LEGISLATIVE COUNCIL

Tuesday, 17 November 2020

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

Parliamentary Procedure

PAPERS

The following papers were laid on the table:

By the President—

Reports, 2019-20
- District Council of Cleve
- District Council of Elliston

Report of the Auditor-General on Examination of the management of road asset maintenance: City of Salisbury—Report 15 of 2020

By the Treasurer (Hon. R.I. Lucas)—

Reports, 2019-20—
- Australian Energy Market Commission
- Department for Energy and Mining
- Legal Practitioners' Fidelity Fund (by the Law Society of South Australia)
- Legal Profession Conduct Commissioner
- South Australian Technical Regulator

Regulations under Acts—
- Development Act 1993—Lapse of Consent or Approval
- Electricity Corporations (Restructuring and Disposal) Act 1999—Restructuring and Disposal—Mining at Leigh Creek
- Planning, Development and Infrastructure Act 2016—
  - General—Lapse of Consent or Approval
  - General—Planning and Development Fund (No 2)

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

Fee Notice under Acts—
- National Parks and Wildlife Act 1972—Lease Fees

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

Teachers Registration Board of South Australia—Report, 2019-20

Parliamentary Committees

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. D.W. RIDGWAY (14:16): I lay upon the table the report of the committee on its inquiry into the State Courts Administration Council—Sheriff's Office.

Report received and ordered to be published.

Parliamentary Procedure

ANSWERS TABLED

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

Question Time

CORONAVIRUS, HOTEL QUARANTINE

The Hon. K.J. MAHER (Leader of the Opposition) (14:21): My question is to the Minister for Health and Wellbeing regarding COVID-19. Will you release the report and recommendations the government received from Jane Halton AO regarding the SA hotel quarantine program, and what were the recommendations made by Ms Halton about the SA hotel quarantine program?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:21): The report that the honourable member refers to was a report to national cabinet. I am not a member of national cabinet; the Premier is. I will refer the honourable member's question to the Premier.

CORONAVIRUS, HOTEL QUARANTINE

The Hon. K.J. MAHER (Leader of the Opposition) (14:21): I have a supplementary arising from the answer.

The PRESIDENT: Rather difficult to get a supplementary out of that, but I will listen to the leader.

The Hon. K.J. MAHER: The report that the minister referred to being a report of national cabinet: can the minister inform the chamber if any parts of that report have been released?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:21): As I said, I will refer the question to the Premier.

CORONAVIRUS, HOTEL QUARANTINE

The Hon. K.J. MAHER (Leader of the Opposition) (14:21): Final supplementary arising from the original answer, sir.

The PRESIDENT: Yes, I am listening.

The Hon. K.J. MAHER: The report that went to national cabinet that the minister referred to in his answer: is the minister able to outline to the chamber what changes have been made to the South Australian hotel quarantine program as a result of that report and its recommendations?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:22): The national cabinet received a report from Jane Halton in relation to hotel quarantine. We also are awaiting a report from the Chief Scientist, Professor Finkel, in relation to contact tracing. What both reports showed is that South Australia's performance is gold standard in both domains. In relation to the honourable member's question, I will seek further details on notice.

CORONAVIRUS, HOTEL QUARANTINE

The Hon. C.M. SCRIVEN (14:22): My question is to the Minister for Health and Wellbeing regarding COVID-19. In view of the minister's comments this morning that investigations are underway into the hotel quarantine outbreak:

1. Who is undertaking the investigation?

2. Will it be completely independent?

3. When will the investigation report be published?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:23): I suspect the supplementaries will be calling for a royal commission, on this opposition's past form, but let's answer the primary question first. The investigations, at this stage, are primarily clinical, so therefore they are being done by SA Health. Our focus at this stage is particularly to identify when the infection might have occurred, because that is really important in terms of ruling people out and people in, in

terms of their risk of developing COVID-19. The investigation will, of course, progress to an increased focus on how it happened, but to this point I am not aware of any evidence that would suggest a breach of protocols.

CORONAVIRUS, HOTEL QUARANTINE

The Hon. C.M. SCRIVEN (14:24): Supplementary: can the minister advise when the investigation report that he is referring to will be published?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:24): Considering that we have already had more than 500 positive cases in South Australia, each of them would have involved investigation to a greater or lesser extent. I can assure you we haven't published 500 reports.

CORONAVIRUS, HOTEL QUARANTINE

The Hon. C.M. SCRIVEN (14:24): Supplementary: for clarity, is the minister saying that this investigation into the hotel quarantine outbreak will not be published?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:24): I didn't say that.

CORONAVIRUS, HOTEL QUARANTINE

The Hon. E.S. BOURKE (14:24): I seek leave to make a brief explanation before asking a question of the Minister for Health and Wellbeing regarding COVID-19.

Leave granted.

The Hon. E.S. BOURKE: The Premier spoke on ABC radio yesterday about the lack of COVID-19 testing for hotel quarantine staff who work in close proximity to people with COVID-19. The Premier said:

> I did query that situation but I was provided with advice that what we were doing was based upon best practice at the time.

My question to the minister is: why weren't staff who worked in hotel quarantine subject to regular COVID-19 testing like people who live in cross-border communities? What advice was provided to the Premier about his queries when he raised them?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:25): I think it's important to clarify that workers in medi-hotels are required to give a daily declaration as to their symptom status and that testing for COVID-19 is readily available to them. No Australian state or territory has been undertaking regular testing of medi-hotel staff and that practice is based on the advice of the AHPPC, Australia's premier group of world-class public health clinicians who determine what is good practice in relation to public health.

My understanding is that the view of AHPPC traditionally, up until this point, has been the concern that staff may delay getting tested when they are aware of symptoms if their next scheduled visit is close. For example, I develop symptoms on Wednesday, I might say, 'I am not really sure; it might just be hay fever. I am scheduled to get tested on Friday, I will wait till then.' My understanding is that public health clinicians are very concerned at that potential response because those two days could infect dozens of people.

The advice of the AHPPC as I understand it, to this point, has been to not have scheduled testing. I should clarify—I should add to my answer by saying that my understanding is that in recent weeks that practice has been under active consideration by AHPPC, even before the outbreak that we became aware of on the weekend. So I would not be surprised if there is a change in practice. From South Australia's point of view, the Chief Public Health Officer, Professor Nicola Spurrier, has already decided that we will be doing seven-day testing, and I am sure if Professor Spurrier was here she would reiterate that.

But that does not suggest that workers, if you like, wait until Friday. The reality is that, whilst mandatory weekly testing will be part of the medi-hotel regime in South Australia, just like any other South Australian, as soon as they become aware of symptoms we would be urging medi-hotel staff to be tested.

CORONAVIRUS, HOTEL QUARANTINE WORKERS

The Hon. T.A. FRANKS (14:28): Supplementary: are workers who are tested at medi-hotels able to continue working while awaiting the results, as, typically, you are not able to do that?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:28): My understanding, much like the cross-border communities that the Hon. Emily Bourke was referring to, was that when it's a scheduled testing you are not required to self-isolate. Having said that, if the person was presenting with symptoms, they would be required to self-isolate.

SMALL BUSINESS GRANTS

The Hon. D.G.E. HOOD (14:28): My question is to the Treasurer. Can the Treasurer update the house on the progress of applications for the second round of small business grants?

The Hon. R.I. LUCAS (Treasurer) (14:28): As members would be aware, the first round of grants to small businesses and to some NGOs were extraordinarily successful and required; that is, some approximately 18,700, I think, $10,000 grants were paid primarily to small businesses, but to some NGOs as well. The testimony that many of us have seen and heard is that many small businesses indicated that it was the difference between their business surviving or not during the early stages of the coronavirus pandemic.

I am pleased to be able to report that, as of this morning at 9 am, so I am told, we had already received 2,538 applications for $10,000 Small Business Grants, including what is a new element to the grants, which is a grant of $3,000 to some sole traders and partnerships who met certain eligibility requirements—similar eligibility requirements to those that other states have imposed on the payment of a similar grant of $3,000 to that particular group of small business operators. As I said, there are 181 of those applications for $3,000 grants in that 2,538.

The more pleasing aspect is that Treasury has got much better at throwing money around and handing money out than the first time around, when complex systems had to be instituted and staff trained, and websites in the initial stages crashed and we had an overload of telephone calls. As I said, Treasury has become much better at handing out this sort of grant now, and I am pleased to be able to report that already, as of yesterday, 183 $10,000 grants had already been processed and paid out within the first week.

RevenueSA, to their credit, having established a good working process in relation to the first grant scheme, were well prepared for a second grant scheme in terms of processing and are already processing grants to the extent that it's possible, as many of the grants that are required desperately by these small businesses that can be paid out before Christmas will be accomplished by RevenueSA. The obvious rider to that is where there is some doubt about the eligibility of an application, then that may well delay the processing of any $10,000 application, but where the processing is clear and the pathways smooth, the payment will be implemented as quickly as possible.

CORONAVIRUS, HEALTH ADVICE

The Hon. T.A. FRANKS (14:32): I seek leave to make a brief explanation before addressing a question without notice to the Minister for Health and Wellbeing on the topic of COVID-19 hotline operating hours in South Australia.

Leave granted.

The Hon. T.A. FRANKS: With a new cluster of cases in South Australia and the new restrictions in place, there are many people in the community who are looking for reliable answers, advice and support. COVID-19 doesn't cause concerns only during business hours or a designated window of time. People for whom the situation is stressful or exacerbating other stressors or problems don't only need support during that fixed window of time. The South Australian Health website directs people to multiple hotlines, but in particular we have the COVID-19 Information Line and the COVID-19 Mental Health Support Line. However, both of these only operate during limited hours.

In contrast, in Victoria, New South Wales and Queensland, they all have 24/7 COVID hotlines available. Meanwhile, our regular COVID hotline operates between 9 and 5, seven days a week, but even WA, who also has limited operating hours, has their hotline operating from 7am to 10pm.

Indeed, while the mental health hotline operated by Uniting Communities operates 8am to 8pm every day, that seems to be targeted to support those people who are in lengthy periods of self-quarantine and those practising social distancing—and the callback service, again, is only 9 to 5. My questions to the minister are:

1. Why are the operating hours so limited for the SA COVID-19 Information Line and the SA COVID-19 Mental Health Support Line?

2. Why don't they operate more extended hours or, indeed, 24/7 in times when the state is in a declared hotspot by other jurisdictions, as it is currently?

3. Given the new cluster of cases in SA, will this be addressed to expand these services in these difficult times?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:34): I thank the honourable member for her question and doing the chamber a service by reminding them of the range of services that are available to citizens to support them in this time. I think the honourable member makes a very good point: in periods of particular stress, there would be value in looking at opening times. There are a lot of demands on the SA Health team, and we are very grateful for the work of the wider Public Service in terms of mobilisation to support us, particularly at times like these. I will certainly take the honourable member's suggestions back to the SA Health team.

CORONAVIRUS, HEALTH ADVICE

The Hon. T.A. FRANKS (14:35): My supplementary was: if someone does need COVID-19 related information, advice or support outside of these designated hours, where should they go?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:35): I thank the honourable member for her question. I would certainly commend the SA Health website but also, to be frank, the DPC COVID-19 website. All citizens would find that the information load that is required in the COVID context is challenging, as we are constantly having changes to directions, depending on whether it is an internal situation or external situation. I appreciate that all citizens are going to need support to keep up with information.

In that regard, I suppose another information source that I would bring to people's attention is that, if they do need detailed information about directions, that's also available on the www.legislation.sa.gov.au site. Also, the police website is particularly useful when it comes to directions and the like.

There is a range of sources. I suppose in a way the range of sources can be a challenge, too. For example, I think you'll find the directions are accessible through almost all of those. It is something that we are learning from. This is the first pandemic we have done, and I thank the honourable member for suggestions and opportunities to improve.

CORONAVIRUS TESTING

The Hon. I. PNEVMATIKOS (14:37): Supplementary: does the minister intend to establish extra COVID-19 testing sites in the northern suburbs after people waited up to 10 hours in queues?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:37): I think the President would find that very difficult to classify as a supplementary, so I will just keep answering it in case he pulls me up. The honourable member will be pleased to know we established a very large facility at Parafield yesterday.

CORONAVIRUS, HOTEL QUARANTINE

The Hon. R.P. WORTLEY (14:37): My question is to the Minister for Health and Wellbeing regarding COVID-19. In view of Professor Spurrier's revealing publicly that she had concerns about hotel quarantine during the past fortnight, did the Chief Public Health Officer raise these with you? If so, what was then done to improve the safety of the hotel quarantine system?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:38): If the honourable member had read the comments in context, or perhaps at least their staff member in writing the question had read the comments in context, the particular issue that Professor Spurrier was referring

to was the increasing positivity rate of incoming international travellers. This is hardly surprising. We've got a pandemic raging around the world, raging in countries that we would regard as our peers—the United Kingdom, the USA.

I must admit in the last couple of days I haven't seen the US rates, but my recollection was that on US election day they had 100,000 new cases. The latest figures I heard were something in the order of 160,000 new cases. These are extraordinary figures. The Hon. Frank Pangallo unfortunately has informed me that it's up to 200,000 cases a day.

These are very concerning figures. Professor Spurrier certainly has highlighted to me the increasing prevalence of the infection overseas. The fact is that we've got thousands of Australians that we are bringing back to Australia from these environments, not just environments where we might think health concerns might normally emanate but from traditional First World health systems. We are certainly seeing an increase in the positivity rate of incoming travellers. That, of course, is a challenge. These facilities were built as hotels. They weren't built as hospitals, and we are dealing with a very infectious virus, so I can understand Professor Spurrier's concerns.

CORONAVIRUS, HOTEL QUARANTINE

The Hon. R.P. WORTLEY (14:39): What changes did the government make once they were made aware of Ms Spurrier's concerns?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:40): Let's be clear: Professor Spurrier leads the public health effort. If the honourable member is suggesting that Professor Spurrier has failed to make changes that she thought were necessary, I will take that on notice. What I would say is that we have been constantly improving our medi-hotel quarantine under the leadership of Professor Spurrier and her world-class team, and we will continue to make improvements, as demonstrated by the fact that Professor Spurrier introduced mandatory testing of medi-hotel staff every week.

CORONAVIRUS, SUPPORT PAYMENTS

The Hon. N.J. CENTOFANTI (14:40): My question is to the Minister for Human Services. How is the Marshall Liberal government supporting the financial wellbeing and resilience of vulnerable families during COVID-19?

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:40): I thank the honourable member for her question. Indeed, the Marshall Liberal government has provided significant funding for people who are in vulnerable situations, both through our 2019-20 budget and in the recent budget, brought down by our very benevolent Treasurer, the Hon. Mr Lucas.

In this recent budget there's some $4.1 million to provide additional support. The package provides an immediate impact and includes tailored financial counselling and loans to help people to avoid permanent financial crisis, a doubling of the existing state government and DHS-administered emergency financial assistance program, a boost to existing financial resilience and wellbeing services to increase service delivery and capacity-building in the community, and funding to non-government organisations in the food relief sector. The details are that we have provided:

- $650,000 to double the capacity of the Emergency Financial Assistance Program (EFAP), which is estimated to provide for an additional 750 to 1,250 EFAP recipients per month;
- $350,000 for food relief activities for organisations including Foodbank, OzHarvest and SecondBite;
- $750,000 to Good Shepherd Microfinance to target sole traders and small business owners impacted by COVID, which will link an expected 700 clients with up to $1.4 million in ethical credit as well as other supports, including budgeting tools;
- $150,000 to Speckle, which offers small cash loans of up to $2,000 to consumers, which are a cheaper, more ethical alternative to payday lenders or traditional lending;
- $1.75 million for increased financial counselling services in South Australia, which will provide multiple packages across the state for activities such as employing financial

counsellors or capability staff on fixed-term contracts, partnerships with other providers to improve access and referral pathways or IT infrastructure and other service delivery system efficiencies to manage the impacts of COVID-19;

- $200,000 to upgrade the Affordable SA Digital platforms, to modernise the platform and assist in ameliorating the expended surges in demand; and
- $250,000 to increase the capacity of the Consumer Credit Law Service.

