person is required to surrender these items to avoid breaching the conditions of their bail. If a person breaches a bail condition, all items in their possession falling within the ambit of 'part of a firearm' are liable to be seized by police who are then required to store items. This presents a particular difficulty if the person in question is a firearms dealer, as this results in their entire stock being seized, including such items as pins and bolts.

Another example of the issues caused by the discrepancy between the Firearms Act and Bail Act relates to firearms prohibition orders pursuant to section 45(2) of the Firearms Act. Currently, a person who is on bail will be required to surrender all firearms, ammunition and 'any parts of a firearm'. If they were subsequently convicted and a firearms prohibition order imposed, they would be prohibited from possessing firearms, ammunition and 'firearm parts', requiring police to return to the person all items seized under the Bail Act that are 'parts of a firearm' but not a 'firearm part'.

This causes significant confusion. As the non-operational parts of a firearm do not present a public safety risk, there is little reason for them to be seized, therefore to address this issue the bill amends the Bail Act to replace the use of the terminology 'part of a firearm' with 'firearm part' and defines 'firearm part' in the same way as the Firearms Act. This will ensure the terminology is consistent between the Bail Act and the Firearms Act. I commend the bill to members and seek leave to insert the explanation of clauses in *Hansard* without my reading it.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clause are formal.

Part 2—Amendment of *Bail Act 1985*

3—Amendment of section 3—Interpretation

This clause inserts a definition of *firearm part*.

4—Amendment of section 3B—Terror suspects

This clause amends section 3B to apply to persons charged with a terrorist offence under State law.

5—Amendment of section 11—Conditions of bail

6—Amendment of section 11A—Bail authority may direct person to surrender firearm

These clauses are amended to refer to the new defined term of *firearm part*.

Schedule 1—Transitional provision

1—Transitional provision

The proposed amendments to section 3B of the *Bail Act 1985* would only apply in relation to a person taken into custody on a charge of an offence allegedly committed after the commencement of that provision.

Debate adjourned on motion of Hon. L.A. Henderson.

STATUTES AMENDMENT (SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL) BILL

Introduction and First Reading

The Hon. K.J. MAHER (Minister for Aboriginal Affairs, Attorney-General, Minister for Industrial Relations and Public Sector) (15:26): Obtained leave and introduced a bill for an act to amend the Equal Opportunity Act 1984, the Fair Work Act 1994, the Magistrates Court Act 1991, the South Australian Employment Tribunal Act 2014 and the Work Health and Safety Act 2012. Read a first time.

Second Reading

The Hon. K.J. MAHER (Minister for Aboriginal Affairs, Attorney-General, Minister for Industrial Relations and Public Sector) (15:27): I move:

That this bill be now read a second time.

It is now nearly a decade since the passage of the South Australian Employment Tribunal Act 2014 established the South Australian Employment Tribunal as a one-stop shop for employment in industrial relations disputes in this state. It is appropriate at this milestone to reflect on whether SAET's governing legislation is meeting its statutory objectives, particularly having regard to the practical experience of workers, employers, representatives and members of the tribunal since SAET was created.

At the 2022 state election, the government committed to a review of SAET. Following the election, the Attorney-General's Department invited feedback from stakeholders to inform any changes to the practice and jurisdiction of the tribunal. I take this opportunity to sincerely thank the many legal practitioners and organisations on both sides of the industrial fence who took time out to provide thoughtful ideas on areas of potential improvement. Having consulted with the tribunal and considered feedback from stakeholders, overall the government is satisfied that SAET is effectively carrying out its function as a one-stop shop for industrial disputes.

SAET provides high-quality dispute resolution in a timely and efficient manner, with over 6,000 applications filed in the last financial year. SAET deals with large and complex case loads, while maintaining resolution time frames significantly faster than many other jurisdictions. Many stakeholders identified SAET as a best practice model for an industrial tribunal and a preferred forum for the conduct of proceedings, having regard to its specialised knowledge and practical focus on dispute resolution.

SAET's high-quality conciliation processes and the work of its commissioners were particularly commended; however, in the course of consultation, stakeholders did identify a range of issues arising from SAET's governing legislation, largely of a technical or procedural nature, which could be addressed to improve the efficiency of the tribunal and the experience of litigants.

