HOUSE OF ASSEMBLY

Thursday 19 May 2011

The SPEAKER (Hon. L.R. Breuer) took the chair at 10:31 and read prayers.

VISITORS

The SPEAKER: We have a group of students here from the Mid North Christian College, Port Pirie, guests of the member for Frome. Welcome. It is good to see people from Port Pirie.

PARLIAMENT (JOINT SERVICES) (WEBCASTING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 February 2011.)

Dr McFETRIDGE (Morphett) (10:33): I rise to support this bill put to the house by the hardworking member for Morialta. I congratulate him on raising this issue once again. I say 'once again' because it is not the first time: it has been raised a number of times. In fact, my predecessor, the Hon. John Oswald, member for Morphett and Speaker in this place, investigated the webcasting of parliament, and I will say a bit more about that later on.

I start by saying that a former premier said to me that it does not really matter what goes on in this place because not many people see it, very few people hear about it (other than watching the paper) and, sadly, very few people come into parliament to watch what is going on. That needs to change. It should be that people are seeing, hearing and, hopefully, coming to watch live what is happening in this place, because it affects their lives every day, each and every South Australian, whether they are children, adults, family members or professionals.

A couple of weeks ago, the Premier described *The Advertiser* as '*Pravda* for the Liberals'. In my maiden speech, I spoke a bit about the media and the way they portray what is going on in parliament. I said that in Russia they have two main newspapers, *Pravda* and *Izvestia*; 'pravda' means 'the truth' and 'izvestia' means 'the news'. The Russians have a saying, 'The truth is not the news, and the news is not the truth.' We need to make sure that what people in South Australia are able to access is the truth, in real time hopefully, of what is going on in this place, and live broadcasting of the proceedings in this chamber is something that is well overdue.

The member for Morialta's bill states 'either in audio or audiovisual form'. I would much prefer this to be in audiovisual form so that people can not only hear what is going on but also see the antics and participate in some way by watching the debate, rather than having it reported second-hand or sometimes third-hand by ministerial staffers through the media. It needs to change, and it needs to change as quickly as possible.

Back in 1998, the Hon. George Weatherill, the father of the member for Cheltenham (Jay Weatherill), asked a question of the President of the Legislative Council about webcasting, and the President then noted, as I said a moment ago, that the Speaker of the House of Assembly (then John Oswald) went to Western Australia with the Clerk of the House 'to look at having cameras fitted in the Houses of Parliament so that they can transfer to the radio stations and television stations' what was going on here.

In 2000, in estimates, the Premier, Mike Rann, asked a question of the then premier, John Olsen. Premier Rann said on 14 June 2000:

> I understand that approval has been given for the letting of tenders, and I understand those tenders have been let, to install a television system in the parliamentary chamber. That will mean that the television channels no longer film from the galleries because parliament will have an in-house television system, and that will make television visuals and sound from question time available not only to television channels but also on the internet, presumably to ensure greater access to our thoughts, words and deeds to a worldwide audience.

The Premier, then opposition leader, Mike Rann, went on to say:

> Will the Premier report on the progress of that project? I understood that a television system for the parliamentary chambers was supposed to be up and running by now.

This is in June 2000. He continued:

> Is it still intended to link the television and voice images to the internet? How much is involved in the process? If tenders have been let, for how much?

The then premier, John Olsen, replied:

As the leader will understand, this is a matter for the Speaker of the House, but I am advised that a consultancy has been let to prepare a report on such a scheme and that report is not yet to hand. The Speaker has established a committee of members of the House, that is, across party lines, and that committee of members will give advice to the Speaker. I am also advised that no final decisions have been made at this stage. The consultancy cost is of the order of $70,000.

I have been unable to find that consultancy report; the library is still looking for it for me. The intent was to introduce audiovisual streaming of this chamber back then and, in discussions with my predecessor, John Oswald, about this, he said that it was his intent but that the situation changed politically and that obviously he was not able to see it come to fruition.

In 2002 the former member for Goyder, Mr John Meier, asked a question of Speaker Lewis. On 19 August 2002, Mr Meier asked:

The previous Speaker, the Hon. John Oswald, undertook a study—in fact, I recall that he went to Western Australia...to investigate the cost and feasibility of installing fixed cameras in this house. I believe, sir, that you also felt there was a need for fixed cameras. I wonder what progress has been made and what moneys have been spent.

Speaker Lewis replied:

…my recommendation would be that we do this before Christmas…I believe this can be done quickly and without too much…fuss, thus enabling the proceedings to be broadcast on the internet.

That was in August 2002. The last mention of this was Speaker Lewis again in July 2004, when he was commenting on the behaviour of one of the members in this place. He said:

…the record of the proceedings of parliament in the audio and video form ought to be taken by Hansard. The chamber should install at least three, and I would suggest five, cameras, controlled by a person employed by Hansard.

That record, as it was being taken, could be put on the internet, so that in real time the broadcast of the proceedings of the parliament could be seen by the public in a manner in which all members of the house would be confident. It would be done without fear or favour or benefit or disbenefit to any honourable member.

Speaker Lewis continued:

The process which I am suggesting would cost a minimum amount of money, by comparison to what it has cost in other parliaments which have already done it. It would enable the television broadcasting channels to download what parts of the proceedings they wish to put to air without them having to be present. That does not mean they would be excluded. It simply means that they would not have to be present to get the clips they sought.

The history of that debate is extensive. I am proud to say that it was my predecessor, John Oswald, who started this. The need to make sure that the wishes of the member for Morialta, and every member in this place, are acceded to through the government supporting his bill is very important.

A quick read of what is happening in other states and territories: the ACT has two internet services available, including web streaming; the commonwealth provides live broadcasting in the Senate and House of Representatives; the New South Wales parliament provides streamed video and audio or an audio only webcast in both chambers using Microsoft Windows Media; the Northern Territory provides video and audio streaming of the Legislative Assembly using Microsoft Windows Media (podcasting is not available yet); the Queensland parliament provides live all-day internet audio and video broadcasting using Microsoft Windows Media again; in South Australia we have nothing; even little Tasmania provides webcasts of both chambers using Microsoft Windows Media—this is not an advert for Windows, but obviously if it works why can't we do it here; the Victorian parliament provides video and audio streaming from both chambers using an Apple player technology; and the Western Australian parliament provides live video and audio streaming of both chambers using Microsoft Windows Media, and the previous 14-day sitting can also be accessed via a recent broadcasts archive.

The filming of this chamber by Sky is something that is new. It is not as extensive as we would like it to be. This bill will make sure the proceedings in this place are available to all South Australians. The Hon. John Oswald was promoting this. We have spent money on a consultants' report. Other former Speakers have supported it—Speaker Lewis—and certainly the leader of the opposition as he was then, the current Premier, supported it. The next premier, Jay Weatherill—his father supported it. So, let's get behind this bill, let's support the member for Morialta and let's make parliament as accessible as it should be to all South Australians.

Ms FOX (Bright) (10:43): I am not quite sure whether the member for Morialta has consulted with the JPSC or the Clerk—I am not sure because I did not hear what the member for

Morialta said in the first instance, but I rise today to make it very clear that this is actually something that is already occurring within this parliament. We are on track to doing this. It is not a responsibility of government per se, nor is it the responsibility of any political party. Listening to what the member for Morphett said in relation to John Oswald, I think we all know that both sides of parliament support this.

We do not have any problem whatsoever with our brilliance, our words of wisdom, our sparkling charisma, being broadcast to the outside world. In fact, I think it is a very good idea. I am advised by the Clerk that there is one problem, and that is that, even though at the moment we have the audiovisual capability to actually do this, there is one security problem, which perhaps I will discuss with the member for Morialta but not on the floor of the chamber here and now.

So, the will is here, the technology is nearly here, there is a slight disagreement about how that technology can best be implemented, and there is one security issue which, as I said, I am very happy to discuss with the member for Morialta later on. Once again, member for Morialta, I do not know whether you have discussed this with the Clerk or not. You haven't—no, okay, that's fine.

In terms of accountability—and I am just preparing myself for your squeals of outrage on the other side—this has been a very accountable government.

Mr Pengilly interjecting:

Ms FOX: Thank you, very predictable. Thank you for falling into my trap, member for Finniss. We were the first government bold enough to take our ministers and our chief executives around the suburbs and the state to meet people face to face and hear their concerns. We have had more than 50 community cabinets thus far, including in the member for Morialta's local area, and we have shown the public how government works and how we seek to solve the problems that are presented to us.

That concept was later followed by the federal government. In fact, in the seat of Makin in the north-eastern suburbs, a federal community cabinet is being held today. I believe that Prime Minister Julia Gillard is here; I know that the Hon. Peter Garrett is in my own electorate—

Members interjecting:

Ms FOX: He is everywhere. The Hon. Peter Garrett is everywhere, which is marvellous. Upon election in 2002, if I rightly recall, the Rann government loosened the FOI laws, making it easier to gain information which is in the public interest. The fact that these powers are sometimes abused by muckrakers is another story. The simple matter is that we have taken nation-leading steps to be more accountable and we fully support the idea of the public having a closer look at what we do here. Many of those who were here during the parliamentary sesquicentenary—

Mr Griffiths: That was four years ago.

Ms FOX: Thank you for your enlightenment; so it was not in 1986?

Mr Griffiths: It was in 2007.

Ms FOX: That is what I thought, but I am glad we could have this conversation. During that time members would quite clearly remember how many people came into this place. We had organised tours with different members of parliament, but the sheer volume of people was such that we could not do that. They just flowed through here and they had a wonderful time. In fact, I remember speaking to the Hon. Martin Hamilton-Smith on that particular day because he had just been elected leader of the opposition, which, of course, is no longer the case.

The reality is that in relation to what the member for Morialta was discussing this is a matter for the parliament. When I say 'the parliament', I do not mean the Labor Party or the Liberal Party. This is a matter for the parliament to implement, and I think that the member for Morialta knows that full well. I am slightly bemused about why you are presenting a bill in relation to something that is already occurring, but I have no doubt when it is your time to speak you will explain that to us.

As I said before, the member for Morialta has already outlined in some detail why a former Speaker could not do that. The member for Morialta is correct when he says that this has been going on for years. I believe that the member for Morialta was not here during the time when this technology changed. As far as I can tell, he has not consulted with the JPSC and he has not had a conversation with the Clerk, and I fully advise him to do so.

The SPEAKER: I am somewhat bemused about why we are debating this bill and why there seems to be some argument about it, because the process is certainly well in hand and I would expect before very long we will be live streaming. However, member for Schubert.

Mr VENNING (Schubert) (10:48): Thank you, Madam Speaker. I appreciate what you just said, but, with respect, a lot of speakers prior to you have said it is coming, it will happen soon; and here we are 12 years since it was first raised and we do not have the final product.

I commend the member for Morialta for bringing this bill to the house again. I believe it will have common support right across the house, because I do not believe there is any reason for anybody to oppose it. As I say, it has been an issue for many years—about 12, in my memory.

When I was the whip in this position here I thought it would be very advantageous to be able to monitor the opposition bench. I went to the Speaker at the time, the Hon. Mr Snelling, and asked permission to install my own camera in the gallery so that I could observe the bench. It worked—I did install it and it worked—but I sought permission and he said, 'No, you can't do that because we will have our own system going.' It would be hugely beneficial for the whip to be able to see the bench; to see who is here without having to ring and race in. To actually see it would be a huge advantage. That is what happened back then.

I understand that the house has been wired and we now have TV monitors in all our offices with audio but, really, it is quite a joke to see just the file photo of the member, knowing that the wires are in the building. I do not know what the problem is. The previous Speaker mentioned the security problem but I cannot understand what that may or may not be. I think all parliaments in Australia now have cameras which are used to differing degrees. I think most now are online and can be accessed at any time the house is sitting. I think it is also important to note that the parliament will control the cameras. Madam Speaker, many times you have had to speak to the TV channels about their cameras and what footage they are taking. In this instance I believe that, once installed, they would have to take the footage from the parliament's cameras and could not take inappropriate shots, so that would solve the problem. I heard the word 'security' but I do not know what that is. Perhaps somebody would like to enlighten me on that.

Mr Marshall interjecting:

Mr VENNING: I cannot see that if we have fixed cameras around the house. However, the bottom line is that everybody has the right to know. This is the information era. People want information, and the technology is there. It is no longer high tech anymore; every day, people are skyping each other and looking at each other through a screen. It might not be for me but it certainly is for the current modern generation. I hope that before the next election (which is now 2½ years away) the system is put in.

When I was on the JPSC the cost of the cameras was pretty exorbitant. I could not believe that the cost was several million dollars just for the cameras. I could not believe that they were so expensive. Were they too elaborate? Were they too high tech for our use? I do not know, but I would have thought cameras like that—just guessing—should have been worth, say, $10,000 each, not in the millions. I hope that we see some action here. I commend the member for Morialta for bringing this motion. He is a younger member and a very electronically switched-on member. It is not about twittering, it is all about—

An honourable member: Tweeting.

Mr VENNING: —tweeting—the people of South Australia being able to switch on and watch what we do here. It may solve your problem, Madam Speaker, in making sure this place is much better behaved. I support the motion.

The Hon. R.B. SUCH (Fisher) (10:52): I will be very brief. I think it is important to discuss this issue. I support it in principle. There are some security issues but I will not elaborate on what they are for obvious reasons. I spoke to the Clerk yesterday (I think it was) and he said that we can currently stream the audio as we have the technical capability for that but, for the visual, you are looking at a minimum of $1 million. I am not against that but I think every time you suggest spending money on parliament there is some criticism from people outside. However, that is not a reason for not doing it.

I think it is important for the public—most of whom never come in here—to know what goes on in here, and that they can listen and preferably see it, as well. I hope it does not result in us having to have acting lessons or having a make-up session before we come in here in the morning.

We could extend the concept a bit with the video and have a few programs like 'My Parliament Rules', or 'Iron MP', or 'Survivor'.

Getting back to the serious side of it, I think it is an important issue which has dragged on for too long. If the security issues can be addressed (and I think they should be) we can ensure that the public can look at what is meant to be the place that represents them—and that is the Parliament of South Australia.

Mr HAMILTON-SMITH (Waite) (10:54): I rise to make a contribution on this bill. I commend the member for Morialta for bringing it to the house and I think we should all agree with it. It comes before the house in the context of a South Australia within an Australian democracy which is at an advanced point in its character.

I watch television from time to time and see countries where people are giving their lives still for the right to vote. One only needs to look at what is going on in Libya, across the Middle East and in parts of Africa where still people are fighting for the very fundamentals: the right to live in peace and the right not to be discriminated against on the basis of race, religion or gender. They are fighting for the very fundamentals of what it means to live in a free and loving democracy.

Then I come back and I look at Australia where we take so much for granted. I look at this great country where we have achieved so much. We have built so much on the back of this fantastic democracy and our federation, standing as it does upon the pillars of the states and their parliaments, which, as I frequently remind my federal colleagues, were here long before the idea and the notion of a nation of Australia or a federal parliament was ever dreamt of.

I ask whether many Australians and South Australians take what we have achieved for granted. I worry that disengagement, particularly among young people, in what is going on in their parliaments, both state and federal, might lead, in the fullness of time, to disinterest and despair. I worry that really cherishing our democracy may ultimately morph into a lack of appreciation that it even exists, and a search for simple, clear answers to complicated problems—of course, simple, clear answers that do not exist.

I often remember that, if a great democratic nation with its wonderful civilisation and its depth of character like Germany can fall into the darkness of Nazism, through a popular vote, and through a popular vote elect an evil villain like Adolph Hitler, then could it ever happen here? Could it happen in a wonderful place like Australia? I feel that, if we do not make available to people in our community the fundamental message of what we are doing—which is to pass laws for the betterment of the people of South Australia, across a whole panorama of issues—then we will fail to inform those we represent about the value of this great institution, this parliament, and about the value of democracy.

Those who think that the idea of democracy will be here forever need to read their history books. Those who think that great empires once created or great ideas once initiated are there for an eternity need to read more. Countries, nations and ideas rise and fall, and those who think that democracy as we know it will be here forever—unless it is protected, nurtured and watered and unless it is allowed to flower—are deceiving themselves. That is why I think this bill to stream the proceedings of this place on the internet is worth supporting, particularly in the message it brings to young people.

