Greens' position is: let's just remove the doubt and write these words into the act.

Amendment carried; clause as amended passed.

Clause 10.

The Hon. C. BONAROS: I move:

Amendment No 9 [Bonaros–1]—

Page 9, line 5 [clause 10(1)]—Delete '$10,000' and substitute '$20,000'

This amendment is consistent with previous amendments that I have moved in terms of the increase in penalties sought for false or misleading disclosures.

The Hon. R.I. LUCAS: As outlined previously, the government is prepared to support this amendment.

Amendment carried; clause as amended passed.

Clause 11.

The Hon. C. BONAROS: I move:

Amendment No 10 [Bonaros–1]—

Page 9, line 13—Delete '$10,000' and substitute '$20,000'

This increases the monetary penalties under clause 11 of the bill for preventing or hindering disclosures, again consistent with the other amendments I have moved.

The Hon. R.I. LUCAS: Again, the government supports this particular amendment.

Amendment carried; clause as amended passed.

Clause 12.

The Hon. K.J. MAHER: This clause refers to a 'principal officer'. For the purposes of this section, who is a principal officer?

The Hon. R.I. LUCAS: My advice is as outlined in the definition clause, but it may well be that the honourable member has a more specific question. The definition in the bill indicates that:

principal officer of a public sector agency or of a council means—

(a) in the case of a public sector agency—

(i) if the agency consists of an unincorporated board or committee—the presiding officer; or

(ii) in any other case—

(A) the chief executive officer of the agency; or

(B) if there is no chief executive officer of the agency—a person designated as principal officer of the agency for the purposes of this definition by the responsible minister for the public sector agency;

In those cases the responsible minister, I would imagine, would have to, upon passage of the legislation, designate a principal officer of the agency if there is no CEO of the agency.

The Hon. K.J. MAHER: I thank the Treasurer for his response. In the application of this act to ministerial offices, who is the principal officer for a ministerial office?

The Hon. R.I. LUCAS: We might have to take that on notice. I suspect the answer is probably the minister, but we will have to take advice on that.

The Hon. K.J. MAHER: You can bring back a reply if you like.

The Hon. R.I. LUCAS: I am happy to provide a reply to the member by way of correspondence after the passage of the legislation. The member has been a minister, so I guess the only options are either the minister or the chief of staff to the minister. In terms of the freedom of information legislation, if you have an officer in your ministerial office who is the designated FOI officer, the person to whom you go for internal appeal is the—I do not know what the definition in the FOI Act is—the principal officer or the person in charge of the office, and that is the minister, who responds. If the answer is anything different from that, the Attorney-General will correspond with the Hon. Mr Maher and provide alternative advice, if it is anything different from what my initial suspicions might be.

The Hon. K.J. MAHER: How does the definition of 'principal officer' differ from the definition of 'responsible officer', which we will consider in the next section?

The Hon. R.I. LUCAS: In relation to clauses 12 and 13 of the legislation, clause 12 makes it clear that the principal officer must ensure that one or more officers are designated as responsible officers. Then under clause 13—Duties of responsible officers, those one or two officers must:

(a) receive appropriate disclosures of public interest information relating to the agency or council and ensure compliance with this Act in relation to such disclosures; and

(b) make appropriate recommendations to the principal officer of the agency or council in relation to dealing with such disclosures; and

(c) provide advice to officers and employees of the agency or council in relation to the administration of this Act,

and may carry out any other functions relating to this Act.

In layperson's terms, it sounds like the responsible officers are doing a good chunk of the work, whilst the buck eventually stops on the desk of the principal officer. The responsible officer or officers are receiving disclosures of public interest information, they are ensuring compliance and they make recommendations to the principal officer. The principal officer eventually has to either agree or not agree with the recommendations and make the final decisions. The buck stops with him or her in terms of the final decision. The responsible officer also provides advice to officers and employees of the agency in relation to the administration of the act. It sounds to me like the responsible officers are doing the bulk of the work, whilst ultimately decisions and final recommendations rest with the principal officer.

The Hon. K.J. MAHER: Again, in relation to a minister's office, is it the understanding that the minister would also be the responsible officer?

The Hon. R.I. LUCAS: Again, if it is anything different to what I am about to put on the record or have previously put on the record, the Attorney-General will correspond with the leader, but my best summation would be, if what I said earlier was correct—that is, the minister is the

principal officer—the minister would appoint his or her chief of staff or senior adviser as the responsible officer and he or she would do the bulk of the work as outlined here as the duties of the responsible officer, make recommendations to the principal officer—if I am correct, that is to the minister—and he or she would make the decision.

In the alternative, if the principal officer was the chief of staff, it would be a little bit confusing then. You would have the chief of staff potentially appointing more junior level advisers, I guess, within the minister's office or the office manager or somebody as being the responsible officer. My best guest is that, on reflection, what I have just put on my record might be a reasonably accurate summation of how it would work in relation to a minister's office. If it is not, the Attorney-General will correspond with the leader and clarify the response I have put on the record.

The Hon. K.J. MAHER: Just for the sake of clarity, is it the case that this act applies to ministerial officers?

The Hon. R.I. LUCAS: Again, we will take that on notice. My advice is we understand that it does. But if it does not—I cannot see immediately where it is excluded—we will advise the leader.

The Hon. K.J. MAHER: We are not certain that it does, but we think it does because we cannot find anywhere that it says it does not. Is that a fair summation?

The Hon. R.I. LUCAS: My current advice is that that is the case. We understand that is the case. I am pleased to advise that my advice is that it is absolute. It does apply to a minister because the definition of public sector agency does include a minister.

Clause passed.

Clauses 13 and 14 passed.

New clause 14A.

The Hon. C. BONAROS: I move:

Amendment No 1 [Bonaros–2]—

Page 10, after line 21—Insert:

14A—Minister may make ex gratia payments

The Minister has an absolute discretion to make an *ex gratia* payment to a person who makes an appropriate disclosure of public interest information as a reward for making the disclosure.

I am not sure that my smooth sailing through this debate is about to continue any further, but I move the amendment standing in my name. This amendment provides the ability for the minister in his or her absolute discretion to make an ex gratia payment to a whistleblower where an appropriate disclosure is made as a reward for doing so.

As I pointed out during my second reading contribution, it is our party's position that the concept of a reward scheme or a bounty scheme aimed at encouraging public interest disclosure whilst also minimising the risks associated with such disclosure is beneficial. These sorts of schemes exist in Canada and the US and they have worked in those jurisdictions with great effect, mainly because, as Senator Whish-Wilson pointed out at a federal level, they encourage disclosure.

The reality is that offering legal protection to someone who has knowledge of corruption or misconduct to come forward and risk their livelihood is not always enough. Providing an avenue for litigation can prove costly and very traumatic.

For the record, it is worth noting that in January this year, when we announced this policy, specifically the proposal for a reward scheme, the then leader of the opposition, Steven Marshall, stated in the media that his party had adopted a policy years ago of paying whistleblowers. It is also important to bear in mind that such a scheme generally operates as the exception rather than the rule.

The proposal for such a scheme has been criticised as potentially resulting in public servants embellishing accounts of wrongdoing for financial gain—in other words, chequebook journalism. However, this has not been the situation in the US or Canada, and I do not expect it would be the

case here. These sorts of arguments serve only to undermine the significant personal and sometimes career-ending sacrifice made by people who make disclosures when facing these sorts of situations. It is not a decision that anyone could make lightly.

I am sure we will hear the argument that public servants are already legally bound to make these sorts of disclosures and that, therefore, these changes only serve to undermine those responsibilities by incentivising disclosure. That is a very simplistic argument that completely ignores the risks associated with the disclosure of information that is very much in the public interest. That is what we are dealing with here and what is at the core of the issue: public interest disclosure.

I acknowledge that Australia is a very different jurisdiction to the US and Canada, which I have pointed to as examples of where this works well, but I do not think that is, in and of itself, a reason to preclude us from considering a reward or bounty scheme. As highlighted by Professor A.J. Brown, a highly regarded expert in this field and a professor of public policy and law for the Centre for Governance and Public Policy at Griffith University, during the federal senate inquiry on this very issue, these sorts of issues could be easily overcome by establishing principles suitable to Australia to govern such a scheme.

Senator Patrick, one of our federal colleagues, said it well when he said, in his dissenting report to the 2018 federal inquiry:

> Whistleblowers aren't always good people; but more often than not they are the best people. They do what they do with integrity and courage and at great risk to themselves.
>
> As Jeff Morris, a whistleblower and hero, stated to the committee:
>
> 'The first thing I'd like to convey is that whistleblowers are human beings. They're human beings taking on massive corporate machines, and it's a very unequal contest. It's the classic case of flesh against steel, and it almost always ends badly. Whistleblowers' health suffers; their finances and their family suffer.'

SA-Best agrees with our federal colleague Senator Patrick that we should recognise and protect whistleblowers as much as possible with strong and unambiguous laws. Anything less would be a lost opportunity.

The Hon. R.I. LUCAS: As the honourable member accurately predicted, the wonderful level of agreement between the government and SA-Best in terms of some of its amendments ends in relation to this particular amendment and its companion amendment. The government opposes this amendment for the following reasons.

The government understands that the purpose of these amendments is to allow for a reward scheme or bounty system whereby a person receives a monetary reward for their disclosure. This appears to be based on recommendations from the Parliamentary Joint Committee on Corporations and Financial Services' September 2017 report, which recommended the introduction of a reward system or bounties for eligible whistleblowers.

The government notes that the commonwealth government introduced a bill in December 2017 to address some of the recommendations of this report; however, notably, the introduction of a reward scheme was not included. It also appears that no jurisdiction in Australia allows for such a scheme as the one being proposed here.

The government does not believe that the practical considerations of such a scheme have been adequately considered. The inclusion of such a provision, despite it stating that the ex gratia payments are at the absolute discretion of the minister, will create an expectation that people will receive a financial reward for coming forward. This could well have a counterproductive effect, as people may be unwilling to come forward unless there is a monetary reward available, or it may encourage reporting that falls short of the requirements for a public interest disclosure, but that will still require consideration by the relevant authority, due to a desire to receive a reward.

The government also wonders where the money to fund such scheme would come from. Including a provision for ex gratia payments to be made without any idea of how they will be funded or any parameters around when such payments might be considered and who would be eligible will create significant practical difficulties in implementation. The government considers that the current provisions of the bill are adequate and appropriate, and it does not support a proposal for a rewards scheme for the reasons outlined.

The Hon. M.C. PARNELL: First of all, I thank the Hon. Connie Bonaros for splitting her two amendments, because the Greens found favour with the first but the second not so much. This is an important provision. I would also like to acknowledge the support of the Attorney-General's office. One thing that we have noticed on the crossbench under the new regime is that there is, I think, a willingness on the part of the Attorney to engage with crossbench members about amendments as they are filed rather than us only finding out on the day what the position might be.

So we were aware that the government was not going to be supporting this amendment. The arguments they put forward were reasonable, but at the end of the day I think there is a greater priority before us, and that is to properly recognise whistleblowers and to also recognise the toll that whistleblowing can pay on the individual.

The Treasurer referred to the Parliamentary Joint Committee on Corporations and Financial Services' report on whistleblower protections from September last year. That is not the only time the federal parliament has looked at this. They looked at it again this year. The Senate standing committee on economics had a look at the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017. As the Hon. Connie Bonaros alluded to, my federal colleague Senator Peter Whish-Wilson from Tasmania put in not a dissenting report but additional comments, which is the polite way they phrase these things sometimes in the Senate.

I will quote a couple of sentences, because I think it is important. Under the heading of 'Whistleblower reward', Senator Whish-Wilson says:

> Offering legal protections is often not enough for someone who has knowledge of fraudulent activities to come forwards with information and risk their financial security, job security and mental health. One of the most important and progressive recommendations of the Parliamentary Joint Committee was to introduce a reward scheme for whistleblowers (Recommendations 11.1 & 11.2) to encourage people to expose misconduct and enable tax authorities to reclaim money.
>
> This is not a radical idea. The US False Claims Act was passed in 1863. It now allows whistleblowers to receive up to 30 per cent of reclaimed money that has been stolen or avoided from government authorities. In 2015, 80 per cent of the around $3.5 billion recovered by US Justice Department was a result of actions taken by whistleblowers.

So 80 per cent of $3.5 billion was thanks to whistleblowers. Senator Whish-Wilson goes on:

> Rewards work. They encourage disclosure. They recover ill-gotten gains. And they help compensate whistleblowers. The Australia Greens support the implementation of the recommendations of the Parliamentary Joint Committee in relation to rewards.

It then goes on—I will not read it all—but the key words are that the rewards should be 'determined within such body's'—in this case the ministers—'absolute discretion'. The recommendations go on to list the sorts of things that will be taken into account by a minister in exercising that discretion but, at the end of the day, we think that it is worth pursuing.

I note the Treasurer's comments, which were similar to those provided to us by the Attorney-General, that you can end up with perverse incentives. I would not see that happening. I would have difficulty seeing someone wanting to move their job into the lucrative area of catching crooks in the Public Service with an expectation of reward. I think that we keep it as absolute discretion; therefore, no-one has any expectation and they do not have any enforceable right. Whether they get any money will depend a lot on their behaviour.

One of the factors that will be taken into account is whether they did things properly through the system as opposed to someone who, as we have been discussing, went straight to a journalist rather than going through the system properly. That might impact on whether they get a reward. At the end of the day, the Greens think that this is a worthwhile amendment and we are pleased to support it.

The Hon. K.J. MAHER: I thank SA-Best for bringing this amendment to the chamber. We have been pleased to vote in favour of every amendment that SA-Best has moved on this bill to date. However, on this one, and I indicate on the next one, the opposition caucus has made a decision not to support the amendments.

In relation to the one that we are currently debating, there is already an absolute discretion to make an ex gratia payment. That is the very definition of what an ex gratia payment is. When we

discussed this, the opposition felt that the scheme, in terms of the Public Interest Disclosure Bill, provides that protection for whistleblowers and it was not necessary to create that extra incentive—although it says 'absolute discretion'—in the hope or, as these things tend to evolve, the expectation of monetary reward.