Consultation also raised some issues about the rules, forms and practice directions of SAET. While those are matters for SAET itself to determine, the president advises me he intends to undertake stakeholder consultation on those issues with a view to potential improvements. The purpose of this statutes amendment bill is to address those technical and procedural issues which arise from SAET's governing legislation and other acts conferring jurisdiction on SAET. I take this opportunity to outline some of the key features of the bill.

Part 2 of the bill amends the Equal Opportunity Act 1984. This amendment provides that employment-related discrimination and victimisation complaints will be heard in SAET rather than the SACAT. That is appropriate given SAET's expertise in employment-related matters, and is supported by the equal opportunity commissioner.

Part 3 of the bill amends the Fair Work Act 1994. In 2017, amendments were made to this act to consolidate the functions of the former Industrial Relations Court of South Australia and the Industrial Relations Commission of South Australia into the new SAET. An unintended consequence of those changes is that uncertainty has emerged over which powers under the act are now exercised by SAET constituted as the South Australian Employment Court, and which are exercised by SAET constituted as an industrial relations commission.

The bill clarifies this by inserting amendments to specifically state which powers are exercised by which part of SAET. These amendments are consistent with the orthodox principles that courts exercise judicial power to ascertain, declare and enforce existing legal rights and responsibilities, while industrial relations commissions exercise arbitral power to ascertain and declare what ought to be the respective future rights and liabilities of the parties.

The bill also clarifies which proceedings are required to be dealt with at a full bench level rather than by a single member. This generally applies to significant matters with implications across the state industrial relations system, such as the state wage case and applications to vary minimum standards for leave entitlements.

The bill amends section 4 of the act to make matters an industrial instrument relating to wages parity an 'industrial matter' for the purpose of the act. This bill also inserts a new section 4A to provide the declared employer for public employees is an instrumentality of the Crown and capable of binding the Crown in relation to an industrial matter. These amendments will give certainty that

when a declared employer of public employees negotiates an industrial instrument on behalf of the government, such as an enterprise agreement, workers and their representatives can have confidence that the government as a whole can be held to that agreement.

This bill repeals existing section 11 of the act. This section is redundant because the same power to make declaratory judgements is also conferred by section 26A of the SAET Act. The deletion is not intended to reflect any diminishing of SAET's powers to grant such declaratory relief. In its place, the bill inserts a new section 11, which confers jurisdiction to settle and resolve industrial disputes. This section is inserted for the avoidance of doubt as a more express statement of the industrial dispute jurisdiction already exercised by SAET, consistent with other provisions in chapter 2, part 1 conferring jurisdiction on SAET. This is not intended to reflect any alteration to SAET's existing industrial dispute jurisdiction.

The bill also inserts a new section 13A to confirm that the prohibition on mandatory injunctions against the Crown under section 7(2) of the Crown Proceedings Act 1992 does not apply in respect of proceedings before SAET under this act. This amendment applies both to SAET sitting as a court and as an industrial relations commission.

The practical effect of the amendment is to restore the longstanding position in Dunk v South Australian Health Commission that orders may be made against the Crown to remedy or restrain contraventions of industrial laws. This is necessary after the recent decision of Chief Executive, Attorney-General's Department v Montrose suggested some such orders may be prohibited by the Crown Proceedings Act. This amendment ensures that when it comes to industrial laws and entitlements, the Crown is subject to the same principles and remedies as any other employer in the state industrial relations system.

The bill repeals section 24 of the act, which deals with the circumstances in which legal costs may be awarded. This section is unnecessary because section 52 of the SAET Act already provides a default position that parties bear their own costs in proceedings before SAET, subject to the provisions of a relevant act.

The bill amends section 34 of the act to align the rules for the calculation of interest on monetary claims with those applied under the commonwealth Fair Work Act 2009. The practical effect is that interest should be calculated from the date an unpaid amount falls due, rather than from the date a monetary claim is commenced in SAET.