We know that a lot of these services are very important for people in these challenging financial times and there is a particular focus, as I have mentioned, in terms of financial counselling, and we think that is a very valuable service which is going to help provide that early intervention, and long-term benefits to people who may be financially vulnerable.

We are acutely aware of the fact that people may have reduced hours of employment and as well as people who were traditionally thought of as vulnerable, there is now a different cohort that we have been referring to internally as 'the COVID vulnerable' and, for that reason, the COVID boost was provided to people who were on JobSeeker payments to particularly assist them.

CORONAVIRUS, SUPPORT PAYMENTS

The Hon. R.P. WORTLEY (14:44): Supplementary: minister, can you tell me what funding is available to workers who have been sent home without pay due to the very recent COVID-19 restrictions?

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:44): Certainly. There are two sets of payments which people may be eligible for. The Australian government, through Services Australia, is providing $1,500 for people who may need to isolate or who may need to care for somebody who needs to isolate. We have a separate payment, which is $300, to people who may not be eligible for that payment, and that includes international students and other workers. So that is more targeted towards people in that casual situation. There is extensive information on media tiles and on the website, and people do need to have been part of a declared cluster in order to be eligible.

CORONAVIRUS, SUPPORT PAYMENTS

The Hon. R.P. WORTLEY (14:45): Supplementary: so if somebody who is employed at the moment is sent home by his or her employer and told to take annual leave, is there any funding for these particular people?

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:46): It would depend on the conditions of that person's employment. For instance, if somebody is in the public sector, they would have access to existing COVID leave arrangements. We have a number of people who are isolating at home and who are working from home, so this is more for people who are in different arrangements where they cannot access an existing arrangement through those other ones. So it is trying to capture people who may not be eligible for particular payments. Also, people who are Centrelink beneficiaries I understand are excluded.

CORONAVIRUS, SUPPORT PAYMENTS

The Hon. C.M. SCRIVEN (14:46): Supplementary: can the minister confirm whether parents of children who have been asked to quarantine will be eligible for COVID quarantine support payments, given that the Services Australia information says that you must be caring for a child aged 16 or under who has COVID-19 or who has been in close contact? Will that still incorporate the parents of children where simply the whole school has been closed down?

The PRESIDENT: The minister has the call, but the Hon. the Deputy Leader is stretching the bounds of those supplementary questions. I ask the minister to respond.

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:47): I think the honourable member is asking me questions about a Services Australia payment, so I would direct her to Services Australia, which is the organisation responsible for administering those payments. My department is responsible for administering the particular DHS payment.

KINDRED LIVING AGED CARE

The Hon. F. PANGALLO (14:47): I seek leave to make a brief explanation before asking the Minister for Health and Wellbeing, as Minister for Ageing, a question about the Kindred Living aged-care facility at Whyalla.

Leave granted.

The Hon. F. PANGALLO: Last week, I attended the trouble-plagued facility, with the husband and son of a severely demented resident who lives there, to witness firsthand the severe infection of Norwegian scabies that had ravaged her body. Her husband and other residents and staff caring for dementia residents in cottage 3 have also been affected. The Nine Network's *A Current Affair* program travelled to Whyalla and aired its story last night, which included interviews with two brave whistleblowers, who were first to expose the neglect at this facility.

Under the spotlight of a royal commission that was ordered to specifically investigate levels of neglect and abuse in our aged-care homes, I found it heartbreaking that this sort of neglect was still occurring. In response to the TV program last night, the Minister for Aged Care and Senior Australians, Richard Colbeck, released a statement revealing that this aged-care facility has been the subject of 11 complaints investigated by the Aged Care Quality and Safety Commission—11. My questions to the minister are:

1. Have you or your office been in contact with Minister Colbeck's office since the airing of the disturbing report last night?

2. Are you concerned at the high number of complaints that have been made against this facility?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:49): I thank the honourable member for his question and I take the opportunity to commend the Hon. Frank Pangallo and Mr Stewart Johnston for their advocacy, particularly for the improvement of standards in aged care. Certainly, I share the member's concerns in relation to the very troubling report that was aired on *A Current Affair* last night in relation to Kindred Living, Whyalla.

Indeed, my office has been in contact with Minister Colbeck's office. Both Minister Colbeck and I are committed to ensuring these allegations are urgently and thoroughly investigated and that appropriate action is taken. I understand that an investigation by the Aged Care Quality and Safety Commission is underway. The health, safety and wellbeing of senior Australians is extremely important. We will direct all appropriate and necessary resources to assist.

While the federal government is responsible for the oversight of aged-care services, particularly through the Aged Care Quality and Safety Commission, the Marshall Liberal government has always acted swiftly to protect vulnerable members of our community, including older South Australians. That's why in the wake of the Oakden disgrace, we passed legislation to safeguard the rights of adults vulnerable to abuse and neglect and to establish the Adult Safeguarding Unit (ASU). That's why in the wake of the tragic death of Ann Marie Smith, the Marshall government brought forward the planned expansion of the ASU to include adults living with disability who may be vulnerable to abuse.

This morning, in response to the *A Current Affair* segment, the Adult Safeguarding Unit has been in contact with the Aged Care Quality and Safety Commission to discuss what steps are being taken in response to this matter and to make the commission aware of SA Health's willingness to assist, particularly in relation to the management of the suspected outbreak of scabies.

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

KINDRED LIVING AGED CARE

The Hon. F. PANGALLO (14:51): Minister, do you believe it's appropriate that an aged-care facility is able to change its name, as Kindred has done, in an attempt to distance itself from the poor reputation its former name had? Is this another example for the installation of CCTV cameras in bedrooms?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:51): If the honourable member might allow me to answer the second question first, the honourable member would appreciate that this government is extremely interested in the potential for CCTV to improve the quality and safety of aged care. I would be interested to have that conversation with the Premier—sorry, the honourable member. Perhaps he will be Premier in another life, but he is still only an honourable member at this stage.

I would be interested to have a conversation with the honourable member as to how he thinks CCTV would help in relation to scabies. I appreciate there might be other issues in the care of the facility but I suppose what comes to mind is there is nothing like boots on the ground and eyes looking at the problem. I know that the honourable member had concerns about the suspension of unannounced visits during the pandemic, and I think he would agree that CCTV is only part of a constellation of safeguards that are needed. So we are certainly keen to explore the opportunity for CCTV.

The question the honourable member raises in terms of a name change is an interesting one because it has been raised in the context of Ann Marie Smith; the name of a service provider, particularly the name of a worker who might be identified as a risk to patients and then they change the name and the like. So it is an issue. To be honest with you, I have no idea of the circumstances in which Kindred Living adopted its new name. I think it was previously known as Whyalla Aged Care. Mind you, it's not an unusual sort of name now. I am thinking of a number of facilities around the state that have names of that ilk, so it might just be a more humanising, more homely type descriptor.

Be that as it may, I will be certainly interested to know whether the timing of the name change might correlate with some of the earlier reports. I noticed there was a comment on the item last night in terms of complaints. I think there was a suggestion that there were four complaints in relation to scabies and two of them were still open. It's something that I will be interested to see in terms of the period over which those complaints occurred; when were the commonwealth sanctions put in place and what was done in response to them?

Certainly, my office's conversations with Minister Colbeck's office highlights the determination of the commonwealth to ensure that appropriate standards are being delivered at Kindred Living.

CORONAVIRUS TESTING

The Hon. I. PNEVMATIKOS (14:55): My questions are to the Minister for Health and Wellbeing regarding COVID-19.

1. Has the minister received any advice about the wait times at COVID-19 test sites; if so, what are those wait times?

2. Is the minister aware of any testing stations that have turned people away?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:55): I am still waiting for final figures for yesterday's test results, but the lowest estimate I have received so far is more than 4,000. It is a very strong response from the people of South Australia within less than 48 hours: the positive test result was received either about quarter to 12 on Saturday night or half past 12—in that sort of time frame—and it went to the Chief Public Health Officer, as appropriate. In slightly more than 24 hours we had an extraordinary response from South Australians going to get tested.

We saw it again today. I had a report of one clinic that at 6 o'clock—in other words, two hours before its opening time—already had 60 people lined up. There has been an extraordinary response by the people of South Australia and we thank them for that. We have now had more than half a million samples taken in South Australia, and the percentage of the population is almost 20 per cent.

In terms of the honourable member's comment in relation to wait times, there certainly have been delays, and we are grateful to the people of South Australia for their patience, because with these sorts of numbers presenting it is just not possible for the clinics to deal with the spike in demand. Even on the first day, the Monday—which is yesterday—opening hours were extended for key COVID clinics: Victoria Park, Parafield Airport, Elizabeth and Magill all stayed open until 8pm.

I understand that on ABC Radio this morning Tom Dodd, from SA Pathology, said that by midnight last night SA Pathology had processed 3½ thousand test results. What was extraordinary

was that he indicated the turnaround time of nine hours was maintained; that is quite extraordinary when you have such a large number of tests.

The SA Health team has not only added the Parafield clinic—which I understand was opened yesterday—and not only extended hours, they are actively looking at what they can do to improve the flow in the context of the outbreak. There is a significant number of people who are being tested due to self-presentation, and there would also be many people who, as a result of being part of contract tracing identification, would either need to or might want to have a COVID test.

COVIDSAFE APP

The Hon. F. PANGALLO (14:59): A supplementary: can the minister explain if SA Health uses the federal government's COVIDSafe app in its tracing efforts?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:59): Yes; we certainly do. The COVIDSafe app is one of a number of tools that can provide data for contact tracing. Another project that we've currently got underway is to explore the use of QR codes and other forms of technology to bring data, particularly from high-risk sites like licensed premises, churches and the like.

What is really important for us is to have the data in a form that can be brought together, so a lot of work has been done, both at the state and federal level, to increase the range of data that might be available to us and also, to be frank, to improve the technology that is available for the contact tracers so that they can, if you like, make the links. It is all very well and good for a QR code to tell us that somebody was at a nightclub and for the COVIDSafe app to tell us that a positive case was also at the same nightclub, but we need to be able to make that information available to contact tracers.

In that regard, we have been upgrading the IT for the contact tracing team, which had an added benefit this week, because the IT system we use for contact tracing I think is called Salesforce. My understanding is that is the same program used by Western Australia, so if I could take this opportunity to thank the Western Australian government for having made contract tracers available to us. The latest advice I have received is that 10 Western Australian contact tracers have been backing up our efforts.

It would also be remiss of me in that context to not acknowledge the generosity of the commonwealth government and the Australian Defence Force. They have been very important and trusted partners of the South Australian government through this pandemic, particularly in the context of border controls and logistics and planning, very key members of our state command centre at Health. But also in the current context the Prime Minister has been in contact with the Premier and offered whatever help the ADF can provide. One of the areas of interest for us, of course, is contact tracing; that is expertise that the ADF has.

The PRESIDENT: The Hon Ms—

The Hon. T.A. FRANKS: It's a supplementary on it.

The PRESIDENT: The Hon Mr Pangallo was up before. Is this following on from the previous one?

COVIDSAFE APP

The Hon. F. PANGALLO (15:01): By a short half-head, Mr President.

The PRESIDENT: A brief supplementary, yes, sir.

The Hon. F. PANGALLO: Minister, I also should have asked you: has the COVIDSafe app been shown to work?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:02): I don't have data on that, but I am more than happy to get that data. Obviously in a situation like this, contact tracing is very important, but thankfully the COVIDSafe app hasn't had as much work to do in South Australia as it might have elsewhere in the world, in that, for example, I think the United Kingdom are on their third version of a COVID-safe app. But I will certainly seek information for the honourable member.

CORONAVIRUS, METROCARD CONTACT TRACING

The Hon. T.A. FRANKS (15:02): My supplementary is: are Metrocards able to be employed to assist with contact tracing, and have they been?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:02): It's an interesting point. One of my ministerial colleagues raised not the Metrocard opportunity but raised the issue of QR codes in public transport. I have certainly had the opportunity to provide a QR code when I present at a restaurant. One of my colleagues indicated that you can't get into his church unless you swipe in using a QR code. So I think this sort of technology is becoming increasingly widespread.

I want to take the opportunity to reassure the people of South Australia that SA Health, and for that matter our partners in SA Police, are acutely aware of respecting people's privacy, so it is intended that all of this data that will be collected from whatever source in relation to COVID-19 will be kept for a very limited period. I can't recall whether it is 28 days or 40 days. I think COVIDSafe might be 40 days, and I think we might be planning to do 28 days. We are resolutely committed not to use it for anything other than public health purposes.

CORONAVIRUS, PARAFIELD CLUSTER

The Hon. T.J. STEPHENS (15:04): My question is to the Minister for Health and Wellbeing. Will the minister update the council on the support available to help people affected by the Parafield cluster?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:04): I thank the honourable member for his question. The response of the South Australian community to the COVID-19 pandemic has been the foundation of the state's success throughout the pandemic so far. As we deal with the current Parafield cluster, that response has continued to be strong. I want to thank all South Australians for playing their part by getting tested, following health advice and self-isolating when required.

Self-isolation is a particularly important part of any response to a potential outbreak, stopping the spread of cases through the community. South Australians have shown a high degree of compliance to date, but we have seen, in other jurisdictions and around the world, there has sometimes been a reluctance by individuals to isolate, particularly where their livelihood was put at risk because of that.

For that reason, as part of our plan for a strong, rapid response to new cases in the community, the Marshall Liberal government has been working with the commonwealth government to deliver a paid pandemic leave scheme for South Australians directly linked to a cluster. We have had this scheme in place and ready to go since 25 August, helping us to move quickly and strongly in the current cluster.

Payments of up to $1,500 are made by the commonwealth, and they are available to eligible workers who are required to quarantine, or care for someone required to quarantine, for up to 14 days following a positive COVID-19 test. Payments are also available to those instructed to quarantine as a result of a public health directive. Another payment of $300, made by the South Australian government, is available for eligible workers in an identified COVID-19 cluster who are required to self-isolate while awaiting a coronavirus test result as a result of a public health directive. The payments are funded under a cost-sharing arrangement with the commonwealth, and I thank the Prime Minister for partnering with South Australia to implement the scheme.

The eligibility requirements include being part of a designated COVID-19 cluster, as notified by the Chief Public Health Officer or her delegate, and I encourage South Australians who think that they might be eligible to visit the South Australian government website for the full criteria. The paid pandemic leave scheme is an important way to support workers who are part of a highly casualised workforce, such as disability care workers and those who work in residential aged-care facilities, as well as protecting vulnerable South Australians whom their work brings them in contact with.

The high levels of compliance by businesses and individuals saw us safely through the first peak of the pandemic, and I am very confident that this same goodwill that is uniquely South Australian will be fundamental in suppressing the current cluster. I want to thank the South Australian

community for their efforts over the past few days and their continued efforts as we strive to get on top of this cluster. I also want to thank and congratulate the SA Health team, from Pathology to contract tracers, to nurses in our medi-hotels and far beyond, for their monumental efforts in keeping our community safe.

CORONAVIRUS, PARAFIELD CLUSTER

The Hon. I.K. HUNTER (15:07): Supplementary question to the minister: was any South Australian identified as being part of that Parafield cluster identified through the commonwealth COVIDSafe app?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:07): I am happy to take that question on notice.

MOUND SPRINGS

The Hon. M.C. PARNELL (15:08): I seek leave to make a brief explanation before asking a question of the Minister for Human Services, representing the Minister for Environment and Water, about South Australia's mound springs.

Leave granted.

The Hon. M.C. PARNELL: Some of the jewels in the crown of the South Australian outback are the various mound springs which occur when water from the Great Artesian Basin reaches the surface under pressure. These springs and the ecosystems around them are dependent on continued natural flows and water pressure of an intact Great Artesian Basin water system. The mound springs are recognised nationally as an endangered ecological community.

The reduction in water pressure in the Great Artesian Basin, through extraction from artesian bores, has been the primary cause of hundreds of mound springs across the basin drying up since the first bores were sunk in the late 1800s. These days, the biggest water user in the region is the BHP Billiton Olympic Dam mine, which is set to extract 50 million litres of water (or 20 Olympic-size swimming pools) every single day for the next 25 years.

Since the Olympic Dam mine began extracting water in 1982, impacts on the mound springs have continued to increase in severity as the extraction rate continues its inevitable rise. Many springs have declined and others have stopped flowing altogether. My questions of the minister are:

1. How is it possible for the decline and ultimate extinction of many of these mound springs to be reversed if BHP Billiton is able to drastically increase its take of water from the Great Artesian Basin?