New clause negatived.

New clause 14B.

The Hon. C. BONAROS: I move:

Amendment No 2 [Bonaros–2]—

Page 10, before line 22—Insert:

14B—Payment of expenses etc

The Minister must ensure that a person who makes an appropriate disclosure of public interest information is reimbursed for any reasonable expenses incurred by the person (including any loss of wages) in connection with making that disclosure if—

(a) the truth of the information disclosed has been established; and

(b) the person makes a claim to the Minister for reimbursement of the expenses and provides such proof of the expenses as the Minister may require.

The amendment provides for the minister to reimburse a whistleblower for reasonable expenses incurred in making the disclosure, regardless of whether a detriment was suffered as a means of recognising any reasonable expenses that they would ordinarily expend in the making of such a disclosure.

The amendment has changed to ensure that those sorts of payments are limited to cases where the expenses were incurred by the person in connection with the making of the disclosure, if the truth of the information has been established and if the person making a claim to the minister for reimbursement of the expenses provides any proof of those claims if required by the minister. I am disappointed that the previous amendment did not get up in relation to ex gratia payments.

If anything, I will respond to something that the opposition said in relation to the incentive. That would have put it at the forefront of people's minds that this is something that they can explore, even in terms of an ex gratia payment. If we are not going to go down the path of having that sort of reward scheme then I would say that the least we can do is to reimburse people. If they have had to take time off from their jobs—I do not know what sorts of expenses they may have incurred but there would be a list there of the sorts of things that they could incur, and taking time off work would be the most likely one—there is no reason why they ought not be reimbursed for those expenses, particularly where those expenses are the result of lost wages.

I think I know which way this amendment is going but, again, for the record, I indicate that I think at the very least this is what we ought to be doing to ensure that people are not left out of pocket for making disclosures that are in the public interest.

The Hon. R.I. LUCAS: The honourable member has accurately predicted the position of the government, and that is that the government is opposing the amendment for the following reason. This is a variation on the 14A amendment that has already been defeated and the government notes that expenses will only be paid if the truth of the information disclosed is established and the person makes a claim for reimbursement and provides proof to the satisfaction of the minister. This amendment remains problematic. It would require the government to reimburse a person who makes an appropriate disclosure of public interest information for any reasonable expenses incurred by that person. The provision proffers no guidance in what might be considered reasonable expenses and, again, does not say where the money for this measure would come from.

The government considers that the current provisions of the bill are adequate and appropriate. If an informant has suffered detriment as a result of their disclosure under the act, clause 9 of the bill provides that an act of victimisation may be dealt with as a tort or as if it were an act of victimisation under the Equal Opportunity Act 1984. For those reasons, the government is opposing this amendment as well.

The Hon. K.J. MAHER: For similar reasons as the government, I can indicate that the opposition will be opposing this amendment. However, I want to place on the record my thanks to the Hon. Connie Bonaros, who spent some considerable time working with the opposition on the amendments and, although we are opposing the amendment, it is much closer to something that we could have supported than as the amendment was originally drafted. Although we are not supporting it on this occasion we understand the intention and thank the honourable member for the work that she has done in making this amendment close to something that we can almost support.

The Hon. M.C. PARNELL: As I alluded to before, the Greens will not support this particular amendment but, similar to the Hon. Connie Bonaros, we are disappointed that the previous one did not get up because it would have actually in some ways covered this field anyway. It is hard to put your mind to what the reasonable expenses might be that would be incurred. One that I imagined was a bundle of papers that a person in a branch office just had to get on to the CEO's desk and there was no other way of doing it but fly from their branch office to the headquarters to physically hand over the incriminating information, and there would be an airfare included and maybe some days off work.

My feeling would be that if ex gratia payments—whilst we have not legislated for them—are still available, by the nature of being ex gratia they can just be done without a legislative basis. I would be pretty disappointed if a person who had gone to great personal expense and risk and had receipts, did not at least get paid back for their great help. They may have recovered millions upon millions for state revenues and I would be very disappointed if they were left in the lurch and out of pocket.

Whilst the difficulty with the amendment as drafted is that it used the word 'must'—they must be reimbursed—you would end up with difficulties such as someone having a legally enforceable right; you would have an argument over which were the reasonable expenses. It was a good attempt, I think, to cover an important topic, and I just hope that despite the failure of both these two new insertions into the bill that the government will have regard to the assistance that is provided to them by whistleblowers and will not be leaving people in the lurch and will at least be compensating them for their reasonable expenses and hopefully, as well, if the case requires it, reward them for their civic duty too.

New clause negatived.

Remaining clauses (15 and 16), schedule and title passed.

Bill reported with amendment.

Third Reading

The Hon. R.I. LUCAS (Treasurer) (16:40): I move:

That this bill be now read a third time.

Bill read a third time and passed.

SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL (MISCELLANEOUS) AMENDMENT BILL

Committee Stage

In committee.

(Continued from 25 October 2018.)

Clause 1.

The CHAIR: On the last occasion we were in committee, we were on clause 1. Does any honourable member have a further contribution on clause 1?

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. R.I. LUCAS: This was the particular clause that saw me report progress at clause 1, because I think there was an indication at the second reading and then at the opening to clause 1 that there would appear, at least on that occasion, and probably still, numbers that may well defeat clause 4 of the bill. That was the first I was aware that there clearly were no amendments to be moved to the legislation. Nothing had been filed, but I was unaware that there was going to be opposition to any particular clause, and clause 4.

I am aware of the publicly stated positions of various members when last we discussed this. The Leader of the Opposition has just indicated that he will continue to oppose clause 4, and I suspect other members may as well. However, I want to put on the record the reasons why the government has moved clause 4 in the manner that it has and the supporting argument for the retention of clause 4 in the bill.

The government's advice is that clause 4 of the bill does not introduce a new cap on the amount of compensation that can be awarded by a magistrate in the South Australian Employment Tribunal. Clause 4 restores the cap on compensation that had existed until it was accidentally removed in 2017. Until 1 July 2017, criminal jurisdiction over so-called industrial offences was dealt with by two magistrates of the Magistrates Court who had been designated industrial magistrates and were co-located with the South Australian Employment Tribunal: their honours magistrates Ardlie and Lieschke. Industrial offences included breaches of the Work Health and Safety Act 2012 and other employment-related legislation.

From 1 July 2017, criminal jurisdiction over these employment-related offences was transferred from the Magistrates Court to the South Australian Employment Tribunal, where they are still dealt with by magistrates Ardlie and Lieschke but now as deputy presidents of the South Australian Employment Tribunal and not as members of the Magistrates Court. The Magistrates Court has, at all relevant times, been subject to a statutory cap of $20,000 in the amount of compensation that its members could award when convicting a person of a criminal offence. This cap applied to magistrates Ardlie and Lieschke prior to 1 July 2017, when they exercised criminal jurisdiction over industrial offences as members of the Magistrates Court.

The cap only applies to members of the Magistrates Court, so it does not now apply to magistrates Ardlie and Lieschke when they are exercising criminal jurisdiction as members of the South Australian Employment Tribunal. The removal of the cap from magistrates Ardlie and Lieschke was not deliberate—this is the government's advice—and was only discovered when brought to the former government's attention by the Crown Solicitor's Office in late 2017. I interpose that this was before the election and under the former government.

Since 1 July 2017, the South Australian Employment Tribunal has dealt with nine criminal proceedings, mainly in Work Health and Safety Act matters. Compensation was awarded in two of those matters to surviving family members. In each of those two cases, the South Australian Employment Tribunal magistrate has awarded compensation in excess of the $20,000 cap, with an average of $60,000 compensation awarded against individual defendants.

If clause 4 were not enacted as drafted in the bill, the entitlement to compensation of a victim or surviving family member when the accused is convicted would depend on whether the offence was a general criminal offence and tried by a magistrate in the Magistrates Court or was an employment-related offence and tried by a magistrate in the South Australian Employment Tribunal. This has the potential to produce inequitable outcomes. A person's entitlement to compensation when an offence is tried by a magistrate should be the same, whether the magistrate sits in the Magistrates Court or in the South Australian Employment Tribunal.

The bill also introduces a provision that would allow a South Australian Employment Tribunal magistrate to refer a matter to a judge of the South Australian Employment Tribunal if the magistrate is of the view that an award of compensation should be made that exceeds the $20,000 cap. This complements an existing provision that allows a South Australian Employment Tribunal magistrate to refer a matter to a judge if the magistrate is of the view that a sentence should be imposed on the defendant that exceeds the maximum fines and terms of imprisonment the magistrate is able to impose.

The president of the South Australian Employment Tribunal has been consulted on this aspect of the bill and has advised that, given the relatively small number of affected cases, the proposed change is unlikely to create any additional burden for the South Australian Employment Tribunal or extend the time for hearing cases.

In advising honourable members about this particular issue, given that there is a decision to be taken by honourable members in relation to the situation where a South Australian Employment Tribunal magistrate believes the issue is important enough to justify an argument for compensation greater than the $20,000—and that may well be the case in the two instances to which honourable members have referred—there is a provision for a South Australian Employment Tribunal magistrate to refer the matter to a judge of the South Australian Employment Tribunal, and the judge is not limited by the $20,000 cap. So the judge could direct, order or make a judgement in relation to compensation in and of the same order that might be done.

As the government's advice has made clear, with the removal of clause 4 potentially we will have inequitable outcomes in relation to whether or not you have a magistrate sitting in the Magistrate's Court or a magistrate sitting in the South Australian Employment Tribunal having two different limits in relation to the extent of compensation. Importantly, if the bill was to stay in the form the government has advised—and, as I said, these recommendations from the Crown Solicitor's Office were raised prior to the change of government, so this is not something that has been driven by the new government in any way—the advice was that this was an unintended consequence of the former government's changes in July 2017.

The Crown Solicitor's Office, under the former government, identified the issue towards the end of last year, but obviously parliament had risen, given the impending election in March 2018. The new government is introducing legislation as a result of the other issue, and this particular issue was included in it on the basis of the advice the former government and the new government received in relation to what was seen by the Crown Solicitor's Office as being an inequitable set of outcomes.

Importantly, on the issue that has concerned honourable members, that is, that in some way an appropriate level of compensation might not be awarded, the government's advice is that the current system would allow that to occur under the proposed structure in the bill where the magistrate would refer the decision to a judge of the South Australian Employment Tribunal. For those reasons, the government supports the existing clause 4 and clearly will oppose the removal or deletion of it by honourable members.

The Hon. K.J. MAHER: I thank the government for its indication of opposition to opposition to the clause, I think is the correct way to describe it. The opposition remains opposed to clause 4. I thank the Treasurer for stating his case and his views about why it should remain in the bill; however, we are not persuaded. I will not go over the contribution I made in my second reading speech, and I think it was even more forcefully put by the Hon. Irene Pnevmatikos in her second reading contribution.

If inequities are identified and need harmonisation, similarly, too, as we discussed with a previous bill that we were just debating, we can come back and fix those up so that the inequities reflect what we are doing here today. Just because there are differences in two different areas is not a reason not to do something in one area; it may well be a reason to do something in both areas. If that really is a concern of the government, if this clause is not included, we look forward to coming back very quickly and fixing up the problem that the government thinks there is.

The Hon. J.A. DARLEY: I indicate that I will support the government's position on this matter.

The Hon. F. PANGALLO: We will oppose this clause 4, and support the opposition. The opposition leader has made some valid points on revisiting this somewhere down the track. Families are already traumatised by workplace tragedy or incidents and they should not be subjected to long, drawn-out proceedings, and this clause could certainly see that happening and could also cause a log jam in that jurisdiction, so we will oppose it and support the opposition on it.

The Hon. T.A. FRANKS: I have some questions of the government at clause 4 with regard to the contribution just made by the Treasurer. The Treasurer has indicated that the president of the

South Australian Employment Tribunal was consulted with regard to the referral by the deputy presidents to a judge. Was the president of the South Australian Employment Tribunal consulted with regard to the appropriateness of a $20,000 cap?

The Hon. R.I. LUCAS: My advice is that he was consulted on the bill that is before the parliament at the moment with clause 4 in it. My advice is we received no comment one way or another about the appropriateness or otherwise of clause 4.

The Hon. I. PNEVMATIKOS: I need to clarify a few issues and perhaps make some comments as well. The industrial magistrates who hear these cases are also judicial officers of the tribunal, so they wear two hats in any event. It is feasible that the provision as contained in clause 4, if applied, would work out as follows: one industrial magistrate hears the matter, believes that the matter requires an award of compensation beyond the $20,000, the matter is referred on and the other industrial magistrate, sitting as a deputy president, can hear that matter.

That would suggest actually introducing a further stage in the process, introducing further delays and additional costs in terms of pursuing a matter, rather than acknowledging that these industrial magistrates are judicial officers and are able to exercise the discretion and make the decision accordingly. There have been only two cases of the nine where they have awarded criminal compensation beyond that amount. That does not suggest judges who are either incompetent or judges who are exercising the discretion in an unfettered manner.

The Hon. R.I. LUCAS: My advice is that the honourable member's summary there is not accurate. In the case that the honourable member made, they can only refer it to a judge, not to each other.

The Hon. I. PNEVMATIKOS: I understand that, but what I am suggesting is that clause 4 would anticipate that occurring, though. If an industrial magistrate decided that the matter was beyond compensation in terms of that cap, then it is quite feasible that an industrial magistrate sitting as a judge—the other industrial magistrate—could hear the matter.

The Hon. R.I. LUCAS: My advice is that that is not accurate; that is, industrial magistrates Ardlie and Lieschke are magistrates, not judges.

The Hon. I. Pnevmatikos interjecting:

The Hon. R.I. LUCAS: No, they are not.

The Hon. I. Pnevmatikos: They are both deputy presidents as well.