The bill inserts a new section 100A to provide a streamlined process for the conduct of the annual State Wage Case. Since the referral of industrial relations powers to the commonwealth, the State Wage Case almost inevitably results in a flow-on to the state industrial relations system of the minimum wage decision made by the commonwealth Fair Work Commission. Nonetheless, every year parties are required to produce evidence and make submissions to SAET prior to the determination being made.

New section 100A will permit SAET to simply adopt the outcomes of the Fair Work Commission determination without the need to conduct a hearing or receive evidence, provided there is no objection from an interested party. If there is such an objection, then SAET will be required to conduct a hearing on the issue within the existing processes.

Part 4 and part 6 of the bill amend the Magistrates Court Act 1991 and the Work Health and Safety Act 2012. These amendments increase the monetary threshold under which a criminal offence can be dealt with by a deputy president magistrate of SAET to $1.5 million. This particularly affects prosecutions under the Work Health and Safety Act. In practice, deputy president magistrates deal with most work health and safety offences and have expertise in these matters. However, the existing monetary threshold of $300,000 means many work health and safety prosecutions may need to be referred to a deputy president judge for hearing or sentencing instead.

This amendment will assist SAET in efficiently allocating its caseload between different judicial members by ensuring deputy president magistrates can fully deal with a work health and safety prosecution up to a category 2 level. Matters above this penalty range may continue to be referred for consideration by a deputy president judge.

Part 5 of the bill amends the South Australian Employment Tribunal Act 2014, amending section 6 of the act to clarify the assignment of matters between SAET sitting as a court or as an industrial relations commission. These amendments are consistent with and facilitate the amendments to the Fair Work Act 1994 discussed above. These amendments will ensure matters assigned to the court can continue to be subject to compulsory conciliation conferences conducted by commissioners.

This bill amends section 19 of the act to provide additional flexibility to the president in the composition of the full bench by allowing commissioners to sit as members of the full bench when SAET is acting as an industrial relations commission. This recognises that commissioners are appointed to SAET having regard to their significant on-the-ground industrial relations experience and expertise, which is essential in achieving the practical resolution of disputes. This amendment ensures that experience and expertise can be deployed as part of the full bench in appropriate arbitral matters.

The assignment of members in any particular case will remain at the discretion of the president, and at least one member of the full bench must always be a presidential member. The amendment also provides that the president must be satisfied that a person has appropriate knowledge, expertise or experience relating to the class of matter that is before SAET before assigning a commissioner to constitute SAET or sit as a member of the full bench.

The bill amends section 43 of the act to increase the maximum time frame for compulsory conciliation conferences in workers compensation disputes from six to 10 weeks. A number of SAET decisions now identify that, in practice, the current six-week time frame specified in the act is often unworkable due to unavoidable delays in obtaining specialist medical evidence or reports. As a consequence, it has become routine for SAET to exercise its power to extend the period for compulsory conciliation well beyond the six-week time frame of the act. Indeed, SAET itself has advised that, in reality, the time frame for conciliation is often closer to 12 weeks than the current six weeks.

It is essential that workers compensation matters are dealt with expeditiously. If an injured worker's claim has been wrongly determined it needs to be resolved as quickly as possible to provide the best opportunity for the worker to access necessary compensation and support to make a successful return to work.

However, time frames in the act also need to reflect the realities of litigation. There is no point in setting a time frame which is practically impossible to meet. Indeed, doing so risks trivialising the goal of completing the conciliation process as quickly as possible. The increase to the maximum compulsory conciliation time frame of 10 weeks acknowledges the existing time frame is often unrealistic and sets a more appropriate target which can actually be achieved in practice.

Importantly, the increase to a 10-week conciliation period operates in conjunction with an amendment to tighten the threshold for SAET to extend conciliation beyond this time frame, recognising that an extension of time should be the exception rather than the norm. This bill replaces the current broad good reasons test for extending the conciliation process with the requirement that SAET must be satisfied there is a substantial likelihood that proceedings will resolve by settlement if an extension occurs. That is appropriate as the settlement of a dispute should be the fundamental focus of a conciliation process.

The bill amends section 44 of the act to provide that the procedure for referral of matters for hearing and determination is subject to the provisions of another relevant act. This recognises that some legislation conferring jurisdiction on SAET may provide for an alternative procedure.