2. What steps will the government take to protect South Australia's iconic mound springs into the future?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:09): I thank the honourable member for his important question. In fact, I think he and I may well have been members of the Environment, Resources and Development Committee at the same time when we went to areas of the Far North in South Australia where the mound springs exist. Indeed, they are environmentally unique and definitely worth protecting.

I also recall that there was quite an extensive program of capping of bores, which the federal government may well have funded, that was administered through the then department—it might have been DWALABI or DEW or whichever former incarnation that was. But in relation to the honourable member's specific questions, I will take those on notice and bring back a response for him from the relevant minister.

CORONAVIRUS, QR CODES

The Hon. J.E. HANSON (15:10): My question is to the Minister for Health and Wellbeing regarding COVID-19. Following on from an answer you gave to the Hon. Mr Pangallo, my questions are:

1. What are the specific reasons South Australia is not using QR codes or other methods to track attendances at hospitality venues despite them being in place in New South Wales for at least two months?

2. Can the minister confirm that this has been the subject of consideration in South Australia for at least five months and it has not been implemented?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:11): Certainly, there have been QR codes used in South Australia for months. It's one of a range of options that SA Police and SA Health had available to them. They are developing an integrated database to use both QR codes and other technology. I expect that will be rolled out shortly.

CORONAVIRUS, QR CODES

The Hon. J.E. HANSON (15:12): Supplementary: if it is being used, then why has it not been rolled out more widely, and is it because the minister regards it as not effective or simply that it's too hard to use in terms of IT?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:12): It's not for me to have a view on whether QR codes are effective or not; I will rely on the very skilled SA Police who have been leading us during this major emergency and the public health clinicians that they work with. The QR codes will be helpful in terms of contact tracing data, but as I said in the answer to the Hon. Frank Pangallo, there are a whole range of other elements of that contact tracing system that come together to form an effective whole. I remind the council what I said in my earlier answers to questions in question time today, which are that the report of the Chief Scientist, Professor Finkel, has commended the South Australian contact tracing system.

CORONAVIRUS, QR CODES

The Hon. J.E. HANSON (15:13): Further supplementary: if the minister doesn't want to offer an opinion on the effectiveness of QR codes, can he at least offer a view as to if we had had QR codes in place, would it have made it easier for contact tracing in regard to the most recent Adelaide outbreak, and will he ensure the immediate adoption of the QR code system?

The PRESIDENT: That was a very lengthy supplementary question.

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:13): Yes, and I am not nearly going to be anywhere near as opinionated in my answer as the honourable member is in his question. I will continue to rely on the stellar advice of SA Police and SA Health.

SMALL BUSINESS LOANS

The Hon. D.W. RIDGWAY (15:14): My question is to the Treasurer. Treasurer, I think it was the former government, at the time that Arrium went into administration in Whyalla, that provided a range of loans to assist small businesses. Can you update the house on what action, given the COVID-19 pandemic, the Marshall Liberal government has taken in relation to these loans?

The PRESIDENT: I am sure the Treasurer can do that, but you have asked me to do that, and I am sure that you meant that you wanted the Treasurer to do that. I call the Treasurer.

The Hon. R.I. LUCAS (Treasurer) (15:14): The former government, back I think far as 2016, made available a series of interest-free loans and some grants to small businesses who experienced cash flow problems at the time of Arrium entering administration. My notes indicate to me that some 19 loans in total were made, totalling $5.6 million, and a grant was awarded to the Whyalla City Council for $125,000 at that particular time.

The South Australian Government Financing Authority continues to administer those loans. Unsurprisingly, as a result of the COVID-19 pandemic, some or all those businesses directly and indirectly approached the government for some relief in relation to the repayment arrangements on those loans—some directly to the government, some via the Small Business Commissioner, and in some cases both.

I am pleased to indicate that the government has entered into—favourable to the businesses—15 repayment arrangements in relation to those 19 loans, I think it was, that had been

entered into. In broad terms, it generally involves extended repayment arrangements, and most of those small businesses have been very pleased at the results of the renegotiation of their repayment arrangements with SAFA. I am advised also that three loans have already been repaid in full by the small businesses and they therefore weren't requiring any assistance.

I think some of the small businesses did request of the government that we convert the loans into grants. The government, on behalf of the taxpayers of the state, didn't agree to that. These were loans entered into in good faith by the former government. We have honoured those loans. We have been generous, on behalf of the taxpayers, in extending the repayment arrangements. As I said, three of them have already been repaid, and we will continue to monitor the progress and the repayment arrangements for those particular small businesses as they continue, hopefully, to emerge from the COVID-19 pandemic.

SMALL BUSINESS LOANS

The Hon. T.A. FRANKS (15:17): My supplementary question is: are any of these small businesses in the position that they are waiting for payments from GFG Alliance over the 30-day period?

The Hon. R.I. LUCAS (Treasurer) (15:17): I think if one has seen the statements from the Small Business Commissioner in the last 24 to 48 hours, it's highly likely that what the Small Business Commissioner has indicated is accurate, but you would need to speak to the Small Business Commissioner about the specific details. Certainly, I have seen his reported comments.

I do recall, in some of the requests—not all but in some—for repayment arrangements, that some did make claim to having, at that particular time, been awaiting repayment from GFG, but not all of those small businesses had made that claim. Whether or not they were all in that position but some only mentioned it in their renegotiations with SAFA, I can't attest to. But clearly the Small Business Commissioner's public statements would seem to indicate that at least some of those businesses are in circumstances that the honourable member is referring to.

BUSHFIRE PREVENTION AND MANAGEMENT

The Hon. J.A. DARLEY (15:18): My question is to the Minister for Health and Wellbeing, representing the Minister for Police, Emergency Services and Correctional Services, about bushfire prevention and management. Can the minister advise what preparations are being undertaken to prepare for the bushfire season and whether our existing fire-management techniques incorporate traditional Aboriginal knowledge?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:18): I thank the honourable member for his question and I am happy to refer it to the minister in the other place.

CORONAVIRUS, HOTEL QUARANTINE

The Hon. T.T. NGO (15:19): My question is to the Minister for Health and Wellbeing regarding COVID-19. In view of the *The Advertiser* revealing that there had been 62 breaches of hotel quarantine procedures identified between April and September, can the minister advise how many times hotel quarantine staff and security guards breached protocol in the past two months and how many times protocols have been breached by other staff or public servants involved in the monitoring and compliance of quarantined travellers?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:19): The honourable member raises a detailed question, which I will return with a detailed answer. I think it's important to appreciate that a number of these breaches would be breaches of protocols which may have no relationship to infection control. My understanding is that the data includes a whole range of breaches in terms of the fulfilment of the contracts of the security personnel.

I also want to make the point, and I suppose it relates to the point the Hon. Russell Wortley was making earlier today, that we have an increasingly COVID-positive cohort going into these hotels, and they are being housed in a facility that was not designed as an infection control environment. COVID is a highly infectious disease. It's very difficult to avoid infection. COVID-19 has been acquired by highly trained health professionals working in an acute hospital environment, using full PPE. We have seen that even in our own ICU here in the Royal Adelaide Hospital. I just make

the point that infections will occur, whether that's in a hospital environment, health service environment or a medi-hotel. What is important is we need to be ready to stop a case becoming a cluster, and a cluster becoming an outbreak.

Bills

DEFAMATION (MISCELLANEOUS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 15 October 2020.)

The Hon. K.J. MAHER (Leader of the Opposition) (15:22): I rise to speak to this bill and indicate that I will be the lead speaker for the opposition. I indicate that the opposition will by and large be supporting this bill that proposes significant amendments to the Defamation Act, with some related a menace to the Limitation of Actions Act.

The current Defamation Act in South Australia reflects a national model defamation provisions that were adopted by the former state Labor government way back in 2005. That process was initiated by the Council of Attorneys-General (CAG) in November 2004. The CAG appointed a national defamation working party that drafted the first model defamation provisions (MDPs). The MDPs used a harmonised legislation approach, where all jurisdictions seek to agree on a set of provisions, which are then legislated as consistently as possible across the nation.

The year 2005 was the first time that defamation law was uniformly examined on a nationwide level with a view to increase consistency. The CAG reconvened the defamation working party in June 2018 to review the 2005 model provisions. This was to address emerging issues of social media disputes, online publication of defamatory matter and the relationship between defamation, investigative journalism and the public interest.

On 27 July 2020, CAG approved the recommended amendments to the MDPs. In doing this, CAG cited broad consultation with media companies, legal bodies, academics, digital platforms and lawyers. The review of the national provisions sought to increase efficiency, introduce mandatory pre-action steps to save court time and limit courtroom litigation of defamation that does not involve serious harm.

This bill seeks to update the law to reflect changes in technology and to address precedents that have arisen in case law. In particular, it seeks to address precedents about when defamatory matter is deemed to be published online. In doing so, it is proposed that the single publication rule time limit would begin upon the upload of digital material, rather than the most recent download.

The bill also proposes early, non-litigious methods of dispute resolution. It contains a new pre-action threshold and requires out-of-court processes, including the compulsory use of concerns notices and offers to make amends. t introduces two new defences, amends other defences and addresses the cap on damages for non-economic loss that a plaintiff suffers.

The bill amends section 9 of the current Defamation Act which covers certain corporations that do not have a cause for action defamation. Currently, only non-profit corporations with 10 or fewer employees can sue. The bill clarifies the definition of employees to include workers like independent contractors and, therefore, affects the companies which can take action. The bill amends section 10 to allow courts to make orders about costs for actions that end because of the death of a party if such an order is in the interests of justice. In the old act and in the new bill there is no cause of action for defamation of or against deceased people.

Notably, the bill introduces a threshold of serious harm for all defamation claims through the insertion of a new section 10A. This is a considerable amendment to the legislation and the scheme. Under the bill's proposed section 10A, plaintiffs must establish that there has been serious harm or there is likely to be serious harm caused by the alleged defamation.

This harm threshold seeks to avoid lengthy and costly court processes where only minor harm is demonstrated and sustained. It is noted that the bill does not define or quantify serious harm

and leaves this up to the courts to determine. The opposition understands that there was not a unanimous position around Australia with regard to leaving this up to the courts.

This change is accompanied by the parallel repeal of the triviality defence contained in section 31 of the act. The bill proposes inserting new sections 12A and 12B about concerns notices. This is one of the new mandatory pre-action steps in the bill. It proposes that plaintiffs must send a formal pre-action concerns notice to a publisher of allegedly defamatory material. This step will be instead of going straight to court and is currently optional rather than mandatory.

After sending the notice, plaintiffs must wait a set time before taking further action, although this period may be reduced by a court. This period is designed to allow for any settlement offers to be made. The bill also amends sections 14, 15 and 18 about valid offers to make amends by setting out the new requirements for publishers about what constitutes a valid offer in response to a concerns notice.

Through amendments to section 21, plaintiffs will be prevented from bringing multiple actions for defamation for the same publication against different but associated defendants. For example, this might stop a plaintiff suing and seeking damages from both a journalist and a newspaper owner or editor who published the same article in the same newspaper. This is intended to stop plaintiffs from attempting to, in effect, circumvent the cap on non-economic damages, and is intended to reduce court caseloads. Whilst the intent is admirable, caution is needed to ensure that this provision is not or could not potentially be abused by those who engage in defamation.

The bill simplifies the contextual truth defence under section 24 of the act. This is where a publication has both true and false defamatory implications but the false allegations do not harm a plaintiff's reputation beyond the true allegations. The new public interest defence appears in the proposed section 27A. Section 27A provides that publishers are not liable if the matter concerns an issue of public interest and the defendant reasonably believed that publishing it was in the public interest. This is based on the public interest defence set out within section 4 of the United Kingdom's Defamation Act.

In view of the public interest amendment, the existing qualified privilege defence under section 28 will have public interest removed. It is noted that earlier model defamatory provisions intended to cover public interest, but the outcome was not as successful as intended. The lack of success regarding public interest from the previous national MDPs and the courts' decisions on single publication demonstrate why this legislation must be approached carefully. We may not always be legislating for what we think is the intended outcome.

The new section 28A in the bill proposes a new defence for scientific and academic peer review journals. This would occur if the alleged defamatory material relates to academic matter that is published honestly and for the education of the public. The bill updates the honest opinion defence in section 29 to accommodate internet publications as proper material that an opinion can be based on. It states these can be supplied via hyperlink.

Notably, this bill amends section 33 to address the cap on non-economic loss suffered by a plaintiff in defamation. Currently, economic loss is subject to separate uncapped provisions, and separate aggravated damages can potentially be awarded. The bill clarifies that the current maximum amount of $421,000, indexed annually, is to be awarded only in the most serious cases. s such the bill does not seek to change the maximum amount but remind the court that the maximum is not the baseline or standard amount. This bill also allows service documents for a defamation via email and by amending section 41 of the act.

Finally, this bill proposes amendments to the Limitation of Actions Act 1936 regarding the single publication rule. The bill proposes that the time for actions—which is one year or up to three years, if considered just and reasonable by the court—linked to online material starts at the time of the publication or posting of the material, not the time of the most recent or relevant downloading of the material. The time limit may be restarted if there are subsequent publications of the same or substantially similar content, or if a subsequent publication or its manner of publication is sufficiently different from the original.

The bill automatically extends the limitation period for pre-action negotiation due to the added time periods linked to compulsory concerns notices and subsequent offers to make amends. A

number of questions were asked of the Attorney-General in the committee stage of this bill in the other place. We will not seek to relitigate all of those issues in great detail, as a number of the opposition's questions were answered in the other place.

However, one issue we will seek to traverse during the committee stage is assurances that smaller plaintiffs will be protected with the reversal of the new single publication rule and a limitation on suing related parties. The opposition, as I said, largely supports this bill but will require a number of questions to be answered during the committee stage.

The Hon. M.C. PARNELL (15:31): The Defamation (Miscellaneous) Amendment Bill 2020, which amends the Defamation Act 2005 and the Limitation of Actions Act 1936, aims to reform the defamation law in South Australia in response to the recommendations of the Council of Attorneys-General (CAG) earlier this year.

CAG's defamation working party recommended changes to the model defamation provisions, which each state and territory government is now working towards adopting. This bill is South Australia's part in a nation-wide initiative. While these reforms only scratch the surface in addressing the issues with defamation law in Australia, many of the reforms in this bill represent sensible steps in the right direction, and I certainly support the goal of working towards a unified approach across all Australian jurisdictions.

So far South Australia and New South Wales are the first cabs off the rank in introducing the bill to their respective parliaments. I am very much indebted to my Greens' parliamentary colleague and fellow lawyer David Shoebridge MLC of the New South Wales parliament, who spoke to their version of this bill recently. David is a vigorous defender of human rights and the rule of law, and I acknowledge his leadership in our party on this issue.

One of the main concerns around current defamation law is that it can be used as a tool by rich and powerful people to silence their critics. The threat of litigation alone is a significant deterrent for many people, and may prevent them from publishing genuine criticisms of anyone with the resources to go down the defamation path in court.

On two occasions earlier in my time in this parliament I introduced 'protection of public participation' bills as a response to the despicable practice of some corporations and property developers of trying to silence their critics through SLAPP suits. SLAPP stands for 'strategic litigation against public participation', and it involves either threats or actual legal proceedings, which generally have little merit but which are designed to silence your critics into submission.

I used a number of examples in parliament when debating these bills, including the Hindmarsh Island marina developers and some polluting industries in the suburbs of Adelaide. Those bills still have merit, but the South Australian parliament has lacked courage, at least the courage of other jurisdictions, in relation to legislating to protect genuine public participation in public interest matters. Of course there should be a mechanism for people to defend their reputation against genuine defamatory comments and material. It has been clearer than ever in 2020 that baseless and untrue claims about public figures can represent a real threat to justice and democracy.

However, we must acknowledge that the world of defamation law has often been a battleground for the squabbles of the powerful and wealthy. For most of us, defamation is just a proxy for the threat of financial ruin from extended costly court battles, regardless of whether or not anything we said or wrote was actually defamatory. In this way, defamation law can act as a 'paywall' to criticising the rich and powerful, and this is a wall that must come down in the interests of justice and equality.