The Hon. R.I. LUCAS: My advice is they are not judges. In the example the honourable member has indicated, where one of the industrial magistrates, under clause 4 of the bill as envisaged, was to make a decision to refer it to a judge, they would have to refer it to a judge and not to either Ardlie or Lieschke because they are not judges. That is the advice I have been given. In the circumstances that the member has outlined, my advice is that is not possible.

The Hon. T.A. FRANKS: What was the opinion of the deputy presidents with regard to this $20,000 cap issue? Were the deputy presidents' opinions sought?

The Hon. R.I. LUCAS: My advice is there was no comment from the deputy presidents on the $20,000 limit. I think, as I have outlined, this is not something that has been driven by the new government. The advice given to the new government, and to the former government prior to the election, was that this was an inadvertent change as a result of the decisions that were taken back in July 2017; that is, this $20,000 compensation limit for magistrates had been accepted.

However, when the changes were enacted by the former government and the parliament endorsed them, this particular issue was not picked up. It was only subsequently that the Crown Solicitor's Office picked up the particular issue and highlighted the concerns both to the former government prior to the election and then, after the election, to the new government. When this other issue, which is the more substantive issue for this legislation, came as a result of the court decisions, the advice from Crown law was to include this particular issue in the bill.

The Hon. T.A. FRANKS: Getting back to my point, the very two people who have implemented what we now seek to remove, inadvertent or not, were not consulted with regard to this

change; is that the case? I wanted a simple answer to that question. I did not want a lecture about the fact that we have a new government now. We also have a new parliament now.

The Hon. R.I. LUCAS: I have not offered any lectures at all. I am seeking to provide information to the committee, with due respect. My advice is that the bill was sent to the president. What discussions the president undertook with deputy presidents, magistrates and others within his jurisdiction was an issue for him. I cannot give you advice as to what level, but the first question, which was either from yourself or the Hon. Ms Pnevmatikos, was about what advice the president provided. The answer was that we had not received any advice.

On the follow-up question about what advice was given to the deputy presidents, we have not had any advice on that, but the bill was sent to the president, as is appropriate. The normal course is that it goes to the head honcho of a particular agency. He or she may well consult with others within their jurisdiction, or they may or may not respond as the leader of that particular agency themself. I cannot help the honourable member. I am not trying to be difficult.

I cannot help the honourable member as to the level of consultation involved, but I am told that it is not the practice of the government, through the Attorney-General's Department, to send it to each and every officer within a particular agency. It goes to the head of the agency, who is the boss, and what consultation the boss undertakes is entirely a matter for that particular person.

The Hon. T.A. FRANKS: What was the advice of the Law Society with regard to clause 4?

The Hon. R.I. LUCAS: My advice is that there was no comment from the Law Society on that particular issue.

The Hon. T.A. FRANKS: Can the Treasurer clarify whether there was advice on the bill from the Law Society and at what point the bill was given to the Law Society seeking their response?

The Hon. R.I. LUCAS: Yes, there was a response from the Law Society. In answer to the honourable member's question as to what advice the Law Society provided on this particular aspect of the bill, my advice is that there was no comment from the Law Society on that particular aspect of the bill.

The Hon. T.A. FRANKS: Can the Treasurer please outline the two situations that have resulted in the averaged-out figure of $60,000 of compensation? What were the two particular situations where that amount was deemed appropriate, and what were the two amounts?

The Hon. R.I. LUCAS: Whilst we check our advice, my recollection is that the Hon. Ms Pnevmatikos put on the record the details of two cases, and I think she has referred to those again, so I suspect we are talking about the same two cases, but I will seek further advice. My recollection from the previous debate is that the Hon. Ms Pnevmatikos put on the record the details about the two cases when we were last discussing this issue.

The Hon. T.A. FRANKS: I imagine not just myself but also other members of this council today received correspondence from the Treasurer's office with regard to citing the $60,000 average figure of the two cases that were awarded over the $20,000 cap, so I assume that the Treasurer, before authorising that communication with us, had the details. Could he now provide them?

The Hon. R.I. LUCAS: Again, I think this was placed on the record by the Hon. Ms Pnevmatikos, but I will stand corrected if that is not the case. In one matter $20,000 was awarded to each of the spouse and three children of the deceased—a total of $80,000. In the second matter there were two defendants and $10,000 was awarded against each defendant to the two parents and three siblings of the deceased.

These have been the only cases in which SAET has awarded any compensation since 1 July 2017. Again, the Hon. Ms Pnevmatikos can correct the record but I think the Hon. Ms Pnevmatikos did place, substantially, that information on the record when we were last discussing it.

The Hon. T.A. FRANKS: If the Treasurer could clarify that none of those amounts were individually over the amount of $20,000 but that it was indeed a cumulative figure—

The Hon. R.I. Lucas: Yes.

The Hon. T.A. FRANKS: Is the Treasurer concerned that it was Judge Jennings' noncumulative treatment of such compensation that is the problem here?

The Hon. R.I. Lucas: What do you expect me to clarify again?

The Hon. T.A. FRANKS: A previous ruling has seen that these compensation matters have been treated as noncumulative and that that cap has applied in a noncumulative way. Is that not the error that this parliament should be correcting rather than reducing the cap?

The Hon. R.I. LUCAS: My advice is that we are not aware of the particular judgement to which the member is referring.

The Hon. T.A. FRANKS: The Greens will be opposing clause 4.

The Hon. I. PNEVMATIKOS: The two cases are Campbell v MacGillivray and Boland v BHP Billiton. Just as a point of clarification, how many deputy presidents do we have in the tribunal and what are their names (not including auxiliary judges who might be called in from time to time to cover overflow)?

The Hon. R.I. LUCAS: There are a few of them. We may have to correct the record later on if we find an extra one or something, but just quickly we think that the list of deputy presidents includes Gilchrist, Farrell, Kelly, Hannon and Calligeros. As I said—

The Hon. I. Pnevmatikos: What about Justice Dolphin, who is president?

The Hon. R.I. LUCAS: You said deputy presidents. As I said, we have not come prepared with a list of the complete membership of the South Australian Employment Tribunal. That is a quick response; if we need to correct the record, and we find another deputy president or two, or whatever it is, we are happy to correspond with the honourable member. But as I said, on a quick reflection, that is a list of five, anyway. There may well be one or two others.

The Hon. I. PNEVMATIKOS: I appreciate that Lieschke is on leave at the moment, so that might be the reason for a smaller list, but anyway, it would be interesting to find out how many judicial members we have at the tribunal.

Clause negatived.

Remaining clause (5) and titled passed.

Bill reported with amendment.

Third Reading

The Hon. R.I. LUCAS (Treasurer) (17:11): I move:

That this bill be now read a third time.

Bill read a third time and passed.

TEACHERS REGISTRATION AND STANDARDS (MISCELLANEOUS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 25 October 2018.)

The Hon. C. BONAROS (17:14): I rise to speak in support of the Teachers Registration and Standards (Miscellaneous) Amendment Bill 2018, which will amend the Teachers Registration and Standards Act 2004 to address a number of issues, namely, the ability of the Teachers Registration Board to suspend the registration of a teacher charged with serious offences and to improve administrative arrangements for the appointment of an acting registrar for the board.

From the outset, I want to put on the public record on behalf of SA-Best the high value we place on the dedication of our educators to their profession and the invaluable input that over 35,000 teachers in South Australia have made and continue to make in the learning journey our children undertake from kindergarten through to primary school and on to high school, preparing them for SACE and beyond. I am sure that we all have warm memories of particular teachers who

recognised the potential in each of us, spurred us on to achieve academically and who helped shape the people we have become.

Teachers are vital to the strong and healthy development of our children, playing a fundamental role in the care and wellbeing of children while at school. We recognise the long hours that teachers work, particularly outside of school hours, marking papers, preparing lessons—usually on weekends and throughout the school holidays—as well as providing additional tutoring to children during school hours in maths clubs and language clubs to give our children an advantage.

It is that dedication that often goes unnoticed by parents and gets criticised by those such as federal Liberal MP, Andrew Laming, who suggested that teachers should work more and take fewer holidays. Perhaps Mr Andrew Laming could look inwards to his own party and colleagues, and all their job insecurities that come with their self-inflicted instability of government, and instead focus on the job that they were elected to do, which is to govern, rather than looking at what our teachers are employed to do. Teachers deserve our respect, that is unquestioned, but they must earn our trust, given that they are charged with caring and educating our most precious resource—our children.

The opposition opined that the vast majority of teachers go out of their way to meet the highest standard on a daily basis but there will always be a small minority who do not. I have highlighted the many ways in which teachers go out of their way to nurture our children, but we must also speak out about those who do not and instead choose to prey on children. While these teachers may be in the minority, it is cold comfort to the innocent children abused in our schools. I remind the chamber that there was only one Shannon McCoole, and I know his name has come up many times in this place, and his appalling depraved actions towards innocent young children gave rise to a royal commission.

It is deeply disturbing to learn recently that a South Australian teacher who had a preoccupation with sexual partners wearing school uniforms and another one who left kids on camp alone overnight while he went to a hotel, are two of 13 local teachers to be struck off or face other disciplinary action in the last year alone. This was detailed in the Teachers Registration Board of South Australia Annual Report 2018. In addition to those two teachers, another five teachers were permanently disqualified from being registered as a teacher for actions, including child exploitation and unlawful sexual intercourse. Let that figure sink in for a moment.

Only last month, we learned that the principal of a southern suburbs school wrote to parents saying that a member of staff had been arrested and charged with sexual offending. Parents were justifiably outraged, having been told that one of the teachers had been charged with sexual offending, but they are not legally allowed to be told that person's identity. That is a debate for another occasion. The examples I have highlighted demonstrate the urgent need for this bill.

Current provisions for the suspension of a teacher's registration limits the board's ability to address any immediate concerns with regard to a teacher's conduct. For example, if the board becomes aware of serious charges laid against a teacher, it cannot take action to suspend that teacher's registration until it has held an inquiry into the matter and determined there is proper cause for disciplinary action. The board may also need to await the outcome of related court action before it can even commence a disciplinary process.

Currently, a teacher's registration will remain valid while any court proceedings and subsequent disciplinary inquiries are underway. In effect, this means that a teacher can potentially hold himself or herself out to be a fit and proper person to work as a teacher, switching from the public sector to the private sector, or working as a tutor, or working as a tutor in people's homes with their children, their vulnerable children, despite being the subject of serious criminal charges relevant to the safety of children.

A teacher facing serious criminal charges related to offences against children remaining on the public register while these matters are finalised has the potential to negatively impact the safety of children and undermines the integrity of the register of teachers. It means that they can still have access to children, our children. This is completely unacceptable, and I applaud the government for moving to address a longstanding issue.

Clause 7 of the bill sets out provision for the registrar of the board to immediately suspend the registration of a teacher who is charged with a prescribed offence pending an inquiry as to whether there is proper cause for disciplinary action against that teacher. The clause also provides for the registrar to vary the conditions of a teacher's registration, including by imposing new conditions, if they are charged with a prescribed offence.

Prescribed offences will be set out in regulations under the Teachers Registration and Standards Act and will replicate prescribed offences under the Child Safety (Prohibited Persons) Act 2016 as well as other serious offences. These include offences against children, whether they be murder, manslaughter, the kidnapping and unlawful removal of a child, rape and other sexual offences against children, including incest.

The bill provides for three members of the board to review a decision of the registrar to suspend a registration or impose or vary conditions on a registration within 60 days. On review, these board members can continue the suspension on the variation of conditions or cancel the suspension or the variation of conditions. A suspension would continue until the board has determined whether there is proper cause for disciplinary action against a teacher or 120 days after the day on which the last charge to which suspension or variation relates has been withdrawn or finally determined or until the suspension is otherwise cancelled under the provisions. The board can determine to cancel a suspension or variation of the conditions at any time.

A teacher whose registration is suspended or whose registration has conditions imposed or varied would have a right to appeal that decision to the Administrative and Disciplinary Division of the District Court under current section 49 of the act.

It is clear from the Teachers Registration Board of South Australia Annual Report 2018 that children continue to be harmed by those they trust, their teachers, and more must be done. We at SA-Best remain open to all possibilities and we have flagged the idea of psychometric and psychological testing of teachers. I know that is not popular amongst all sectors and it is something that we are certainly consulting with sectors about.

I note it is consistent with an announcement made by the Premier on the day of the apology last month. That is an announcement he made which I have been trying to get some more information on in relation to how psychometric testing could possibly be used in this space in terms of child protection issues, because that is what we are talking about here.

A media release from the Minister for Child Protection on the day of the apology to adult survivors of child sexual abuse in our trusted institutions stated:

> The State Government has committed to taking strong actions to support people who have experienced abuse in the past and better protect children in the future.

The federal opposition leader Bill Shorten in his sorry speech said:

> And we are sorry that the abuse and the assault and the rape of children is still going on and is being covered up to this very day in this very country. We are sorry that we still cannot protect our children. We are sorry—all of us in this parliament—that we've not done enough to guarantee that this cannot happen again…Too many Australian children are still living unsafe lives at risk.
>
> It's the true test, isn't it, of our words?

I agree with the Leader of the Opposition that we have not done enough to guarantee this cannot happen again and, of course, it is still happening. Words can be cheap, especially from us politicians, but we must ensure that every child in all our schools is safe, and we will consider every option available to do just that.

The teaching profession deserves the trust and respect of our community. To engender this trust, the state must maintain high professional standards for its teachers and ensure that those teachers registered in South Australia are not only competent educators but fit and proper persons to have the care of children. Every child is precious and every child's innocence must be protected. With those words, SA-Best indicates its support for the bill.

The Hon. R.I. LUCAS (Treasurer) (17:25): I thank honourable members for their indication of support for the second reading of the bill.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. T.A. FRANKS: I remind the government representative, obviously not the Minister for Education but the minister representing the Minister for Education, of my questions in my second reading contribution, which have not yet been answered in the government's summary. I draw the attention of the Marshall government, again, to the findings of the New South Wales Ombudsman that, in fact, drug sniffer dogs four out of five times get it wrong.