I was interested recently to read of former Labor minister Lindsay Tanner's new book, which he calls *Sideshow: Dumbing Down Democracy*. In it, Tanner despairs at the way politics and the media interact nowadays, and he describes the evolution of that process now with such a dynamic change to the number and the array of media outlets covering what is going on in Australian political life.

One only needs to go down to the bowels of this place and read the archived copies of *The Advertiser* and *The Observer* going back to the 1920s and even into the last century to see that in those days politics was reported quite differently by the print media. There was no television. There was no radio. There was no scrambling to break the news first. It was actually a sensible reporting of what had gone on. The papers actually gave an impartial and objective account of the news and tried to inform people of what had actually happened here in a sensible way.

There is not a great deal in there about scandals. If we had known all about the drinking habits of George Washington or the sexual goings on of former prime ministers and great men of history, there probably would be no great men of history. Their private lives would have been explored, demolished and crucified by the modern media. There would be no great men of history.

We now live in a world where everyone knows everything about everybody when it comes to political life. That is because there is a scrambling of competition amongst the electronic media—the radios, the televisions and, increasingly, internet-based media—to get out there first, to get the politician, and to report the conflict rather than the cooperation of politics. I do not blame the media for this at all, and neither does Lindsay Tanner, because they have a job to do as well. Conflict and bad news sell newspapers, newsprint and television; they love the conflict. If a UFO landed in Victoria Square this afternoon, it would be on the front page of every paper and lead the news around the world. If there is some political disaster or scandal, well, of course, you can guarantee that it will knock off a good news story.

There is this scramble to be the first out there. Of course, how politics has responded is to put on a show. We now know that getting kicked out of the house, or getting into a frantic argument with someone across the chamber, some bad language, the Speaker having to call everyone to order, or carrying on like a pack of schoolyard bullies and schoolchildren, will get on the news and may get our story up. Sadly, politicians around the country and around the world increasingly have had to give the media what it wants. To be fair, that is really giving the public what they want because they buy the news. They want that, too.

We are all caught up in this chain of actions and reactions about which Tanner speaks in his book. That is why I think live radio and live streaming have something to offer. It means that the people who have elected us—the taxpayers of South Australia—can see for themselves directly what goes on. Members of parliament in this place can be held to account by those who have elected them for their own behaviour, for their language, for whether or not they are asleep or awake, or for whether or not they are making a sensible or a silly contribution to a bill or to a debate. Maybe over a period of time we can move political debate and the media coverage of it back onto policy issues, back onto the things that really matter.

Instead of the theatre of politics, whether we won question time today, didn't we do well today because we got kicked out of parliament, or we caused some fracas, or we pursued some scandal or drama, or we accused the minister of lying, or the minister accused the opposition of behaving poorly, or whatever the case may be, maybe we can get the debate back onto building roads and building ports and coming up with a civil law and civil code that are to the benefit of the children and the elderly. Maybe we can get the debate back onto how the money will be raised and how the money will be spent.

One small step in that direction, I think, would be to live stream the proceedings of this place and to get some of the theatre out of it. Nobody is to blame, as Tanner remarks in his book. The politicians, the media, the people who watch what is reported, we are all caught up in this dynamic. Live streaming the proceedings of this place, I think, will help to break the cycle. For that reason, I encourage all members to support the bill, and I commend the member for Morialta for this fantastic initiative.

Mrs GERAGHTY (Torrens) (11:04): I would be inclined to adjourn the debate, but I will not because I understand that another member prefers to do that. I just wonder what the point is in continuing to debate an issue about which we all seem to be coming to an agreement that it is already being done. The bill comes in hindsight, off what is already occurring, and I think there are probably other bills on the *Notice Paper* that would be worth getting on with, although I suspect there is a deliberate ploy by members opposite not to do so. As the member for Bright has already indicated, this issue is already being undertaken and dealt with by the parliament. It is in progress, and the bill really is quite superfluous.

Mr PEGLER (Mount Gambier) (11:05): I move:

That the debate be adjourned.

The house divided on the motion:

AYES (22)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Caica, P.	Foley, K.O.	Fox, C.C.
Geraghty, R.K.	Hill, J.D.	Key, S.W.
Koutsantonis, A.	O'Brien, M.F.	Odenwalder, L.K.
Pegler, D.W. (teller)	Piccolo, T.	Portolesi, G.
Rankine, J.M.	Rann, M.D.	Rau, J.R.
Sibbons, A.L.	Snelling, J.J.	Thompson, M.G.

AYES (22)

Wright, M.J.

NOES (16)

Brock, G.G.	Chapman, V.A.	Gardner, J.A.W. (teller)
Goldsworthy, M.R.	Griffiths, S.P.	Hamilton-Smith, M.L.J.
Marshall, S.S.	McFetridge, D.	Pederick, A.S.
Pengilly, M.	Sanderson, R.	Such, R.B.
Treloar, P.A.	van Holst Pellekaan, D.C.	Venning, I.H.
Whetstone, T.J.		

PAIRS (8)

Conlon, P.F.	Redmond, I.M.
Kenyon, T.R.	Evans, I.F.
Weatherill, J.W.	Pisoni, D.G.
Vlahos, L.A.	Williams, M.R.

Majority of 6 for the ayes.

Motion thus carried.

ROAD TRAFFIC (TRAFFIC SPEED ANALYSERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 April 2011.)

Mr VENNING (Schubert) (11:14): Currently there is no legislative authority or requirement that the police have to maintain or meet the Australian Standards regarding lasers—that is, the handheld speed devices. I commend the member for Fisher for moving this motion because it is very similar to the issues that I raised in this house yesterday. It is on the same area.

This bill seeks to introduce standards or rules, if you like, that will ensure that when traffic speed analysers are used to detect speeding motorists, they are all used the same way; that is, there must be a minimum and a maximum acceptable distance for motorists in order for them to be accurate.

Earlier this month, a pensioner had his speeding fine overturned in the Adelaide Magistrates Court. He was accused of driving 8 km/h over the 60 km/h speed limit through the intersection on Sir Donald Bradman Drive. The man in question was adamant that he was not speeding at the time in question and supported his claim by giving evidence that he checked his speedometer prior to and during the time he went through the intersection. Both times it read 60 km/h. The Chief Magistrate found that prosecutors could not prove beyond reasonable doubt that he was speeding. Well, that certainly is a precedent.

Introducing via legislation a requirement that police have to maintain or meet the Australian Standards regarding the use of lasers may prevent such a situation from occurring. Motorists could be assured that if they received an expiation notice it would be correct, and it may also serve to prevent cases unnecessarily clogging up the courts when people have been expiated as a result of inaccuracies in the equipment.

There are no standards that have to be met in regard to the use of police laser guns; the police commissioner's instructions on their use do not even have to be complied with. That really is unacceptable, when fixed or mobile speed cameras have to meet fairly strict standards and testing. There are no set requirements whatsoever for the consistent use of handheld laser guns.

The honourable member for Fisher's bill, although not explicitly the same as my failed motion yesterday, is on the same subject. People are fed up with being used as cash cows by the government when the accuracy of the use of speed lasers is called into question, and it compounds public frustration and anger. The New South Wales O'Farrell government is, today, undertaking an audit on speed camera use and effectiveness, and I commend it for that. The Victorian government

is also undertaking an examination of the issue; Ted Baillieu has appointed a camera ombudsman. I think it is high time for a full scale review to be undertaken here, and it could include the matters covered by this bill. I commend the member for Fisher for his strong stand on this issue.

Mr ODENWALDER (Little Para) (11:17): It will come as no surprise that I oppose this bill. I spoke on the motion several weeks ago, and I want to thank the member for Schubert for the media attention I received because of it. As I said in response to the previous motion, which has now been made redundant, I have full confidence in South Australia Police and its current standards and procedures in relation to speed-measuring devices, and I believe this bill is unnecessary.

As I have said, the SAPOL Radio and Technical Support Group is responsible for the maintenance and calibration of these instruments, which are used in the detection of alcohol, speed and red-light offences. All traffic speed analysers used by SAPOL are currently required to meet the Australian Standards that I mentioned in my previous speech: they are AS4691.1:2003 and AS4691.2:2003. They cover the device requirements, calibration, and user operational procedures, and copies of these standards are in the public domain.

If any device is found to be operating outside SAPOL policy it is defected and immediately removed from service until corrected. The calibration of South Australian police laser speed guns is carried out in accordance with the above standards in a calibration laboratory in compliance with the Australian Standard AS ISO/IEC 17025:2005. The operational competency of this laboratory is independently audited by the National Association of Testing Authorities.

The instruments used to carry out the calibration are themselves independently calibrated by external NATA accredited calibration laboratories, and such calibration is traceable to national standards, as per requirements of the National Measurement Act and Regulations 1960. The SAPOL calibration laboratory and staff have recently been reassessed by the National Association of Testing Authorities, and they have demonstrated compliance with the Australian and international general standards for the competence of testing and calibration authorities.

Certificates are produced when required for prosecution purposes, and the courts accept the certificates as evidence of accuracy. Case law also exists about the validity of these certificates. For these reasons, the government and I do not support this bill.

Debate adjourned on motion of Mr Goldsworthy.

EXPIATION OF OFFENCES (SPEEDING OFFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 April 2011.)

Mr ODENWALDER (Little Para) (11:20): I rise to indicate that the government does not support this bill.

The Hon. R.B. Such interjecting:

Mr ODENWALDER: Surprise. The member for Fisher has introduced a bill that seeks to amend the Expiation of Offences Act 1996 to change the process involved in issuing expiation notices so that all information contained on an issued notice is written on the notice at the time of the incident and in the presence of the recipient. Full disclosure of evidence at the time of a police officer writing in expiation notice is simply not practical.

The Expiation of Offences Act 1996 is an administrative scheme. The purpose of the expiation notice system, established under the act, is to allow the efficient disposal of minor offences without the necessity for all matters to enter the court process. An expiation notice is issued to advise a person that a particular offence has been detected.

The notice informs the recipient what the offence is; the time, date and location of the offence; the expiation fee; the issuing officer's particulars; information on how to pay the expiation fee and alternatives to payment, including the right to elect to be prosecuted and to enter into the court process. This is the principal decision to be made by the recipient of an expiation notice.

The notice is not designed to prove every element of the offence. An expiation notice should not be equated with a prosecution. If the recipient of the notice elects to be prosecuted, he or she will be entitled to full disclosure of material in the possession of the prosecution, as has been determined by statute and case law precedent. The current scheme allows for the disposal of minor matters quickly and efficiently without, in most cases, a court appearance. People who wish

to dispute the notice can do so by having the matter heard before a court. In that case, evidence to support the charge would be provided to them through disclosure.

The bill also seeks to create an independent panel to review expiation notices. I believe, and the government believes, that this effectively duplicates the role of the court, and so is unnecessary. SAPOL already has the capacity to undertake a review process, which is generally to check that the notice has been legally issued in accordance with the act and regulations. During this process, the Expiation Notice Branch can withdraw a notice entirely or issue a caution, should the review reach that conclusion. After this review, if the notice is to stand, the recipient still has the option to elect be prosecuted, whereby they have the opportunity for the matter to be heard before the court as the independent arbiter.

To create a review mechanism in the nature of a panel would create another layer of administrative function, which would be inconsistent with the intention of the existing act and regulations. The legal status of decisions made by such a panel would, in any case, require careful examination. It is also likely that there would be considerable budgetary implications in establishing such a panel, whose decision may ultimately be that the matter needs to be resolved in court.

Changes to the current process are not supported, and it is the government's opinion and my opinion that the bill would create an unnecessary waste of time and resources and would duplicate court process.

Debate adjourned on motion of Mr Goldsworthy.

CRIMINAL LAW CONSOLIDATION (MEDICAL DEFENCES—END OF LIFE ARRANGEMENTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 May 2011.)

Mr BIGNELL (Mawson) (11:24): I rise today to speak on this very important matter before the house, and I would like to begin by thanking all those people who have contacted me at my electorate office with their views on either side of the debate. I think it is very important that we respect both sides of the debate. It is a very passionate subject and one that people have very strong feelings either way on. I really feel very much for those people who have contacted me with some quite often heartrending stories of their own personal experiences.

It is one of those issues that has been at the forefront of most of our minds for the past few years with various bills before this place. Last year, we were looking at a bill that did not make it into this chamber but did make it into the upper house. I remember ebbing and flowing on what my vote would be on that matter. It seemed that the more people you spoke to the harder the decision became. I attended a briefing last year, organised by Tom Kenyon and some Family First members, and it was very good to hear from some palliative care specialists and of their experiences and put palliative care into context.

It brought home an experience I had 10 years ago with my own father when he found out that he had three months to live. His first reaction was that he did not want to go through the pain of the three-month dying process. I guess something that we all have within our hearts is that we fear death and the pain associated with it, so dad's immediate reaction was to get on the phone and ring the voluntary euthanasia helpline. They were quite good. They did not counsel him any particular way; in fact, he found them very encouraging in that they did tell him to explore palliative care options but said, 'You might also want to read a book called *The Final Exit*.'

I went out and bought the book for him. It is subtitled, *The Practicalities of Self-Deliverance and Assisted Suicide for the Dying*. Dad wanted me to buy it, so I went to the store and bought it for him. In the intervening week, he had actually reconsidered his views on it. It is still in its wrapping and sits on my bookshelf in my parliament office as a reminder of my own dad's thoughts on the matter because it is something that is pretty hard to understand until you have lived through it or had a close relative live through it.

When we spoke to the palliative care specialists last year in parliament, they mentioned to us that when you do have that three months there is the chance of a miracle recovery, but there is also the chance for some bonding. That experience of dying, when shared with relatives, can actually add a dimension to a relationship. I know my personal experience was that at that stage I was working at the ABC as a sports journalist. I worked every weekend and had Tuesdays and

Wednesdays off. My dad was a stock agent who had sales on Wednesdays, so his Tuesdays and Wednesdays were flat out.

He was 61, and you think that your dad is going to be around forever. What that three months did was give us the opportunity to spend practically every day together. My son, who was three at the time, and his other grandkids, also got to spend a lot of time with him. So, we need to bear in mind that that period can be quite an important time for those who are dying and the loved ones around them. I do not think I would have supported the bill that did not quite come to our house last year, but I do have great respect for the people who deliver palliative care in this state.

I think we are one of the leading states in the delivery of palliative care and I would hate for any action to be taken against a doctor or nurse who may in some way assist someone in the relief of pain and the process of dying. I can only talk about the experience I had, but dad's doctor was fantastic, and I would hate for anything to have ever happened to him, in the legal sense, because I know—well, I do not know exactly what he did—that he knew my dad's view and the family's view that dad was to suffer as little as possible. I cannot say for certain whether dad's death was brought forward, but we knew that that doctor was making the best decisions and providing the best care for my dad.

A couple of days before he died—we grew up in the South-East—dad wanted to go back to Penola, to Mary MacKillop's church to say his final prayers. This doctor sort of said, 'Look, Trev, you're not fit enough to do it, but we'll try a blood transfusion.' So, we all gathered on the Saturday morning of the June long weekend, 10 years ago—my sisters were in town from interstate—and the doctor did the blood transfusion. Then he came back in and said, 'Look, Trev, I'm afraid the blood transfusion hasn't really worked. You're not going to be strong enough to go.'

The SPEAKER: Just a moment, member for Mawson. Member for Ashford.

SITTINGS AND BUSINESS

The Hon. S.W. KEY (Ashford) (11:30): Madam Chair, I move an extension of time of 30 minutes.

The SPEAKER: Is that seconded?

An honourable member: Yes, ma'am.

The SPEAKER: For the question say aye; against no.

Mr WILLIAMS (MacKillop—Deputy Leader of the Opposition) (11:30): Madam Speaker, I wish to speak.

The SPEAKER: The motion was seconded. Member for MacKillop.

Mr WILLIAMS: I speak against the extension. Madam Speaker, the private members' time is time sent aside for—

The SPEAKER: Member for MacKillop, this is just a procedural motion. It's really not able to be debated. I am not sure why you are wishing to debate this.

Mr WILLIAMS: Because I am trying to protect the private members' time, Madam Speaker. If the government is going to use its numbers to overtake private members' time, the government should put this business into government time. That is why we have private members' time, Madam Speaker.