The bill amends section 51 of the act to provide for the confidentiality of communications between non-legally qualified representatives and members in proceedings before SAET. It has been common throughout Australian history for non-legally qualified officers and employees of industrial associations, both business associations and trade unions, to represent their members in industrial courts and tribunals. That is also the case in SAET, with several acts expressly providing for such a right of representation. This includes in workers compensation and industrial proceedings.

While it may be thought communications between a representative and a member would be confidential, the decision in Davies v Woolworths Group Limited has identified that such communications may be disclosed to opposing parties if a representative is not legally qualified. Disclosing confidential communications between a representative and a party to proceedings would substantially undermine the important representative function of industrial associations, which has been recognised in South Australia for decades.

The amendments in this bill ensure that, where a party is represented by a non-legally qualified person authorised by legislation to appear before SAET as a representative, documents and communications will be subject to similar confidentiality rules as apply between a legal practitioner and their clients.

This bill amends section 65 of the act to allow SAET, on application, to expand the scope of issues in dispute in workers compensation disputes where the tribunal is satisfied it is in the interests of justice that a question should be determined as part of the proceedings.

Workers compensation disputes are a unique jurisdiction. Proceedings are conducted using informal documents and without detailed applications or pleadings. It is common for the issues in dispute to ebb and flow as new medical and factual developments arise while a dispute is on foot and the parties' cases are sharpened closer to a hearing.

The jurisdiction is also unique in that the relationships between an injured worker and a compensating authority like ReturnToWorkSA often persists over a period of years and is rarely confined to a single issue. A workplace injury may result in a cluster of related claims which arise over time; some for weekly payments, some for medical expenses or surgery, some for return to work services and some for lump sum compensation.

While the act allows the issues in dispute in proceedings to be enlarged with the consent of the parties, concerns have been raised that one party's unreasonable refusal to consent can result in unnecessary duplication through the filing of separate applications about related issues, and ultimately increased costs and delay.

The aim should be for all relevant issues and dispute between a worker and a compensating authority to be heard and determined in the same proceedings insofar as just and appropriate, taking into account matters such as the objects of the tribunal, the need for procedural fairness and case management principles. That approach provides the best opportunity to achieve finality in litigation and allow the worker to move on with confidence in their affairs and the ability to focus on their recovery, rather than the dispiriting prospect of completing one proceeding before SAET only to face further proceedings arising from ancillary disputes, which could have been resolved simultaneously.

The amendment in this bill will ensure that, if the parties cannot agree on which issue should be dealt with in proceedings, SAET has the ability to supervise the litigation and ensure related issues are dealt with together insofar as is just and appropriate. This means, for example, that SAET can determine that it is appropriate to deal with both the question of whether the worker's injury arises from their employment and whether the worker is entitled to a particular surgery or medical expense related to an injury in the same proceedings.

The bill amends section 86 of the act to significantly streamline the process for the enforcement of monetary orders made by SAET. Currently, in order to enforce an order made by SAET a party must go through a labyrinth of legal processes. Having already won their case in SAET, if a debtor refuses to comply with an order the party must first seek to prove the order as a debt through a civil claim in the Magistrates Court or District Court. The purpose of this process is to effectively convert an order of SAET into an order of the other court.

This provides a forum where a debtor can seek to relitigate the substantive issues that were raised before SAET. Only once a debt has been proven in a civil claim can a party proceed to commence an application for enforcement of judgement under the Enforcement of Judgments Act 1991.

The amendments in this bill will remove these unnecessary barriers to the enforcement of SAET decisions and hopefully improve compliance with orders made by SAET generally. A worker

who has been underpaid and pursued that underpayment to receive an order from the court is entitled to expect their order will be complied with.

Under these amendments where a mandatory order is made by SAET sitting as a court it will no longer be necessary to prove the order as a debt. Instead, the order will be immediately enforceable as if it were a judgement of the Magistrates Court or District Court.

The amendments also promote access to justice by providing that where non-legal practitioner representatives, such as an officer or employee of an industrial association, is entitled to represent a party before SAET, then they may also represent the party in the proceedings under the Enforcement of Judgments Act.