I remind the government that I would like an answer to my question now, which is: given the Marshall government's commitment to this war on drugs and to having sniffer dogs in schools, what happens the very first time a sniffer dogs sits next to a teacher in a school, noting that four out of five times that that sniffer dog sits next to that teacher that dog is likely to be wrong? What happens to that teacher? How will they be treated, and how will they be given natural justice, given that it is more than likely to happen in error, according to the New South Wales Ombudsman?

The Hon. R.I. LUCAS: My advice is that the minister and the department are in the process of developing a draft protocol in relation to the use of sniffer dogs within schools. I am advised that they are currently consulting with their partners in the police and also the independent and Catholic sectors. The government anticipates that an agreed protocol will be released in time for the 2019 school year.

The government's advice is that the Ombudsman's report to which the honourable member has referred could be interpreted in a number of ways. The government's view is that the point the Ombudsman is making, in that part of the report, is that there were very few successful prosecutions for supply. The government's view is that this says nothing about possession. Possession is discussed elsewhere in the report. The essential import of the member's question is natural justice for the teachers who may or may not find themselves in that situation. The government's advice is that ensuring natural justice for staff and students is a significant matter being considered in the development of the protocols.

The principle that indication is not evidence of an offence is also incorporated in the protocol for both schools and police. The answer to the honourable member's question is that there is no answer from the government and the department at this stage. It is the subject of further consultation in the development of a protocol for the use of sniffer dogs within schools. The government's intention is to have an agreed protocol released in time for the 2019 school year.

The Hon. T.A. FRANKS: I would like the government to actually bring back an answer at some stage, clarifying its position that the New South Wales Ombudsman's report did not find that sniffer dogs got it wrong four out of five times. From that report, I have here a number of 14,102 searches on people, and in those 14,102 searches no illicit substances were found on 11,248 occasions. That is regardless of a prosecution success rate or not. On what is the government basing its response that that was due to prosecutions rather than searches?

The Hon. R.I. LUCAS: I am only in a position to share the information and advice that the department and the minister provided to me. As the minister handling the bill, I have shared the information I have with the honourable member. I have indicated that a protocol will be developed. I am happy to undertake to ask the Minister for Education, if he has further responses in relation to the honourable member's questions and interpretation of the Ombudsman's report, to correspond with the honourable member in relation to further explanation of his and the department's interpretation of the Ombudsman's report.

However, as we discuss this particular bill today, not being the responsible minister, I am not in a position to give those sorts of responses. I suspect that the main issue of great concern, not only to the honourable member but to all involved in the discussion about the use of sniffer dogs within schools, will be what is ultimately the agreed protocol to be used in terms of their operation. On that,

I can again only add that that is being worked on. The intention is to have an agreed protocol prior to the start of the 2019 school year.

The Hon. T.A. FRANKS: I will not hold up the committee's time too much further. In the minister's original response, he indicated that a consultation process was underway. I heard the reference to the Independent Education Union, but I did not hear a reference to the Australian Education Union. Are they being consulted?

The Hon. R.I. LUCAS: The honourable member might have misheard me. I had not referred to 'union' at all, but to the independent and Catholic sectors, in addition. Clearly, the government sector is obviously being consulted, and I would imagine that all stakeholders are being consulted in relation to government schools. I suspect the reason for the particular advice I was given was to say that there are also discussions going on with the independent and Catholic school sectors. I did not mention unions. They may well be consulted as well.

The Hon. T.A. FRANKS: Just to clarify, have none of the unions been consulted with or are all of the unions being consulted with?

The Hon. R.I. LUCAS: I suspect that will mean that all of them will eventually be consulted with. My answer did not refer to unions at all, but that does not mean that they are not being consulted. I will be amazed if the Australian Education Union is not being consulted in relation to representing the views of teachers in regard to this issue. My guess would be that the appropriate employee associations representing teachers within the independent Catholic sector would also be consulted. If there is anything different to that, I am happy to have the minister correspond with the honourable member. But I suspect that will be an accurate reflection of the situation, either as it is now or as the protocol is developed between now and the start of the 2019 school year.

Clause passed.

Remaining clauses (2 to 8) and title passed.

Bill reported without amendment.

Third Reading

The Hon. R.I. LUCAS (Treasurer) (17:36): I move:

That this bill be now read a third time.

Bill read a third time and passed.

Ministerial Statement

SHOP TRADING HOURS

The Hon. R.I. LUCAS (Treasurer) (17:37): I seek leave to make a ministerial statement.

Leave granted.

The Hon. R.I. LUCAS: As a result of questions raised by, I think the Hon. Ms Bourke, earlier in question time today, I have asked my office to try to establish answers to the questions the Hon. Ms Bourke put to me. As a result of that investigation, it has confirmed that I did not receive an email in the Treasurer's office at 2.27 p.m. on 5 October from the SDA, but as a result of the quite specific nature of, obviously, the information that the honourable member had received, my officers contacted the ICT security adviser in Treasury, and I understand that the advice from the Treasury ICT security adviser is that the particular email to which the honourable member has referred was sent to a junk email box. I will seek leave to table the appropriate report from the junk email system.

As a result of this particular search, I understand that it was identified that an email had been received, but the email was identified by Outlook, which is the email client, as containing 'a potentially unsafe attachment' and was automatically redirected by the system through a junk filter. The email, as a result of the honourable member's specific nature of the timing—2.27, or whatever the time was—has been subsequently located in the junk folder. It has been retrieved and scanned by the ITC security adviser. He or she had to determine whether it was safe to open, and he or she said it was safe to open. I am not sure whether it was going to explode or something along those lines.

Anyway, he or she determined that it was safe to open and has opened it, and has now forwarded it to the Treasurer's office. I seek leave to table a photocopy of the junk email record of the log system.

Leave granted.

The Hon. R.I. LUCAS: This particular attachment has junk email: Treasurer.dtf@sa.gov.au, Outlook. It says 'Secretary SDA branch, Christmas trading'. It says, 'Links and other functionality have been disabled in this message. To turn on that functionality, move this message to the inbox.' The Outlook junk email filter marked this message as spam. We converted this message into plain text format. Outlook blocked access to the following potentially unsafe attachments: 'Christmas trading 2018 PDF'. For whatever reason, the security system identified it as spam and junked it. There was evidently an attachment to the email or letter which they deemed to be potentially unsafe and for that reason it went into the spam with the junk email.

I thank the honourable member for her question. As I indicated, whilst I had not received a submission from the SDA, its submission was entirely consistent with the position it has always adopted in relation to shop trading hours, so it was unsurprising in and of its nature. I cannot see anything in it which was potentially unsafe in terms of the attachment that was there. We are following through. If I have any further information tomorrow, I will share with the chamber what in the message actually caused it to be spammed or identified as junk email.

In closing, I can assure honourable members that I have issued no instruction that any correspondence from any union is to be junked or treated as spam. The systems that exist there now are the systems that existed prior to the change of government.

Bills

HEALTH AND COMMUNITY SERVICES COMPLAINTS (MISCELLANEOUS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 18 October 2018.)

The Hon. T.A. FRANKS (17:41): I rise on behalf of the Greens to indicate that we support the Health and Community Services Complaints (Miscellaneous) Amendment Bill 2018. This bill will amend the Health and Community Services Complaints Act 2004 so that the National Code of Conduct for healthcare workers that was approved by the COAG Health Council for adoption by the states and territories replaces the Code of Conduct for Unregistered Health Practitioners (South Australian code), which is indeed currently in the regulations under the act.

The national code is, as members know, based on the current South Australian code. The South Australian code was adopted from the New South Wales model after the Social Development Committee's 'Inquiry into Bogus, Unregistered and Deregistered Health Practitioners'. That committee did some excellent work, including leading us to where we are now.

It is certainly most welcome that those parts of the practice of health that do not fall within the current regulations and appropriate structures for complaints are able to be dealt with in this way. Certainly, members would also know that one of those areas where it is quite intrinsic within the health system is the area of social work. I think this bill yet again underlines the need for the registration of social workers. This is a second-best option for the moment but is certainly no final solution. I also welcome practices such as gay conversion therapy and other dubious areas of so-called health care being able to be brought into scrutiny to give consumers and citizens alike better protections.

I remind members that at a stage soon I will be bringing my bill to register social workers to a vote, but it would be terribly unparliamentary of me to mention that, so I will actually just draw members' attention to a September 2014 document, which is entitled 'Evidence of harm caused by social workers: Australian and overseas examples', that has been put together by the Australian Association of Social Workers. It identifies examples of harm by country, including a child protection social worker who was charged and convicted with 16 counts of distributing indecent photographs of

children and possessing indecent photographs. The children in the photographs are the same age as the clients that the social worker was working with. That example was from England. That person was struck off the Health and Care Professions Council register and was unable to practice from thereon as a social worker.

Another example is from Ontario, where a social worker who worked in a correctional institution was allocated a client who was incarcerated after being convicted of aggravated sexual assault. The member provided the client with counselling and psychotherapy to assist the client with managing their anger and frustration and to deal with depression, anxiety, childhood victimisation and shame and guilt over the offence for which the client was incarcerated.

The social worker then engaged in a sexual and intimate relationship with the client, engaged in personal phone contact with the client and allowed the client to access confidential records concerning other clients. The social worker discussed details of those relationships with the client in sessions rather than focusing on the client's therapeutic needs. They also shared the substance of the initial mandatory report received by the college with the client that told the client that they had to get their stories straight.

That social worker was in Ontario. They were subjected to a 12-month suspension and ordered to complete a boundaries and ethics course and engage in insight-orientated psychotherapy, and they were supervised in their practice for a period of two years. I could go on and on. Indeed, the Australian Association of Social Workers has gone on and on with countless examples that we know occur within this profession.

As I have said before, there are many good practitioners in this profession and they do deserve our respect. They have some of the most difficult jobs, and they are essential to not just our health care but also of course the community and human services that we so often laud in this place. However, there is an incongruity there: in those particular countries social work is regulated. Here in Australia it is still not.

With those few words, I look forward to this part of this particular bill that we debate no longer being required for social workers because I hope to see them covered by a proper regulation system and registration in the near future.

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

SUMMARY OFFENCES (DISRESPECTFUL CONDUCT IN COURT) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 16 October 2018.)

The Hon. D.G.E. HOOD (17:47): I rise in strong support of this bill, which gives effect to the Marshall Liberal government's election commitment to make it a summary offence for a party to a proceedings to intentionally engage in disrespectful conduct before a court. I imagine this would not come as any surprise to most members, given that I introduced a private members' bill back in 2016 as a pre-emptive move to prevent unacceptable conduct from occurring in South Australian courts, which was largely a response to what had been exhibited at certain hearings interstate.

You may recall, sir, that my bill did receive passage in this place but lapsed due to the proroguing of parliament. Of course, the former shadow attorney-general, now Attorney-General, also concurrently introduced a similar bill in the other place, which was defeated. Obviously, the type of legislation proposed was not perceived as necessary by the government at that time. Needless to say, I am pleased that our parliament has another opportunity to enact some very important provisions that seek to preserve a respect for the rule of law and associated institutions to maintain a proper administration of justice.

The summary offence of disrespectful conduct, as proposed in this bill, aims to catch conduct which presently falls between the existing powers of removing a person from the courtroom and the inherent judicial power of contempt of court. In effect, this new offence seeks to provide the judiciary with wide discretion to deal with disrespectful behaviour of parties to proceedings in a manner that the court deems fit. The particular behaviour that may give rise to such an offence could take the

form of refusing to stand before a judge after being requested to do so, using offensive or abusive language and interfering with or undermining the authority or dignity of the court.

There must be an intentional physical act as opposed to an involuntary act, and it does not require a person to purposefully be disrespectful. It carries a maximum penalty of $1,250 or three months' imprisonment, which is consistent with other penalty provisions under the Summary Offences Act 1953 and the Acts Interpretation Act 1915. It is important to note that this offence would not apply in the criminal jurisdiction of the Youth Court, in appreciation of the commonly accepted principle that youths should generally not be liable for a term of imprisonment except in exceptional circumstances.

As I previously mentioned, the impetus for attempts to introduce such provisions over the past few years has essentially been due to a series of instances where extremely inappropriate conduct has been exhibited in other jurisdictions around the nation. In one case in New South Wales, for example, an accused who was tried for murder refused to stand for four judges over an 18-month period on every occasion it was expected of her. It was later determined by a former attorney-general that the failure to stand did not meet the threshold of being contempt of court, and no further action would therefore be taken.

In Victoria five Muslim men who had been accused of travelling to Syria to join Islamic State appeared in court and refused to stand for a Victorian magistrate. When questioned by the court the lawyer for the accused men stated that their refusal to stand should be excused, contending that their action was in congruence with their religious beliefs. He explained that these men did not recognise or respect any authority other than that of their god, Allah.

Although it has been pointed out on numerous occasions that the intent of this bill is not designed to target any one particular group within our community—and it does not—it is apparent that some individuals may be determined to use their religious observances as an excuse to defy our institutional conventions. Interestingly, I am aware that the Attorney-General recently received advice, via an explanatory note on the judicial process and participation by Muslims prepared by the Australian National Imams Council, that there is in fact no provision under Sharia law prohibiting Muslims from standing up or bowing before a magistrate or judge.

I also add that when I announced my intention to introduce my private members' bill in the previous parliament it attracted considerable media attention, and I was subsequently contacted by many constituents expressing their overwhelming support for the measures to better manage courtroom behaviour. I was actually contacted by members of the Islamic community also supporting the bill. In fact, the Islamic Association of South Australia itself approached me offering its full support for the proposals both verbally and in person, with confirmation in writing on behalf of all its official establishments and affiliates.

There is broad support for this bill right across the various communities we find in our state. In my estimation there is clearly a broad consensus within the community that our courts should be afforded adequate tools to deter and handle any disrespectful action that could hinder their effective and orderly function.