Mrs Geraghty: It is private members' time.

Mr WILLIAMS: But you are going to use your numbers to take over private members' time.

Mrs Geraghty interjecting:

Mr WILLIAMS: Yes, you are. You were going to use your numbers, and if the government is so intent—

Mrs Geraghty interjecting:

Mr WILLIAMS: —on this matter going forward—

The SPEAKER: Order!

Mr WILLIAMS: —put it in government business.

The SPEAKER: Order!

Mrs Geraghty interjecting:

Mr WILLIAMS: Stop abusing the rest of the members of the house.

The SPEAKER: Order! Member for MacKillop, sit down. I want to consult with the Clerk. I have had advice from the Clerk that it is a procedural motion. It can happen if the numbers agree to it. So, I will put the motion again for the members' time to be extended by half an hour.

The house divided on the motion:

AYES (22)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Caica, P.	Foley, K.O.	Fox, C.C.
Geraghty, R.K.	Hill, J.D.	Key, S.W. (teller)
Koutsantonis, A.	O'Brien, M.F.	Odenwalder, L.K.
Piccolo, T.	Portolesi, G.	Rankine, J.M.
Rann, M.D.	Rau, J.R.	Sibbons, A.L.
Snelling, J.J.	Thompson, M.G.	Weatherill, J.W.
Wright, M.J.		

NOES (18)

Brock, G.G.	Chapman, V.A.	Evans, I.F.
Gardner, J.A.W.	Goldsworthy, M.R.	Griffiths, S.P.
Hamilton-Smith, M.L.J.	Marshall, S.S.	Pederick, A.S.
Pegler, D.W.	Pengilly, M.	Sanderson, R.
Such, R.B.	Treloar, P.A.	van Holst Pellekaan, D.C.
Venning, I.H.	Whetstone, T.J.	Williams, M.R. (teller)

PAIRS (6)

Conlon, P.F.	McFetridge, D.
Kenyon, T.R.	Redmond, I.M.
Vlahos, L.A.	Pisoni, D.G.

Majority of 4 for the ayes.

Motion thus carried.

Ms CHAPMAN: I rise on a point of order: I seek a matter of clarification. As the motion was just passed and the time for the second session of private members this morning will be reduced by half an hour, as you would be aware, there is a now a motion that has been brought forward from June until today in that next session which must be moved to facilitate the time requirement, and in those circumstances has been specifically brought forward. What are you going to do, Madam Speaker, to ensure that that is facilitated?

The SPEAKER: I am not really sure why the member is asking me what I am going to do about it. It is up to the house to decide, and there will be time after this half an hour for that to occur. I can come back to you with a further response if you wish but at this stage I am not quite sure what the point of order is about.

Ms CHAPMAN: I had not raised it. I sought a point of clarification as to the procedure it was to go through. I will discuss it with you further.

The SPEAKER: Member for Mawson.

CRIMINAL LAW CONSOLIDATION (MEDICAL DEFENCES—END OF LIFE ARRANGEMENTS) AMENDMENT BILL

Second reading debate reading resumed.

Mr BIGNELL (Mawson) (11:40): I find it quite sad when we are talking about life and death issues that the members for MacKillop and Bragg want to talk about the rats and mice of the political process.

Ms CHAPMAN: I have a point of order, Madam Speaker. First, the speaker in making that statement is offensive to the matters that we are dealing with in relation to the charter of health and community complaints. It is not a rats and mice issue and I find it personally insulting, and I am sure the people who want this issue raised in the parliament feel the same.

The SPEAKER: There is not really a point of order because it is not something that we would consider a point of order; but, member for Mawson, I think you should continue with your remarks and refrain from making such comments.

Mr BIGNELL: Thank you, Madam Speaker, and I will return to the area I was talking about before the disruption, which is the health professionals who help people in their dying days. In particular, I thank all the staff—the doctors, nurses and all the other staff—at the Daw House Hospice where dad spent some time.

In those final few days when he was very weak, as I was saying before, he wanted to return to Penola near where we grew up in the South-East of South Australia to say his final prayers at the church where Mary MacKillop did so much of her work. He asked the doctor about this and the doctor—who had a great sense of humour and was very helpful and tried to help dad as much as he could—said, 'Look, Trev, you are too weak but if we give you a blood transfusion it might give you the strength to make that final journey to Penola.' It was the June long weekend.

The doctor came in after the transfusion and said, 'I'm sorry, Trev, the transfusion has not done its job and you are too weak to go.' The doctor left the room and I was thinking, 'Thank goodness for that,' because I did not really want to get in the Tarago with my sisters and make the drive down. Dad, in his normal, fairly stubborn way, said, 'Right, pack the Tarago: we are off.' My sisters duly met his wishes. I said, 'Dad, I'm not coming to Penola with you. It is going to be like *Weekend at Bernie's*, driving around the South-East with a dead guy in the car.'

That is the sort of thing I am talking about. In those final months you have your tears and your laughs, and we had lots of laughs. There was a lot of black humour between my dad and me, because I spent time driving him to medical appointments and to sort out his legal and business requirements in those final days. It is very hard to tell people not to fear death but, when you have lived through it with a close relative, you realise it is something that we all have to face up to and everyone is going to handle it differently.

Once again, I thank all those medical professionals with whom we came into contact in those three months before dad's death back in 2001. I stand here today not backing voluntary euthanasia but backing those doctors and nurses who do so much for people in their final days. So I will be supporting the Criminal Law Consolidation (Medical Defences—End of Life Arrangements) Amendment Bill.

Ms THOMPSON (Reynell) (11:44): As have other members, I have received a number of letters and various messages from people within my electorate and people outside my electorate.

As with other matters of conscience, my view is always to seek to allow all individuals to exercise their own conscience and provide a framework whereby, no matter what a person's religious or ethical views, they are able to enact them. I believe that today we have a society which is sufficiently mature to enable us to provide respect to the various views that are genuinely and very firmly held by many people within our community.

For those whose views mean that life must take all natural courses and not have medical intervention in many ways at all, such as some religious groups, I respect their views. For those who will accept a level of medical intervention but not to the extent that it in any way shortens life, I respect their views. For those who believe that they should have more control over the quality and quantity of life, I respect their views. This bill seeks to enable the participants in the process, and any doctors and any health workers, to enable that last group I mentioned to have their wishes accommodated. The wishes of the first two groups are already accommodated, but the wishes of the third group are not always under current laws.

Of the many communications I received, the one that best reflected and said far more eloquently than I possibly can the views that I hold came from Graham Nerlich MA, B. Phil (Oxon) FAHA, Emeritus Professor of Philosophy in the University of Adelaide. It was interesting that, on top of all the very heartfelt communications I received from doctors describing some very difficult

situations in which they have seen their patients, it was a philosopher whom I found most useful in considering the rationale that I hold in relation to respect for people's views. Professor Nerlich writes:

> Doctors often face a cruel dilemma where a patient suffers an illness, injury or medical condition that irreversibly impairs that person's quality of life so that the life becomes intolerable to that person and beyond the reach of even the best palliative care. If the patient pleads for the doctor to end their suffering by ending their life the dilemma is especially agonising.
>
> The proposed amendment provides neither a direction, nor an advice nor a permission as to what the doctor may do in such circumstances. It imposes no duty on the doctor. It is merely a defence against prosecution brought against him or her, and any ancillary workers, in the event of their granting the patient's request.
>
> Ethically, each person has a right to their own life. The right imposes duties on others towards them. But it does not follow that people have duties to themselves to preserve their own lives under all circumstances. The state does not, and should not, prevent them from choosing to risk death in the ordinary course of life. It does not bar them from choosing deliberately, to seriously endanger their life, either in attempts to aid or rescue others. It does not even legislate against reckless risks, taken for frivolous thrills. Nothing prevents anyone from laying their life down deliberately in time of war, for instance. In the painful medical dilemma, patients may competently and responsibly choose to forgo their right to life. It follows that they thereby cancel the ethical duty on the doctor to oppose a patient's free and competent request in the circumstances described in the amendment.

He then adds that the AMA's clauses 10.3 and 10.4:

> …make it obvious what would move a doctor to take the step and risk prosecution: it is proper responsible medical compassion. Thus the proposed defence against prosecution is ethically justified. I support it in the strongest terms.

I think that says far more eloquently how I see the importance of this parliament enabling people to exercise their own conscience, make their own decisions and not stop willing practitioners from assisting people to exercise their own conscience. As said by Professor Nerlich, it does not impose an obligation on the doctor; it does not impose any particular rights on individuals. We already have a very good act relating to palliative care, but this enables people to make a decision to say, 'I have had enough.' It does not allow prior directives. It is very, very modest in what it does allow, but it does allow the parliament to give our citizens more rights in the exercise of their own conscience and their own views.

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services) (11:50): I rise to exercise my conscience on this matter and to oppose the bill. I do so not in any way to attempt to criticise those who are proposing this. I do not think anyone who proposes this is not of goodwill, and I think that the same should be said of those who oppose legislation like this. I have been in parliament since October 1997, and I have opposed every attempt, every measure, to bring about this type of reform. I do so with one fundamental belief, that is, that doctors should do no harm. As the member for Reynell just said, this is a very modest step forward, but it is how you get larger change later—with modest reforms.

Personally, I feel that my conscience says that I must do all I can to make sure that no-one is harmed who does not wish it upon themselves. It is a very sensitive and difficult area in which to legislate. I completely sympathise with all the heartfelt cases used as examples for this legislation to be amended. However, examples do not make good law. It is a difficult decision. I make a point of letting my constituency know before every election my views on this matter. I do not attempt to hide it.

I know it is overwhelmingly popular in my electorate. In fact, I would go as far as to say that 85 per cent of my constituents support this measure, and I publically proclaim to all of them that I will be voting against it, and I said so before the election. I will say so during my four-year term, and I will say so again at the next election. The reason I say it is that I have a conviction that all life is sacred and that doctors should do no harm. With those few words, I oppose the legislation.

Debate adjourned on motion of Mrs Geraghty.

AMNESTY INTERNATIONAL

Ms THOMPSON (Reynell) (11:54): I move:

That this house congratulates Amnesty International on its 50th Anniversary on 28 May 2011.

Members would know that the iconic symbol of Amnesty International is a candle wrapped with barbed wire, an image that was inspired by an ancient proverb, 'Better to light a candle, than curse the darkness.' This month, Amnesty International celebrates its 50th anniversary—five decades of

human rights campaigning. Amnesty International is the world's largest human rights organisation. It is an organisation largely made up of voluntary members, and currently has approximately three million supporters across 150 countries, with over 100,000 supporters here in Australia.

Amnesty International was founded in 1961 by London barrister, Peter Benenson, who was outraged when he learnt of two Portuguese students who had been arrested after raising their glasses to toast freedom. This simple act led to their imprisonment, and their loss of freedom outraged Mr Benenson. He wrote an article for *The Observer,* titled 'The forgotten prisoners', calling on readers to join a mass letter-writing campaign to pressure governments to set such prisoners free. His appeal was reprinted in other papers across the world and turned out to be the genesis of Amnesty International.

In 1977, Amnesty International was awarded the Nobel Peace Prize. The Nobel committee based its selection on a number of factors, not the least of which was AI's apolitical stance. Amnesty International is renowned for its political and geographical impartiality. It seeks out injustice in the East, in the West and in developing nations. In fact, the organisation set out to follow Voltaire's famous philosophy, 'I may detest your ideas, but I am prepared to die for your right to express them.'

AI never engages in comparisons between countries, nor promotes one political system as superior to another. As most of my colleagues would no doubt be aware, Amnesty International's key areas of interest are:

- protecting human rights and dignity;
- protecting the rights of women, children, Indigenous people, minorities and refugees;
- securing a prompt and fair trial for all political prisoners;
- securing the release of prisoners of conscience—those imprisoned for non-violent expression of their views;
- ending torture and the ill-treatment of prisoners and political objectors;
- abolishing the death penalty;
- promoting economic, social and cultural rights for marginalised communities;
- promoting religious tolerance.

It is difficult to estimate how many prisoners of conscience have been released as a result of Amnesty International's campaigns. One study over a three-year period in the 1970s found that of the approximately 6,000 prisoners for whom AI was working at the time, 3,000 were released. There is every reason to believe Amnesty International continues to enjoy a similar success rate, if not a greater one, thanks to new technology that allows urgent appeals to reach supporters online without delay.

Emails now allow supporters the chance to contact political authorities speedily, and by alerting these authorities that the eyes of the world are watching their next moves there is a much stronger chance of release. Professor Luiz Basilio Rossi, a prisoner of conscience in Brazil, believes the AI campaign saved his life. He has said of the AI campaign:

> I knew that my case had become public, I knew they could no longer kill me. Then the pressure on me decreased and conditions improved.

For all its successes, Amnesty International is the first to concede that there is still a great deal of work to be done to address human rights violations around the world. An Amnesty International report found that in 2009:

- torture or ill-treatment took place in at least 111 countries;
- unfair trials took place in at least 55 countries;
- restriction on free speech occurred in 96 countries worldwide.

It was also reported that there were 48 countries with known prisoners of conscience, and 18 countries that continued to execute their citizens through stoning, electrocution and beheading.

The reports of Amnesty International relating to Australia also make interesting reading. As I said, no country escapes the eyes of Amnesty International. Looking at their 2006 report, it states:

While in Australia, Irene Kahn called on the Prime Minister to bring David Hicks home to face trial or be released as part of our ongoing campaign to protect the human rights of all detainees in the 'war on terror'. David has entered his fifth year in captivity at the US-run Guantánamo Bay prison facility without any prospect of a fair trial. Actions across the country, including public support by touring rock band U2, revealed a growing movement of Australians who oppose our government's failure to ensure a fair go for David Hicks. In just eight weeks you sent 30,000 emails to the Prime Minister.

As we all know, David Hicks was eventually released, although under very strange circumstances. That report from 2006 also states:

On the home front, we highlighted the extent to which Australia's recent anti-terror laws threatened to erode our human rights with a community survey that increased awareness of the issues. It is worrying that the issue of security continues to be used as a justification for eroding fundamental protection of hard-won human rights.

The report also stated:

We continued to demand that the Australian government develop an integrated national strategy to stop violence against women and our petition on this reached a total of more than 23,000 signatures during the 16 Days of Activism campaign, highlighting the strong community support for this issue.

It goes on to state:

More 440,000 women in Australia (or one in 20 women) were victims of violence in the last year, according to the Australian Bureau of Statistics' Personal Safety Survey.

In that year Amnesty International also included campaigns against temporary protection visas and offshore processing of refugees. I think that report illustrates that not all Australians agree with Amnesty International's reports but they certainly provide a light to us to make us think about our own society and our own values in a country where we can freely express our views. The Australian report for 2010 contains some good news. It notes:

Australia will have a National Plan to Reduce Violence against Women and their Children in 2010. Five years ago, such a plan was not on our Federal Government's radar. This shows what we can achieve when we work together.

It also reports:

Aboriginal people in the northern Territory continue to suffer discrimination and voicelessness, and emerging policies, if adopted, will see them having to leave their traditional lands in order to access basic services.

The report goes on:

Detention facilities are overflowing on Christmas Island while the Australian Government plays politics with the rights of asylum seekers, And the government drags its feet on responding to calls for a Human Rights Act.

However, on the positive side the report states:

The Federal Government introduced new laws specifically prohibiting torture and ensuring that the death penalty cannot be reintroduced by state governments. This takes Australia closer to fully realising its obligations under the UN Convention against Torture and confirms its long-held opposition to the death penalty.

In looking at the pictures of the board of directors of Amnesty International in Australia, I noticed that, compared with many political organisations, there are many young members on that board. Presumably, that is reflected in Amnesty's membership in Australia. It is very heartening that, at a time when people are often joining organisations (whether they be political, local clubs and pressure groups of various sorts) in decreasing numbers, Amnesty International is an organisation that suits many people in Australia as a way of expressing their views. It is pleasing to see that so many people, particularly young people in Australia, are interested in having a debate on the issue of human rights and are interested in taking action to further the understanding of human rights and the respect for human rights both internationally and in Australia.