The bill amends section 92 of the act to permit SAET to make rules providing for the suspension of inactive proceedings. It is common for workers compensation proceedings in particular to involve periods of inactive litigation, such as where the parties are awaiting the receipt of specialist medical reports or confirmation of a worker's prognosis following surgery. This amendment will support SAET in the efficient management of its workload by allowing specific rules to be made dealing with these circumstances, such as placing proceedings in a suspended matters list pending the resumption of active litigation.

It is essential that all parties in our industrial relations system—workers, employers and compensating authorities like ReturnToWorkSA—can have confidence in the high-quality independent dispute resolution processes that SAET provides. Continuous improvement is always welcome, and the government will monitor feedback on the practical effect of the amendments in this bill and consider any feedback from stakeholders on issues that may arise to ensure SAET can continue to deliver the best services for the entire community.

I commend the bill to members and seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

Part 2—Amendment of *Equal Opportunity Act 1984*

3—Amendment of section 95B—Referral of complaints to Tribunal

This clause amends section 95B to provide for referral of matters to SAET (rather than the Tribunal) in certain circumstances.

Part 3—Amendment of *Fair Work Act 1994*

4—Amendment of section 4—Interpretation

This clause—

- makes an amendment consequential to clause 5
- amends the definition of *industrial matter* to specifically include matters in an industrial instrument relating to wage parity.

5—Insertion of section 4A

This clause inserts a new section 4A as follows:

4A—Meaning of employer for public employees

This provides that the employer for public employees is the body or person (not being a Minister) declared by regulation to be the employer of the employees (and the employer is an instrumentality of the Crown and is capable of binding the Crown).

6—Amendment of section 8—Jurisdiction to interpret awards and enterprise agreements

This clause provides that jurisdiction conferred under section 8 of the Act vests in SAET constituted as the South Australian Employment Court.

7—Substitution of section 11

The current section 11 is deleted because it is unnecessary. This clause substitutes a new section 11 as follows:

11—Jurisdiction to settle and resolve industrial disputes

Jurisdiction to settle and resolve industrial disputes is conferred on SAET constituted as an industrial relations commission.

8—Amendment of section 12—Orders to remedy or restrain contraventions

This clause provides that jurisdiction conferred under section 12 of the Act vests in SAET constituted as the South Australian Employment Court.

9—Amendment of section 13—Advisory jurisdiction

This clause provides that jurisdiction conferred under section 13 of the Act vests in SAET constituted as an industrial relations commission.

10—Insertion of section 13A

This clause inserts a new section 13A as follows:

13A—Mandatory injunctions

Section 7(2) of the *Crown Proceedings Act 1992* does not apply in respect of proceedings before SAET under the Act.

11—Insertion of heading

12—Insertion of heading

These sections divide Chapter 2 Part 2 into Divisions.

13—Repeal of section 24

Section 24 is repealed.

14—Amendment of section 34—Award to include interest

An award of interest, or lump sum instead of interest, must take into account the period between the day the relevant cause of action arose and the day the judgement is delivered.

15—Insertion of Chapter 3 Part A1

This clause inserts an interpretative provision as follows:

Part A1—Interpretation

65—References to SAET

A reference to *SAET* in Chapter 3 is a reference to SAET constituted as an industrial relations commission.

16—Amendment of section 69—Remuneration

This clause removes the requirement for SAET to establish a minimum standard for remuneration at least once in every year (which is consequential to clause 26) and provides that the minimum standard for remuneration is established by a Full Bench of SAET.

17—Amendment of section 70—Sick leave/carer's leave

18—Amendment of section 70A—Bereavement leave

19—Amendment of section 70B—Family and domestic violence leave

20—Amendment of section 71—Annual leave

21—Amendment of section 72—Parental leave

22—Amendment of section 72A—Minimum standards—additional matters

23—Amendment of section 72B—Special provision relating to severance payments

These clauses provide for various minimum standards to be established or reviewed by a Full Bench of SAET.