An important feature of our democratic society is showing respect towards our laws and the judicial officers who are charged with upholding procedural fairness and impartiality in our court system. It is concerning that disruptive behaviour may be going unchecked under current legislation, which certainly has the potential to undermine public confidence in the judiciary should it prove to impact the flow of proceedings and diminish the court's ability to effectively manage and adjudicate cases.

Our courts are already under immense pressure from the substantial amount of cases waiting to be heard, and we have a responsibility to ensure they are not further unnecessarily burdened through being forced to endure offensive or improper actions by those who refuse to adhere to the fundamental expectations we have held for some centuries. I support the bill and commend it to the council.

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

APPROPRIATION BILL 2018

Second Reading

Adjourned debate on second reading.

(Continued from 18 October 2018.)

The Hon. I. PNEVMATIKOS (17:53): I rise to talk further about the 2018-19 state budget and the impact that will have on the most vulnerable in our community. After 16 years in opposition, in the first budget of this government we hoped to see the government initiate and act on their election policies for more jobs, lower costs and better services. Instead, in their first economic statement in 16 years, we begin the winter of our discontent with cuts, closures, privatisations and an increase in debt in each and every year across the forward estimates.

Members of the community were promised more jobs, lower costs and better services. Instead, what we received was no initiative, no creativity in solving problems or addressing the issues affecting our communities and an orchestrated wholesale attack on those who are the most vulnerable and in need. Both the Treasurer and the Premier advised that their approach towards this budget was necessary to meet their commitments and policy goals. What we are seeing, however, is a bandaid approach to policymaking and a conscious decision to no longer rely on the approaches of the previous government to produce a budget committed to lower levels of spending by 2020-21.

A closer examination reveals a trend. The Liberals are obsessed with reducing their level of spending and, as a corollary, reducing government responsibility and intervention. We saw it when they were last in government, we see it on a federal level and we are seeing it in this budget. This trend is paradoxical to the actual purpose of a government, which is to have programs for society and the community as a whole, which necessarily requires public expenditure to establish and maintain those programs.

The scale of cuts is evident in the forecasts relating to general government employment. Over four years, 4,023 Public Service positions will be cut and about 1,700 of those reductions will stem from privatisation of disability services. Government disability services typically support some of the highest needs people living with disabilities and their families. The Marshall government is reducing its own funding and support for disability services, reliant upon the transitions to the NDIS, regardless of whether there are any shortfalls in the federal scheme. It completely disregards recommendation 6.2 of the Productivity Commission study report into the National Disability Insurance Scheme costs, which were:

> The Australian, State and Territory Governments should make public—through the COAG Disability Reform Council (DRC) — their approach to providing continuity of support and the services they intend to provide to all people with disability (including the value of supports and number of people covered), beyond supports provided through the National Disability Insurance Scheme. Arrangements for continuity of support should be made clear before full scheme implementation.
>
> The National Disability Insurance Agency should report annually to the DRC on boundary issues as they are playing out on the ground, including identifying service gaps and actions to address barriers to accessing disability and mainstream services for people with disability. The reporting should be used for ongoing monitoring, evaluation and improvements.

This recommendation is in place because many non-government organisations are simply unable to provide the same comprehensive services in the disability sector, and it is expected and required that the state government will fill in the gaps to programs and services. By ignoring the recommendation a void is created, short-changing many due to the reduction of facilities and resources. By opting out, the state government is opting out of being a provider of supported community accommodation services under the national disability scheme, further penalising South Australians with disabilities, their families and their carers.

During her time as the federal assistant minister for social services and disability services, Jane Prentice called on state governments to maintain an ongoing investment to support advocacy for people with disability. The New South Wales government heeded this advice, as should we, as there is no benefit or sense in further disadvantaging such a vulnerable group in our community.

The remaining 2,300 Public Service job losses are spread across a range of areas, including the privatisation of our correctional services. South Australia has a proud record of stable reoffending

rates which sits below the national average, because the previous government worked hard to keep our communities safe. This government plans to, firstly, remove $38 million from police operational budgets. Where are these savings coming from? Will it result in a reduction of front-line work?

We have heard about the interest in the Adelaide Remand Centre by G4S custodial services in the media. G4S is a privately owned corporation that currently manages two other prisons in Australia: Port Phillip Prison, in Victoria, and Mount Gambier Prison. We need only to look at HMP Birmingham in England, run by G4S, to see the disarray that comes from a lack of public sector standards. This prison, and many others established by G4S, have seen major dark days that include riots and uprisings by prisoners, negligent care and appalling living conditions. With inadequate staff-to-patron ratios, HMP Birmingham was overthrown by over 600 prisoners in 2016. This riot came in the same two-month period where similar incidents occurred in three more prisons in the United Kingdom under G4S management.

In the case of HMP Birmingham, it resulted in the prison being returned to the ownership and control of the British state. In the past 12 months, Victoria's Port Phillip Prison has seen events of a fire, which caused a lockdown and destroyed several security cameras and other surveillance equipment, as well as a tragic inmate death earlier this year. Our very own Mount Gambier Prison has plans for expansion, despite an independent investigation being initiated last year after the rape of a security guard. However, the Marshall Liberal government is more than happy to wash its hands of any such responsibility if it means cutting costs.

There has been extensive research undertaken to assess whether the privatisation of prisons provides any benefit to the state. The government should not forget the lessons learned from the Dame Phyllis Frost Centre, a women's correctional centre in metropolitan Victoria, which was competitively tendered and opened in 1996. The facility was designed, built and operated by the Corrections Corporation of Australia, an affiliate of the Corrections Corporation of America. By 2000, control was taken over by the state of Victoria on the basis that the corporation was unable to meet a number of standards. The prison privatisation experiment failed.

Following the closure of this correctional facility and two others, an independent investigation into the management and operation of Victoria's private prisons was conducted. The report made 54 recommendations, which covered contractual arrangements, performance monitoring, staffing, prisoner management, health services and integration programs. For more than two decades, Australian state governments have toyed over public or private control and management of prisons. As of October 2017, the two states with the highest number of prisoners in private prisons maintained significantly higher costs per prisoner than any other state with publicly controlled prisons.

It is apparent that private prisons are poor performers in the areas of rehabilitation and programs of integration. They are unable to ensure maintenance of health and safety standards in relation to systems of work and personnel. The net effect is higher reconviction rates and higher costs to the state when prisons are managed and controlled privately. The corrections system within Victoria faced many conflicts before this report subsequently determined that even the most extensive contracts could not provide safeguards against poor operational performance of prisoners outside the public sector.

These facilities should be designed, by their nature, to appropriately and proportionally rehabilitate offenders so that they may return as reformed members of our society to make a contribution in our community. Facilities should not be built reliant upon a revolving door style system where, once released, and in the absence of programs for rehabilitation, patrons reoffend and are subsequently placed back into incarceration.

Privatising a maximum security prison will only hurt our pockets in the long run, negatively impact the safety of our communities and shift the policy focus away from alternative strategies that may ultimately prove more effective than simply a model solely reliant on incarceration. Privatising prisons does not result in good policy and programs for law and order, nor do they provide any cost benefits to the community. The narrative of this budget is to cut costs, to not provide services and to remove government responsibility.

Take Service SA, which is one of our most valuable state services for people in our communities. In fact, it generates 11 million transactions every year. This multifaceted service facility

enables communities to have one neighbourhood location where they can renew or cancel vehicle registration, apply for a number of different transfer licences, source government information and forms, and pay fines and appropriate bills.

Some of the tasks that I just mentioned, and a number of others, can only be done in person and yet the government has decided to scale back on the centres which will lead to longer travel times, longer waiting times and poorer, less accessible services. Having an accessible location for these functions helps an array of people who would normally not be able to seek assistance. The closure of these centres will take away any sense of community, which is invaluable to many people.

The elderly, many of whom do not have computers, are expected to navigate the online realm just to complete their forms. Those without private transport will have to travel further distances just to be able to apply for their independence. Irrespective of any disability, patrons will have to wait in a line for substantial periods of time just to receive the level of assistance that is not available to them online or over the phone. I have been out to visit one of these centres scheduled for closure and have spoken to many patrons. The response has been overwhelming: we had 4,679 signatures from patrons who reside in the electorate of Adelaide, amongst a total of 7,839 signatures statewide who are opposed to this decision.

Furthermore, as revealed in estimates, as part of a broader reform piece the future of Service SA will be examined. No commitments have been made as to whether there will be further closures. Modbury patrons are already facing a future where an additional 10 kilometres of travel will be required. Prospect patrons are split between travelling to the city and paying for parking or going the extra distance to Port Adelaide. Mitcham patrons will need to turn back to the Marion centre, which many came from in the first place due to the huge waiting lines. It is duplicitous to tag a budget that promotes better services but which instead is closing centres that provide community access and assistance to a range of government agencies.

Turning to issues of inequality and poverty affecting our state, it is astonishing that South Australia is currently in a situation where the wealth of the lowest 20 per cent of income earners has dropped by 9 per cent whilst the wealth of the highest 20 per cent has risen by 53 per cent. We have approximately 131,945 South Australians living in poverty, including 22,350 children. The budget is silent on this and is not instituting any programs to address the growing issue of the working poor and underemployed who are living in poverty. In fact, it appears to be compounding the problems of poverty.

From November, Housing Trust rents for low-income tenants in bedsits of one-bedroom cottage flats will face up to five increases in rent over the next three years, according to the new budget measures. That means that by 2021 approximately 3,000 tenants will be paying up to $50 per week more, equating to about $2,500 per year. More importantly, these increases in rent are not resulting as a consequence of a corresponding increase in income from Housing Trust tenants. What happened to the Liberal commitment to lower costs?

Statistics from Foodbank's most recent report 'Rumbling Tummies: Child Hunger in Australia' identify that more and more families are finding themselves in a position where they are having to decide between paying their rent or feeding themselves. More than half of parents in Australia have admitted to not paying bills in order to be able to afford to buy food for their household. More than half of those parents expect it to become more challenging to provide food for their families in the future as the cost of living continues to rise.

Almost nine out of 10 parents have skipped a meal so that their children can eat, with one in five parents having to let their children go a whole day without eating any food, fresh food, at least once a week. Yet the government deems it acceptable to cut proactive pilot programs such as Right Bite in the interests of saving a few dollars.

Right Bite was a program designed to supply fresh fruit and vegetables to schools to encourage healthy attitudes towards food. The pilot was scheduled to end in 2019, when a decision would be made about the feasibility and cost effectiveness of rolling it out to all public schools. Eating enough food is important for a child's healthy growth and development, and it is pivotal for our state's future growth to invest in the health of our children. It is the government's responsibility to alleviate the burden of poverty and ensure that families are able to afford the necessities of life.

Welfare and front-line groups, through very public media campaigns, are creating awareness about the extent of poverty and growing inequalities in our society. The government needs to heed this advice and stand up for the most vulnerable in our community with programs and services and, just as importantly, strategies to combat this growing problem, which is reaching epidemic proportions.

This is not just an epidemic in metropolitan areas. Rural areas across our state are feeling the cuts and inequities as well. Distance, isolation and an often harsh climate create further issues for those living in rural and remote areas. Housing security is one of the fundamental pillars for a family to be able to maintain good health, education and employment outcomes, yet the government allowed funding to stop on 30 June for the National Partnership Agreement on Remote Indigenous Housing. Problematic overcrowding still exists, and the population is growing. The government should not turn a blind eye and remove itself from responsibility simply because the matter is out of sight.

Whilst on the issue of government responsibility, let's take a look at redress. The national scheme that came through our parliament fell short of where it should have been in terms of monetary compensation, indexation of entitlements, access to counselling and eligibility, as identified and established in the royal commission's recommendations of December 2017.

Regardless of the limitations of the national scheme, there was no action taken and no effort to acknowledge the shortfalls of the scheme and those gaps in services and programs by our state government. Where they could not meet schematic demands for counselling, why did the government not set up further provisions for free counselling services for the survivors? The survivors deserve the redress as proposed by the royal commission, yet the budget neglects to introduce any measures to introduce the range of shortfalls in the National Redress Scheme. If the government is true to its word for better services for South Australians, I truly hope that it includes progress on this commitment as on others.

I raised earlier the growing issue of the working poor and underemployed, who are living in poverty. The closing down of services, insufficient availability of jobs and an increasingly insecure workforce are all factors contributing to the exposure to poverty that many are confronted with. Many workers barely make enough to keep up with the cost of living, and not nearly enough is being done to rectify this matter.

Studies reflect that 2.4 million workers nationwide are being underpaid and that 43 per cent have at some time been paid less than the minimum wage. Disproportionately, it is the most vulnerable members of our community who are hit hardest by underemployment, regardless of whether they are remote workers, have a disability, are new to the workforce, are returning to the workforce after time away, have migrant backgrounds, or have complex family situations.

I have been following the budget quite closely and all I can say is that it falls short, based on their own criteria. We were promised more jobs, yet the program of privatisations and closures is culling jobs instead. There are no job creation initiatives or infrastructure projects in this budget. We were promised better services, yet front-line services are being cut, with those left soon to be acquiring additional demands with little to no financial support.

Our state budget should not be used for political pointscoring. It is about doing what is needed to ensure we grow while supporting all members of our society proportionately. It is about doing the right thing. It is clear that this budget is not a fair budget. Any growth in GDP estimates is outweighed by the negative effects on our society and the economy when your starting-off point is cuts, closures and privatisations. This budget creates an additional burden on South Australians who are already doing it tough and struggling to get food on the table for their families.

Debate adjourned on motion of Hon. J.S.L. Dawkins.

EDUCATION AND CHILDREN'S SERVICES BILL

Introduction and First Reading

Received from the House of Assembly and read a first time.

Second Reading

The Hon. R.I. LUCAS (Treasurer) (18:16): I move:

That this bill be now read a second time.

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

Leave granted.

The Education and Children's Services Bill 2018 will repeal and replace the *Education Act 1972* and the *Children's Services Act 1985*, providing a contemporary framework for the delivery of high-quality children's services and compulsory education in this state. While the Education Act and the Children's Services Act have provided an adequate framework for education and early childhood services for many years, they no longer reflect the needs of our contemporary system, a system which we would like to see become the best in Australia.