I know that there is still much to be done, but we can be grateful that an organisation such as Amnesty International exists to fight for the most vulnerable and oppressed in our world, to deter further human rights abuses and ultimately deliver a fairer and more secure world. I express my gratitude to Peter Benenson and his colleagues, who established so quickly such an important international organisation.

Debate adjourned on motion of Mr Pederick.

VISITORS

The SPEAKER: I welcome to the place a group of students who I think are from the Adelaide Secondary School of English, who are guests of the member for Croydon. We hope you enjoy your time here. It is lovely to see you here.

ROYAL WEDDING GIFT

Mr PICCOLO (Light) (12:06): I move:

That this house notes the South Australian wedding gift for Prince William and Kate Middleton of a $10,000 donation to the Royal Flying Doctor Service.

Firstly, I congratulate the royal couple and wish them well in their future. The royal wedding was an important event as a national occasion for Britain in which the public was invited to celebrate and feel emotionally involved, lining the streets of London to congratulate the newlyweds. It was nice to see the royal couple return to Buckingham Palace and embrace on the balcony, in a tradition that was started by the late Queen Mother (that is, Elizabeth Bowes-Lyon) when she married the future King George VI in 1923.

Ms Bedford: Not on the balcony.

Mr PICCOLO: It was; well, according to my information. It was a tradition also famously repeated in 1981 at the wedding of Prince Charles to then Lady Diana Spencer. As members would be aware, the Royal Flying Doctor Service is one of the charities nominated by the royal couple. It is a very worthy organisation. The RFDS is one of the largest and most comprehensive aeromedical organisations in the world.

Members interjecting:

The SPEAKER: Order! There is a lot of noise here at the moment and it is difficult to hear the member for Light. Member for Torrens, you are being very vocal. Member for Light.

Mr PICCOLO: Thank you, Madam Speaker. Using the latest in aviation, medical and communications technology, it delivers extensive primary health care and 24-hour emergency services to those who live, work and travel throughout Australia. The RFDS is a not-for-profit organisation. While supported by the commonwealth, state and territory governments, the RFDS relies heavily on fundraising and donations from the community.

We hope that the South Australian government's donation will contribute towards the purchase of state-of-the-art medically equipped aircraft and to finance other major capital initiatives. At present, the RFDS has a fleet of 53 aircraft operating from 21 bases located across Australia, providing medical assistance to over 270,000 people every year—that is one every two minutes of the day.

I commend Prince William and Kate Middleton for their request for donations to charities instead of purchasing gifts for them. It was a kind and thoughtful gesture that will assist many people. I am certain that the charities benefiting from donations are sincerely grateful for this kind initiative from the royal couple. It was a commendable and positive initial step in what we hope will be a long and happy relationship. I commend the motion to the house.

Ms BEDFORD (Florey) (12:09): I cannot let this moment go past. I concur with the member for Light and congratulate him on this motion. I, too, congratulate the state for giving such a marvellous gift to Royal Flying Doctor Service. Yes, the member for Mawson has noted I am not wearing the jewellery today, which I wore in sympathy with Kate Middleton. Wearing such a large ring does actually hurt your finger.

I particularly wanted to say this: was I the only person in this house who saw our own David Wotton in the crowd on the day, walking down the mall, saying how marvellous it was to be there on that wonderful day of celebration?

The Hon. R.B. Such interjecting:

Ms BEDFORD: Our David Wotton was there, so I felt in some way our house was represented—truly represented—at the marvellous occasion. I have been known to be a royalist and I am very interested in the history of the royal family—

The Hon. R.B. Such: You're not part of it, are you?

Ms BEDFORD: Well, it's not proven, but it's not disproven. I really do wish Their Royal Highnesses The Duke and Duchess of Cambridge every good wish. It is marvellous to see so many people happy, even if it was only for a day. I hope that their lives will bring us all and them much happiness and many more happy days into the future.

Motion carried.

HEALTH AND COMMUNITY SERVICE RIGHTS

Ms CHAPMAN (Bragg) (12:11): I move:

That the charter made under the Health and Community Services Complaints Act 2004, entitled Health and Community Service Rights, and laid on the table on 8 March 2011, be disallowed.

I move this motion, which is pursuant to section 23 of the Health and Community Services Complaints Act 2004. I think some explanation needs to be given to members as to why I am seeking to disallow this and why it needs to be dealt with today. Essentially, that act provides for the minister, after a certain process, to develop and approve a charter of rights for complainants in this area. Over the last few years that process has been underway.

A charter was tabled in this house. The rules require, pursuant to section 23, that any amendment to that is via a process of motion, which must be moved within the 14 days, and a notice of motion, as we use for our regulatory disallowance process, is not able to achieve that. Hence, I thank the house for its approval to have this matter dealt with today, because this is the 14th day. Notwithstanding the press release issued today by the complaints commissioner, Ms Sudano, welcoming this charter, someone somewhere I hope will give her advice that this motion is now before the house.

In essence, this process has been undertaken belatedly. This was an act that came into effect in 2005, and things like the appointment of the council under it and this charter have had a very long gestation period—indeed, contrary to the provisions of the act. Nevertheless, it is with us. As of mid-last year a consultation process was undertaken. The Health Consumers Alliance, which I think I can describe as a peak body that at least was established for the advocacy of the consumers seeking complaints processes, firstly put in a submission in the consultation period last year, amongst some 140-odd others.

In addition to that, they sent a letter that was circulated to all MPs indicating that they supported the charter that had been tabled in parliament and obviously sought our endorsement of it. That is a very persuasive piece of information to rely on, but what I have since read—and the member for Morphett has also had it brought to his attention—is that there are a number of other factors which we do need to look at, investigate and consider.

A number of parties have now presented to myself and the member for Morphett. I should explain. I cover community services for the opposition and the member for Morphett covers health issues. You will recall that complaints in this arena are now for consumers against any service in those two jurisdictions whether or not the service provider is public or private; so, it is quite an expanded role.

The complaints really fall into a number of categories. One complaint came from more than one, but I will put it aside for the purposes of today. There are a number of complaints which related to the consultation process itself, the independence of various parties involved in putting submissions, the time frame taken, the extension of consultation times and the like. They are machinery matters—important ones, I accept—but, as to the administration of the consultation, I do not take specific carriage of that in this debate today and I probably will not in the future, although others may.

The areas of concern fall into two other main categories; one is that the charter that we have as a state charter actually contradicts the submission that HCA had previously put in to the commission, to the extent that this charter diminishes the rights of consumers from the standard of the Australian charter. Without going into a lot of detail on it today, members are probably aware that since 2008 there has been an Australian charter in respect of health which has been adopted in a number of other jurisdictions, some of which has been brought into state-based charters or codes in other jurisdictions.

However, there is a national charter out there in relation to health complaints. It has been ticked off by all the ministers around the country and it is actually operational. There is that first head of complaint. The second is that the charter that has been published contradicts the request of the HCA that it adopt the same guiding principles in the Australian charter. Deviation from this may or may not be perilous or fatal towards what ultimate decision is made, but I do note a further aspect from a submission that has come to me; that is, the terms of the health agreement between the states and the commonwealth have certain requirements in respect of an independent complaints body.

I do not propose to traverse all the requirements of that, but under B30 and B32 of the agreement, as I am advised—and I am reading from what purports to be part of the agreement—there are inconsistencies between this state-based charter and what is required under that health agreement. If that is the case, then we do not want South Australia to be in breach of the agreement, particularly if it has any financial consequences for the health moneys that are required to be paid by minister Roxon to the South Australian minister for the purpose of our public health. That is another area that we really feel must be investigated.

Even if the Minister for Health has not got organised for the state publicly-owned services, including our hospitals, to provide consumers or clients or patients with advice about the Australian charter, then he should do so in the meantime. I say that particularly because I have in front of me one of the pamphlets that are being distributed already through the private sector, which has not waited to see whether or not the states ever do the state-specific one, and they have actually already got this material out there.

I have one in front of me, distributed as 'Rights and Responsibilities' by Calvary (which of course provides a number of independent health services to South Australians), in which they confirm their support of the Australian Charter of Healthcare Rights as developed by the Australian Commission on Safety and Quality in Health Care and sets out that material for the purposes of their patients or consumers or clients. Therefore, there is a remedy or a backup to this in the meantime.

I have read a report by Mr Richard Bingham, who is our state Ombudsman. He undertook a preliminary investigation of a complaint by Ms Pam Moore in which she complains about a number of processes, and the consultation, and also about the substance of the charter that was ultimately published. She has also raised the question of inconsistency/incompatibility with the federal arrangement.

I just want to make it clear that whilst he was dismissive of a number of procedural aspects, he made a finding that the developing of the state-specific charter—which is the one tabled before our parliament—is not unlawful, unreasonable or wrong. He was very clear about that; but declined to make a determination or any decision on whether this state-based charter reduces the rights of consumers. He made it very clear in his determination that it is a policy matter, a matter for the minister—and therefore this parliament, of course—by virtue of the act's obligations to protect against that. So this issue is still at large, and it is a matter that we need to get right.

We have the backup, at the very least, of the federal one which covers health. There has been some argument put to me about whether we should have just adopted that and added a clause in ours to make it applicable to community services as well; apparently that is something that has been done in other jurisdictions. It may be the way to go, but I do not have a particular view either way as to whether we amend the commonwealth one and fix it to our requirements or whether we do our own from scratch.

However, it does need to be compliant with rules that we have signed up to, to ensure that we do not breach other obligations or—and most importantly to me, and I am sure also to the member for Morphett—that we do not prejudice, exclude or act in any manner that reduces access by potential claimants to services, not just of a particular service but also to any that might identify conduct or negligence that indicates a systemic failure of any health or community service to this state.

I hope I have made it clear to members that this matter needs to be open to discussion; hence moving this motion. I regret that it has been at relatively short notice, but I am sure that the member for Morphett, as well perhaps as other members of the house, will come back with more details of the issues that have been raised by concerned citizens on this matter, so that we end up with a charter that will serve South Australians, not sever their rights.

Debate adjourned on motion of Mrs Geraghty.

STURT'S DESERT PEA

Ms CHAPMAN (Bragg) (12:22): I move:

That this house urges the Premier to write to the Prime Minister to ensure the South Australian floral emblem, Sturt's desert pea, be excluded from any regulation to ban their sale from plant nurseries.

It is with pleasure that I inform the house not only of my support of this motion, but also that I had an opportunity to canvass this issue when I attended the Rotary Club of Burnside Leadership in

Conservation and Volunteer of the Parks evening, which the Minister for Environment and Conservation also attended. We were very pleased to have his presence there on that occasion.

The Volunteer of the Parks award went to Mr Alan and Mrs Lorraine Hancox from Friends of the Simpson Desert Parks. Additionally, the Leadership in Conservation award went to Seiji Iwao, who is a liaison ranger in the department for Friends of Newland Head Conservation Park. They are both worthy awards, and the recipients this year were outstanding.

Unfortunately, the minister had to leave because he had other commitments, but on that occasion I did raise my concern that our state floral emblem, Sturt's desert pea, is about to be added to a long list of plants which are prohibited under a federal government law which purports to limit the propagation, sale, cultivation, etc., of certain plants essentially because of particular matter they contain. The basis of this is that anything that might contain a drug, or a particular piece of plant matter in it that could be used to make illegal drugs, needs to be considered very seriously.

However, what has happened is that a number of species of wattle, our Australian floral emblem, and many other popular plants, including ornamental cacti, etc., but most importantly for the purpose of this motion, and for my request that the Premier act on it, is that Sturt's desert pea, our beloved state floral emblem, is to join that list.

I have consulted on this matter with Mr Ralph Bönig, who is the President of the Law Society. He has provided me with quite an extensive submission from the Nursery and Garden Industry Australia on this matter, because of their concerns as to how it would have an adverse impact not only on the propagation, but also on the availability of these particular items of flora.

I will refer to those in a moment but, can I say, the Law Society of South Australia have said that while the possession of these plants would not actually be illegal, the nurseries selling them would face the same penalties—that is, up to life imprisonment—if they are caught with any quantity of these plants (even the seed) and they fall within the same category as offenders who traffic large quantities of marijuana. I cannot think that any sensible person would have actually wanted to impose this.

I am just very surprised that we have not had a response from the Premier at this stage to say, 'Look, I have dealt with that matter; we have resolved it, and we are going to make sure that we are not caught up in this.' However, in the absence of having this reassurance, I press the house to support a motion that he does so—not only so that our nurseries out there are not prosecuted for these things, but also that we protect our state floral emblem.

I regularly give out packets of Sturt's desert pea seed. It is featured not only here in our bloodline, in the parliament, but it is also of course completely across the floor of the Legislative Council. I mean, this is something that we are very proud of. I actually ask school children to have a go at growing them. I hate to think about whether I am going to be an accessory to a major crime and face imprisonment for trading with a plant which contains the drugs which have been caught up in this.

Essentially, it is to cover plants that contain mescaline, or dimethyltryptamine (they call it DMT for short, thank goodness), but that is specifically in the Sturt's desert pea, and that is the offending ingredient. So, the CEO of the state branch of the Nursing and Garden Industry, Geoffrey Fuller, has asked the government to use their common sense and review this. I am told anecdotally, by the Law Society President, that about a thousand acacia trees have to be harvested to get enough of their content to create one pill.

So, we really are dealing with a situation where I think somebody sitting in Canberra—some mental giant over there—has decided that this should apply. It may have been inadvertent, but it does concern me that it is not only a dopey idea, but one that has not been redressed, and has not been attended to. So, I ask the parliament here today to protect our state floral emblem.

Can I just say, in the submission that was presented to the Attorney-General's Department of the Parliament of Australia (that is, the national body) they also raised a number of other issues about the removal of these plants effectively from the broader environment—not just the gardening community and those of us who might grow these in our own gardens. We are all trying to be water wise and grow things that are going to be consistent with our natural environment. But, in the broader environment, the impact is quite severe, because if there is to be no assistance in the broader parks and environs for the propagation and development, and even research into the protection—and, in some areas, expansion—of these plants, then ecosystems out there are also under threat.

So, it is important that we look not just at the question of how the industry itself might suffer in respect to prosecution, but how our researchers and our parks and wildlife people may be inadvertently caught up with this procedure if they were to, in some way, disperse what effectively is potentially a precursor for a drug which, under our Controlled Substances Act, is illegal. So, we are looking for some relief. If the minister is able to provide that, then we would welcome it. There are some other options to be able to say we will leave them on the list, but we provide for a defence that is a legitimate use defence.

I simply say, why should we in any way be having our state floral emblem, or our national emblem for that matter, on this sort of list, then having to backtrack with defences to be able to say why one is lawfully in possession of a seed of a national or state floral emblem. It is just completely absurd to think that we should have to take that course.

If there is a circumstance where someone who did harvest, propagate or cultivate plants for the specific purpose of harvesting substances to create drugs, and it could be established that that was for the purpose of creating drugs that are unlawful or for the purposes of onselling those precursors, then sure, let us look at amending the criminal law to deal with that. Let's not mark and demean our state or national floral emblems in such a draconian way. So, wake up, somebody there in Canberra. If they don't, please, Premier, address this matter post-haste.

The SPEAKER: This is very interesting, member for Bragg. I will have to change all my stationery unless something happens about this. All my stationery features our beautiful Sturt's desert pea.

Debate adjourned on motion of Mrs Geraghty.

VETERINARY PROFESSION

Dr McFETRIDGE (Morphett) (12:32): I move:

That this house—

(a) congratulates the Australian Veterinarian Association on holding its national conference in Adelaide this week;

(b) notes that 2011—

(i) marks the 250th anniversary of veterinary education with the establishment of the first veterinary school in Lyon, France, in 1761;

(ii) is World Veterinary Year to honour the contribution and achievements of the veterinary profession in the community;

(c) recognises that—

(i) 2011 marks the 120th anniversary of the first class of graduates from the inaugurated Melbourne Veterinary College;

(ii) there are now seven schools of veterinary medicine established in Australia;

(iii) veterinarians are dedicated to preserving the bond between humans and animals by practising and promoting the highest standards of science-based and ethical animal welfare;

(iv) veterinarians are on the front line in maintaining Australia's status as being free from exotic diseases that threaten the environment, and human and animal health;

(v) veterinarians provide extensive pro bono services annually through the ethical treatment of unowned animals and wildlife;

(vi) veterinarians are vital to ensuring the high quality of Australia's commercial herds and flocks, and the security of our food supply;

(vii) veterinarians provide a valuable public health service through preventative medicine, control of zoonotic disease and scientific research;

(d) recognises that significant contributions and achievements have been made by many individual members of the Australian veterinary profession, including—

(i) Nobel Prize winner and Australian of the Year, Dr Peter C. Doherty, who achieved major breakthroughs in the field of immunology;

(ii) Professor Mary Barton, a leading veterinary bacteriologist with a distinguished career in government and veterinary public health; and

(iii) Dr Reg Pascoe, a renowned equine surgeon and dermatologist, and a leader in his profession for more than 50 years.