I am pleased that several of this bill's proposed changes do start to address this paywall to criticism while keeping intact the intent of defamation law which is to prevent and compensate for damage to reputation by false accusations. We still have a lot further to go but this is a sensible step in the right direction.

One of the key reforms of this bill is that it introduces a serious harm threshold so that a case will only go ahead if a preliminary hearing finds that the alleged defamation does cause risk of serious harm. The Greens believe this is a reasonable amendment. While the defence of triviality was a previous attempt at addressing cases where the alleged defamatory statement was unlikely to cause

the plaintiff harm, this serious harm threshold goes further and mandates that serious harm must be established before a court case can proceed officially.

For cases where no serious harm can be established, non-litigious avenues will often be more constructive and certainly less expensive. I think it is important to flag that serious harm will have to be carefully defined. The Law Society, for example, expressed concerns about the lack of guidance in the legislation itself about how that threshold is to be approached and that serious harm could be interpreted quite subjectively. However, overall, the Greens think this reform is a sensible step towards preventing public resources being misspent on trivial claims and a step away from wealthy, powerful people using defamation law to shield themselves from valid criticism.

I think this serious harm threshold could also provide a much needed mechanism to scrutinise online cases of alleged defamation where published material can include a Facebook comment, perhaps only seen by four people, and deleted soon after posting. It may be defamatory but, depending on the identity of the four people who saw it, it may not reach the serious harm threshold. In fact, it is unlikely to. While social media has certainly muddied the waters around defamation, I hope that this reform will provide a new avenue for negotiation amid the rapidly changing publication landscape.

Consideration of social media and its role in modern communication is also central to another key reform in this bill, the single publication rule. The current defamation law requires that defamation action must occur within 12 months of publication of the alleged defamatory material. However, current laws also assume that each time online material is accessed or downloaded, it is 'published' afresh, meaning that this 12-month period is reset each time someone accesses the material and, hypothetically, can be 'published' perpetually forever. This amendment would specify that defamation cases based on online content must occur within 12 months of the original content being made public.

Another major aspect of the bill is that it mandates the issuing of a concerns notice before any proceedings occur and it outlines set forms, content and timing for these concerns notices, including offers to make amends. In other words, someone accused of defamation must be notified before any legal proceedings can occur, given the opportunity to withdraw potentially defamatory statements and the opportunity to say, 'Sorry, I didn't mean that.'

Under the current act, the plaintiff does have the opportunity of issuing a concerns notice but under this bill this will become mandatory. This is sensible, and I hope it will encourage non-litigious pathways and establish a few limitations on powerful players automatically retreating behind their paywalls to criticism. I think communication is always a good first step in addressing any dispute and it is a route to resolution that is much more accessible than marathon court battles.

Also included in this bill is a fresh public interest defence, intended to protect information that is otherwise defamatory but clearly in the public interest. For me, it is a no-brainer that we need a public interest test in defamation law. This is also consistent with the Greens earlier 'protection of public participation bills'.

I note that the new defence, which the bill aims to insert into the act, borrows partly from the public interest test in section 4 of the UK Defamation Act 2013 which is broader than South Australia's current 'Defences of fair report of proceedings of public concern' but has had its share of criticisms as being a hard test to meet. It is for this reason I am also pleased to note further additions inspired by New Zealand's defence of responsible communication on a matter of public interest.

It is vital that public interest is protected through a clear and consistent test and that free and robust public debate is not hindered by the threat of defamation proceedings and costly damages. While a clearer and simpler test may be required in future, the Greens are pleased to see this step in the right direction, and we support the reform.

I also want to briefly address the new defence for academic disputes published in peer-reviewed journals. In many ways it is astonishing that we even need to legislate this, but I am pleased that the bill will provide protection for academics who publish critiques of each other in peer-reviewed journals. This is a very reasonable reform. Academia relies on free discussion and the exchange of ideas, and it is vital that this process is not unnecessarily stifled by legal battles.

There are fiercely passionate academic debates in all fields of study, and I hope this new protection will ensure courts and public resources are focused on protecting people's public reputations, not on thrashing out academic disagreements over the excruciating details of the reliability of carbon dating for rice-based pottery glazes.

An honourable member interjecting:

The Hon. M.C. PARNELL: That's a big one. The bill will also clarify the way that the cap on monetary damages for non-economic losses would work. The original intent of the legislation was to provide a sliding scale, where damages are awarded values of between zero and an indexed maximum cap—currently $421,000—depending on the severity of the non-economic loss caused by the defamation.

However, this is not how it is currently used, and it is not how the law has been previously interpreted by the Victorian Court of Appeal. Accordingly, clause 20 of the bill aims to re-establish the original intent of the 2005 act. That is a sensible goal, and we will see if it works this time around.

Having spoken about what is in the bill, we also need to acknowledge what is not included. One particular concern of mine, which the CAG has decided to kick down the road a little further, is the vexed issue of social media and online reviews. When I raised this issue with the Attorney-General's staff, I was advised that:

> Issues specific to liability for digital defamation are being progressed in a separate reform process, as per recommendation 15 in the background paper on the Model Defamation Amendment Provisions 2020.

I went to that paper and found recommendation 15, which reads:

> The Defamation Working Party will undertake a separate review process to consider potential amendments to the Model Defamation Provisions to address the responsibilities and liability of digital platforms for defamatory content published online. This will include consideration of the issues raised by the Australian Competition and Consumer Commission in the Digital Platforms Inquiry Report published on 26 July 2019. Recommendations will be made to CAG following this process.

I also look forward to seeing what they come up with, because all of us who maintain social media sites, especially those who allow for third parties to write comments on our sites, need to be aware of what liability might be attached to that practice.

Clearly, in the modern world every one of us is a potential publisher, and our audience could be national or even global. That is why it is important that we commit to a national effort to update defamation laws around Australia. We need to make sure plaintiffs cannot shop around each state or territory jurisdiction looking for the defamation laws that suit them best.

I will finish by saying that while defamation law is still generally the realm of the powerful and wealthy to legitimise their squabbles or silence their critics, the proposed reforms in this bill are a step in the right direction. For these reasons, the Greens will be supporting the bill.

The Hon. C. BONAROS (15:43): I rise to speak in support of the second reading of the government's Defamation (Miscellaneous) Amendment Bill 2020. As we have heard, the bill seeks to update South Australia's defamation law consistent with the model national uniform defamation law, developed by the Council of Attorneys-General following their review of current defamation laws, which was released in July this year.

While responsibility for defamation law falls to individual states and territories, a national approach to reform has been called on as an essential feature for some time. Of course, with nationally consistent approaches also comes some limitations in terms of what we should and should not tinker with.

New South Wales, as the lead state for these reforms, were first out of the blocks, passing these amendments in August of this year. The bill we have before us now was put out by CAG for public consultation and extensive comments were received. I am especially pleased that the proposal did receive more than 70 submissions from media companies, digital platform corporations and users, plaintiff and defendant defamation lawyers and academics. It gives us some confidence that the bill has been well thought through and is informed by experts in the field, unlike much of the legislation the government pushes us to rush through this place with.

That said, there are some areas of the bill which, at first glance, certainly raise some questions with me which I have sought further clarification from the Attorney on and will no doubt be canvassed a little further in the committee stage.

The basic premise of defamation law is simple. It is to strike a balance between a person's private right to protect reputation and the public's right to freedom of speech and expression. The New South Wales Attorney-General, when introducing the bill in New South Wales, said this balance is 'to ensure that reputations are protected while responsible speech is as free as it needs to be to shine lights into the dark corners of our society'.

It is always important that we shine lights into those dark corners. These reforms, the first in 15 years, are considered a reset of the balance between protecting an individual's reputation and the right of free and fair speech. Defamation disputes are notoriously adversarial, complex, emotive, drawn out and extremely costly, and my main concern in this area is really ensuring that we do not exacerbate any of these factors with any new measures. Indeed, we should be doing the opposite.

As I said, there are some measures in this bill which I discussed at length with the Attorney's office, because the last thing we want to be doing is enshrining in legislation any measures which make it even harder to pursue one of these actions. But we do need reforms, and these are, as I said, nationally consistent reforms, which I understand have been the subject of lengthy consultation.

The need for these reforms has been well publicised, particularly in light of recent high profile cases in the media, most notably Geoffrey Rush's almost $3 million victory against the publisher of *The Daily Telegraph*. With the proliferation of new and emerging social media forums, the 24/7 news cycle and highly accessible electronic means of cheap and fast dissemination, the contexts and potential for actions in defamation have multiplied exponentially since the current law was passed in 2005.

Highly respected ANU College of Law lecturer and communications law expert Brett Walker has pointed out the law is struggling to adapt the traditional principles of defamation law to new technologies in a consistent manner. Defamation laws also need to keep pace with our ever-changing community standards of what is and is not defamatory content. This is no different to any other area of the law where we have struggled to keep up with the explosion of online technology.

While we do not want every neighbourhood or interpersonal dispute to make its way into the courts, at the same time there needs to be remedies available and accessible to those who are defamed. Importantly, the bill provides some pre-action alternatives to litigation and a new threshold test of serious harm to ensure defamation actions are commenced after procedural requirements and the preliminary threshold test of serious harm is met.

The requirement that a concerns notice must be issued and that it must be served with sufficient time and detail for an offer to make amends to be made before proceedings can be commenced is, I think, a sensible and practical reform in this bill. It is hoped that this measure will provide a valuable opportunity to resolve the dispute at the earliest opportunity and for the parties to negotiate and agree on remedies rather than to litigate, which we all know ends up costing an extraordinary amount of money.

Similarly, the introduction of a serious harm threshold test for a defamation claim being determined by the judicial officer as soon as practicable before a trial is a good initiative. It should weed out those actions with no merit, or limited prospects of success, before a plaintiff and/or defendant incur, again as I said, what can quickly become crippling legal costs.

The proof, of course, will be in the court's interpretation of serious harm. As the new section 10A of the new bill makes very clear, this is for the judicial officer to determine. These pre-action steps are intended to enable judges to stop defamation cases that do not involve serious harm as quickly as possible. The current law has a defence of triviality for smaller cases, but this amendment inverses that. Rather than it being something for the defendant to argue in response to a plaintiff, the plaintiff needs to overcome the threshold up front. The highly subjective triviality defence is thus redundant.

There will be instances, still, where damages for economic and non-economic loss are awarded, and I understand a separate award of aggravated damages can be made if the defendant's

conduct is particularly egregious. I think this is a particularly important aspect of this bill, given some of the other changes. Geoffrey Rush's history-making defamation damages payment has no doubt contributed to the clarification of capped damages for non-economic loss in this bill. The separation of the economic and non-economic loss components and clarification of the cap on non-economic loss is, therefore, a welcome enhancement.

Perhaps one of the most interesting aspects of the bill is that it takes the first step towards defamation law being able to deal with publications on digital platforms. The introduction of the single publication rule clarifies that the limitation period runs from the first publication or posting of the alleged defamatory material rather than the time of the download. However, the limit can restart if there are subsequent publications of the same, or substantially similar, content, and if the material is substantially new then the clock would also restart.

One of the perhaps more exciting aspects of the bill is the two new defences and minor amendments to existing defences, because these will need to be tested in the courts to see how they will actually operate in practice. The introduction, for instance, of a new public interest defence, modelled on the UK defamation act, will challenge the courts to make the distinction between what is in the public interest, not what is of public interest.

Courts will have to decide if a defendant publisher's conduct satisfies the public interest test, by considering factors like the integrity of the sources, the efforts the publisher made to get both sides of the story, and what the public interest in the publication is claimed to be. Courts will also need to keep up to date with current community standards of what is or is not considered defamatory.

However, the new law is not intended to protect the kind of journalism that led to comedian/actress Rebel Wilson's massive defamation win after gossip magazines went after her. Although most of her huge $4.7 million payout was later overturned on appeal, Wilson said it was never about the money and that she was satisfied the jury had restored her reputation. I say well done to her.

The second new defence for peer-reviewed matters published in academic or scientific journals should foster the robust and vigorous intellectual debates and contest of ideas that lead to innovation and invention. As I have said, this bill is just the first step in reforming defamation law so that it is fit for purpose in a rapidly evolving digital age. There are already new challenges on the defamation law horizon, with a need to further level the playing field between traditional media like television and print, and techno companies like Google.

The Voller (Voller v Nationwide News Pty Ltd, Voller v Fairfax Media Publications Pty Ltd, Voller v Australian News Channel Pty Ltd in 2019) decision, which is under appeal at the moment, should provide further guidance from the courts in regard to whether news media providers will continue to be liable for defamatory third party comments on their social media pages.

This is certainly something that has been of huge interest to me. In that case, the New South Wales Supreme Court found the news outlets were the primary publishers of the allegedly defamatory comments on their Facebook pages, in the same way as if the comments had been published on their own websites or in their own hardcopy newspapers.

The news outlets argued they should be considered as secondary publishers, for obvious reasons. The distinction here is a primary publisher is liable for defamatory comment from the moment of publication. The ongoing protection of a secondary publisher is a fertile area of interpretation for the courts and one which, again, given the explosion of online platforms, becomes very relevant to us as legislators.

Another very interesting case that will not only test the defamation laws but no doubt lead to further reforms, I think, is Kabbabe v Google, which is a 2020 case. In this case, the court confirmed publication of an allegedly defamatory review was taken to have occurred where the words were heard, read or downloaded and therefore the defamation occurred in Australia even though Google is an American-based company.

Furthermore, the court found Google was likely to have had control of the reviewer's information and that Dr Kabbabe had a prima facie case for defamation against the reviewer.

Dr Kabbabe will now be able to use the information obtained from Google in legal proceedings against the anonymous reviewer.

This case may see American social media conglomerates, such as Google, Instagram and Facebook, forced to divulge personal information about keyboard warriors who have used digital platforms to defame others. It may also have a dampening effect on the keyboard warriors, bullies and trolls who seem to have found their calling on the internet.

There is absolutely more that needs to be done to modernise defamation law. This is a first step—it is a good first step—but there is certainly a lot more that needs to be done. While cases like the ones I have mentioned are coming thick and fast, we do not have another 15 years to take the next step. I think it is an area that we need to keep a vigilant eye on. I look forward to the outcomes of CAG's second stage of this reform in particular, which will focus on the responsibilities and liabilities of digital platforms for defamatory comments published online, something I am sure we all have similar concerns in relation to.

In the meantime, I thank the Attorney-General's office for providing me with responses to some of my concerns—I think I just kept calling them the Rebel Wilson examples—particularly as they relate also, though, to contextual truth, something which I might ask some further questions about during the committee stage debate, and more generally around ensuring that what we are doing is in fact fostering access to justice, particularly for those who cannot afford costly legal actions and defamation actions, in particular. With those words, I indicate again our support for the second reading of the bill.

The Hon. F. PANGALLO (15:58): I rise to speak on the Defamation (Miscellaneous) Amendment Bill and offer my general support for the reforms it contains. These will help streamline and expediate civil actions and hopefully lead to a reduction in costs for both plaintiffs and defendants. The new law will be applied by all the states, although in some will continue to be trials by judge alone, as happens in South Australia, while others have juries. My preference would be to also have jury trials in these proceedings in South Australia.

As a journalist on newspapers, radio and television, I have had some experience in this area of the law in having to address defamation claims made in broadcasts and publications. These are costly for all parties involved in the proceedings. However, to mitigate costs, it is pleasing there is now provision in this bill that clarifies the requirements from a publisher to make an offer to make amends; that is, to make a reasonable offer within a specified period that would be acceptable to the plaintiff who claims to have been defamed.

I am unsure what constitutes a reasonable or acceptable offer and what would happen if it is not accepted, as often happens; however, mediation is quite important in settling these emotive cases. My understanding of what currently applies is that a defendant can make a settlement offer, also known as a Calderbank offer, and, if it is rejected and the plaintiff fails to win more in damages than the offer made, the plaintiff could be liable for the other party's costs.

The State of South Australia and SA Health may well have saved taxpayers millions of dollars had they attempted to make amends and quickly settle a defamation action taken against it a few years ago by the iconic baker Vili Milisits and his wife, Rosemary. It is incumbent on the South Australian government to conduct itself as a model litigant; however, it fell well short of the standard in this case.