Our children deserve access to the best schools, preschools and children's services, and this bill aims to establish the conditions necessary for teachers, parents, families and communities to work together to give our children the best start in life.

The bill builds on the work undertaken by the previous government and adopts most of the provisions of the bill that was introduced into parliament last year but lapsed in this place. I acknowledge the efforts of the former minister in respect of this work, and the Marshall government will continue to work with those opposite to ensure the passage of this important bill.

However, there are some significant changes to the bill previously brought forward by the former Labor government. This government's bill does not include, for example, Labor's central controls proposed for governing councils. We have removed provision for the minister to direct, suspend or dissolve a governing council in disciplinary circumstances. We have also introduced changes to ensure that parents and other persons responsible for children and students at schools, preschools and children's services will form the majority of members of the governing councils of those schools and services. The government strongly believes that by empowering school communities through greater autonomy and accountability we will deliver better student outcomes and have happier and more efficient school communities.

The government's bill includes provision for governing councils to access funds for independent legal advice when they are in dispute with the department. This was a specific recommendation of the Debelle royal commission. Under the bill, the Crown Solicitor, or a nominee of the Crown Solicitor, will make a decision as to whether a governing council's request meets the necessary requirements to be funded. The relevant funds will be administered by the Attorney-General's Department.

The bill removes the exclusive right of the Australian Education Union to nominate members of relevant committees formed under the bill, including selection committees for promotional level positions in the teaching service and review committees considering the amalgamation or closure of a school. The members of selection committees will now be appointed by the chief executive and at least one member will be a person elected from the teaching service to represent them on such committees. In lieu of an AEU nominee, review committees for the purposes of amalgamations and closures of schools will need to include a staff member of each school to which the review relates that has been nominated by the staff of the relevant school.

The bill retains the status quo in relation to opportunities for schools to participate in religious or cultural activities. It retains arrangements under which a parent can seek to have their child exempted from participation in such activities on conscientious grounds. A child who is exempted from such activities would be provided with an alternative activity related to the curriculum during the period in which the activities are conducted. Importantly, the act will make it clear that Christmas carols may be sung in South Australian government schools.

A good education is vital to the healthy development of a child. It allows them to grow, make friends and realise their career ambitions once they leave school. Central to a good education is attendance at school and while the vast majority of parents support their children to attend school, a few do not. We owe it to these children to take decisive action to ensure they attend.

Research suggests that even a small amount of unauthorised absence from school can negatively impact on a student's achievement. The impacts are most severe for the most vulnerable children. In addition, chronic non-attendance at school can lead to poor outcomes throughout a person's life, including, for example, negative impacts on health, employment, and potentially involvement with the justice system.

The government is implementing a number of measures to address chronic truancy and the bill supports that work. The bill includes increased penalties for the parents of children who are chronically absent from school and provides a broader range of measures to deal with cases of non-attendance, including, importantly, provision for family conferencing. In addition to these strengthened provisions, the government will be auditing attendance policies at all government schools, taking steps to ensure children in out-of-home care are engaged in mainstream education, and increasing the number of truancy officers employed in the department by 50 per cent.

The bill does not include provision for the issuing of expiation notices for non-attendance as proposed by the previous government when they introduced a similar bill. Issuing of expiation notices for these types of offences would

undermine the benefits of early intervention through family support work and/or a family conference and diminish the impact of the strong deterrent of prosecution through the courts. Prosecution through courts may well be a last resort. The government fears that an expiation notice, as previously promoted by those opposite, would have been too often used as a first resort.

The bill carries over the provisions aimed at ensuring safe learning and working environments in schools, preschools and children's services. The government is supportive of strong measures to protect teachers and other staff acting in the course of their duties from offensive behaviour or the use of abusive, threatening or insulting language. These protections will apply in all schools in South Australia across government and non-government sectors.

Under the bill, offensive behaviour need not occur on school or preschool premises and would include, for example, the abuse of staff over the telephone. Other measures aimed at promoting safe environments include provision for:

- a person to be barred from any premises or place used or to be used by a school, preschool or children's service if that person has behaved in an offensive manner while on the premises, or threatened or insulted staff, or committed or threatened to commit any other offences on or in relation to the premises;
- dealing with trespass on all schools, preschools and children's service sites; and
- authorised persons to deal with people behaving in an unacceptable manner on premises.

The bill also brings together and improves employment provisions for teachers and support workers in government schools, preschools and children's services centres.

The bill includes a number of provisions to improve information sharing between government and non-government schools and preschools, children's services centres and the department, where necessary, to support the education, health, safety, welfare or wellbeing of a child. These provisions were further enhanced through government amendments in the other place, including amendments to better align exceptions to prohibitions on the use and disclosure of personal information shared under the provisions with those in the government's Information Privacy Principles Instruction and Information Sharing Guidelines, and to support the implementation of recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

In particular, where a child is transferring between schools, the bill provides for the principal of the school in which the child is to be enrolled to request a report from the principal of the child's previous school about the child's academic progress and any support the child might need to be successful in their education at the new school. An amendment made in the other place makes clear that such a report could include information that relates to the safety or wellbeing of the child or that may be relevant to the safety or wellbeing of other children or persons at the school. These amendments directly support the implementation of recommendations 8.13 and 8.14 of the Royal Commission.

The principles of the Bill were also amended in the other place to clarify that children and students should be involved in the promotion of their education and development and that they should be consulted in respect of decisions under the Act that may affect them. These amendments were made at the suggestion of the Commissioner for Children and Young People.

I seek leave to have the explanation of clauses inserted into *Hansard* without my reading it.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines terms and phrases used in the measure.

4—Application of Act to non-Government schools

This clause sets out how the measure applies to non-Government schools, including by setting out the provisions that do not apply.

5—Interaction with other Acts

This clause clarifies that this measure does not derogate from other Acts.

6—Minister may acquire land

This clause authorises the Minister to acquire land for the purposes of this Act. By doing so, the measure becomes a special Act for the purposes of the *Land Acquisition Act 1969*, and the provisions of that Act will then apply to such acquisitions.

Part 2—Objects and principles

7—Objects and principles

This clause sets out objects and principles informing the operation of the measure.

Part 3—Administration

8—Functions of Chief Executive

This clause sets out the functions of the Chief Executive (formerly the Director-General, and combining the position of Director of Children's Services from the repealed *Children's Services Act 1985*).

9—Administrative instructions

This clause confers on the Chief Executive the power to issue binding administrative instructions to governing councils or affiliated committees of schools, stand-alone preschools and children's services centres.

10—Model constitutions

This clause requires the Minister to publish model constitutions of the kinds specified.

11—Advisory committees

This clause allows the Minister to appoint committees to advise the Minister or the Chief Executive on any matter related to the operation of this measure or the provision of education and children's services in this State.

12—Delegation

This clause is a standard power of delegation.

13—Chief Executive may require information from schools, preschools and children's services centres

This clause empowers the Chief Executive to require specified persons and bodies to provide information to the CE that the CE reasonably requires for purposes of this measure, with an offence created for non-compliance.

14—Sharing of information between certain persons and bodies

This clause enables the persons and bodies specified to provide certain information and documents to other such persons or bodies if the provision of the information or documents would assist the recipient to perform official functions or manage certain risks to children and other persons.

15—Report

This clause requires the Chief Executive to report to the Minister annually (in respect of calendar years) on the operation of the Department.

Part 4—Preschools and children's services centres

Division 1—School-based preschools

16—Minister may establish school-based preschools

This clause provides that the Minister may establish school-based preschools.

17—Governing councils of school-based preschools

This clause provides that the governing council of a school in relation to which a school-based preschool is established is also the governing council of the preschool, and sets out requirements relating to the representation of the preschool on the council.

Division 2—Stand-alone preschools and children's services centres

18—Minister may establish stand-alone preschools and children's services centres

This clause provides that the Minister may establish stand-alone preschools and children's services centres.

19—Governing councils of stand-alone preschools and children's services centres

This clause provides that a governing council is to be established in respect of each stand-alone preschool and children's services centre, although the same council may be the council for multiple preschools and children's services centres. The clause also sets out the nature of a governing council and its governance arrangements.

20—Composition of governing councils of stand-alone preschools and children's services centres

This clause sets out the composition of governing councils of stand-alone preschools and children's services centres, in particular requiring that a majority of appointees to the council be persons who are responsible for children attending, or who are to attend, the stand-alone preschool or children's services centre. The clause also makes procedural provision for where it is not possible for that majority to occur.

21—Approval of constitutions by Minister

This clause allows the Minister to approve a constitution to be adopted by the governing council of a stand-alone preschool or children's services centre (that is, to be adopted in place of a model constitution). The clause also makes procedural provision in relation to approvals.

22—Amendment of constitutions

This clause sets out circumstances in which the Minister may directly amend, or direct a governing council to amend, a constitution.

23—Functions and powers of governing councils

This clause sets out the functions and powers of governing councils of stand-alone preschools and children's services centres.

24—Limitations on powers of governing councils

This clause sets out limitations on the exercise of the functions and powers of governing councils of stand-alone preschools and children's services centres.

Division 3—Continuation of children's services centres registered under *Children's Services Act 1985*

25—Application of Division

26—Continuation of registered children's services centres

This Division continues registered children's services centres under the repealed *Children's Services Act 1985*, and makes transitional adjustments to the terms used under that Act to describe the centres etc to be consistent with the measure.

Division 4—Removal of members of governing councils etc

27—Minister may remove member of governing council

This clause enables the Minister to remove a member of the governing council of a stand-alone preschool or children's services centre from office for the reasons specified.

28—Minister may prohibit or limit performance of functions etc by governing council

This clause enables the Minister to prohibit or limit, in accordance with the regulations, the exercise of a power or function by the governing council of a stand-alone preschool or children's services centre.

Division 5—Closure of stand-alone preschools and children's services centres

29—Closure of stand-alone preschools and children's services centres

This clause sets out the process for the closure of stand-alone preschools and children's services centres.

Division 6—Miscellaneous

30—Conflict of interest

This clause is a standard provision relating to conflicts of interest in respect of members of the governing councils of stand-alone preschools and children's services centres.

31—Accounts may be audited

This clause provides that the accounts of stand-alone preschools and children's services centres may be audited at any time by the Chief Executive or the Auditor-General.

32—Corporal punishment prohibited

This clause prohibits corporal punishment from being imposed on children at Government preschools and children's services centres.

Part 5—Government schools

Division 1—Establishment of schools

33—Minister may establish schools

This clause provides that the Minister may establish schools.

Division 2—Governing councils and affiliated committees

Subdivision 1—Governing councils and affiliated committees

34—Governing councils of schools

This clause provides that a governing council is to be established in respect of each school established under the measure, although the same council may be the council for multiple schools. The clause also sets out the nature of a governing council and its governance arrangements.

35—Composition of governing councils of schools

This clause sets out the composition of governing councils of schools, in particular requiring that a majority of appointees to the council be persons who are responsible for students of the school. The clause also makes procedural provision for where it is not possible for that majority to occur.

36—Affiliated committees

This clause allows the Minister to authorise the establishment of affiliated committees, being a committee affiliated with the governing council of a school.

37—Conflict of interest

This clause is a standard provision relating to conflicts of interest in respect of members of the governing councils of schools as well as members of affiliated committees.

38—Accounts may be audited

This clause provides that the accounts of the governing council of a school or an affiliated committee may be audited at any time by the Chief Executive or the Auditor-General.

Subdivision 2—Approval and amendment of constitutions

39—Approval of constitutions by Minister

This clause allows the Minister to approve a constitution to be adopted by the governing council of a school (that is, to be adopted in place of a model constitution). The clause also makes procedural provision in relation to such approvals.

40—Amendment of constitutions

This clause sets out circumstances in which the Minister may directly amend, or direct a governing council of a school to amend, a constitution.

Subdivision 3—Functions and powers of governing councils and affiliated committees

41—Functions and powers of governing councils and affiliated committees

This clause sets out the functions and powers of governing councils of schools and affiliated committees.

42—Limitations on powers of governing councils and affiliated committees

This clause sets out limitations on the exercise of the functions and powers of governing councils of schools and affiliated committees.

Subdivision 4—Arrangements on closure or amalgamation of school

43—Minister may make arrangements for governing councils etc on closure or amalgamation of school

This clause sets out the actions that may be taken by the Minister to deal with the governing council of a school, or an affiliated committee, on the amalgamation or closure of the school under the proposed Division.

Subdivision 5—Removal of members of governing councils and affiliated committees etc

44—Minister may remove member of governing council or affiliated committee

This clause provides that the Minister may remove a member of the governing council of a school or an affiliated committee from office for the reasons specified in the clause.

45—Minister may prohibit or limit performance of functions etc by governing council or affiliated committee

This clause enables the Minister to prohibit or limit, in accordance with the regulations, the exercise of a power or function by the governing council of a school or an affiliated committee.

Subdivision 6—Governing Councils Legal Fund

46—Interpretation

This clause contains the definitions relevant for the subdivision.

47—Governing Councils Legal Fund

This clause sets up the Governing Councils Legal Fund. It provides that money for the Fund is as provided for by Parliament or paid into it under this or any other Act. Any deficiency in the Fund will be met from the Consolidated Account.

48—Payments from Fund

This clause sets out the requirements in relation to payments from the Fund. A governing council of a school may apply to the Crown Solicitor for approval for payment from the Fund of the costs of independent legal advice incurred in relation to a dispute between the governing council and the Department. The Crown solicitor may refer the application for such an approval to another person (a *nominated person*) to determine. This may be necessary to avoid a conflict of interest in certain circumstances. Approval for payment must be granted if the Crown Solicitor (or the person to whom an application has been referred) is satisfied of the matters set out in subclause (6). The Crown Solicitor or a nominated person is independent of direction or control by the Crown or any Minister or officer of the Crown.

49—Accounts

This clause provides that the Minister must cause proper accounts to be kept of money paid into and payments made from the Fund.