This week there are nearly 850 vets and vet staff meeting down the road at the Convention Centre for the 2011 national conference. It is a fantastic event. I have been there a number of times and I am attending some workshops on Friday. Unfortunately, because of commitments to this place, I cannot attend as much as I would like, but I have had the chance to catch up with a number of my colleagues and talk to them about what is happening in the Veterinary Association and the veterinary world. It is a great thing that is happening and, as I say, I congratulate the Australian Veterinarian Association on holding what has been an exceptionally successful national conference down there this week.

I congratulate Dr Barry Smyth on being re-elected as the national president last night. I am sure Dr Smyth will continue the great work that the association has done on a national basis. Certainly, the South Australian branch is continuing to do some terrific work within this state.

Amongst the announcements last night and yesterday were also some of the prizes that were awarded. There is a range of prizes awarded by the Australian Veterinary Association. Last night, our own South Australian, Professor Mary Barton, was awarded the President's prize. Professor Barton is a well-known veterinarian in South Australia who has done a lot of work in bacteriology and does a lot of terrific work at the University of South Australia. I was very lucky, as a student, to win the Australian veterinary student award. All of these are prestigious awards and I congratulate Professor Barton on receiving the President's prize last night.

Of course, as a veterinarian, there is no conflict of interest in this at all. I am very proud to be here to speak about this issue. Can I say, I am not the only veterinarian who has been in this place. The Hon. John Cornwall, a member of the other place, was in here with the Labor Party and had a distinguished career as the minister for health. So, as the shadow minister for health, I would like to follow in the steps of the Hon. John Cornwall, not as a shadow minister, but as the minister for health.

The Hon. Dr Bruce Eastick was not only the leader of the opposition, he was a speaker in this parliament. I remember, as a kid, Bruce Eastick coming out to stitch up one of my horses. It is lovely to see Bruce. I last saw him at the official opening of the new veterinary school at Roseworthy, earlier this year.

The Veterinary Association's national conference is not just about a social gathering; a broad scientific program is being put on down there. One of the biggest announcements that was made there this week was the announcement of the development of a vaccine for the hendra virus in horses. Hendra virus is a virus carried by bats, and it has caused the death of many horses in Queensland. Unfortunately, it is a zoonotic disease that is transferred to humans, and it has killed a number of vets and veterinary workers in Queensland. It is a real issue for all of us in South Australia as well, with the fruit bats (or flying foxes) coming into South Australia, because they are the main vector for this particular virus.

The scientific program is very broad; it goes across public health. There are many Indigenous issues being discussed this week, and also there is an extensive trade display. The public health issues range from the discussion of zoonotic diseases (as I said, hendra and rabies), but there are a lot of issues that are being discussed, and also public health issues, such as why dogs bite. When not just thousands of children but also adults across Australia are bitten by dogs, it would be nice to work out exactly why this is happening and educate dog owners and people who are handling dogs. The Indigenous issues are focusing around the health of camp dogs and their relationship with the public health of those Indigenous communities. I congratulate the people who are doing some fantastic work there.

There is an extensive trade display down at the Convention Centre, and I would encourage members of parliament to go down there. I am sure they would be more than welcome; they do not have to have a dog tag to go in there. The extensive trade display is everything from computer programs for running a practice right through to assisting in rapid pathology diagnosis and many other aspects of veterinary practice nowadays.

Some of the latest equipment is on display, from cages to cardiac monitors, from the latest books and equipment right through to advice on how to invest the meagre earnings from your veterinary practice. One display actually monitors the health of the vets themselves; I participated in that. There is nothing wrong with me, apart from the fact that I need to be six inches taller! It is very, very important that we as members of parliament not only look after our constituents but look after ourselves, and it is good to see that the veterinary profession is looking after themselves as well.

Last night was a trade display social night, and it was lovely to see our own veterinary students from the University of Adelaide's Roseworthy College there and to talk to some of them. It took a long time to get there, but we have our own veterinary school here in South Australia.

As I pointed out in the private member's motion, this year it is 250 years since the first veterinary school was established in Lyon in France, in 1761. I refer to *A Veterinary Awakening*, a book written by Rhyll Vallis. It is a terrific little book. I will give this one to the parliamentary library, but I would recommend it to members to have a look at what is going on. The word 'veterinarian' comes from the Latin word 'veterinae', meaning 'working with animals'. The first veterinary text of any note was printed in 1528 and was a copy of Vegetius' *Mulomedicina*, a comprehensive equine veterinary text produced around 500 AD.

The history of veterinary medicine has often been precipitated either by war, and the need to have fit and healthy horses to run military campaigns, or by disease. Between 1710 and 1714, half of the cattle in France were destroyed by rinderpest. When France suffered another outbreak in 1750, Claude Bourgelat was able to persuade King Louis XV of France that the medical profession's efforts against the disease had failed. What was needed, Bourgelat argued, was a school producing trained veterinary specialists equipped with the scientific knowledge to combat rinderpest. Bourgelat oversaw the establishment of the first permanent veterinary school in Lyon in France in 1761-62.

Over the next two decades, six similar veterinary schools were opened in Western Europe, and, in 1791, the Royal Veterinary College opened in London. England's first veterinary school proclaimed itself, 'For the improvement of Farriery and the Treatment of Cattle'. In Australia, when the first convicts arrived in 1788 there were no veterinarians accompanying the fleet and, from around 1817, of the 18,000 convicts who were transported to Australia, only six gave their occupation as veterinary surgeon. However, it is unlikely that they were qualified as vets, as we all know that vets are known to be people of strong moral fibre and hardly likely to steal a loaf of bread or a handkerchief.

On travelling to New Holland, the first immigrants, the first convicts, the first settlers, would have brought with them some of the popular veterinary texts of the day: *The Gentleman's Farriery* and *The Family Horse Doctor*. The world of veterinary science did not do much in Australia until around the 1850s, when gold was discovered, the gold rush occurred and migration trebled the population of Australia. Before that, there was not a lot of imported livestock but, with the rapid rise in population, more imports of livestock and their products and more extensive livestock production took place.

Unfortunately, with these developments came disease and, while livestock quarantine laws were enacted in the 1870s, it was too little too late. Back then, instead of a state veterinary service like those in Europe, each Australian colony had a government stock branch headed by a chief inspector of stock. In South Australia, sheep scab was a real issue in the 1850s, and we had a handful of scab inspectors, as they were called, who visited 35 sheep stations, inspected 186,274 sheep and travelled 1,622 miles by horse. That was a pretty tough life. I used to do a lot of miles in my four-wheel drive, but it was nothing like those miles travelled on the back of a horse.

In 1880, fewer than 50 qualified vets were practising in the whole of Australia, and there was no regulation of who could call themselves a vet; in many cases, farriers and other quacks put up a shingle and called themselves veterinary surgeons. Australia's first qualified veterinary surgeon is thought to have been John Stewart, who stepped off the boat and onto Sydney Cove in 1841. He set up a private practice in Sydney, which he ran in conjunction with a horse bazaar. A former professor of veterinary medicine in Glasgow, he was the author of two books when he arrived in Australia, *Advice to Purchasers of Horses* and *Stable Economy*.

When the first confirmed cases of foot and mouth disease occurred in Australia in 1876 and 1872 in cattle imported to New South Wales, a veterinarian, John Pottie, who worked part-time for the New South Wales government and part-time in private practice, was able to confirm the disease, enact quarantine, and shut down the spread of the disease and, as we know, Australia is still free of foot and mouth disease.

The first veterinarian to arrive in Victoria was William Tyson Kendall in 1880. He observed that there were no more than a dozen qualified veterinary surgeons practising in Victoria. Kendall, along with Graham Mitchell and several other qualified vets in Australia, had the following to say about the Australian veterinary profession in 1881:

A large proportion of the stockowners and farmers have had no previous experience of the management of stock in countries or parts where veterinary surgeons were available...The present state of veterinary progress in these colonies is therefore similar to what it was in England fifty years ago...

To remedy this sad situation, the vets set about professionalising veterinary medicine in Australia. Due to their efforts, in 1880 the first Australian veterinary association was formed—the Australasian Veterinary Medical Association. The association's president, Mitchell, and secretary, Kendall, also began publishing *The Australasian Veterinary Journal* in 1882. The Australasian Veterinary Medical Association, with members from various colonies and New Zealand, actively campaigned for the establishment of an Australian veterinary school. It also sought legislation granting qualified vets exclusive right to the title of 'veterinary surgeon'. Both aims were accomplished: in 1887, the Veterinary Surgeons Act was proclaimed and, in 1888, six students enrolled in the Melbourne Veterinary College.

The history of veterinary science in Australia is well put together in *A Veterinary Awakening* by Rhyll Vallis, and I encourage members and members of the veterinary profession to read it. It also talks about the history of government veterinarians, and we know that the role of government veterinarians complements the role of those in private practice. I will finish by once again congratulating the Australian Veterinary Association on the hard work that it has been doing in advancing the profession, both scientifically and professionally. I congratulate those associated with the establishment—at long last—of the University of Adelaide's Veterinary School at Roseworthy. Professor Gail Anderson is the founding Dean of that school. I have been there a number of times, and I had the pleasure of being there with the minister for agriculture at the official opening.

The future for that school is a very bright one. There is a need for governments and politicians of all persuasions to ensure that we encourage and support the veterinary profession because, without the eagle eye for biosecurity that vets provide, we will go back to the days of sheep scab and foot and mouth. If some of the diseases get into Australia, they will destroy the agricultural industries. Because of the work of vets on sheep scab, the wool production in Australia went from £2 million a year to £40 million a year between 1830 and 1850. The levels of production in agriculture are only possible because of the work of our vets.

Also, the role of vets in small-animal practice and the enjoyment given to families and communities by the ownership of pets is a terrific health benefit as well as a social benefit. The role of veterinarians cannot ever be underestimated. I am very proud to say that my daughter Sahra is a vet as well now, and she is a proud member of this profession. With that, I congratulate the Australian Veterinary Association on its national conference.

The Hon. R.B. SUCH (Fisher) (12:46): I will make a brief contribution. I have to declare that I am not a vet and I prefer to go to a standard medico rather than to a vet. I am not sure which one is cheaper these days.

I want to comment briefly on a program which has been developed by the vets, and I commend them for this. It is something that we may not think of but, during bushfires or times of other emergency, animals running astray and loose can be a hazard not only to themselves but also to people on roads, and so on. To the credit of the veterinarians in South Australia, they have set up a system whereby, if there is an emergency, they have an arrangement where that issue can be dealt with by the vets and others to ensure that we do not have animals that are injured and untreated running astray and causing a risk to themselves and others. So, I commend them for that recent establishment. I am not quite sure what its fancy name is.

I commend the government because, ultimately, the government came to the party, I guess through the Minister for Emergency Services, to support that group. I know Dr Rachel Westcott runs a mobile veterinary practice called Vet to Pet. (She grew up in the street where I allegedly grew up.)

I conclude by once again commending the veterinary specialists for their contribution to that civic duty of ensuring that if there is another emergency—bushfire, Ash Wednesday, flood, or whatever—that there is now a coordinated organised response arrangement. I again commend the minister, I think the Minister for Emergency Services, who decided to support that in various ways.

Debate adjourned on motion of Mrs Geraghty.

VISITORS

The DEPUTY SPEAKER: I would like to acknowledge the presence in the chamber today of the former head clerk of this place, Mr David Bridges and his partner, Bernadette Schubert. Welcome back.

YOUTH CENTRES

The Hon. R.B. SUCH (Fisher) (12:49): I move:

That this house requests the state and local government sectors to work towards the expansion of existing community centres and the establishment of new youth centres in areas of need, which will provide structured activities and support mechanisms, as well as being a hub for social interaction for young people.

Members would know that in my previous life I was, amongst other things, minister for youth, and I am still very passionate about our young people, even though my youth left me a long time ago.

A lot of people, I think, pay lip service to young people and say they are important and use other words like that, but when it comes to the reality I do not think in some situations our young people get a fair go or the resources that they should by way of facilities and so on. When people say to young people, 'You are our future,' that is true, but they are also the present and, as I have often said in the past, in groups and speeches and so on, if you are 12, that year of your life is just as important as if you are 42, 52 or 92. Unwittingly, by only focusing on the future, you are actually diminishing the current significance of young people.

What I am trying to do through this motion is to focus on the need for increased facilities for young people, whether it is through a community centre or a specialised youth centre. When you look around, we have some excellent facilities for senior citizens, and I certainly welcome them, because I am probably not far off using one. They are something that the community has decided is important and if you go round in my council area, Mitcham as well, others, you will see plenty of centres set up specifically for the older section of the community.

This is not the case for young people, though. In fact, in my general area, in my electorate, we have gone backwards in terms of provision of facilities for youth. We used to have a specialised youth centre; we no longer have that. The council used to have youth workers on call 24 hours a day. They would go out if young people were drinking in the park; they would deal with that; they would try to get them home safe and sound, all that sort of thing. Nowadays we have a contracted service through the council, which is essentially 9 to 5.

I have been advocating for a long time that we have police youth clubs. The old-style youth club interstate was where many lads learnt how to box. That was one type of activity, but the new-style police youth club goes far beyond that. If you look at what happens interstate, you will find that they have specially trained police who are involved in running those centres. I will just give one example: this is the one from Albany in Western Australia (where they have just discovered some gold bullion, I understand, on a building site, but I do not have any claim to that, unfortunately), the Albany police community youth centre.

They have many throughout Western Australia, in Broome, Bunbury, Carnarvon, Collie, Exmouth, Geraldton, Harvey, Kalgoorlie, Northam, Quairading and Roebourne. They function not only as a place where young people can, to use their expression 'hang out', but they offer things like using (as recreation) air rifles, archery, badminton, driver training, fencing, gymnastics, self-defence, aerobics, and they also have Police Rangers as part of that youth facility.

As well as focusing on young people generally, they also provide special programs for those who may be either running foul of the law or who look as though they could. They provide things like anger management for young people to show them how to deal with any bottled-up anger they may have. Some of the other centres that exist provide facilities, pool tables, computers, X-box, table tennis, art and craft, DJ facilities (that is as in music) and cafes. One of the things that is borne out by surveys that have been conducted in my local area is that young people want somewhere where they can hang out together.

Older people often see that as an idle activity, but it is part of growing up. It is important that they have activities that are relevant to their age and also a place where they can go because young people are often discriminated against in some of these shopping areas. I think I have mentioned in here before that the shopping centre where I am used to play Frank Sinatra at a loud level to deter young people from hanging around the centre—*Come Fly with Me*. After hearing it about 1,000 times, I have decided not to go flying with Frank Sinatra—he is dead anyway.

There are often subtle and not so subtle mechanisms designed to ensure that young people do not hang around shopping centres. The shopping centre of today is really the village green of yesterday, and if young people do not go there, where do they go? What is happening in Aberfoyle Park—and it is not unique—is that you get young people hanging around the Happy Valley sports centre. Sadly, they are not all playing sport—it would be good if they were—and often they get into underage drinking and other such activities. The critics might say, 'Why don't they join the netball team, the footy team—there's plenty of sporting things.' That is fine—they could and they should—and we know that if young people do they are less likely to get into trouble with the law or other sorts of problems. They need a range of activities that go beyond that.

Some young people are interested in science, some are interested in art. Young women may have a different interest from young lads. It needs to be a comprehensive program and the survey that was done down my way indicated that they wanted to hang out at Westfield Marion (they are keen on this hanging out), which means going there, meeting their friends and being able to talk to them. A lot wanted to go to the movies. They also raised the point that they did not have a local youth centre.