SA Health had, without a shred of evidence, implied that custard Berliners believed to have been responsible for an outbreak of food poisoning had come from Mr and Mrs Milisits' Mile End plant. They had tried to argue that, because of the high volumes produced there, the contaminated products must have been Vili's on the balance of probabilities—absurd, and of course the court had to agree.

As the Vili's business is a partnership of Vili and his wife, and not a corporation, they successfully sued for the damage to not just their business but to their own reputations. But it was a torturous seven-year process for them, taking on a government not prepared to concede they got it wrong and trying to de-pocket the plaintiffs all the way to the High Court, just for the plaintiffs to get proper disclosure of documents.

Mr Milisits and his wife are principled business operators. Their Mile End bakery must meet, and does meet, exceptionally high health and safety standards. They undergo regular inspections by various agencies. Their sophisticated production equipment would have made it extremely unlikely that their products would have been the source of the contamination, while SA Health could not distinguish Vili's Berliners from those of any other cake manufacturers, except to say that they had yellow icing. Well, they all have yellow icing.

The reputational damage was ongoing. Mr Milisits told me that, even when the matter was still before the courts, the University of Adelaide, through its Regency Park campus, continued to highlight the food poisoning incident and slandered the business in its food science and technology lectures. So they were prepared to go all the way to restore their reputations and the credibility of their business, which they had built up over 52 years.

They told me that they would have accepted a prompt public apology, yet that never came. Even though it has since been settled in their favour, still leaving them with considerable legal bills, there has been no formal public apology or acceptance that the government got it wrong. As Mr Milisits jokingly tells me, each day he looks into the mirror he says, 'Can I trust you?'

This bill retains the threshold where only small or not-for-profit corporations can sue. Had Vili's been a for-profit corporation with more than 10 employees, they may not have been able to sue for defamation. The bill now expands the definition of an 'employee' to also include independent contractors to provide more clarity over what constitutes a small business. It also introduces a serious harm test, where plaintiffs need to prove that publication has caused, or is likely to cause, serious harm to their reputation, as Mr and Mrs Milisits were able to do.

However, for a corporate plaintiff this harm must be demonstrated through proof of financial loss. Up until the national defamation reforms were made in 2005, the media ran the very real risk of being sued by larger corporations with more than 100 employees if they published allegations of malpractice, misconduct or corruption in the context of fair comment or public interest. They would use their considerable legal muscle as a shield to stop truth and silence criticism.

I will use a couple of examples I encountered. s a journalist with Seven Network's *Today Tonight,* and only after these significant changes were introduced, I was able to expose the bastardry and deception committed on customers by banks and other lending institutions.

One big bank threatened to pull millions in advertising revenue if a story about them was broadcast on national television. My nervous boss at the time, David Leckie, called me and just asked, 'All I want to know is: are you right about this?' I said, 'Yes, the evidence stacks up.' Bravely, Mr Leckie chose editorial independence over financial gain or loss, telling me, 'That's good enough for me. I'll tell their CEO where he can stick it.' The story ran and was watched by an audience of close to 1.8 million. Others like it followed, yet we still had to wait 15 years for a royal commission into the banking and financial industry to expose the insidious, criminal, unethical and immoral behaviour.

In 1998, before the defamation reforms, Seven took a huge risk taking on international giants James Hardie. I investigated the tragic case of Ron De Maria, a victim of asbestosis, who worked as a tip driver for James Hardie at their Elizabeth factory. Mr De Maria was dying. Being aware of his medical condition, James Hardie stalled and frustrated his legal claim for damages. Had he died while the claim was unresolved, his family would have received significantly less than he was entitled to. This was pure corporate bastardry—and that is being kind to them.

As part of my investigation, Ron took me on a shocking tour of parts of the northern suburbs where, on their orders, he regularly illegally dumped asbestos waste. It included sites at Andrews Farm, where there is now a housing estate, and at St Kilda, which has since been redeveloped into a popular playground. There we discovered asbestos fragments leaching to the surface. They had also provided crushed asbestos to use as fill on pathways around the city of Elizabeth during its development.

James Hardie threatened to injunct the story because they had objected to the claims being made that asbestos was lethal and killed people. Our defence was contextual truth. In this bill, a longstanding drafting anomaly is tightened up for the defence of contextual truth, allowing an ultimate

weighing up of the matter to determine whether any unproven defamatory allegations lower the plaintiff's reputation overall. It will enable defence to be judged on its merits and the truth of any imputation. For instance, if one of the claims Seven had made against James Hardie was unproven, the overall strength of other claims could be taken into consideration for the defence of contextual truth defence to succeed.

My executive producer, Graham Archer, made the call and it was the right one: publish and be damned. This was a matter of immense public interest. James Hardie did not follow up on its threat of an injunction or follow-up defamation action. Their action was an attempt to intimidate and suppress criticism of a publicly listed company that behaved abominably. They quietly settled with Ron De Maria, and sadly he passed away a short time later.

Another worthy amendment is the new defence for reasonable public interest, while modifying but retaining the existing qualified privilege defence. For instance, under the new changes, should the federal Attorney-General, Christian Porter, carry out his threats to sue the ABC for the salacious investigations into his private affairs, the ABC's defence could be contextual truth arising from the charges made that reflected on his alleged overall behaviour, that the report was an issue of public interest because of Mr Porter's stature as the nation's top legal officer, and that the ABC reasonably believed that the publication was in the public interest.

These new changes are based on the UK model. We saw how that played out spectacularly badly for actor Johnny Depp in the mother of all UK defamation actions against the British tabloid *The Sun*, which accused him of being a wife-beater and assaulting his ex-wife Amber Heard. he nearly 600-page judgement, which Mr Depp is foolishly appealing, will no doubt be a centrepiece of judicial interest and a discussion in legal studies everywhere.

The media landscape has changed considerably since the rapid evolution of the internet and the explosion of social networks and their many platforms. As we have seen in recent times, particularly in the US presidential elections, platforms like Google, Twitter and Facebook can be, and are, a hotbed of malicious untruths, unhinged abuse and misinformation disguised as commentary, opinion or free speech which can be spread globally in an instant.

It has given rise to a new term popularised by one of Twitter's biggest trolls, the incumbent President, Donald Trump—fake news. You only need to look at the warnings that Twitter has attached to his latest bombasts attacking the integrity of the elections. There are online news sites or live streams encouraging feedback from anonymous users that is not effectively moderated or corrected.

This is still a new and mostly unregulated world for slander. Under existing laws, the owner of the website or search engines like Google and Yahoo could be classified as publishers and be litigated. Google was sued in South Australia after arguing that they were innocent disseminators of the offending material.

For some reason, some participants in elections seem to think that defamation either does not apply or they are ignorant of the law itself. Take the last state election where we at SA-Best witnessed a tirade of abusive commentary. Some of our candidates were subjected to unfounded and slanderous remarks by individuals, other political parties and the horde of pile-on trolls who populate these places, who think they are immune to legal action.

Their mistaken belief is that all is fair in love and war online. Well, it is not. For those who could afford it, legal letters flew between candidates and their accusers, including our own besieged leader, Nick Xenophon. But, of course, the prospect of any proceeding is usually commercially unrealistic. You just cop it and move on.

Our candidate in Giles, Tom Antonio, was savaged and had his reputation sullied in false Facebook posts that we believe were orchestrated to cause him enough reputational harm to prevent him from taking a winnable seat. Tom lost; however, he later instigated legal action against one of these Facebook trolls, Kerri Pollock-Morgan, who in one of her rants accused him of forcing her late father, Jim Pollock, to resign as mayor of the steel city.

Had she chosen to check the facts, she would have discovered the real story. By then the damage had already been done to Tom's campaign. Ms Pollock had also claimed that Mr Antonio

abused her at the Whyalla pre-poll. There were no witnesses to this. Mr Antonio vehemently denied the accusation, yet the media still chose to report it, hurting his candidacy. Recently, Ms Pollock-Morgan had to issue Mr Antonio an apology. It reads:

> Mr Antonio, I regret publishing a Facebook post suggesting Mr Tom Antonio forced my father Mr Jim Pollock to resign as Mayor of the City of Whyalla. This post has caused us both considerable personal distress for which I am sorry.
>
> After discussions with Mr Antonio I understand that my father had to resign because of the requirements of the legislation as governs local government matters and his ill health. Signed Kerri Pollock-Morgan.

I seek leave to table that document.

Leave granted.

The Hon. F. PANGALLO: The Labor Party also accused Mr Antonio of being a highly disruptive and damaging figure during the period when the Whyalla Steelworks was in administration. Those remarks got plenty of media attention, too, further eroding Mr Antonio's prospects as a candidate. Again, this was false, and I will base this on a letter written on 25 June 2018 by Arrium's administrator, Mr Mark Mentha, of KordaMentha. Allow me to read that letter:

> Dear Tom,
>
> As lead administrator of Arrium Group Limited I write to personally thank and acknowledge you for your contribution to the KordaMentha team in saving of the Whyalla Steelworks and associated iron ore mines in the South Middleback Ranges. Arrium Australia is Australia's leading steel long products manufacturing and distribution business, with circa 6,500 employees across 150 sites in Australia, 2.6 million tonnes per annum of steel making capacity and 10 million tonnes iron ore export capacity. The Whyalla Steelworks and mining operations are central to this business.
>
> KordaMentha were appointed voluntary administrators over Arrium in April 2016, Australia's largest insolvency. Post our appointment, on day one I remember disembarking at the Whyalla Airport to be greeted by a concerned and passionate acting mayor [a civic duty brought about by the illness of the incumbent mayor, Jim Pollock]. You stepped into the breach at a tumultuous time in the history of the city. The future of Whyalla and its 22,000 residents was inextricably linked to Arrium and the successful outcome of the administration.
>
> Tom, from day one you understood the symbiotic relationship of Whyalla with Arrium, and stood by a simple creed: 'Closure is not an option', and you never strayed from that message, privately or publicly. As a civic leader of Whyalla, at the time you continually publicly laid bare the catastrophic consequences of a closure of the steelworks and mines, and accordingly kept the issue at the forefront of public policy and media. This in turn went a long way to keeping the issue front and centre in the minds of policy makers and influencers at both state and federal level. Even after stepping down as acting mayor, you kept this mantra alive in your role as a city councillor.
>
> The end result of a successful restructure and sale of Arrium could not have been achieved without contribution from many key stakeholders. Employees, management, unions, banks, governments both state and federal, courts, suppliers and creditors all played their role. Tom, you played a critical part, and all stakeholders, including the City of Whyalla and we the administrators, will be forever grateful.
>
> On behalf of Sebastian Hams, Scott Langdon and the entire KordaMentha team—a big thank you.
>
> Yours sincerely, Mark Mentha, Partner.

I seek leave to table that document.

Leave granted.

The Hon. F. PANGALLO: The Tom Antonio I know is a good family man, a well respected and successful businessman in the town and on the West Coast, and has served as a councillor for 12 years and as acting mayor. But politics is a dirty game. When the mud flies, it usually sticks.

Some years ago Mr Antonio was also accused of sending a racist fax, which was tabled in parliament. He denied being responsible for it. The authenticity and source of that document, which contained his business fax number, was impossible to verify, even after a police investigation. This bill does allow the publishing of honest opinion, but it must be accompanied by material supporting the views expressed. However, I do not believe this bill goes far enough in restoring reputational damage, particularly when it comes to publishing or making apologies.

We all make mistakes of judgement, and we should be prepared to own up to them. I have. Channel 7 lost a defamation case I was involved in nearly 20 years ago. It was one of those stories that in hindsight we should have dropped. I will point out that any litigious-type stories were always

put before 7s lawyers before they were aired. However, the final call to broadcast usually comes down to the decision of senior producers. I regretted that one. Some time after the dust had settled, I made it a point to seek out the person who had been defamed and I made him a personal apology, which he graciously accepted. In fact, he later provided me with assistance in a local government corruption investigation I was undertaking.

As it now stands, publishers may not be required by a court to publish an apology and I am of the view that legislation should also order remedies, with apologies of the same prominence as the offending material. When you compare the enormous national and international coverage that was initially given to cases like that of the distinguished Oscar-winning actor Geoffrey Rush, compared with the coverage received when he won his libel case and a subsequent appeal, it seemed quite distorted and unbalanced.

Furthermore, I believe a court should also order that defamatory material must be fully expunged from the internet. A welcome new feature in this bill is the single publication rule. This is particularly pertinent in the world of Google, Yahoo, Facebook, Twitter, TripAdvisor, Instagram, TikTok and the plethora of other social platforms, including dating sites where narcissistic keyboard warriors abound.

As it stands now, each time an individual accesses the defamatory material on different sites or different publications after the original source, it is considered as a separate publication and can give rise to fresh litigation long after publication. The effect of this was that, particularly with digital online content, it nullified the one-year limitation to bring on an action. That has now been extended to three years. However, there is still a provision for a fresh action to be commenced if a publication is sufficiently different.

Cases like Geoffrey Rush versus News Limited, actor Rebel Wilson versus Bauer magazines and Wagner v Harbour Radio, in which broadcaster Alan Jones had accused a prominent Queensland family of being responsible for flooding which caused deaths, certainly set high benchmarks for damages awards into the millions. This bill also clarifies the purposes and operation of the cap on damages for non-economic loss. I think the reforms will be, and probably have been, welcomed by media proprietors and the legal sector. I commend this bill.

The Hon. R.I. LUCAS (Treasurer) (16:22): I thank the honourable members for their extensive contributions to the second reading debate and look forward to its speedy passage.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. C. BONAROS: I have what I hope is a very simple question. During my second reading contribution, I pointed to how difficult defamation actions can be, how complex they can be to prove and obviously how expensive they can be as well. During the briefing, one of the points we discussed was ensuring that nothing in this bill made that process even more difficult.

I note that in the answer that was received from the Attorney's office to that question, the response was that some actions may actually become more difficult as a result of the provisions. However, of course, that has to be balanced against freedom of expression and so forth. So my question is: in what sorts of instances are we expecting that these actions will become more difficult as a result of the bill's provisions?

The Hon. R.I. LUCAS: I am advised that for low-level cases the concept of serious harm may well be more difficult for someone to prove. That would be an example of the type of issue where an individual might have greater difficulty in relation to potential action.

The Hon. K.J. MAHER: I was going to ask this at clause 7, when it came up, but as it is being addressed at clause 1 I might ask it now. In terms of the serious harm element that this bill proposes to change, is there evidence in South Australia that this has been a problem? Are there cases clogging up the court system that will no longer be clogging up the court system with this serious harm element being brought in?

The Hon. R.I. LUCAS: I am advised that there have been some cases in South Australia, and some examples might relate to social media type cases, where there have been exchanges on social media. The advice is that a number of those may find it quite difficult to prove serious harm in relation to those particular claims.

The Hon. K.J. MAHER: My final question on clause 1 is: are there any statistics or numbers kept, on a yearly basis, on how many cases have been brought before the courts and litigated in the courts that will no longer be able to be litigated as a result of this? Is there any evidence of the numbers?

The Hon. R.I. LUCAS: The frank answer to the member's question is no; there is little information. It may be possible that with the introduction of the new ECMS (the electronic case management system) that sort of information might be more available in the future. In terms of what information currently exists, there is no information we are able to share with the member.

The Hon. C. BONAROS: My understanding is that we do not have a definition of serious harm, is that correct?

The Hon. R.I. LUCAS: Yes; that is correct.

The Hon. C. BONAROS: Given that is something that is going to be left to the courts to determine, effectively, can the minister tell us what level of consultation occurred on that at CAG? What kind of commentary did we receive in terms of what we thought would constitute serious harm? Surely that must have been the subject of some debate during the consultation period. Do we have any details about that?

The Hon. R.I. LUCAS: I am not really in a position to provide much clarity in relation to the nature of the discussions. I am sure the member is correct that in the consultation stage at officer level, before it got elevated to CAG, this would have been one of the issues that would have been discussed, but I am not in a position to provide any detailed information to the honourable member's question.