50—Audit of Fund

Under this clause, the Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.

Division 3—Amalgamation and closure of schools

51—Amalgamation of schools

This clause provides that the Minister may amalgamate 2 or more Government schools, sets out the circumstances in which such an amalgamation can occur and makes procedural provision relating to notice.

52—Closure of schools

This clause sets out the process for the closure of Government schools. In particular, closures are to occur with the consent of students or persons responsible for them, or on the recommendation of a review committee following a review under proposed section 53.

53—Review of schools in a particular area

This clause allows the Minister to commission a review to determine whether each Government school within a particular area continue to be required and, if not, whether 1 or more of the schools should be amalgamated or closed. The clause also makes procedural provision in relation to such reviews.

54—Review committees

This clause sets out how a committee that is to conduct a review under proposed section 53 is to be constituted and how it is to function.

55—Minister to report to Parliament if recommendations of review committee not followed

This clause requires the Minister to report to Parliament where the Minister decides to amalgamate or close a school contrary to the recommendation of a review committee.

Part 6—Special purpose schools

56—Minister may establish special purpose schools

This clause provides that the Minister may establish special purpose schools for the purposes specified in the clause.

57—Governing council and constitution

This clause sets out the governance arrangements for special purpose schools.

58—Closure of special purpose schools

This clause sets out the process for the closure of special purpose schools, namely that the Minister may close one for any reason the Minister thinks fit, and requires notice of closures to be given to the principal and persons responsible for students at the school.

59—Modification of operation of Act in relation to special purpose schools

This clause disapplies Part 5 of the measure in respect to special purpose schools, and confers a regulation-making power to modify the operation of the measure as it applies to special purpose schools.

Part 7—Provision of education in schools

Division 1—Enrolment

Subdivision 1—Compulsory enrolment in school or approved learning program

60—Children of compulsory school age must be enrolled in school

This clause requires children of compulsory school age to be enrolled in a school and replaces the applicable part of current section 75 of the *Education Act 1972*.

61—Children of compulsory education age must be enrolled in approved learning program

This clause requires children of compulsory education age to be enrolled in an approved learning program and replaces the applicable part of current section 75 of the *Education Act 1972*.

62—Chief Executive may direct that child be enrolled in particular school

This clause simply replaces section 75A of the *Education Act 1972*.

63—Chief Executive may direct that child be enrolled in another school if improperly enrolled

This clause allows the Chief Executive to direct that a specified child who is enrolled in a Government school (including a special school) be instead enrolled at another Government school if the Chief Executive is satisfied that the child was enrolled at the school on basis of false or misleading information (including false information about the residential address of the child).

Subdivision 2—Enrolment of adult students

64—Special provisions relating to enrolment of adult students

This clause makes provision about the enrolment of adult students in Government schools, incorporating the effects of the *Child Safety (Prohibited Persons) Act 2016*. In particular, adult students (other than those who become adults in the course of their secondary education) will need to have a current working with children check.

Subdivision 3—Information gathering

65—Certain information to be provided on enrolment

This clause requires a person who is responsible for a child who is to be enrolled in a school or an approved learning program to provide to the principal of the school or the head of the approved learning program the information specified in the clause. Failure to do so without a reasonable excuse is an offence.

66—Chief Executive may require further information relating to student

This clause enables the Chief Executive to require a person who is responsible for a child to provide to the CE specified information that is reasonably required in the administration, operation or enforcement of this Act. Failure to do so without a reasonable excuse is an offence.

67—Principal may require other principal to provide report in respect of specified child

This clause enables the principal of a school or the head of an approved learning program at which a specified child is proposed to be enrolled, to require the principal of another school or head of an approved learning program at which the child is or has previously been enrolled to provide specified information. This information may relate to the enrolment, academic achievement, or the safety or wellbeing of the student, or be information that may be relevant to the safety or wellbeing of other children or persons at the proposed school or approved learning program. Failure to do so without a reasonable excuse is an offence.

Division 2—Attendance at school and participation in approved learning programs

Subdivision 1—Compulsory attendance at school and participation in approved learning program

68—Child of compulsory school age must attend school

This clause requires children of compulsory school age to attend the school at which they are enrolled and replaces the applicable part of current section 76 of the *Education Act 1972*.

69—Child of compulsory education age must participate in approved learning program

This clause requires children of compulsory education age to participate in the approved learning program in which they are enrolled and replaces the applicable part of current section 76 of the *Education Act 1972*.

Subdivision 2—Family conferences

70—Purpose of family conferences

This clause explains the purposes of family conferences under the proposed Subdivision, namely the making of voluntary arrangements to ensure the attendance of a student at the school, or the participation of the student in the approved learning program, in which they are enrolled but are failing to attend.

71—Chief Executive may convene family conference

This sets out the circumstances in which the Chief Executive may convene a family conference, as well as who can attend a conference.

72—Procedures at family conference

This clause sets out how a family conference is to be conducted.

73—Chief Executive and principal etc to give effect to decisions of family conference

This clause requires the Chief Executive and the principal of a school or head of an approved learning program in which a student is enrolled to give effect to valid decisions made at a family conference; however those decisions cannot require unlawful acts or omissions, nor do they create any legally enforceable rights or obligations.

Subdivision 3—Limitations on employment of certain children of compulsory school age or compulsory education age

74—Employment of children of compulsory school age or compulsory education age

This clause makes it an offence for a person to employ a child of compulsory school age or compulsory education age during school hours, or in labour or an occupation that renders, or is likely to render, the child unfit to attend school etc or obtain the proper benefit from doing so.

Subdivision 4—Reporting of persistent non-attendance or non-participation

75—Principal etc to report persistent non-attendance or non-participation

This clause requires the principal of a school or head of an approved learning program to notify the Chief Executive if a student of the school or approved learning program is persistently failing to attend school, or participate in the approved learning program. The clause also deems a failure to attend or participate on any 10 days in a term to be a persistent failure requiring report (disregarding failures where a person responsible for the child has complied with section 69(3) or 70(3)).

Division 3—Suspension, exclusion and expulsion of students

76—Suspension of students

This clause was regulation 44 of the *Education Regulations 2012* (allowing for the suspension of students) and has simply been relocated into the measure.

77—Exclusion of students

This clause was regulation 45 of the *Education Regulations 2012* (allowing for the exclusion of students) and has simply been relocated into the measure.

78—Expulsion of certain students from particular school

This clause was regulation 46 of the *Education Regulations 2012* (allowing for the expulsion of students from a school) and has simply been relocated into the measure.

79—Expulsion of certain students from all Government schools

This clause was regulation 47 of the *Education Regulations 2012* (allowing for the expulsion of students from all Government schools) and has simply been relocated into the measure.

80—Appeal against decision to exclude or expel student

This clause was regulation 50 of the *Education Regulations 2012* (allowing for an appeal against a decision to suspend etc a student) and has simply been relocated into the measure.

81—Regulations in relation to operation, administration and enforcement of suspension, exclusion or expulsion of student

This clause provides that the regulations may make provision for or in relation to the operation, administration and enforcement of the suspension, exclusion or expulsion of a student under Part 7 Division 3.

Division 4—Religious and cultural activities

82—Religious and cultural activities

This clause allows the principal of a school to set aside time for the conduct of religious or cultural activities (or both). Written notice of such activities intended to be conducted by or on behalf of the school must be given to a person responsible for a student at a school. If a person responsible for a child that is a student at the school seeks permission from the principal of the school for the child to be exempted from participating in such an activity, then the child is exempt.

Division 5—Discipline

83—Corporal punishment prohibited

This clause prohibits corporal punishment from being imposed on students at Government schools.

Division 6—Registration of student exchange programs

84—Interpretation

This clause defines terms used in the proposed Division.

85—Registration of student exchange organisations

This clause enables the Education and Early Childhood Services (Registration and Standards) Board to register a person or body as a student exchange organisation and sets out procedural requirements for such registration.

86—Annual registration fee

This clause requires registered student exchange organisations to pay an annual registration fee.

87—Guidelines

This clause allows the Board to publish or adopt guidelines in relation to student exchange organisations and the operation of student exchange programs.

88—Board may give directions to registered student exchange organisation

This clause empowers the Board to direct a registered student exchange organisation to take, or to not take, such specified action in the circumstances set out in the clause.

89—Suspension and revocation of registration

This clause sets out when and how the Board may suspend or revoke the registration of a registered student exchange organisation.

Part 8—Protections for teachers, staff and students etc at schools, preschools and children's services centres

Division 1—Preliminary

90—Application of Part

This clause sets out the premises to which the proposed Part applies (including non-Government schools and preschools etc).

Division 2—Offences

91—Offensive or threatening behaviour

This clause creates an offence for a person to behave in an offensive or threatening manner on premises to which the proposed Part applies.

The clause also creates an offence for a person to use abusive, threatening or insulting language to, or to behave in an offensive manner towards, a prescribed person acting in the course of their duties (whether or not the offence occurs on premises to which the proposed Part applies).

92—Trespassing on premises

This clause creates an offence for a person to trespass on premises to which the proposed Part applies.

Division 3—Barring orders

93—Power to bar persons from premises

This clause empowers a designated person in respect of premises to which the proposed Part applies to bar a person from the premises (and related premises) in the circumstances specified in subclause (1). The clause also makes procedural provision in relation to such barring, and creates an offence for a person to contravene or fail to comply with a barring notice.

94—Review of barring notice by Minister

This clause provides that a person who is barred from premises under section 93 for a period exceeding 2 weeks may apply to the Minister for a review of the barring notice.

Division 4—Power to restrain etc persons acting unlawfully on premises to which Part applies

95—Certain persons may restrain, remove from or refuse entry to premises

This clause empowers an authorised person in respect of premises to which the proposed Part applies to direct a person to leave the premises in the circumstances specified in subclause (1). The authorised person may use reasonable force to restrain or remove the person, or prevent their re-entry to the premises. The clause also makes procedural provision in relation to such directions, and creates an offence for a person to contravene or fail to comply with a direction.

Part 9—The teaching service

Division 1—Preliminary

96—Interpretation

This clause defines 'misconduct' as used in the proposed Part.

Division 2—Appointment to the teaching service

97—Appointment to the teaching service

This clause provides for the appointment of teachers to be officers of the teaching service, and makes provision for the basis, terms and conditions of such appointments.

98—Merit-based selection processes

This clause requires certain appointments and promotions to occur on the basis of merit.

99—Rate of remuneration for part-time employees

This clause sets out how the rate of remuneration for part-time officers is to be determined.

100—Special remuneration for attraction and retention of officers of the teaching service

This clause provides that the Chief Executive may offer special remuneration to officers of the teaching service for the purposes of attracting and retaining officers of a high standard, and may enter into arrangements with officers of the teaching service for that purpose.

101—Probation

This clause requires an officer of the teaching service employed on an ongoing basis to be on probation for a period of 2 years, however that period may be reduced or waived in the circumstances specified. The clause also requires officers appointed as term employees to be on probation in accordance with the regulations.

Division 3—Duties, classification, promotion and transfer

102—Assignment of duties and transfer to non-teaching position within Department

The clause enables the Chief Executive to determine the duties of officers of the teaching service, and the place or places at which duties are to be performed. The clause makes procedural provision in respect of such determinations.

103—Transfer within teaching service

This clause enables the Chief Executive to transfer officers of the teaching service between positions in the teaching service, provided that in doing so the officer's salary is not reduced and the transfer is not used to promote the officer to a higher classification level.

104—Classification of officers and positions

The clause enables the Chief Executive to make classifications of the kinds specified in respect of officers of, and positions in, the teaching service.

105—Application to Chief Executive for reclassification

This clause provides that an officer of the teaching service who considers that their classification, or that of their position, is not appropriate may lodge with the Chief Executive an application for reclassification, and makes procedural provision in relation to such applications.

106—Appointment to promotional level positions

This clause provides that the Chief Executive may appoint officers of the teaching service to positions within the teaching service classified at promotional levels, and sets out how such appointments are to be applied for and made.

Division 4—Long service leave

107—Long service leave and retention entitlement

This clause sets out the long service leave entitlements of officers of the teaching service.

108—Taking leave

This clause sets out when and how officers of the teaching service can take long service leave, and makes provision for the salary to be paid during the leave period.

109—Payment in lieu of long service leave

This clause provides that officers of the teaching service can apply to be paid salary in lieu of their accrued long service leave, and makes procedural provision for such payments.

110—Interruption of service where officer leaves teaching service

This clause provides for the service of an officer of the teaching service who leaves the teaching service for specified reasons and is then reappointed to the teaching service to be taken into account as though that service were continuous in the circumstances specified.

111—Special provisions relating to certain temporary officers of the teaching service

This clause preserves the effect of current section 22A of the *Education Act 1972*.

112—Entitlement where officer transferred to other public sector employment

This clause recognises the service of officers of the teaching service who are transferred to other employment in the public sector of the State as being continuous with that other employment.

113—Entitlement of persons transferred to the teaching service

This clause recognises the service of persons who transfer from other employment in the public sector of the State to the teaching service as being continuous with their service in the teaching service.

Division 5—Disciplinary action and management of unsatisfactory performance

114—Disciplinary action

This clause sets out the action the Chief Executive may take if the CE is satisfied that an officer of the teaching service is guilty of misconduct.

115—Managing unsatisfactory performance

This clause sets out the action the Chief Executive may take if the CE is satisfied that the performance of an officer of the teaching service is unsatisfactory.

116—Reduction in remuneration level

This clause sets out grounds on which the Chief Executive may reduce the remuneration level of an officer of the teaching service.

117—Suspension

This clause provides that the Chief Executive may suspend an officer of the teaching service if the CE is satisfied that the nature or circumstances of any matter alleged against the officer are such that the officer should not continue in the performance of their duties.

Division 6—Physical or mental incapacity of officers of the teaching service

118—Physical or mental incapacity of officers of the teaching service

This clause provides that the Chief Executive may require an officer of the teaching service to undergo a medical examination if the Chief Executive considers the officer's unsatisfactory performance may be caused by physical or mental incapacity, and makes procedural provision in relation to such examinations.