24—Amendment of section 79—Approval of enterprise agreement

This clause provides that an enterprise agreement may be referred to a Full Bench of SAET for approval in certain circumstances.

25—Amendment of section 90—Power to regulate industrial matters by award

This clause allows SAET to vary an award about remuneration and other industrial matters and removes an obsolete note..

26—Insertion of section 100A

This clause inserts a new provision as follows:

100A—State Wage Case

A Full Bench of SAET must, within 3 months of the conclusion of the Annual Wage Review conducted by the Fair Work Commission, conduct an annual review of the minimum standard of remuneration under section 69, minimum wage rates in awards and minimum work-related allowances and loadings in awards.

27—Amendment of section 108—Question to be determined at the hearing

This clause updates a cross reference.

28—Amendment of section 120—Application for registration

This clause provides that applications for registration under Chapter 4 Part 2 are to be made to SAET constituted as an industrial relations commission.

29—Amendment of section 125—Alteration of rules of registered association

This clause provides that SAET constituted as an industrial relations commission can register an alteration of rules.

30—Amendment of section 127—Orders to secure compliance with rules etc

This clause provides that certain applications under section 127 are to be made to SAET constituted as the South Australian Employment Court.

31—Amendment of section 130—De-registration of associations

This clause provides that SAET constituted as an industrial relations commission can de-register an association.

32—Amendment of section 132—Application for registration

This clause provides that applications for registration under Chapter 4 Part 3 are to be made to SAET constituted as an industrial relations commission.

33—Amendment of section 134—Registration

This clause is consequential to clause 32.

34—Amendment of section 135—De-registration

This clause provides that SAET constituted as an industrial relations commission can de-register an organisation or branch.

35—Amendment of section 138—Limitations of actions in tort

This clause provides that applications under section 138 are to be made to a Full Bench of SAET constituted as an industrial relations commission.

36—Amendment of section 140—Powers of officials of employee associations

This clause provides that in exercising powers under section 140(4) SAET must be constituted as an industrial relations commission.

37—Amendment of section 219D—Compliance notices

This clause provides for the making of applications to SAET constituted as the South Australian Employment Court for a review of a notice issued under the section.

38—Repeal of section 230

This section repeals section 230.

39—Transitional provisions

This clause provides transitional provisions related to the Part.

Part 4—Amendment of *Magistrates Court Act 1991*

40—Amendment of section 9—Criminal jurisdiction

This clause increases the jurisdictional limit applicable in the case of an offence under the *Work Health and Safety Act 2012* being heard by an industrial magistrate to a fine of $1,500,000.

41—Transitional provision

The new limit proposed under clause 40 will apply in relation to proceedings commenced in the Magistrates Court after the commencement of that clause.

Part 5—Amendment of *South Australian Employment Tribunal Act 2014*

42—Amendment of section 6—Jurisdiction of Tribunal

This clause removes the current section 6(2)(b)(ii) and provides that if a matter is assigned to the South Australian Employment Court, the Court may direct, or an Act or the rules may provide, that the matter be the subject of a compulsory conference in an industrial relations commission.

43—Amendment of section 6A—Conferral of jurisdiction—criminal matters

This clause increases the jurisdictional limit applicable in the case of a minor indictable offence heard by a magistrate of the South Australian Employment Court to a fine of $1,500,000.

44—Amendment of section 13—Appointment of Deputy Presidents

This clause requires consultation with the President before an appointment is made under the section.

45—Amendment of section 19—Constitution of Tribunal

Under this amendment a Full Bench of the Tribunal may, when acting as an industrial relations commission, consist of 3 members of which at least 1 must be a Presidential member. In addition it is provided that if a non-Presidential member is to constitute the Tribunal, or is to be a member of a Full Bench of the Tribunal, for the purpose of dealing with a matter, the President must be satisfied that the member has appropriate knowledge, expertise, or experience relating to that class of matter.

46—Amendment of section 43—Compulsory conciliation conferences

A conciliation conference must be attended by persons with sufficient decision-making authority to fully participate in settlement discussions. The amendments also make provision in relation to the maximum period over which a conference may occur and extension of such a period in certain cases. The amendments also make it clear that the conference may enlarge the scope of proceedings in accordance with section 65.