The Hon. C. BONAROS: I imagine it was also the subject of some discussion during the New South Wales debate that occurred as well, being the first out of the blocks in terms of the passage of these amendments. Could the minister undertake perhaps to get some information for us, subsequent to this, in relation to any of the information we have around the definition of serious harm? I suppose what I am trying to get to is whether we have given any indication to the courts of the sorts of factors that we would anticipate would be taken into consideration by the courts in their deliberations.

The Hon. R.I. LUCAS: I am happy to refer the honourable member's question to the Attorney-General, and, if she is in a position to provide any further information, ask her to do so. This is the Attorney's area, not mine, but my understanding of the situation is there is not going to be any clarity or guidance provided to the courts. It is as the member indicated in the brief to her first question; that is, it is being left to the courts to interpret what serious harm is.

So there is nothing in the legislation or the statute. As you said, there is no definition of it, and there is nothing which says, 'Here are the principles upon which you should guide your judgements as to what serious harm is.' But if the Attorney is in a position to provide any further information about the level of discussion and consultation which was provided in the preparation of this final bill, then I will refer the question to the Attorney and see what she might be able to provide.

The Hon. C. BONAROS: Thank you. And given the level of interest that has been expressed about phase 2, if you like, of the reforms, can the Treasurer give us any indication of the likely time frame of consideration of those both by CAG and parliament? Has a time frame been put on these discussions in terms of phase 2?

The Hon. R.I. LUCAS: Again, I will refer that to the Attorney. My advice is that it was possibly late 2022, but I will take that on notice and ask the Attorney to correspond with the honourable member. I think it is best we leave it to the Attorney to correspond.

Clause passed.

Clauses 2 to 12 passed.

Clause 13.

The Hon. K.J. MAHER: On clause 13, which requires permission for multiple proceedings in relation to publication of the same defamatory matter, I just want to check we are understanding this correctly. If someone has initiated a defamation action against a publisher—let's say, for example, that someone had said that Rob Lucas is a terrible bloke, and that was considered defamatory and for some reason a court did not accept that as completely true; let's just say that a court did not—and that was published in a newspaper in New South Wales, there would presumably be a cause of action for Rob Lucas, if he was indeed not a terrible person, against that newspaper in New South Wales.

If a completely unrelated radio station in Perth published the same defamatory material, and they were completely unrelated companies, could Rob Lucas take action against both of those completely unrelated companies for the same material?

The CHAIR: I am sure he is referring to the Hon. Rob Lucas.

The Hon. K.J. MAHER: A different Rob Lucas.

The CHAIR: A different Rob Lucas?

The Hon. R.I. LUCAS: I certainly hope so. I certainly hope I would be able to, or the hypothetical Rob Lucas could take action, and I am advised that would be the case. In the circumstances the Leader of the Opposition has outlined, that individual would be able to take action against each of those outlets in each of the jurisdictions, in separate actions, if he chose to.

The Hon. K.J. MAHER: In that same scenario, if it was an FM radio station in Sydney and a sister station, or a Fairfax station in both cities, would the fictional Rob Lucas then be able to take two separate courses of action against the station owned by the same company in both cities, under this legislation?

The Hon. R.I. LUCAS: I am advised that the individual would need to seek court permission to institute separate actions, so with the court's permission you could institute separate actions in the circumstances that the member has outlined. Certainly, the individual has the capacity to join them as codefendants in one action, but would have the option, if that individual chose, to seek the court's permission to take two separate court actions in those circumstances.

The Hon. K.J. MAHER: If they sought to join them as codefendants in the one action, does that have the effect of limiting the $421,000 non-economic loss to that one action, whereas if it were two separate actions you have, essentially, up to two lots of that $421,000?

The Hon. R.I. LUCAS: I think the honourable member probably knows the answer to that question. Yes, you would double the prospects if you got two separate actions.

The Hon. K.J. MAHER: If those radio stations were not owned by the same corporate entity, if they were, as in my very first example, a newspaper in Sydney completely unrelated to a radio station in Perth with the same material, would that same potential plaintiff have to seek court approval to initiate two separate actions?

The Hon. R.I. LUCAS: Even I think I can answer that one. No, they are two separate actions, two separate companies. In the first example, you would not need court permission in those circumstances.

The Hon. K.J. MAHER: This is what, I think, I am coming to. If it was a newspaper in Sydney and a radio station in Perth, that had completely different individual structures for those two media outlets but somehow had a governing ownership structure where there was one company that owned them, that would mean, would it not, that the potential plaintiff would have to get court permission to take an action against two seemingly separate companies in a separate newspaper and a separate radio station, and if it was not for the largely unknown corporate ownership structure, they now have to seek court permission whereas otherwise they would not. Is that correct?

The Hon. R.I. LUCAS: I do not propose to go too far further down this ferret hole or rabbit hole, but it depends, I am advised, on the definition of 'associated entity' under the commonwealth

Corporations Act legislation. I am not in a position to provide detailed advice to the Leader of the Opposition about how the associated entity provisions of that particular legislation have been interpreted in any number of examples the member might like to come up with. As a general principle it is pretty clear how it would be interpreted. I think the member might need to take his own legal advice if he has any particular examples in mind.

The Hon. K.J. MAHER: I thank the Treasurer for that. I do not propose to ask any more questions on this, but might the Treasurer take it on notice and provide those answers as to how that has been interpreted? For the purposes of this legislation, what is, I guess, at the outside the most tenuous link as an associated identity that would be captured by the definition in this bill?

The Hon. R.I. LUCAS: I will refer the honourable member's question to the Attorney, but I will not give an undertaking on her behalf at this stage; I will leave it to her. There may well be a lot of precedents which are easy to turn up which her officers can refer the honourable member to and she may well be quite happy to do so, but I will leave it ultimately to her judgement to see the honourable member's question and see whether or not there is information that she is readily able to provide without having her officers go to too much extra work in relation to it.

The Hon. C. BONAROS: The Leader of the Opposition was on the same path as I was heading. In that context, I think that is a very important point because, if I understand correctly, an associated entity could also include a contractor or an employee of the defendant. So it is not just necessarily two radio stations owned by the same brand, if you like, but it could extend to a contractor or to an employee of the defendant in this case, which is one of those. Can we just confirm that that is the case, or am I completely wrong?

The Hon. R.I. LUCAS: I think the honourable member is confusing a number of different concepts. What we have just been talking about is associated entity. I do not see how an employee would be an associated entity within the Corporations Act. The honourable member, however, might be referring to new section 21(3), which does talk about (a) an employee, and then under (c) talks about the associated entity concept, which we have just been talking about, but they are two different subsections.

I think the honourable member might be conflating the employee issue in relation to (a) there with the associated entity discussion, which we have just had with the Leader of the Opposition. I do not see how an employee would be an associated entity under the provisions we have just been discussing.

The Hon. C. BONAROS: Perhaps, for my benefit then, can we just explain the difference between those two provisions in terms of the associated entity and the associate of a previous defendant, which does include the individuals that I mentioned?

The Hon. R.I. LUCAS: I do not know that I can add too much more. New section 21(2) states:

> The person may not bring further defamation proceedings for damages against a previous defendant or an associate of a previous defendant…

Then it goes on to outline other provisions. Then, subsection (3) in essence explains what an associate of a previous defendant might be. It states, 'A person is an associate of a previous defendant if, at' etc. and it goes on, (a) 'an employee of the defendant' and then paragraph (b) and then (c) 'an associated entity of the defendant'. The questions that we were addressing with the Leader of the Opposition was this issue the notion of an associated entity and that is when, by way of answers, we indicated that was an associated entity within the context of the commonwealth Corporations Act.

The honourable member was then asking a question as to whether an employee was an associated entity under paragraph (c). As I said, I think the honourable member, with great respect, is conflating paragraphs (a) and (c). We were talking about associated entities under the Corporations Law. The member then asked me whether an employee was an associated entity under that particular provision. I have referred her now to paragraphs (a) and (c) and said that is where this issue of employee might come up.

The Hon. C. BONAROS: Perhaps I could just clarify. It was not so much the associated entity, my question was—and perhaps I did not frame it well—in the same sorts of situations as those described by the Leader of the Opposition, could the court grant permission for an action against an associate of a previous defendant, that being a contractor, an employee of the defendant or an associated entity of the defendant? Does that make sense?

The Hon. R.I. LUCAS: I think the honourable member has clarified the question now. If the question is more attuned to whether the honourable member wanted to sue *The Australian* and a particular journalist at *The Australian*, then the best explanation is that you would co-join them, if that is the right word, and that would be part of one action: sue them both at the same time.

If you wanted to, for whatever reason, sue *The Australian* and the journalist separately, you would need to get the permission of the court to do it separately. The one that I am more familiar with is where they sue both *The Australian* and the journalist at the same time, but, if you get the court's permission, you can actually sue *The Australian* and the journalist separately, if you wanted to do that.

The Hon. C. BONAROS: So, in that instance where they are not co-joined but you are suing them separately, the heads of damages—the caps—then apply to each suit.

The Hon. R.I. LUCAS: Theoretically, yes; but I am advised that, in this particular circumstance, the court might take a range of other issues into account, which might mean that whilst it is theoretically possible it might not in practice occur in the sort of way the honourable member is saying. That is, by doing it separately you are going to automatically maximise your chances of getting two maximum payments in that particular way. If the member was thinking that way, then the advice would be: it is possibly not likely.

The Hon. C. BONAROS: It is possibly not likely, except that the court would be making that decision, because they have the discretion.

Clause passed.

Clauses 14 to 21 passed.

Schedule 1.

The Hon. K.J. MAHER: Under schedule 1, part 2, clause 3, the proposed insertion of section 37A, it refers to the single publication rule. It is similar to the area we have just traversed—an associate of the first publisher. I want to check that I understand this correctly, whether this is the intention of what we are doing. As I understand it, if a publisher or an associate publisher publishes something, it is taken from the very first publication, regardless of where in Australia that happens or what form in which that happens; is that right?

The Hon. R.I. LUCAS: My advice is that essentially the answer to the honourable member's question is yes.

The Hon. K.J. MAHER: This is a concern that has been raised with us. For example, if it is a very big, national media company, and some allegedly defamatory material is published in a newspaper in Toowoomba, for example, and then that same material is published 18 months later in a newspaper again in Hobart, and the person who is taking offence to the defamatory material lives in Hobart.

They did not see, as they probably would not see, the publication in the Toowoomba. They saw it Hobart, but it is 18 months later. Does this then effectively, without more, according to this, stop them from taking action because the time limit started from that Toowoomba publication? The fact that it was published in the same manner in a newspaper in Hobart means that the time limit is set from that first publication, not the one that they see in the state in which they live?

The Hon. R.I. LUCAS: My advice is, in the example the honourable member has given, if there was a defamatory article in Toowoomba and the person who was living in Tasmania did not see it, and then 18 months later the same article was published in the Hobart Herald or whatever it is, and he takes action, or wants to take action, against the Hobart Herald—it was exactly the same article—

The Hon. K.J. Maher: *The Mercury*.

The Hon. R.I. LUCAS: Whatever it is called; I am calling it the Hobart Herald. We are talking fictional here. If he finds out, through the course of that, that it was originally published 18 months ago in the Toowoomba Bugle, then he or she can seek permission of the court to take action against both. If it is outside the 12 months but within another period of three years, he can seek court permission to take action in that particular case.

The Hon. K.J. MAHER: As the law currently stands, without this bill, in the example that has been given and without this new single publication rule, would that potential plaintiff who reads it in the 'Hobart Herald' have to seek court permission, or is the publication deemed from that second publication by the same company in the Hobart newspaper? My question is: does the passage of this bill put a hurdle in front of someone who is being defamed and did not or could not know that they were earlier defamed?

The Hon. R.I. LUCAS: I am advised, in the circumstances the member has outlined, it is potentially an additional hurdle.

The Hon. K.J. MAHER: And is that the government's intention, to put these additional hurdles in the way of someone who would have had no way of knowing that an interstate newspaper had published this?

The Hon. R.I. LUCAS: I am advised that under 37A(3) there is another option available to the individual in the circumstances; that if the manner of the publication is materially different the plaintiff could argue that it was either more prominently published in the Hobart Herald as opposed to the Toowoomba Bugle or it was published in a different jurisdiction which was more damaging perhaps to greater extent, that that individual could use 37A(3) to argue to a court that the limitation period should start again—so there is a further option available to the individual. It is not as black and white as perhaps the initial question and answer were leading us down a particular path; I now introduce my trump card of 37A(3) to say that there is a further option available to the individual in the circumstances the member has outlined.

The Hon. K.J. MAHER: I thank the Treasurer, and I am not doing this in a flippant manner. I think these will be serious issues that potentially people who have had harm caused to their reputation may seek a remedy for. I think it would be useful because I can well envisage this matter becoming a matter before a court in deciding if someone can take action or not. I just want to make sure that that is the government's intention when implementing this.

I do not think we have to implement everything, even though it is model defamation law. The Treasurer may correct me if I am wrong but in the original ones 15 years ago, Tasmania differed from the national law, so it is up to jurisdictions to decide which elements they may have. I just want to make sure that it is the government's intention that in at least some circumstances it will make it more difficult for a potential plaintiff to take action as a result of a single publication law.

The Hon. C. BONAROS: Having looked at subclauses (3) and (4) it appears, on the face of it, as if it is supposed to overcome—it is like we thought of this and we are trying to overcome that hurdle, but it does raise an interesting point and I think the Leader of the Opposition has made an interesting point in that regard. If it is not more prominent or more widely publicised then the hurdle does become more difficult to overcome in terms of getting a time extension from the courts, making an application to the courts to extend that time period.

The two factors that we are effectively looking at are: is there a level of prominence that is higher than the one that was previously given; and is the extent of the subsequent publication perhaps more prominent than the first one? If you do not reach those two thresholds then potentially you are faced with a hurdle in terms of getting your application for an extension of time increase granted or approved.

The Hon. R.I. LUCAS: I am not sure that I can add too much more that will provide additional clarity and benefit for members, other than to say that I am advised that one of many examples that might be used in a particular argument that an individual might have might be, for example, in the example the Leader of the Opposition has given that someone is living in Tasmania and might be doing business in Tasmania and all their friends and acquaintances are in Tasmania, therefore the

publication of exactly the same material in Tasmania is likely to do more reputational damage to an individual who is living and working in Tasmania as opposed to exactly the same article having been published 18 months earlier in Toowoomba, where no-one in Toowoomba knows who Kyam Maher is, or wherever it might happen to be. It might well be one of a number of issues that might be able to be pursued by an individual under this particular provision. I am told there are many possible examples, but that might be one example.

Schedule passed.

Title passed.

Bill reported without amendment.

Third Reading

The Hon. R.I. LUCAS (Treasurer) (17:01): I move:

That this bill be now read a third time.

Bill read a third time and passed.

Parliamentary Committees

SELECT COMMITTEE ON THE EFFECTIVENESS OF THE CURRENT SYSTEM OF PARLIAMENTARY COMMITTEES

Adjourned debate on motion of Hon. C. Bonaros:

That a message be sent to the House of Assembly seeking permission for the Clerk of the House of Assembly to attend and give evidence before the Select Committee of the Legislative Council on the Effectiveness of the Current System of Parliamentary Committees.

(Continued from 11 November 2020.)

The Hon. R.I. LUCAS (Treasurer) (17:02): This is essentially a procedural motion. The Hon. Ms Bonaros some time ago moved this motion. I was unaware at the time that it was introduced. I was aware of it, being on the committee, but I was unaware of what might be the attitude of the Clerk of the House of Assembly and my colleagues in the House of Assembly. I have now satisfied myself and been advised that, (a) the Clerk of the House of Assembly has no objection and, (b) my colleagues in the House of Assembly also have no objection, so with that I indicate the government support for the motion.

The Hon. K.J. MAHER (Leader of the Opposition) (17:02): I feel of my own volition that I should place on the record that the opposition supports this motion.

The Hon. C. BONAROS (17:02): On behalf of the committee, I am very appreciative of the support.

Motion carried.

Bills

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

Second Reading

Adjourned debate on second reading.

(Continued from 10 November 2020.)

The Hon. M.C. PARNELL (17:03): As the lead speaker for the Greens on this bill I would like to begin by congratulating the Attorney-General for tackling the key issue that this bill tries to address, that is, to modernise the way the law deals with situations of homicide resulting from circumstances of family violence. Members who were here prior to the last state election might recall my 2017 private member's bill, Criminal Law Consolidation (Defences—Domestic Abuse Context) Amendment Bill 2017, which addressed many of the same issues that this government bill is dealing with.