An issue that comes up frequently is the lack of transport. If you are under the driving age, obviously you are dependent on parents or someone else to get around. If you do not have good public transport then you also have a problem. You have a problem for those under 18 in terms of licensed premises, in terms of going to a venue. They might just want to listen to the music, but it is not generally acceptable for young people to be going to a licensed premise if they are under the drinking age. I think the law is a little bit vague on that but, generally speaking, if it is not illegal it is frowned upon.

So, we have a large group of young people, teenagers, who essentially are locked out of a place to go where they can meet with each other, talk to each other and engage in constructive activities. This motion is really a plea for not only the state government but also local government and the federal government to really look at this issue because, if we get young people constructively involved—young people of all backgrounds, non-English speaking and Aboriginal youth as well—challenging them and involving them with specially trained police officers, it helps bridge the gap between police and young people but also helps them to see that the established order of society is not totally anti-youth, even though they might get the impression frequently that society is against them.

I put this motion just to highlight the issue. These things require money. When I have raised in the past the possibility of having police youth clubs, SAPOL says, 'Well, we're not funded for it.' Other agencies say, 'Well, we're not funding the police,' so nothing happens. We have to move away from that silo mentality, deal with the issue and with our young people. In that way not only would we have fewer young people getting involved in things they should not but also their well-being and that of society as a whole would be improved. I commend the motion to the house.

Debate adjourned on motion of Mrs Geraghty.

[Sitting suspended from 13:00 to 14:00]

CRIMINAL ASSETS CONFISCATION (PRESCRIBED DRUG OFFENDERS) AMENDMENT BILL

His Excellency the Governor, by message, recommended to the house the appropriation of such amounts of money as might be required for the purposes mentioned in the bill.

Members interjecting:

The SPEAKER: Order!

ANSWERS TO QUESTIONS

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

GRANT, MR B.

238 The Hon. M.J. ATKINSON (Croydon) (10 May 2011).

1. Have the ratepayers of the City of Charles Sturt paid $55,000 for anger-management and staff-relations counselling for Councillor Bob Grant?

2. Why is this matter still confidential, years after this counselling has ended?

3. What value or outcome did this counselling provide?

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Industrial Relations, Minister for State/Local Government Relations): I have been provided the following information:

1. The City of Charles Sturt made available a mediation service for Councillors to improve and facilitate better working relationships between elected members and the previous Chief Executive Officer. I am advised that this service cost $55,000 during 2004-07. It is understood that Councillor Grant regularly utilised this service during this time period, while three other Councillors used it briefly and chose not to use the service further.

2. The matter is not protected by any confidentiality order. The expenditure, its purpose and the individuals involved are not confidential.

3. There was not an evaluation undertaken to determine what benefits were derived. This is a matter for the Council.

EMPLOYMENT PARTICIPATION RATE

In reply to **Mr GRIFFITHS (Goyder)** (7 October 2010) (Estimates Committee A).

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change): I have been advised the following:

The employment participation rate quoted by the Economic Development Board (EDB) report is the civilian population aged 15-64 *in work* as a proportion of the 15-64 age group. The ABS definition for participation rate differs from the EDB's approach to this workforce indicator in that the ABS defined the participation rate as the civilian population, aged 15 or above, that are *working or actively seeking work.* As the ABS counts unemployed persons, and given that the civilian population cohorts are different for each definition it follows that there are different percentage rates. The population estimates used by the EDB are sourced from Planning SA's population projections.

The EDB's approach recognises that the workforce is at its most productive between the ages of 15 and 64 and recommends strategies to increase the participation rate for the majority of the workforce, recognising that people begin the retire from age 65 onwards.

In 2010-11 the new framework for the South Australia Works initiative will be implemented to raise workforce participation rate for those who are disadvantaged in the labour market, and increase foundation skills levels, particularly for literacy and numeracy.

The principal objective is to contribute to an increase in workforce participation, which is one of the key policy objectives of the government. The primary role is to identify and respond to the skills development needs of each state government region. Location-specific services and customised programs were designed to respond to the needs of the individual, local industry and employers and local labour markets. There will be a greater focus on increasing foundation skills, especially literacy and numeracy. Over 21,580 people will benefit from SA Works programs, with at least 9,390 participating in work programs and 4,900 gaining a job.

A new workforce participation directorate will be formed, incorporating the employment programs and Aboriginal policy coordination directorates. The restructuring will increase our capacity to develop strategic partnerships for key workforce participation agendas, particularly with the Federal Government, and strengthen the front-line service delivery of SA Works in each of the state's regions, with a particular focus on increasing opportunities for Aboriginal people.

In addition, the Government will commence implementation of the Jobs Strategy commitment to allocate an additional 100,000 training places over six years and increase participation in vocation education and training (VET) from 10.9 per cent to 12.0 per cent of the working age population.

ARTS GRANTS

In reply to **Mrs REDMOND (Heysen—Leader of the Opposition)** (7 October 2010) (Estimates Committee A).

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change): I have been advised the following:

The largest grant provided through the Independent Makers and Presenters program for 2009-10 was $100,000 for the Major Commission grant category.

The smallest grant for 2009-10 was $580 through the Professional Development—Last Minute Presentation grant category for the Visual Arts artform.

HOUSING SA ACCESS PROJECT

The Hon. J.M. RANKINE (Wright—Minister for Families and Communities, Minister for Housing, Minister for Ageing, Minister for Disability) (14:03): Since the South Australian Housing Trust was founded in 1936, housing, population and our communities have changed dramatically. The Rann government has responded to these changes—

The SPEAKER: Order! Point of order.

Mr WILLIAMS: Is the minister going to seek leave to make a ministerial statement?

The Hon. J.M. RANKINE: Sorry. I seek leave to make a ministerial statement.

Leave granted.

Members interjecting:

The SPEAKER: Order!

The Hon. J.M. RANKINE: Since the South Australian Housing Trust was founded in 1936, our housing, population and communities have changed dramatically. The Rann government has responded to these changes. Most recently, we have built new types of housing and laid the foundations for more sustainable mixed communities like Woodville West and the UNO Apartments.

We have also been working with the private sector and community organisations to address the ongoing challenge of providing quality, affordable housing. Housing SA is now embarking on the next step in this process of modernisation. Scheduled for a staged implementation in 2012, we will implement a simpler, more efficient and responsive service to those who need housing assistance.

The last decade has seen many new housing supports beyond the traditional services, such as public housing, bond guarantees and Commonwealth Rent Assistance. The Nation Building Economic Stimulus Plan has provided the biggest boost to social housing construction in 20 years. The community housing sector has grown by more than 50 per cent—

Ms Chapman interjecting:

The SPEAKER: Order, member for Bragg!

The Hon. J.M. RANKINE: —and we have entered into $120 million worth of partnerships with community organisations through the Affordable Housing Innovations Fund, and there are 3,800 new affordable private rental properties coming through the National Rental Affordability Scheme. Our government has also introduced the 15 per cent requirement for affordable housing in significant new developments which—

Ms Chapman interjecting:

The SPEAKER: Order!

The Hon. J.M. RANKINE: This is an initiative that the Liberals opposed and would have scrapped at the last election—and they certainly did not support the Economic Stimulus Plan. They would have scrapped the opportunity for us to have 2,200 commitments from 25 developers, and another 2,000 are under negotiation. The Property Locator website provides exclusive access to properties by low and middle-income households. HomeStart Finance has helped around 60,000 South Australians to buy a home, including more than 1,100 public housing tenants, through HomeStart's Equity Start Loan—I am sorry, Madam Speaker, I was waiting for an interjection.

Members interjecting:

The SPEAKER: Order!

Mr Marshall interjecting:

The SPEAKER: Order, member for Norwood!

The Hon. J.M. RANKINE: She interrupted her interjections with some silence, Madam Speaker.

Mr Venning interjecting:

The SPEAKER: Order, member for Schubert!

The Hon. J.M. RANKINE: This is in addition to an investment of more than $200 million in homelessness supports over four years in South Australia alone. The Access Project will create a single housing register so that those in need only have to ask once to be linked to the best services for their circumstances. It will establish an integrated entry point so that those in need get the same level of service whether they talk to Housing SA, a community housing association or a range of other non-government providers.

Meanwhile, the internet will be used to give people more access, more control and more flexibility in their requests for support and their ongoing contact with service providers. Under the Rann Labor government, and working with a federal Labor government that delivers on housing policy, we are providing more affordable housing options than ever before. Housing SA will soon consult with the wider housing sector to ensure this vital reform delivers the best outcomes for the community.

VISITORS

The SPEAKER: I acknowledge the presence in the gallery of students from the Adelaide Secondary School of English, who are guests of the member for Croydon. Welcome, and we hope you enjoy your time here today.

QUESTION TIME

CARBON TAX

Mrs REDMOND (Heysen—Leader of the Opposition) (14:08): My question is to the Treasurer. Does he support the federal government's carbon tax?

The Hon. J.J. SNELLING (Playford—Treasurer, Minister for Employment, Training and Further Education) (14:08): Of course; it is federal government policy and it is important. I know the climate change deniers on the other side do not accept climate change, but on this side of the house this government has a proud record of taking measures to try to mitigate the effects of climate change.

Mr Venning interjecting:

The SPEAKER: Order! Member for Schubert, you are warned.

The Hon. J.J. SNELLING: I do not think that should be in any way controversial.

ADELAIDE OVAL

Mr PICCOLO (Light) (14:08): My question is to the Premier. Did the Premier agree with the Leader of the Opposition when she said on radio yesterday that the redevelopment of Adelaide Oval is nonsensical because 38,000 seats is sufficient?

Mrs Redmond interjecting:

The SPEAKER: Order, Leader of the Opposition!

Ms Chapman interjecting:

The SPEAKER: Order! The member for Bragg is warned. Premier.

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:09): Well, the short answer to the question is no. It is not only me, but many others—including 80 per cent of SACA members, and the better half of the Liberal Party in this state—believe that, yes, Adelaide does require a vastly upgraded Adelaide Oval, with a capacity of 50,000. Apparently, the leader's current position is that 38,000 is sufficient. We believe that

50,000 is what is required. It will mean that, for the first time, we will be able to see football and cricket at the very highest level sharing a world-class stadium facility. It means the oval will be able to host AFL football—

An honourable member interjecting:

The SPEAKER: Order! Point of order. The member for MacKillop.

Mr WILLIAMS: Madam Speaker, there is a bill before the house, and I think this is pre-empting the debate on that bill.

The SPEAKER: Order, the member will sit down! At this stage, I am just listening carefully—

Mr Williams interjecting:

The SPEAKER: Order, the member for MacKillop!

Mr Williams interjecting:

The SPEAKER: Order, the member for MacKillop, you're warned! At this stage, I am listening to what the Premier says—if he strays into the content of the bill—but this seems a fairly general response.

The Hon. M.D. RANN: Certainly, we are not legislating for the leader's comments on radio yesterday. It means that the oval will be able to host AFL football, local and international cricket, rugby and soccer matches, and various other special events as may be secured by us as a state, such as music concerts or one-off major sporting events. I have to say that last night's radio performance absolutely beggared belief, but I will get on to that in a moment. The upgraded oval will make our state comparable to other states in terms of what we can offer to the sporting codes, corporate bodies, the media and, most importantly, the spectators.

Once upon a time, the opposition wanted a 50,000 capacity sporting oval in our city centre. That is what they wanted. That was their policy, but apparently last night that changed. In fact, the Leader of the Opposition wanted a much bigger oval than that. She wanted 80,000 people at her oval. It has gone from 80,000 down to 38,000. It was 80,000—and apparently a rooftop—before the election. What a difference an election makes. The stumbling, dodging and weaving by the Liberals on a city stadium for Adelaide has been like watching Arthur Daley try to crack a deal.

Mr Marshall interjecting:

The SPEAKER: Order, the member for Norwood!

The Hon. M.D. RANN: Oh, no, we'll talk about that. In the leader's case, I have to say that her formula for turning South Australia into a series of thousands of French villages—imagine if I had said that when I was leader of the opposition. It would have been ridiculed. There would have been cartoon after cartoon with me in a beret.

Members interjecting:

The SPEAKER: Order, members on my left!

The Hon. M.D. RANN: In the leader's case, it may be more apt to say: watching Inspector Clouseau, who once famously said, 'There is a time to laugh and a time not to laugh, and this is not one of them.' Let me run the house through some of the leader's more awkward twists and turns. In November 2009, just a few months out from the 2010 election, the Leader of the Opposition grandly unveiled the former leader's vision with the April 2009 date still attached. They just changed the name and photo but left the date in. The member for Waite, I am sure, was very, very proud. But her plan was for an $800 million to $1 billion brand new, 50,000 (it had changed) seat, multipurpose undercover sports stadium (these, by the way, are the Liberal's costings) to be built on the new Royal Adelaide Hospital site that would have the interstate and local railway systems running beneath it, along with, we understand, multistoreyed underground car parking.

Just think about this. It is a $1 billion stadium; it is going to have the trains and trams running underneath it, but also there is going to be an underground car park. Just think about that: there could be a traffic jam. It might remind her of the Metro in Paris. The leader said this was necessary because:

For too long—

this is what she said—

Adelaide has been regarded as a backwater where nothing ever changes. This development will once again make this city proud.

Members interjecting:

The SPEAKER: Order, the member for Norwood, you are warned!

The Hon. M.D. RANN: That is what she said. I will read that again because we had an interjection from the next leader of the opposition. They can change the photo and next time change the date—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: The Leader of the Opposition said this was necessary because, she said:

For too long Adelaide has been regarded as a backwater where nothing ever changes. This development will once again make this city proud.

That's what she said, and she anticipated that she could generate $1 billion funding for the project from the sale of government land. Initially the Liberals were saying they could sell land at Keswick, which does not actually belong to the government, so they turned their attention to land at Gepps Cross which we are told was worth a maximum of $100 million on a good day. That is her mathematic formula. We have trains going underground beneath the underground car parks.

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: We are selling land at Keswick that we do not own and then we find all this land down at Gepps Cross which on the best day would earn us about $100 million. Then we go on to this: the leader then went on radio on the same afternoon and substantially upgraded her stadium plans to say she anticipated the stadium would have a capacity of 60,000 to 80,000 people. This is like Wembley Stadium or maybe the Stade de France, I don't know. Is that right?

Mr Marshall: Is it Chante-lois or Chante-loi?

The SPEAKER: Order! The member for Norwood, you are warned for the second time.

The Hon. M.D. RANN: This is where I am sure this is going to be highlighted elsewhere—yet last night on radio, this idea of a city stadium—she wanted 80,000 and a covered roof. Last night on radio she said the idea of a city stadium is nonsensical. I will quote exactly what she said. Now, remember the 80,000 stadium we were going to get before the election. Well, last night it was this:

Our view is that the whole thing is a nonsensical spend of Government money…$600m plus probably and that is to put 12,000 extra seats into a stadium that already has 38,000—more than sufficient to cater for football if they wanted to bring it into the city this Friday night.

So it has gone from 80,000 to 38,000.

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: So presumably, if the leader does not support the Adelaide Oval redevelopment, having lost the election, she would want us to remember—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —in her words, 'a city where nothing ever changes', because that is her plan. We are not going to have a stadium with the Liberals; we are going to have the French villages, and while she is now feigning outrage about the government negotiations with the Adelaide City Council over some parking arrangements for the redevelopment, it was the Leader of the Opposition back in November 2009 who declared that if she were elected—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: Do you want to hear this? She doesn't want to hear what she said before. Her stadium was a mirage in the city. Here we go: back in November 2009, she declared that if she were elected, her huge stadium, railway, casino, riverbank extravaganza would be done by seizing control of the area in order for her to coordinate its development and construction. She was going to take the whole lot. Now she is worried about the little bits of leaves around the corner. Now she is the new Ann Moran. Let me remind the house of what she said. I am going to again remind her of her comments:

> The Riverside Development Authority will be established in the first term of a Redmond Liberal Government to take control of the area and co-ordinate development and construction.