47—Amendment of section 44—Referral of matters for hearing and determination

This clause makes a minor clarifying amendment to section 44.

48—Amendment of section 51—Representation

This clause allows protection equivalent to legal professional privilege where a person is entitled to be represented in the Tribunal by a person who is not a legal practitioner.

49—Substitution of section 65

This clause substitutes a new section 65 as follows:

65—Power to enlarge scope

Under the proposed new provision the Tribunal may enlarge the scope of proceedings either with the consent of all parties or, in the case of proceedings are under the *Return to Work Act 2014*, where (on application and after giving all parties an opportunity to be heard), the Tribunal is satisfied it is in the interests of justice that a question should be determined as part of the proceedings.

50—Amendment of section 72—Functions of registrars

This clause provides for a review of an exercise of administrative power by a registrar.

51—Amendment of section 86—Enforcement of decisions and orders of Tribunal

This clause makes provisions in relation to recovery of monetary orders made by the Tribunal.

52—Amendment of section 91—Disrupting proceedings of Tribunal

This clause amends section 91 so that the section will also apply where a person contravenes or fails to comply with an order for payment of money.

53—Amendment of section 92—Rules

Rules may provide for the suspension of inactive proceedings.

54—Transitional provisions

This clause provides transitional provisions.

Part 6—Amendment of *Work Health and Safety Act 2012*

55—Amendment of section 230—Prosecutions

This clause increases the limit on sentencing for an indictable offence against the Act charged on complaint in the South Australian Employment Court to a fine of $1,500,000.

56—Transitional provision

The new limit proposed under clause 55 will apply in relation to proceedings commenced in the South Australian Employment Court after the commencement of that clause.

Debate adjourned on motion of Hon. N.J. Centofanti.

INTERVENTION ORDERS (PREVENTION OF ABUSE) (SECTION 31 OFFENCES) AMENDMENT BILL

Introduction and First Reading

The Hon. K.J. MAHER (Minister for Aboriginal Affairs, Attorney-General, Minister for Industrial Relations and Public Sector) (15:47): Obtained leave and introduced a bill for an act to amend the Intervention Orders (Prevention of Abuse) Act 2009. Read a first time.

Second Reading

The Hon. K.J. MAHER (Minister for Aboriginal Affairs, Attorney-General, Minister for Industrial Relations and Public Sector) (15:48): I move:

That this bill be now read a second time.

Today, I introduce the Intervention Orders (Prevention of Abuse) (Section 31 Offences) Amendment Bill 2024. This bill amends the Intervention Orders (Prevention of Abuse) Act 2009 to address an historical charging error in relation to offences under section 31 of that act. Section 31 contains offences for breaches of intervention orders under the act.

Section 31(1) is a less serious offence of contravening a term of an intervention order which requires participation by the defendant in an intervention program. This offence carries a maximum penalty of a $2,000 fine or imprisonment for two years, with an associated expiation fee of $315. Section 31(2) is a more serious offence of contravening any other term of an intervention order. This offence carries a maximum penalty of three years' imprisonment for a basic offence and five years for an aggravated offence.

In September last year, I was informed that it had been identified that defendants had been charged with and found guilty of a less serious offence under section 31(1) where they should have instead been charged with and found guilty of an offence of breaching section 31(2) of the act. I am advised that this incorrect charging came about as a result of an error in a form used by SAPOL prosecutors to lay charges.

Nearly all of these prosecutions, I am advised, were resolved by way of a guilty plea and the defendant was sentenced by the court on the basis of their admitted, uncontested or proven conduct as if the prosecution were for the more serious section 31(2) offence. This error has not exposed any person to a greater penalty than they would have been liable to had they been found guilty of the offence of breaching section 31(2) of the act. Nonetheless, review proceedings may be available to those persons.

I am advised that this issue arose after the commencement of the act in 2011 and continued until an error in South Australia Police's charging system was finally remedied in May 2019. In practice, this was an error in SAPOL's charging system which produces the required documents to lay a complaint or information before the court. I am advised that a full audit of these matters has identified 771 files with 700 individual defendants to whom this error applies.