At the time of introduction in October 2017, the South Australian Law Reform Institute (SALRI) had released their stage 1 report, The Provoking Operation of Provocation, but they had not yet finalised the stage 2 report, which was released the following year in April 2018. The stage 1 report, while strongly recommending the abolition of the partial defence of provocation, also said that:

> …it would be premature to make or consider any changes to the present law of provocation until its further review in the second stage has been concluded.

Due to that, my 2017 bill addressed other recommendations from the stage 1 report but refrained from tackling the issue of abolishing provocation.

After the stage 2 SALRI report was released, I announced my intention to introduce a new bill, similar to my 2017 bill but with the additional provisions to abolish provocation. I was then advised that the Attorney-General was planning to do the same, so we decided to wait and see. The Greens are pleased that this issue is now being addressed in this government bill.

While considering how to modernise the way our legal system deals with homicides in a family violence context, my office spent a year researching case law and how the laws in other jurisdictions operate. We looked at the law reform in other states that attempted to address these same issues and what the results were. We also conducted extensive consultation with all the key stakeholders and experts in this area of law, including a round table, which proved to be extremely useful.

The bill went through a few incarnations before we settled on a final version, and this was a reflection of the complexity of the issues it was dealing with. I will not repeat all the information contained in my long second reading speech in October 2017, as members can read it for themselves if they are interested. My 2017 bill may not have been the perfect solution to this difficult area of law reform but there was general agreement from the experts that we were heading down the right path and that it was important to kickstart the debate.

So the Greens are pleased the government has now taken the baton and is continuing to run with this important law reform. Whether the government's proposed legislation is the perfect solution or not is yet to be seen and may not be known until the law is tested in the courts. Concerns had been raised that it might not result in fair outcomes for the victims of family violence who kill their abusers, given that we still have mandatory minimum sentencing for murder.

Ian Leader-Elliott, Emeritus Fellow at the University of Adelaide and Adjunct Professor at the University of South Australia School of Law, raised a number of concerns regarding the original draft bill which was significantly different to the bill we have before us. He also raised concerns with this bill which we passed on to the Attorney-General. As a result, the government has filed a new set of amendments (set 2) to address some of these concerns. The Greens will be supporting these amendments.

However, we still have some concerns in relation to sentencing. Importantly, there have been two South Australian cases in which women faced with appalling family violence from husbands were spared gaol time by compassionate sentencing for 'provocation manslaughter'. Mr Leader-Elliott explains that:

> …[the] real problem here is the retention of the mandatory life penalty. A more sensible approach to these problems would be possible if life imprisonment was a maximum rather than mandatory penalty for murder.

In the written reply that I received from the Attorney-General's office, the response to this concern read:

> Mr Leader-Elliott suggests that the Government should make it clear that the amendments do not preclude a very short sentence for murder, including a suspended sentence, where appalling family violence by the victim has led to a fatal response from the defendant.
>
> As matters stand, a court is not able to impose any of the community based sentences contained in Part 4 of the Sentencing Act in respect of the offence of murder. To depart from this in respect of murder in circumstances of family violence would require legislative amendment and would represent a very significant change in long-standing policy. It could not be achieved by a statement in the Second Reading Speech as suggested. Accordingly, the Government will not be supporting change in this regard.

This is disappointing but it is not unexpected, given the government's support for minimum mandatory sentencing for murder, and I would add minimum mandatory sentencing for a whole range of criminal offences. But given the fact that, under this bill, no procedure will be available to enable the exercise of compassion in sentencing once the partial defence of provocation can no longer be used, the Greens would like to put on the record our concern that this legislation could end up having serious unintended consequences for these survivors of family violence.

In relation to the two South Australian cases I referred to earlier, Rajini Narayan received a head sentence of six years for 'provocation manslaughter' and Marion Taylor received five years. Both had their sentences suspended. If these women had been convicted of murder, a comparable non-parole period would be unprecedented in its lenience.

Even if this bill contemplated equally lenient non-parole period sentencing in severe cases of family violence, no provision has been made for the remission of imprisonment. Effectively, under this bill it appears that women who kill in these circumstances in future will be gaoled—which would be a substantial increase in their punishment.

On a more positive note, as I mentioned earlier the government has drafted amendments in response to another issue raised by Mr Leader-Elliott. He recommended:

> Express provision should be made for the consideration of evidence of family violence in duress. Proposed s15B(2) on 'reasonable proportionality' has no explicit application here. Unlike self defence or defence of property, which require a 'reasonably proportionate' response, duress simply requires 'a reasonable response' to the threat. That's a different issue from reasonable proportionality and specific provision should be made for family evidence here. If self defence and the defence of property require a specific provision to activate these proposed evidentiary provisions when 'reasonable proportionality' is an issue, similar provision should be made when duress is raised and 'reasonable response' is an issue. (A court might take that approach to interpretation, but legislatures should not depend on courts to repair their oversights.)

I am pleased that in response the Attorney-General's office replied:

> Mr Leader-Elliott suggests that express provision should be made for the consideration of evidence of family violence in the defence of duress. The government supports this and will be filing an amendment.

I am very glad to have helped achieve some reforms behind the scenes, as it were, so that we will not need to be doing anything on the floor.

In relation to the amendments to be moved by the Hon. Connie Bonaros to insert a review clause, the Greens will be supporting this sensible amendment. So, with the reservations that I have previously outlined about the consequences of how these provisions will intersect with minimum mandatory sentencing, overall the Greens will be supporting this bill.

The Hon. C. BONAROS (17:11): I rise on behalf of SA-Best to speak in support of the Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Bill 2020. As we know, the bill amends four acts: the Bail Act, the Criminal Law Consolidation Act, the Evidence Act and the Sentencing Act. I understand this bill is based on the preferred recommendations of SALRI in the stage 1 (2017) and stage 2 (2018) reports entitled The Provoking Operation of Provocation.

I would like to commend and thank SALRI for its outstanding work and the work it has undertaken in the development of this bill. I would also like to thank the large number of stakeholders who generously provided their input to the SALRI reports, and hence to the legislation we have before us today. I also acknowledge and thank my Legislative Council colleagues the Hon. Mark Parnell and the Hon. Tammy Franks for their dogged persistence to see this area of the law given much needed law reform.

At the outset it is important to note that the SA Legislative Review Committee stated that any future reform of the provocation defence should only take place in the context of a wholesale review of the mandatory sentencing provisions that also apply in South Australia in respect of murder. SALRI concurred with those views, and I am pleased the provisions of the bill before us are a comprehensive suite of reforms to four acts, not only the outdated common law defence dealt with in this bill.

The current law needed reform to remove its discriminatory gay panic defence aspect, but provocation is only part of a bigger picture that needed to be completely repositioned to reflect current community values and standards. Indeed, the criticisms of provocation have been such that all

Australian jurisdictions, bar South Australia, have now either abolished it entirely or at least narrowed its scope. It is really important to acknowledge that although South Australia was the first state to decriminalise homosexual activity way back in 1975, sadly we are now a very distant last to reform this area of law.

The role, scope, and even the existence of provocation as a partial defence to murder has been described by Andrew Hemming, an academic writing in the *Western Sydney Law Review*, as, 'A totally flawed defence that has no place at all in any Australian jurisdiction irrespective of the particular sentencing regime.'

I think that is a sentiment we in this place agree with. The sexual orientation and gender bias of the partial defence of provocation is offensive. The idea that a victim has somehow contributed to their own death because of an alleged advance or comment a perpetrator took offence to is abhorrent.

The existence of this defence enabled Michael Lindsay to argue in the High Court that the victim he bashed to death in 2011 had caused him to lose control by making unwanted sexual advances. Not only is the existence of the provocation defence abhorrent but the message it sends to the community—that the victim somehow contributed to their own death—is particularly concerning.

As Justice Kirby, the only dissenting judge, so eloquently said at the time:

> If every woman who was the subject of a 'gentle', 'non-aggressive' although persistent sexual advance...could respond with brutal violence rising to an intention to kill or inflict grievous bodily harm on the male importuning her, and then claim provocation after a homicide, the law of provocation would be sorely tested and undesirably extended...

He went on:

> ...this Court should not send the message that, in Australia today, such conduct is objectively capable of being found by a jury to be sufficient to provoke the intent to kill or inflict grievous bodily harm. Such a message unacceptably condones serious violence by people who take the law into their own hands.

I recognise the provocation defence has had some very limited utility for women defendants who have suffered family violence. But for this defence, these women could have been unjustly convicted of murder and mandatorily sentenced to life. This bill attempts to address this very difficult issue comprehensively by effectively abolishing the provocation defence but ensuring that evidence of family violence and the circumstances surrounding it have to be taken into account at trial and in sentencing.

These are very welcome reforms for the reasons that have already been outlined by the Hon. Mark Parnell especially, and I am pleased to see this family violence aspect emphasised consistently and repeatedly throughout the four acts amended by the bill.

The bill also seeks to provide comprehensive guidance to the courts in dealing with offences committed in certain family violence circumstances and clearly defines the concepts and definitions relied upon. There is also provision for the court to receive expert evidence of social framework evidence about family violence. The requirement of a judge to identify and explain the purposes for which evidence of family violence may or may not be used hopefully should avoid any misunderstanding or miscarriage of justice.

Protecting the identity of defendants who have suffered family violence that is of a humiliating or degrading nature is also a welcome protection being inserted into the Evidence Act. The clear intention to take into account family violence and utilise social framework evidence are outlined in the relevant clauses and hopefully will be of assistance in ensuring courts take this into account and do not get into lengthy, protracted disputes over statutory interpretation.

The return of judicial discretion in sentencing a person in exceptional circumstances is also welcome, although I think this is an element of the bill that may require some monitoring to ensure exceptional circumstances are limited to those prescribed and there are not perverse outcomes or unintended consequences. Inserting a presumption against bail for those charged with murder is controversial, and I can think of cases where this has been a real problem, but there is an opportunity for the court to establish exceptional circumstances, so there is still a safety net for those charged to apply for bail. It is not ruled out in the bill.

As I have said, I am strongly supportive of the bill finally abolishing the common law defences of provocation, necessity, duress and marital coercion and replacing two of them with statutory provisions. The defence of marital coercion has been redundant for decades. If it was ever of any practical use as a defence, then I am pleased to see it go. The new provisions for duress and necessity, now replaced with sudden and extraordinary emergency, now more appropriately sit with all of the defences and do not apply to the offences of murder, attempted murder or related murder offences.

Of particular interest is a provision that while defensive action needs to be proportionate to the threat this does not mean that the defendant cannot exceed the force used against them. Under the government's further amendments, the court decides if this is reasonable, especially in cases of family violence, and that is particularly important. This is, in my view, a very sensible provision to avoid ridiculous cases where an innocent victim is charged with an offence when defending themselves because in the circumstances they responded with greater force.

As has been alluded to by the Hon. Mark Parnell, my amendments are to ensure the impacts and outcomes of the operation of the bill are reviewed and a report of that review is provided to parliament after the fifth, but before the sixth, year of operation. The first amendment inserts a new clause to ensure that part 3, division 2, the division that deals with defences, is reviewed in regard to the effect of the abolition of the common law defences and the effects that 15B(2) has had on the operations of sections 15 and 15A, and to consider the operation of the new and modified defences set out in 15D and 15E.

Similarly, the second amendment that I propose to move provides for a review and report to parliament on the operation and effects of the changes to the evidence provisions in the new part 3, division 4. These are innovative sweeping changes in an extremely complex area of law, and it will be prudent to review them again to ensure they are operating as parliament intended. Both amendments prescribe the review and report can make recommendations about further amendments, modifications and adjustments if there are unintended consequences, unforeseen issues, or problems arising in implementing the sweeping changes in the law.

Again, as the Hon. Mark Parnell has pointed out, and as I have just alluded to, these are issues that we have raised with the Attorney, because, obviously, given the complexity of what we are dealing with, there is the potential that there will be unintended consequences. That is not what we want. Again, I commend the work of SALRI, the work of the former Attorney-General, who instigated the review that this bill so heavily relies on, and of course the continued advocacy of the Hon. Mark Parnell and the Hon. Tammy Franks. I look forward to the debate of the bill.

The Hon. J.M.A. LENSINK (Minister for Human Services) (17:22): I thank honourable members for their contributions and the commitment from all parties to progress these long overdue reforms to the law. In particular, I would like to acknowledge the Hon. Ian Hunter and the Hon. Tammy Franks for their longstanding advocacy on this matter and also acknowledge contributions from the Hon. Kyam Maher, the Hon. Mark Parnell and the Hon. Connie Bonaros.

The defence of provocation is archaic. It encourages victim blaming, it is gender biased, it is difficult to understand and, as has been canvassed in this chamber, it remains offensive in its application in circumstances where, colloquially, there has been 'gay panic'. The government and the members in this chamber agree that this is unacceptable.

Bringing this bill before the parliament took longer than anticipated for several reasons, not least of which is the complexity of sentencing law in South Australia and ensuring the drafting of the new provisions met its intended purpose. The bill went through several drafts and was the subject of extensive consultation with lawyers and stakeholders. It remains the government's strong view that the law still needs to recognise circumstances of domestic and family violence in situations where victims of prolonged abuse retaliate against their abusers.

In essence, the settled version of the bill is the simplest of all the options considered. It abolishes the various common law defences, creates new statutory defences and allows for family violence to be considered as an exceptional circumstance for departing from the mandatory minimum non-parole period at the sentencing stage.

I note several amendments have been placed on file, two sets by the government, two sets by the Hon. Connie Bonaros and one amendment by the Hon. Tammy Franks. The government amendments insert transitional provisions, which are necessary to deal with criminal liability, sentencing and evidentiary issues that arise with the commencement of the bill. These are uncontroversial.

Amendments filed yesterday are in response to a concern raised by the Hon. Mark Parnell and Emeritus Professor Ian Leader-Elliott. The amendment makes it abundantly clear that evidence of family violence is relevant to both the subjective and objective aspects of the defences of both self-defence and duress, that is, family violence is a relevant consideration in assessing both a defendant's beliefs in the context of self-defence and duress and in assessing the objective reasonableness of a defendant's conduct.

The government carefully considered the other matters raised and determined that no further changes were needed. The two sets of amendments filed by the Hon. Connie Bonaros relate to a review of these provisions after five years. After communicating with the Attorney's office, Ms Bonaros has agreed to remove two particular aspects and the government thanks Ms Bonaros and will therefore support the [Bonaros-2] amendments.

The amendment filed by the Hon. Tammy Franks erases from correspondence received from the South Australian Rainbow Advocacy Alliance. It proposes that offenders' motivations of hatred or prejudice against a victim be expressly made a consideration in sentencing. Unfortunately, the government is unable to support this amendment at this stage and has conveyed this to Ms Franks and the opposition. There are several reasons for this, but most importantly this has not been the subject of consideration and consultation, unlike the rest of the bill.

The sentencing consideration raised is most appropriately the subject of a separate law reform project and in a separate bill due to the subject matter and the Attorney has indicated that she would be willing to consider a reference to the South Australian Law Reform Institute to facilitate this. I reiterate that sentencing law is complex. Should the Franks amendment pass today, this would impede the progress of the bill as the government would, at the very minimum, need to undertake further consultation with the Law Society, the Bar Association, the courts, the Crown Solicitor and the Office of the Director of Public Prosecutions.

The government acknowledges the longstanding advocacy of Ms Franks for LGBTIQA+ rights and her worthy intention in the movement of this amendment. Once again, I thank all members for their contribution and I look forward to the passage of the bill.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. K.J. MAHER: I might, for the sake of ease of progression of this bill through the committee, indicate what the opposition's attitude will be to the various sets of amendments that have been filed. We will not have much, if any, questions on other clauses of the bill. I can indicate that the opposition will be supporting the amendments filed by the Hon. Connie Bonaros in relation to review clauses.