Division 7—Resignation and termination

119—Resignation

This clause sets out how an officer of the teaching service resigns from the service, and provides that the Chief Executive may make a determination that an officer has resigned if they are absent, without authority, from their employment for a period of 10 working days and do not give a proper written explanation or excuse for the absence to the Chief Executive before the end of that period.

120—Termination

This clause sets out how the employment of an officer of the teaching service can be terminated.

Part 10—Other employment and staffing arrangements

121—Chief Executive may employ other persons for purposes of Act

This clause provides that the Chief Executive may employ such other persons (in addition to the employees and officers of the Department and officers of the teaching service) as the Chief Executive thinks necessary or appropriate for the purposes of the measure.

122—Part 7 and Schedule 1 of the Public Sector Act 2009 to apply to persons employed under this Part

This clause applies Part 7 and Schedule 1 of the *Public Sector Act 2009* to certain persons employed under proposed section 121, subject to the modifications set out in subclause (1).

123—Use of staff etc of administrative units of the Public Service

This clause provides that the Chief Executive may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

Part 11—Appeals

Division 1—Review by South Australian Employment Tribunal

124—Review by SAET of certain decisions and determinations

This clause provides a right of review to the SAET for a person who is aggrieved with certain decisions or determinations of the Chief Executive under Part 9 of the measure, and makes procedural provision in respect of such reviews.

Division 2—Appeals to Administrative and Disciplinary Division of the District Court

125—Appeal against certain actions of Minister or Chief Executive

This clause provides a right of appeal to the Administrative and Disciplinary Division of the District Court for a person who is aggrieved by a prescribed action of the Minister or the Chief Executive under the measure, and makes procedural provision in respect of such reviews.

Part 12—Authorised officers

126—Authorised officers

This clause sets out who are authorised officers for the purposes of the measure, including the CE, police officers and employees of the Department authorised by the Chief Executive as an authorised officer.

127—Powers of authorised officers

This clause sets out the powers of authorised officers under the measure.

128—Offence to hinder etc authorised officers

This clause creates a series of offences (such as hindering) relating to authorised officers under the measure.

Part 13—Financial provisions

Division 1—Materials and services charges for schools

129—Materials and services charges for schools

This clause allows Government schools to impose materials and services charges in respect of each student enrolled in the school for the whole or part of a calendar year, and makes procedural provision in relation to setting and recovering such charges.

Division 2—Other fees and charges

130—Charges for certain overseas and non-resident students etc

This clause allows the Chief Executive to fix charges in relation to the matters set out in subclause (1), and procedural provision in relation to setting and recovering such charges.

131—Certain other charges etc unaffected

This clause clarifies the fact that the measure does not prevent other charges or payments being fixed or made in relation to the matters specified.

Division 3—Recovery of amounts payable to the Commonwealth

132—Recovery of amounts payable to the Commonwealth

This clause allows the State to recover certain debts due to the Commonwealth under the *Australian Education Act 2013* of the Commonwealth.

Part 14—Miscellaneous

133—Exemptions

This clause allows the Minister to exempt a specified person, or a specified class of persons, from the operation of a provision or provisions of the measure.

134—Use of certain school premises etc for both school and community purposes

This clause allows the Minister to permit Government premises etc to be used for community purposes, and to provide assistance to community bodies so as to allow Government schools to use their facilities etc.

135—Proceedings for offences

This clause requires the consent of the Minister before proceedings can be commenced for an offence against the measure.

136—Commencement of prosecution for offence against Act

This clause provides that proceedings for an offence against the measure must be commenced within 2 years of the alleged offence.

137—Confidentiality

This clause prevents confidential information from being disclosed except in the circumstances specified.

138—Protections, privileges and immunities

This clause limits liability under the measure, and provides that certain privileges and immunities are not affected by the measure.

139—Evidentiary provisions

This clause allows specified matters to be proved in legal proceedings by means of a certificate.

140—Service

This clause sets out how notices or documents under the measure can be served on a person.

141—Regulations

This clause sets out regulation making powers under the measure.

Schedule 1—Repeals, related amendments, transitional provisions etc

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Repeal of *Children's Services Act 1985*

2—Repeal of *Children's Services Act 1985*

This clause repeals the *Children's Services Act 1985*.

Part 3—Repeal of *Education Act 1972*

3—Repeal of *Education Act 1972*

This clause repeals the *Education Act 1972*.

Part 4—Amendment of *Children's Protection Act 1993*

Part 5—Amendment of *Criminal Law Consolidation Act 1935*

Part 6—Amendment of *Education and Early Childhood Services (Registration and Standards) Act 2011*

Part 7—Amendment of *Independent Commissioner Against Corruption Act 2012*

Part 8—Amendment of *National Tax Reform (State Provisions) Act 2000*

Part 9—Amendment of *Public Sector Act 2009*

Part 10—Amendment of *SACE Board of South Australia Act 1983*

Part 11—Amendment of *Summary Offences Act 1953*

Part 12—Amendment of *Superannuation Act 1988*

Part 13—Amendment of *Teachers Registration and Standards Act 2004*

These Parts make related amendments to the Acts specified consequential to the enactment of the measure.

Part 14—Transitional and other provisions

This Part makes transition provisions in respect of the enactment of this measure, and the repeal of the *Education Act 1972* and the *Children's Services Act 1985*.

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

STATUTES AMENDMENT (NATIONAL ENERGY LAWS) (BINDING RATE OF RETURN INSTRUMENT) BILL

Introduction and First Reading

Received from the House of Assembly and read a first time.

Second Reading

The Hon. R.I. LUCAS (Treasurer) (18:17): I move:

That this bill be now read a second time.

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

On 14 July 2017, the COAG Energy Council agreed to implement a binding rate of return instrument for the rate of return components of the Australian Energy Regulator's and the Western Australian Economic Regulation Authority's regulatory determinations.

Accordingly, the South Australian Government is amending the national energy laws to introduce a binding rate of return instrument into the process for setting the revenue of regulated electricity and gas businesses. This amendment will provide greater certainty and reduce the regulatory burden for network businesses and consumer groups by establishing a single rate of return instrument that will apply across all determinations made by the regulator.

The *Statutes Amendment (National Energy Laws) Binding Rate of Return Instrument Bill 2018* will amend the National Electricity Law and National Gas Law to require the AER to make an instrument that is binding on the AER and regulated electricity and gas network businesses.

The AER regulates the revenue network businesses can earn which determines the prices they can charge during a regulatory period. It does this by making distribution and transmission determinations that apply over a five year period. This Bill does not change this. It allows the AER to establish the methodology it will use to determine the rate of return in the regulatory determinations for all businesses once every four years. The AER will no longer use a different approach for each business.

Energy Ministers consider this an important step in stabilising energy prices over time. This is because the rate of return makes up the largest revenue component, accounting for up to two thirds of network businesses' regulated revenue.

The Bill's intention is to provide a rate of return that will allow the regulated businesses to recover their efficient financing costs. It will also support investment in the long term interest of consumers, as required by the National Electricity Objective and National Gas Objective. In developing the instrument, the AER must also have regard to the Revenue and Pricing Principles set out in the national energy laws. Businesses will be able to seek judicial review if the AER fails to have regard to the National Electricity Objective and National Gas Objective and the Revenue and Pricing Principles.

The approach retains incentive-based regulation while providing flexibility for regulatory innovation. Reasserting the primacy of the Revenue and Pricing Principles will ensure network businesses continue to have an incentive to make efficient investment decisions. The key concept of a weighted average of an allowed return on debt and an allowed return on equity has been included to provide greater guidance to the AER. The AER will also be required to explain its decision-making processes and conclusions in the explanatory information it must publish with the instrument.

The Bill will make the AER's decision making process more transparent through improved consultation requirements. It will provide stakeholders with the opportunity to contribute evidence and advice about appropriate methods and relevant market data to underpin the content of the instrument.

A consumer reference group will be established to advise the AER on implementing the consumer consultation process and facilitate consumer input into the design of the instrument.

An independent expert panel will also be established to review the draft instrument, ensuring that the AER's decision is based on sound reasoning.

The Bill will require the AER to review and replace the instrument every four years.

The Bill will provide that once initial Rules have been made by the South Australian Minister on the subjects provided for in the Bill, the Minister will have no power to make any further Rules regarding regulated networks' rate of return.

I commend this Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *National Electricity Law*

4—Amendment of section 2—Definitions

Definitions are inserted for the purposes of the measure.

5—Amendment of section 15—Functions and powers of AER

The functions and powers of AER are amended to reflect the new Division relating to the rate of return instrument.

6—Insertion of Part 3 Division 1B

New Division 1B is inserted into Part 3. In general terms, new Division 1B will require the Australian Energy Regulator (AER) to make an instrument that specifies the way to calculate the rate of return on capital and the value of imputation credits or the way to calculate that value.

Procedural requirements relating to the making of the instrument are set out, such as that the AER must engage a consumer reference group, seek submissions on the making of the instrument, seek concurrent evidence from experts, release a draft instrument, seek submissions on the draft, and engage an independent panel to assess and provide a report on the draft.

The rate of return instrument will commence on the day after it is published on the AER's website, and remains in force until replaced. It must be replaced every four years (i.e. on the day that is the fourth anniversary date of its publication).

The instrument will apply to all economic regulatory determinations made under the *National Electricity Law* after it commences:

Division 1B—Rate of return instrument

Subdivision 1—Preliminary

18F—Definitions

18G—Rate of return instrument has force of law

18H—Rate of return instrument is binding on AER and network service providers

Subdivision 2—Requirement to make rate of return instrument

18I—AER to make rate of return instrument

18J—Content of rate of return instrument

Subdivision 3—Consultation requirements

18K—Process for making rate of return instrument

18L—Other matters AER must have regard to in making instrument

18M—Requirements before publishing draft instrument

18N—Consumer reference group

18O—Publication of draft instrument and other information

18P—Report about draft instrument by independent panel

18Q—Publication of explanatory information

18R—Failure to comply does not affect validity

Subdivision 4—Publication, review and other matters

18S—Publication of rate of return instrument

18T—Commencement and duration of instrument

18U—Review and replacement of instrument

18V—Application of instrument

18W—Rate of return instrument may apply for this Law and the National Gas Law

Subdivision 5—Confidentiality of information

18X—Confidentiality

18Y—Disclosure of information given in confidence

7—Amendment of section 28J—Opportunity to be heard before regulatory information notice is served

8—Amendment of section 28Q—Assumptions where there is non-compliance with regulatory information instrument

These amendments are consequential.

9—Insertion of section 90BA

A new rule making power is inserted.

90BA—South Australian Minister may make consequential Rules relating to rate of return instrument

The South Australian Minister will be empowered to make consequential Rules relating to the rate of return instrument. This is in connection with the insertion of the rate of return framework into the *National Electricity Law* (and its removal from the Rules).

10—Amendment of Schedule 1—Subject matter for the National Electricity Rules

11—Amendment of Schedule 2—Miscellaneous provisions relating to interpretation

These amendments are consequential.

12—Amendment of Schedule 3—Savings and transitional

Transitional provisions are inserted for the purposes of the measure. In particular, special arrangements are set out for the first rate of return instrument on account of a review being undertaken by the AER on an existing guideline. Another transitional provision relates to the application of the amendments effected by the measure to particular decisions:

Part 15—Transitional provisions for rate of return instrument

28—Definitions

29—Making first rate of return instrument if review not completed before commencement

30—Making first rate of return instrument if review completed before commencement

31—Application of this Law to particular decisions

Part 3—Amendment of *National Gas Law*

13—Amendment of section 2—Definitions

The amendments to the *National Gas Law* set out in the measure are substantially the same as the amendments to the *National Electricity Law* under the measure (with modifications where necessary in the context of the *National Gas Law*).

14—Amendment of section 27—Functions and powers of the AER

15—Insertion of Chapter 2 Part 1 Division 1A

Division 1A—Rate of return instrument

Subdivision 1—Preliminary

30A—Definitions

30B—Rate of return instrument has force of law

30C—Rate of return instrument is binding on AER and covered pipeline service providers

Subdivision 2—Requirement to make rate of return instrument

30D—AER to make rate of return instrument

30E—Content of rate of return instrument

Subdivision 3—Consultation requirements

30F—Process for making rate of return instrument

30G—Other matters AER must have regard to in making instrument

30H—Requirements before publishing draft instrument

30I—Consumer reference group

30J—Publication of draft instrument and other information

30K—Report about draft instrument by independent panel

30L—Publication of explanatory information

30M—Failure to comply does not affect validity

Subdivision 4—Publication, review and other matters

30N—Publication of rate of return instrument

30O—Commencement and duration of instrument

30P—Review and replacement of instrument

30Q—Application of instrument

30R—Rate of return instrument may apply for this Law and the National Electricity Law

Subdivision 5—Confidentiality of information

30S—Confidentiality

30T—Disclosure of information given in confidence

16—Amendment of section 52—Opportunity to be heard before regulatory information notice is served

17—Amendment of section 59—Assumptions where there is non-compliance with regulatory information instrument

18—Insertion of section 294CA 294CA—South Australian Minister may make consequential Rules relating to rate of return instrument

19—Amendment of Schedule 1—Subject matter for the National Gas Rules

20—Amendment of Schedule 2—Miscellaneous provisions relating to interpretation

21—Amendment of Schedule 3—Savings and transitional

Part 15—Transitional provisions for rate of return instrument

90—Definitions

91—Making first rate of return instrument if review not completed before commencement

92—Making first rate of return instrument if review completed before commencement

93—Application of this Law to particular decisions

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

CONSTRUCTION INDUSTRY TRAINING FUND (BOARD) AMENDMENT BILL

Introduction and First Reading

Received from the House of Assembly and read a first time.

PUBLIC INTEREST DISCLOSURE BILL

Final Stages

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

At 18:20 the council adjourned until Wednesday 7 November 2018 at 14:15.