No negotiations, no questions asked, never mind the Adelaide City Council, never mind Ann Moran, and the leader made not a mention of consulting the Adelaide City Council on building over the Parklands. Then their plan was to hand over prime control of this state government asset to the SANFL and to soccer. Can I just say in finishing, how phoney is that! It was 80,000 before the election: 38,000 now. Consult to the n^{th} degree now: before the election, take it all over.

Members interjecting:

The SPEAKER: Order! The member for MacKillop, order! We won't have a repeat of yesterday's performances.

VISITORS

The SPEAKER: I think I omitted to mention that there is a group of students here from TAFE today who are guests of the member for Adelaide. I think they are sitting there somewhere also. Welcome.

I also remind people who are sitting back there that it is not acceptable to take photos in the chamber while people are in here. I saw someone take a photo; I would hope you will not do it again.

QUESTION TIME

CARBON TAX

Mrs REDMOND (Heysen—Leader of the Opposition) (14:19): My question is again to the Treasurer. With Prime Minister Gillard in town today, what representations has the Treasurer made, or will he be making, to the Prime Minister about the cost of living impacts of the federal government's carbon tax on South Australians?

The Hon. J.J. SNELLING (Playford—Treasurer, Minister for Employment, Training and Further Education) (14:20): Look, once we see the details of the carbon tax, we will make representations, but the simple fact is—

Members interjecting:

The SPEAKER: Order, member for MacKillop!

The Hon. J.J. SNELLING: The simple fact is that this government believes that climate change is a direct threat to the welfare of South Australians, to the welfare of the South Australian economy. We think it makes sense.

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: The climate change deniers on the other side can put their head in the sand and pretend it is not happening, but the simple fact is that climate change represents a significant threat to the South Australian economy. The risk of severe drought—you can imagine what effect that might have on an economy which depends so highly on—

Members interjecting:

The SPEAKER: Order!

Mrs REDMOND: Point of order, Madam Speaker: the matter of relevance. My question was specifically about the cost of living impacts for South Australians of the carbon tax, not climate change.

The SPEAKER: Order! Sit down, that's enough. There is no point of order. The Treasurer is explaining why he believes that the carbon tax is acceptable.

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: Of course, as the federal government presents its plans—

Mrs Redmond interjecting:

The SPEAKER: Order! Leader of the Opposition, you are warned.

The Hon. J.J. SNELLING: —for the carbon tax and how it is going to work, and what remissions and offsets there will be for companies and employers, then we will have a close look at it. That will be the appropriate time to have a look at it. In the meantime, we have certainly made our voice heard with the commonwealth when it has come to other matters. Madam Speaker, you of course will know—

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: You, of course, would be very familiar with the representations which this state made to the commonwealth with regard to the resources rent tax, and the changes the commonwealth made because of the strong representation made to the commonwealth on that matter. And, once again, we will make strong representations if we think that any proposed carbon tax is going to have a detrimental effect on South Australian jobs. But, in the meantime, we stand shoulder to shoulder with the federal government, because we believe—

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: I mean, all the farmers on the other side—what's going to happen to their property values if there is a severe drought, and we have ongoing, severe and more frequent droughts? What effect on the South Australian economy will there be if the Goyder line is moved south, and—

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: —the area of South Australia that can be cropped is reduced because of climate change? This side of the house is not going to stick its head in the sand like the opposition.

Members interjecting:

The SPEAKER: Order!

An honourable member interjecting:

The SPEAKER: Order! Member for Kavel, behave. I think that was you. I think it was your voice; I'll be watching you.

SOUTH-EAST FORESTRY INDUSTRY ROUNDTABLE

Mr PEGLER (Mount Gambier) (14:23): My question is to the Treasurer. Can the Treasurer tell the house who are the members of the South-East Forestry Industry Roundtable, who will provide the government advice on the conditions of the forward sale of forest rotations?

An honourable member: That's a Dorothy.

Mr PEGLER: Of course it is.

The Hon. J.J. SNELLING (Playford—Treasurer, Minister for Employment, Training and Further Education) (14:24): It is interesting, isn't it, that this is the first question I have had in some weeks since this announcement was made on this issue. Members of the opposition have shown zero interest in this issue—

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: You know, they cry, we get the crocodile tears—

Members interjecting:

The SPEAKER: Order! Point of order, member for Davenport.

The Hon. I.F. EVANS: Point of order, Madam Speaker: the Treasurer is alleging the opposition has not asked a question about this issue. The reason is it was put out in a press release.

The SPEAKER: Order! There is no point of order there. Treasurer.

The Hon. J.J. SNELLING: The simple fact remains that members opposite, despite their crocodile tears for the people of the South-East, when it comes to questions in this place, have not shown any interest in this issue at all.

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: It is good, at least, that the member for Mount Gambier is prepared to stick up for his constituents. Now, as members would be—

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: As members would be aware—

Members interjecting:

The SPEAKER: Order, the member for Davenport!

Mr Pengilly: You're nearly as bad as Jennifer, Jack.

The SPEAKER: Order! The member for Finniss, you are warned.

The Hon. J.J. SNELLING: Thank you, ma'am. He is rather uncharitably referred to as Mr Bean, but I think he more represents Edmund Blackadder—the member for Finniss. Nonetheless, as members would be aware, on Tuesday 3 May 2011, I announced the South Australian government's intention to proceed with the proposed forward sale of the ForestrySA plantations. The decision was made following the preparation of a regional impact statement by independent external economic consulting firm ACIL Tasman and an extensive consultation process.

At the time of making the announcement, I advised the house of steps that would be taken to protect the interests of the South-East as a direct result of proceeding with the divestment of the forest rotations. I can now confirm the establishment of the South-East Forestry Industry Roundtable, one of the most important steps that was highlighted on 3 May.

I have already announced that the round table will be chaired by Mr Trevor Smith, who has represented the forest and forest products industry, employees and communities in several roles for over 35 years. He was the former national secretary of the Construction, Forestry, Mining and Energy Union. I can now inform the house of the other members of the round table.

Firstly, Mr Mark Braes is currently chairperson of Regional Development Australia Limestone Coast. He was a former mayor and councillor of the Wattle Range Council. Mr Chris Peterson is currently the CEO of Gunns Timber Products based in Launceston, Tasmania. Mr Peterson has 35 years' experience in the timber industry.

Mr Philip Lloyd is currently chairman of the Green Triangle Regional Plantation Committee. The committee is made up of a range of corporate, individual and not-for-profit entities, all of whom are directly involved or linked with the plantation industry sector. The committee collectively owns and/or manages around 90 per cent of the region's plantation resources. Mr Lloyd is a registered professional forester of some 30 years' experience, with tertiary qualifications in both forest science and business administration.

Mr Ian McDonnell lives in Mount Gambier and has worked in the timber industry for most of his life as, in fact, has his parents and, I think, his grandfather as well. I think he is the third generation. Currently, he is the CEO and part owner of NF McDonnell & Sons sawmillers—a family-owned sawmilling business that has been operating in the South-East since 1944.

Mr Richard Sage, currently chairman of the Forestry Stakeholder Group in the South-East, is also mayor of the District Council of Grant and has represented the area as a local councillor for many years. Mr Matthew Brookes is the Southern Region Operations Manager of CarterHoltHarvey Wood Products Australia. Mr Brookes has been in the industry for 26 years in various roles—commencing in the local sawmill—from sawmill scheduling and logistics to treatment plant and re-manufacturing management. Finally, Mr Brad Coates is from the Construction, Forestry, Mining and Energy Union. Mr Coates has been with the union movement for the last 15 years. He is currently the assistant secretary of the CFMEU of South Australia branch and has been for the past eight years.

Mr Pengilly: Bought them off.

The Hon. J.J. SNELLING: It is interesting that the member for Finniss should interject, 'Bought them off.' I am sure that Mr Ian McDonnell would be very interested that, somehow, the member for Finniss implicates Mr McDonnell in some sort of corruption. I am sure Mr McDonnell will be very interested to read that in *Hansard*.

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: That is what 'bought them off' means. It means corruption. Now, in addition, the round table will give me advice about specific conditions of the forward rotation sale—

Members interjecting:

The SPEAKER: Order, member for Finniss!

The Hon. J.J. SNELLING: —before the government takes the next step to market. This will include the extension of existing log supply contracts, placing a cap on exports and targeting a minimum rotation length. The round table will also review the levels of the obligations to be placed on a successful purchaser of the forward rotations about replanting and this advice will inform the parameters that the forward rotations are taken to market. The final negotiated conditions will then be reviewed by the round table. The government recognises the importance of the state's forest industry—

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: If it is so important to members opposite, why haven't they asked me any more than a couple of questions by their most junior frontbenchers?

Mr Pederick interjecting:

The SPEAKER: Order, member for Hammond!

Mr Williams interjecting:

The SPEAKER: Order! Member for MacKillop, you are warned for the second time.

The Hon. J.J. SNELLING: The government recognises the importance of the forest industry and is committed to addressing the many challenges facing the industry irrespective of the proposed forward sale of forest rotations. The establishment of the South-East Forest Industry Roundtable is one of many steps that the government intends to take to protect the interests of the industry and, of course, of the larger community in the South-East.

Mr Pederick interjecting:

The Hon. J.J. SNELLING: If the member for Hammond thinks he cares so much, why can't he get a question up? Why doesn't he speak to his leader and ask to be put up to the top of the question list?

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: The Minister for Forests and I look forward to working with members of the round table to get the best results for the industry, the South-East and, of course, for the state.

Ms Chapman interjecting:

The SPEAKER: Order! The member for Bragg, you are on your second warning.

WATER PRICING

Mr WILLIAMS (MacKillop—Deputy Leader of the Opposition) (14:31): My question is to the Minister for Water. What water prices, additional to those announced last week, will the community of South Australia face because of the federal government's carbon tax?

The Hon. P. CAICA (Colton—Minister for Environment and Conservation, Minister for the River Murray, Minister for Water) (14:32): I thank the Deputy Leader of the Opposition, but the way things are going, maybe the future leader of the opposition.

An honourable member interjecting:

The Hon. P. CAICA: Don't think so? Well he got there with three votes.

The SPEAKER: Order!

The Hon. P. CAICA: Madam Speaker, I will reinforce the comments of my friend the Treasurer. This side of the house believes that one of the problems confronting this planet and one of the major pressing difficulties that this planet will face is the level of pollution—

Mr WILLIAMS: I rise on a point of order. The question wasn't about what the government believes about climate change. It was about what impact a carbon tax will have on water prices.

The SPEAKER: Order! Sit down. I gather your point of order is relevance but at this stage the minister can answer the question how he chooses and he seems to be referring back to the need for a carbon tax.

The Hon. P. CAICA: Thank you very much, Madam Speaker. Quite simply one of the major issues facing this planet is climate change that relates to the pollution, amongst other things, and the way in which we as a species on this planet currently live, and it needs to be addressed. I would also say, too, it is very difficult to do. It is a bit like you asking me about the costs involved with respect to, amongst other things, the management plans or the monitoring of the management plans for the marine parks.

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: Gone fishing, got a bite! It is very difficult to do a proper analysis, as we will do, as the Treasurer said, when the information that you require to do an analysis upon is not available. All that information will be more readily available once the commonwealth provides more details about the situation about the carbon tax, which this side believes is necessary.

SCHOOLS, BEHAVIOURAL CENTRES

Ms FOX (Bright) (14:34): My question is to the Minister for Education.

Members interjecting:

The SPEAKER: Order! The Leader of the Opposition and the Minister for Water: stop quarrelling across the chamber!

Ms FOX: My question is to the Minister for Education. Will the minister advise the house how the government is supporting schools to address behaviour and attendance issues?

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Education, Minister for Early Childhood Development, Minister for Science and Information Economy) (14:35): I thank the honourable member for her question. As she knows as a former teacher, our schools teach the values of respect, tolerance and non-violence but, occasionally, behaviour which is not consistent with those values is brought into our schools. We know that managing that aggressive and disrespectful behaviour in schools is a massive strain on our teachers and also it is not fair on the kids in the class who are trying to learn.

So, during the last election campaign the Rann Labor government promised that it would establish six better behaviour centres to help schools manage disruptive or unruly students. I am pleased to advise the house that the first two of those promised centres are up and running—one at Salisbury Downs Primary School and one at Murray Bridge Primary School.

The centre at Salisbury Downs will provide a different model than we currently have in South Australia. The centre, along with three of the other new metropolitan centres, will focus on primary school age children who are showing signs of disengaging or bad behaviour. The idea is to intervene early because we know that the patterns are set very early on and they remain enduring patterns. So, if we intervene early, we are likely to nip this behaviour in the bud.

Rather than excluding the children altogether, the centre will work with children to address their behaviour. The idea is that they will attend the centre for two days a week and on the other three days they will be back in mainstream classes practising the techniques they have learnt to manage their anger, and also relate to their fellow students and respect their teachers using the strategies they have learnt in these centres.

One day a week staff in the centre will work with these students in mainstream classrooms to ensure that the skills they have learnt in the centre are being translated in the classroom. In addition, family counsellors will work in these centres to add an extra dimension to the support that these young people and their families need. The centre and the staff will work closely with parents and caregivers, because we know that the family environment is often at the heart of some of these behavioural issues.

The centre at Murray Bridge, along with another regional centre to be established, will operate on the more traditional model, that is, for high school students. These are students where the behaviour is just utterly unacceptable and inconsistent with the sort of behaviour we would accept in a mainstream school. That is a question of working very intensively with these students.

Sadly, for some of these students who have got to high school and continue to have these entrenched behaviours, we know it is difficult to get them back into a mainstream setting, but we also need to be alert for the fact that some of these young people may have missed out on the foundations that allow them to succeed at high school. We know that for some of these young people it is a fact that high school is a daily humiliation because they have not received that grounding they need to succeed in high school, so the way to avoid being humiliated is to get yourself kicked out of school by acting up. We need to be alert to that and meet the needs of those students as well.

During the election campaign we also promised 12 new truancy officers, to double the number of truancy officers in this state to deal with the causes of truancy and unauthorised absence. Almost all those staff are now employed, and the focus of these new attendance officers will be on early intervention and the early years of schooling. Once again, unashamedly, we are putting our resources in the front end—the early years—to make sure we stop this behaviour escalating. We know that the patterns are set very early and it is crucial that we respond at that early stage. Again, the new staff will work closely with families to identify the reasons for the causes of the absences and get to the bottom of them.

There is an enormous amount of good work that is going on in our schools but they also have to tackle these difficult issues. At the heart of what we are doing is responding to the great charter that we have in public education to meet the needs of every individual child in our public schooling system.

CARBON TAX

Mr WILLIAMS (MacKillop—Deputy Leader of the Opposition) (14:39): My question is to the Minister for Industry and Trade. Does the minister agree with Australian Workers Union secretary Wayne Hanson who stated that Whyalla and Port Pirie would be 'wiped off the map' by a carbon tax?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services) (14:39): No.

Members interjecting:

The SPEAKER: Order!

COUNTRY HOSPITALS

Mr BIGNELL (Mawson) (14:40): My question is to the Minister for Health. How is the state government building up services for country patients at the four country general hospitals in Berri, Port Lincoln, Mount Gambier and Whyalla?

Mr Williams: What about Keith? Tell us about Keith.

The SPEAKER: Order!

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for Mental Health and Substance Abuse, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (14:40): That is a good question. I am happy to answer this question. I thank the member for Mawson, who is also my parliamentary secretary on health matters, for his great—

Mr Pengilly interjecting:

The Hon. J.D. HILL: Where do you live during the week, Michael?

Mr Pengilly: In Adelaide when I am here, John.

The Hon. J.D. HILL: Good. Don't reflect on other members then.

The SPEAKER: Order! There will be no interjections across the floor.

The Hon. J.D. HILL: Don't reflect on other members, member for Finniss. As a government we have been very determined and committed to expanding medical care in country South Australia. In particular, we want to minimise the amount of travel that country residents need to undertake to receive the health care that they need. We are closely measuring the amount of—

Ms Chapman interjecting:

The SPEAKER: Order!

The Hon. J.D. HILL: We are closely measuring the amount of activity in South Australia's regional public hospitals. Indeed, the number of inpatient separations—that, of course, refers to the number of people—

Mr Williams interjecting:

The Hon. J.D. HILL: Ask me a question any time, member for MacKillop. Ask me a question.

Mr Williams: You don't answer them.