In relation to the amendments filed by the Hon. Tammy Franks, after discussions with our former colleague Kelly Vincent in this place, we do not disagree with what is being put forward by the suggestions from the SA Rainbow Alliance as expressed in the amendments from the Hon. Tammy Franks. I would appreciate the government perhaps placing on record some of the informal discussions we have had, in that including those amendments as part of this bill—and I would appreciate confirmation from the government—may have the undesirable effect of holding up the passage of this bill and the abolition of the gay panic defence. If that is confirmed, I can indicate we will not support the amendments contained in this bill but we are keen to look at how they might be given expression elsewhere.

The Hon. C. BONAROS: For the record, I can confirm effectively the same: while we are sympathetic to the issues that have been raised—and I note that they are to be included in a private member's bill—I think that might be a more opportune time to consider them given that it may result in an unwanted delay to the passage of this bill. We have sympathy for that position; we just do not want to do anything to hold up this bill. For that reason, we will consider them in the context of a private member's bill proposed by the member.

The Hon. T.A. FRANKS: In lieu, then, of moving and speaking to my amendment, I will at this point thank all those members who have addressed the concerns that have been raised by the South Australian Rainbow Advocacy Alliance. Indeed, I note that there have been over 38,000 South Australians or Australians who have signed a petition, both supporting and welcoming the passage of this bill but also asking us to go further and to ensure that our laws do condemn prejudice and do not condone it and, indeed, go further to protect victims of hate crime. I will not be proceeding with the amendment today.

I note that I gave notice today of a private member's bill to effect—as they are doing in New South Wales, Victoria and the Northern Territory—the intent of ensuring that hate crimes, attacking somebody simply because their sexuality or gender identity offends you, should no longer be given a free pass. We look forward to no doubt seeing, given the express support of the government, the opposition and other crossbenchers today, a speedier passage, in terms of consultation and progress on a piece of legislation that can be supported by all in this place, than we have for this particular piece of provocation legislation.

I am looking forward to seeing the end of the gay panic defence and seeing gendered and bigoted defences for murder removed from our courts. Indeed, we can go further and ensure that hate crimes are outlawed in the future. I hope that this parliament does that job before the next election.

Clause passed.

Clauses 2 to 6 passed.

Clause 7.

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

Amendment No 1 [HumanServ–2]—

Page 3, line 21 [heading to clause 7]—Delete 'Reasonable proportionality' and substitute:

Reasonableness etc where offence committed in circumstances of family violence

Amendment No 2 [HumanServ–2]—

Page 3, lines 24 to 31 [clause 15B, inserted subsection (2)]—Delete inserted subsection (2) and substitute:

(2) In a trial for an offence in which the defendant raises a defence under this Division, the question of whether—

(a) the defendant genuinely believed that particular conduct was necessary and reasonable (either for a defensive purpose or for the purposes referred to in section 15A(1)(a)); or

(b) particular conduct was reasonably proportionate to a particular threat; or

(c) the defendant reasonably believed that a particular threat would be carried out; or

(d) the defendant reasonably believed that particular conduct was the only reasonable way a particular threat could be avoided; or

(e) particular conduct was a reasonable response to a particular threat,

is, if the defendant asserts that the offence occurred in circumstances of family violence, to be determined having regard to any evidence of family violence admitted in the course of the trial.

I believe that as the government speaker on this bill I have outlined a number of things in relation to a range of amendments, both on behalf of government amendments and other members' amendments. But I will reiterate, in relation to this particular amendment that deletes proposed

section 15B(2) and replaces it with an alternative section 15B(2), that the purpose of the amendment is to make it abundantly clear that evidence of family violence is relevant to both the subjective and objective aspects of the defences of both self-defence and duress; that is, family violence is a relevant consideration in assessing both a defendant's beliefs in the context of self-defence and duress and in assessing the objective reasonableness of a defendant's conduct.

The Hon. Mark Parnell relayed concerns raised with him that, as previously drafted, section 15B(2) did not clearly articulate exactly how evidence of family violence could be considered in respect of some aspects of those defences. This revised version puts it beyond doubt.

The Hon. M.C. PARNELL: I thank the minister for her explanation. As I have said before, the Greens are happy to have assisted in refining the bill at the last minute, and we will be supporting both of these amendments to clause 7.

Amendments carried; clause as amended passed.

Clause 8.

The Hon. C. BONAROS: I move:

Amendment No 1 [Bonaros–2]—

Page 5, after line 18—After inserted section 15E insert:

15F—Review of Division

(1) The Minister must cause a review of the operation of this Division (as amended by the *Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act 2020*) to be conducted and a report on the review to be prepared and submitted to the Minister.

(2) The review and report must include—

(a) consideration of the effect (if any) of the abolition of the common law defences specified in section 14B; and

(b) consideration of the effect (if any) that section 15B(2) has had generally on the operation of sections 15 and 15A; and

(c) consideration of the operation of the defences set out in sections 15D and 15E; and

(d) a recommendation as to whether further modification to the Act is necessary or desirable for the purpose of recognising and addressing the role family violence plays in relation to certain offending,

and may include any other matter the Minister thinks fit.

(3) The review and the report must be completed after the fifth, but before the sixth, anniversary of the commencement of this section.

(4) A report under this section may be combined with a report under section 34Z of the *Evidence Act 1929*.

(5) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

For the benefit of members, there is set 1 and set 2. I will not be moving set 1. I am only proceeding with set 2, given the explanation that was provided by the minister and discussions that have taken place with the Attorney in relation to some of the issues in set 1. I think we have already outlined, really, what is the purpose amendment No. 1 during the second reading, so I will not reiterate what I have already said. Everyone is supporting it.

Amendment carried; clause as amended passed.

Clause 9 passed.

Clause 10.

The Hon. C. BONAROS: I move:

Amendment No 2 [Bonaros–2]—

Page 9, after line 6—After inserted section 34Y insert:

34Z—Review of Division and section 69A

(1) The Minister must cause a review of the operation of this Division and section 69A (as enacted or amended by the *Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act 2020*) to be conducted and a report on the review to be prepared and submitted to the Minister.

(2) The review and report must include—

(a) consideration of the effect (if any) that this Division has had generally in relation to offences committed in circumstances of family violence; and

(b) consideration of whether the circumstances of family violence set out in section 34V should be modified; and

(c) details of any appeals relating to directions given under section 34Y; and

(d) details of any suppression orders made under section 69A(1a); and

(e) a recommendation as to whether further modification to the Act is necessary or desirable for the purpose of recognising and addressing the role family violence plays in relation to certain offending,

and may include any other matter the Minister thinks fit.

(3) The review and the report must be completed after the fifth, but before the sixth, anniversary of the commencement of this section.

(4) A report under this section may be combined with a report under section 15F of the *Criminal Law Consolidation Act 1935*.

(5) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

I move this amendment for the reasons already outlined. I think we have consensus in relation to this as well.

Amendment carried; clause as amended passed.

Clauses 11 and 12 passed.

New schedule 1.

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

Amendment No 1 [HumanServ–1]—

Page 10, after line 12—Insert:

Schedule 1—Transitional provisions

1—Transitional provision—amendments to *Criminal Law Consolidation Act 1935*

Section 15B(2) of the *Criminal Law Consolidation Act 1935* (as enacted by this Act) will be taken not to apply in relation to a trial that commenced before the commencement of this clause.

2—Transitional provisions—amendments to *Evidence Act 1929*

(1) Subject to subclause (2), Part 3 Division 4 of the *Evidence Act 1929* (as enacted by this Act) applies in relation to—

(a) proceedings for an offence commenced but not determined before the commencement of this clause; and

(b) proceedings for an offence commenced after the commencement of this clause (whether the offence was committed before or after that commencement).

(2) Section 34Y of the *Evidence Act 1929* (as enacted by this Act) will be taken not to apply in relation to a trial that commenced before the commencement of this clause.

3—Transitional provision—amendments to *Sentencing Act 2017*

Section 48 of the *Sentencing Act 2017* (as amended by this Act) applies in relation to a non-parole period in respect of an offence where—

(a) proceedings for the offence were commenced but not determined before the commencement of this clause; and

(b) proceedings for an offence commenced after the commencement of this clause (whether the offence was committed before or after that commencement).

Transitional provisions are needed to deal with criminal liability, sentencing and evidentiary issues that arise with the commencement of the bill. These transitional provisions will work in conjunction with a staged commencement of the provisions. This is to ensure that appropriate provision is made for legal proceedings that are already on foot before the commencement of the bill.

In some cases, it is appropriate for the law that is applied in those proceedings to remain and be applied as it was prior to the proceedings commencing. In other cases, the new laws can be applied to proceedings that are underway but have not been completed when these provisions commence. There are separate transitional provisions for each of the amendments to the Criminal Law Consolidation Act, the Evidence Act and the Sentencing Act.

Clause 1 disapplies section 15B(2) and (3) of the CLCA to trials that commenced before these new provisions become operative. This is to ensure that the law in relation to reasonable proportionality does not change part way through a trial in cases where self-defence or defence of property is raised. Clause 2 ensures that the new Evidence Act provisions apply to proceedings that have commenced but not been completed when the new provisions commence and to proceedings that are commenced after the provisions become operative.

The only exception to this is new section 34Y, which requires a judge to identify and explain the purpose for which evidence of family violence can be used. Like clause 15B, it is not feasible for this new provision to apply to trials that are already underway. Rather, this provision will apply prospectively to trials that commence after the new provisions become operative.

Clause 3 relates to the changes made to section 48 of the Sentencing Act. It ensures that the amendments to the Sentencing Act apply in relation to any sentence imposed after the commencement of the amending act, regardless of whether the proceedings for the offence had commenced prior to or after the commencement of the amending act. n so doing it clarifies that the amended sentencing scheme applies to proceedings already on foot at the date of commencement, as well as proceedings that commence after the commencement.

New schedule inserted.

Title passed.

Bill reported with amendment.

Third Reading

The Hon. J.M.A. LENSINK (Minister for Human Services) (17:40): I move:

That this bill be now read a third time.

Bill read a third time and passed.

APPROPRIATION BILL 2020

Estimates Committees

The House of Assembly requested that the Treasurer (Hon. R.I. Lucas), the Minister for Human Services (Hon. J.M.A. Lensink), and the Minister for Health and Wellbeing (Hon. S.G. Wade), members of the Legislative Council, attend and give evidence before the estimates committees of the House of Assembly on the Appropriation Bill.

The Hon. J.M.A. LENSINK (Minister for Human Services) (17:43): I move:

That the Treasurer (Hon. R.I. Lucas), the Minister for Human Services (Hon. J.M.A. Lensink) and the Minister for Health and Wellbeing (Hon. S.G. Wade) have leave to attend and give evidence before the estimates committees of the House of Assembly on the Appropriation Bill, if they think fit.

Motion carried.

Parliamentary Committees

SELECT COMMITTEE ON THE EFFECTIVENESS OF THE CURRENT SYSTEM OF PARLIAMENTARY COMMITTEES

The House of Assembly gave leave to the Clerk of the House of Assembly to attend and give evidence before the committee.

At 17.52 the council adjourned until Wednesday 25 November 2020 at 14.15.

Answers to Questions

SMALL BUSINESS COMMISSIONER

In reply to **the Hon. M.C. PARNELL** (24 September 2020).

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

The Small Business Commissioner is continuing his work advocating for and assisting small business as we continue down this very challenging path created by COVID-19.

The South Australian government has extended the legislation to protect retail and commercial tenants from eviction over the failure to pay rent due to the COVID-19 pandemic.

The legislation was passed by state parliament on 24 September 2020 to extend the COVID-19 Emergency Response Act 2020 (COVID Act). This will extend the COVID act until 6 February 2021.

The current COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020 (regulations) have been amended. The regulations (under which mediation can occur) now extend from 1 October 2020 to 3 January 2021. The act and regulations provide the opportunity for tenants and their landlords to mediate through the Office of the Small Business Commissioner if necessary.

The Small Business Commissioner has advised that staff commenced working remotely in a staggered approach from 23 March 2020 and have been dealing with vastly increased volumes of inquiries and cases even while operating in a virtual environment.

The office did not have the ability to triage phone calls during the six months when staff were working remotely. A system where callers were asked to email their inquiry or use an online form on the South Australian Small Business Commissioner website was implemented. The incoming emails were regularly monitored and inquiries where distributed to relevant staff who contacted customers as soon as possible.

In April 2020 a total of 429 online inquiries were recorded, the highest number ever recorded, and an 89 per cent increase compared with the corresponding period in 2019. This was also at a time when nearly all of the staff were working remotely.

A total of 2,160 enquiries were made online between 1 April 2020 to 30 September 2020 which compared with 1,690 inquiries including phone, in the same period the previous year.

There have been no complaints about the contact service provided by the office during the period and the Small Business Commissioner has commended his staff for the exceptional work they have undertaken during the COVID-19 pandemic.

I note that the formal advice from the state government on the date when this question was raised was that staff should be encouraged to return to the workplace. Indeed the commissioner has worked with his staff to ensure that he can continue to provide a high level of service to the small business community as they transition safely back to the workplace.

As at Friday 25 September the office has implemented a system for the rotation of staff to actively take calls from the public.

Information to assist small businesses in relation to government support and other resources is also being posted on the commissioner's website and social media. There is also extensive communication through social media including Facebook and LinkedIn.

The Small Business Commissioner's office continues to deliver events via webinar, either their own or participating in events organised by others.

The OSBC has been publishing updates on latest COVID-19 information as it relates to small businesses including landlords and tenants of retail and commercial leasing, to its website.

The state government through the Department for Innovation and Skills is also keeping business informed through www.business.sa.gov.au.

HOMELESSNESS SERVICES

In reply to **the Hon. E.S. BOURKE** (13 October 2020).

The Hon. J.M.A. LENSINK (Minister for Human Services): I have been advised:

A pilot program offering nine homes specifically to older women with finance assistance through shared equity was launched in August 2019 with properties made available for sale in early November 2019.

These properties were made exclusively available to single women over 50 years of age for a period of three months, after which they were made available to anyone eligible for the Affordable Homes Program.

During this three-month period there were 51 inquiries, of which 22 were eligible to buy under the initiative.

All 22 eligible buyers were directed to HomeStart Finance to secure finance, including assessment to receive the shared equity assistance.

Three single women over 50 years of age were able to meet finance requirements and were subsequently successful in purchasing a home through the program.

All nine properties have now contracted or sold to buyers eligible under the affordable homes program with shared equity finance.

HOMELESSNESS SECTOR REFORM

In reply to **the Hon. E.S. BOURKE** (14 October 2020).

The Hon. J.M.A. LENSINK (Minister for Human Services): I have been advised:

During 2020-21, 192 public housing properties will be built.

HOMELESSNESS SECTOR REFORM

In reply to **the Hon. T.T. NGO** (14 October 2020).

The Hon. J.M.A. LENSINK (Minister for Human Services): I have been advised:

To ensure that all organisations are adequately prepared in advance of the release of the tender, SA Housing Authority has provided indicative time lines for the specialist homelessness services reforms procurement process to the specialist homelessness services sector.

Consistent with probity advice, indicative time lines were provided on:

- 3 September 2020 at the sector reference group meeting, which comprised representatives of each client cohort and across metropolitan and country areas
- 11 September 2020 through a communique to all specialist homelessness services
- 13 October 2020 at a briefing workshop for all specialist homelessness services.

When the time lines are finalised, all specialist homelessness services will be notified of key dates at the same time.

PUBLIC HOUSING

In reply to **the Hon. M.C. PARNELL** (14 October 2020).

The Hon. J.M.A. LENSINK (Minister for Human Services): I have been advised:

1. As at 30 September 2020, SA Housing Authority was responsible for the tenancy and property management of 33,671 properties.

2. As identified in my previous response, just over 6,000 properties have been provided to Tesla for assessment for suitability for the SA Virtual Power Plant (SA VPP). The authority has completed its assessments and property inspections are now underway. Newly built properties will continue to be added to the program over the next several financial years and assessed for suitability.

3. As identified in my previous response, 1,100 properties have had a solar PV system and Tesla Powerwall installed under the SA VPP. As at 30 September 2020, a total of 2,036 solar PV systems have been installed on authority properties.

4. With the roll-out of Phase 3A of the SA VPP, an additional 3,000 installations are proposed by the end of 2022.

As new properties are built, they will be included in the assessment for solar PV installations. Newly built apartment buildings and upgrades of existing walk-up flats will also be assessed for suitability for solar PV.