The SPEAKER: Order!

The Hon. J.D. HILL: The interjections are flying freely across the aisle, Madam Speaker; I just draw that to your attention. The number of inpatient separations—which refers to the number of people passing through a hospital—has been steadily increasing over the past four years. At the same time, the growth in separations in our city hospitals, while it is still going up, is not going up at the same rate. Country hospitals, for example, recorded, in the 2009 year, 90,940 inpatient separations, and that is a 4.4 per cent increase over the previous year. In the city in that period of time, we saw only a 1.9 per cent growth rate in separations. So, in other words, we have been able to put more activity in country hospitals so fewer country people have had to come to the city.

What this shows is that enhancing and expanding services at country hospitals, and at the four country general hospitals in particular, is resulting in more specialist treatment closer to home for country people. Another benefit from this approach is that we are increasing teaching, training and education opportunities for health professionals, making these hospitals more attractive places to work.

Our goal is to ensure that only patients requiring specialised and complex care will need to travel to metropolitan Adelaide to access services. This commitment to build up services at the four country general hospitals has required a significant investment in modern medical facilities. So, I am really pleased to report that the Riverland general hospital project at Berri is underway and is scheduled for completion in November 2013. I was pleased to brief the local member and the shadow minister yesterday on this. A managing contractor has been appointed to the $41 million project, and one of the first requirements will be to work with ETSA to upgrade and move the transformer onto the site.

Residents in the Riverland will benefit from an expanded and refurbished emergency department, two theatres and more treatment, like chemotherapy, renal dialysis, acute mental health care and rehabilitation. In real terms, that is 300 people who will not have to travel to Adelaide each year for surgery, as well as another 40 who will be able to stay in their home town for rehabilitation.

I am very pleased that this government was successfully able to bid for commonwealth funding to redevelop the Port Lincoln and Mount Gambier hospitals through the national Health and Hospital Fund Regional Priority Round. These projects were assessed by an independent advisory board and, as members would know, announced just before last week's federal budget. That means now that all four of our general country hospitals are undergoing major redevelopment.

The $39 million commonwealth investment at Port Lincoln hospital will create a public dental clinic, a redeveloped operating theatre and same-day patient unit, and new facilities for expanded acute care services. There was a carefully considered staffing plan attached to the submission and this investment has been welcomed by everybody, I understand, other than the local member, who could not help but play politics with it.

At Mount Gambier, $30 million will be spent to redevelop the hospital and build an ambulance station. An expanded facility there will allow more room to offer acute care services, including cancer and intermediate care beds, mental health services, palliative care, general medicine and rehabilitation services.

Last week I visited Mount Gambier and met with the local member, the local HAC, and clinicians who told me the limited physical capacity posed major challenges to staff. A number of the doctors said they were ecstatic with the new investment, and patients and staff there will have a fantastic modern facility backed by a plan with additional services.

A year ago the federal government announced $54.3 million for the redevelopment of a regional cancer centre in Whyalla, in addition to funding of $15 million from this government—that takes it to $65 million. The regional cancer centre will be located within the Whyalla Country General Hospital. It will provide services which extend to over 110,000 people over 600,000 square kilometres. Other expanded services at Whyalla include mental health, rehabilitation and orthopaedics, which will be a great advantage for residents in Coober Pedy, Roxby Downs, the Flinders Ranges and the Far North.

We are very proud of our increasing investment in regional public health services. I would like to thank the federal government for backing our plans and backing our vision. The 2010-11 state budget committed $714.5 million to public health services in the country; that is $84.1 million or 13 per cent more than the previous year.

I note an additional $13 million will be invested in four other projects for regional South Australia through the national Health and Hospitals Fund and, once again, I thank the commonwealth government for that. These projects include improved oral and dental health care at Wallaroo and the Riverland, new primary health care at the APY lands, and a new medical clinic for Naracoorte.

Members interjecting:

The SPEAKER: Order! There is far too much background noise.

ROYAL ADELAIDE HOSPITAL

The Hon. I.F. EVANS (Davenport) (14:46): My question is to the Treasurer. How can the government claim that the new Royal Adelaide Hospital PPP offers taxpayers better value for money than the traditional build when private investors in the project, according to the Macquarie Bank document, will be earning between 12 and 15 per cent per year, but the government is borrowing at about 4.3 per cent?

The Hon. J.J. SNELLING (Playford—Treasurer, Minister for Employment, Training and Further Education) (14:47): It is quite a simple explanation, but it might stretch the opposition's abilities.

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: The simple reason is because the whole project is not financed by private equity, only a small proportion of it. There is a small proportion that is funded by private equity and that is to provide an incentive to make sure that the consortium delivers. When they are sourcing finance there is a small proportion which is private equity finance, which is at the most risk and therefore attracts a higher interest rate, but the overwhelming majority of the finance for the project will be at a much lower interest rate because it will be debt-financed rather than equity-financed.

ROYAL ADELAIDE HOSPITAL

Dr McFETRIDGE (Morphett) (14:48): My question is to the Treasurer. Will you confirm that the new Royal Adelaide Hospital PPP is structured so that once the hospital is built it can be sold to overseas investors?

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for Mental Health and Substance Abuse, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (14:48): That is just absolute arrant nonsense, Madam Speaker. The hospital is being built on state land and it will become a state asset at the end of the contracting period of 35 years.

SOUTH AUSTRALIA INNOVATION AND INVESTMENT FUND

Mr SIBBONS (Mitchell) (14:48): My question is to the Minister for Industry and Trade. Can the minister advise the house of the South Australia Innovation and Investment Fund Round 3 announcement which took place this morning?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services) (14:49): Yes, I can. I would like to thank the honourable member, as a former employee, for his keen and special interest in the Tonsley site. He knows more than most what this state went through when Mitsubishi closed at the Tonsley vehicle assembly plant in March 2008.

It is no surprise to all members that the Rann government acted, and acted quickly, to make sure that those workers and the state were not disadvantaged by the closure of that facility. Together with the federal government, we announced an extensive package of support in the sale, to the amount of $30 million—which made the Leader of the Opposition laugh because that is how she thinks of workers getting any sort of support.

Members interjecting:

The SPEAKER: Order!

The Hon. A. KOUTSANTONIS: This fund is known as the South Australia Innovation Investment Fund (SAIIF). Round 1 of the fund—which the Leader of the Opposition thinks is very funny—was announced on 27 February 2009. About $11 million of that fund was provided to eight projects, stimulating over $51 million worth of private manufacturing investment and about 300 jobs. Are you going to laugh now? No.

Round 2 of the fund was announced on 20 November 2009. About $6 million was funded to eight projects, stimulating over $52 million worth of private manufacturing investment and creating a further 300 jobs. Is that funny as well? Is that funny too?

Mrs Redmond interjecting:

The SPEAKER: Leader of the Opposition!

The Hon. A. KOUTSANTONIS: This morning, at the SMR manufacturing plant at Lonsdale, along with the federal Minister for Innovation, Industry, Science and Research, Senator the Hon. Kim Carr, I had the privilege of announcing the grant recipients for the third and final round. The sheer diversity of the companies in this third round speaks for itself.

I am proud to announce the successful firms. They are: Clean Seas Tuna; Ezy-Fit Hydraulics; Hospira Adelaide; Numetrics; agricultural machinery company, PLB Australasia; REDARC Electronics and Robin Johnson Engineering; SAGE Automation; Trackside Intelligence; and the People's Republic of Animation.

I take this opportunity to thank SMR for hosting today's event. SMR is a global pioneer in high precision moulding and optical engineering. It is a proud and profitable arm of a corporate empire, supplying about 30 per cent of the global market's rear vision mirrors. The company is a testament to the enduring strength of Australian manufacturing. It is constantly evolving, constantly growing, constantly remaking itself for changing times.

It is the commitment to continually research, seek out innovation and change that ensures that high-value manufacturing continues to be one of the state's primary economic contributors. It is a credit to this government and the federal government, and with the hard work of those engineering firms, in that they innovate, take advantage of these cash incentives, and make more of it.

ROYAL ADELAIDE HOSPITAL

Dr McFETRIDGE (Morphett) (14:52): My question is again to the Treasurer. What is the additional cost to the government to fit out the new Royal Adelaide Hospital so that it is ready for patients, given that, according to the Macquarie Bank equity document, the builder is 'not responsible for the procurement of complex medical items'?

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for Mental Health and Substance Abuse, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (14:53): This was a question that was raised with me in the media, I think, about two weeks ago, so I guess it is par for the course that it would be raised in here about two weeks after the event.

Mr Marshall interjecting:

The SPEAKER: Order, the member for Norwood!

The Hon. J.D. HILL: As I informed the public on that occasion, under the arrangements we have through the PPP the hospital will be fitted out for basic stuff, including beds and all the things you would expect to find in a hospital. The complex medical equipment—MRIs and those kinds of bits of machinery—will be supplied by the state, as you would expect.

Under the PPP arrangements, the private contractor, or the private company, will be responsible for the non-clinical activities, including the fit-out of the hospital. The more complex, technical machinery will be done by the government. When we have reached a financial close we will be able to give all that information to the public.

SA WATER SURVEY

The Hon. I.F. EVANS (Davenport) (14:54): My question is to the Minister for Water. Why did SA Water award consultants NTF a $162,000 consultancy to undertake a survey on SA Water's customers' willingness to pay higher water prices for water infrastructure investment, including the new desalination plant, and why was this consultancy suddenly suspended after the government paid the consultant around $78,000?

The Hon. P. CAICA (Colton—Minister for Environment and Conservation, Minister for the River Murray, Minister for Water) (14:54): I haven't got that information here in front of me, but I will get a very fulsome answer and get back to the honourable member and the house with that answer.

AIR WARFARE DESTROYER

Mr HAMILTON-SMITH (Waite) (14:54): My question is to the Premier. Will a fourth air warfare destroyer be built in South Australia as he and federal Labor proffered in the last state and federal elections, and does he intend to raise the issue with the Prime Minister, Julia Gillard, during her current visit to SA?

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:54): I think I have made myself clear on many occasions that we would all like, I am sure in a bipartisan way, to see a fourth air warfare destroyer built in South Australia. It has never been on the drawing board plans of either the Howard government or the Labor government. However, we will continue to press for it.

Members interjecting:

The SPEAKER: Order! The member for Ashford!

Mr Williams interjecting:

The SPEAKER: Order! Member for MacKillop, you are warned for the third time. Next time, you will be out.

ACKNOWLEDGEMENT OF COUNTRY

The Hon. S.W. KEY (Ashford) (14:55): My question is to the Minister for Aboriginal Affairs and Reconciliation. Why is it important to observe the protocol of acknowledging traditional custodians at public events?

The Hon. G. PORTOLESI (Hartley—Minister for Aboriginal Affairs and Reconciliation, Minister for Multicultural Affairs, Minister for Youth, Minister for Volunteers, Minister Assisting the Premier in Social Inclusion) (14:55): I would like to thank the member for Ashford for her important question. An acknowledgement of country of the traditional custodians is a way that all of us can show respect for Aboriginal culture and heritage and the ongoing relationship that traditional custodians have with their land. Very simply, it shows respect.

The media reports today suggest that the new Premier of Victoria believes this practice may be too politically correct. Since when is being respectful political correctness? There is no doubt that the acknowledgement of country is a symbolic gesture, but that is the point: symbols in our community are extremely important. That is why we bow to you, Madam Speaker: it is a mark of respect as we enter this place. That is why we wear a red poppy, for instance, on Remembrance Day.

We know the acknowledgement of country is important because Aboriginal people have told us it is, and that is because it recognises—

Ms Chapman interjecting:

The SPEAKER: Order, the member for Bragg!

The Hon. G. PORTOLESI: That is because it recognises that the story of Australia goes further back than the 220 years of white settlement. It is important because if we are ever, as a community, to overcome racism and its ongoing effects, we must acknowledge our nation's history, as complex as it is. Here in South Australia, this government has for many years had protocols in place to acknowledge the traditional custodians, particularly at public events. We are very proud of this practice and we will continue to do this.

We are not alone in doing this. Local governments, the private sector and universities are all undertaking this practice. That is why I am deeply disappointed that the new Premier of Victoria has basically given permission and his endorsement for this practice to be scrapped in Victoria. This government is as committed as ever to maintaining this practice in South Australia because we need to, as a community, if we are ever to deal with our history in our community.

I urge all members in this place to reaffirm this commitment to the process of reconciliation, especially as we find ourselves on the eve of Reconciliation Week and Sorry Day. I also urge the Leader of the Opposition, who is not even bothering to listen to this important question, to set herself apart from her Victorian colleagues and publicly repudiate her Victorian colleagues. I ask the Leader of the Opposition to publicly repudiate Ted Baillieu, but she hasn't got the guts.

Members interjecting:

The SPEAKER: Order!

The Hon. G. PORTOLESI: Have you got the guts?

Members interjecting:

The SPEAKER: Order!

The Hon. G. PORTOLESI: Got the guts, Isobel?

Members interjecting:

The SPEAKER: Order! There are a lot of people wandering around. The member for Unley.

RIGHT BITE PROGRAM

Mr PISONI (Unley) (14:58): My question is for the Minister for Education. Will the minister explain why the government has cut funding to the Right Bite program which promotes healthy eating in schools?

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Education, Minister for Early Childhood Development, Minister for Science and Information Economy) (14:59): I think there is a bit of confusion about that.

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: I thank the honourable member for his question. I have heard this furphy raised before and I will get a more detailed answer and bring it back to the member. The Right Bite program has not been cut. There was a program that was put in place by the government in this area that had a particular lifespan, and that came to its natural end. The government is investing in a range of strategies in this area, and continues to invest in them, but I will bring a fuller answer back to the house so the honourable member can hear about that.

Of course, both the education portfolios and the health portfolios are working closely together to promote healthy eating behaviours in schools. Indeed, the OPAL program itself is directed very substantially at this issue, so there are a range of investments across both the health and the education portfolios which are directed at improving the quality of the nutrition that school kids get into their bodies.

There has been a range of policies at the level of the school which have assisted that, policies which have affected the sort of food that is available at canteens, and that has been a very powerful source of change for students. Of course, the public awareness campaign—which I understand is a health campaign—

The Hon. J.D. Hill: 5&2.

The Hon. J.W. WEATHERILL: 5&2, that's right—two pieces of fruit and five serves of vegetables a day. That is able to be presented graphically and is very easily understood by students, and there is evidence to suggest that that is having a significant effect on behaviour. So the resources that are going into this particular endeavour—that is, healthy eating—have been enhanced, and I think it is wrong to suggest there have been cuts, but I will bring back a fuller answer to the house.

RIGHT BITE PROGRAM

Mr PISONI (Unley) (15:01): Supplementary, Madam Speaker: will the education minister confirm that the savings made by cutting the Right Bite program will be reinvested back in the education system?

The SPEAKER: I'm not sure that that is a supplementary; I think it is probably a question.

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Education, Minister for Early Childhood Development, Minister for Science and Information Economy) (15:02): I am not accepting the premise of the question. I will bring back an answer to the house.

ADELAIDE FESTIVAL OF IDEAS

Ms THOMPSON (Reynell) (15:02): My question is to the Premier. Will the Premier update the house on the 2011 Adelaide Festival of Ideas?

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (15:02): They don't like ideas, do they? Even the word makes them squirm—

Members interjecting:

The SPEAKER: Order! Member for Norwood, you are warned for the third time.

The Hon. M.D. RANN: —which surprises me, because the Adelaide Festival of Ideas was founded in 1999, during the time of the previous Liberal government, so why would you all be booing and sneering and carrying on? It has very quickly established itself as an important biennial event on our cultural calendar. The Festival of Ideas celebrates innovation, creativity and intellectual pursuits—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —as central to our values and identity here in South Australia. Adelaide's Festival of Ideas was the first in the nation and has been followed by others both around Australia and in other parts of the world. Attendances at Adelaide's Festival of Ideas have grown to

over 35,000—you don't see many Liberals there, but never mind—and its success has attracted significant public support and national media attention.

In essence, the Adelaide Festival of Ideas gives big ideas and contemporary debates space for exploration. It is an event where innovative thinking and sharing of ideas is encouraged, and the public can engage with some of the world's most highly recognised thinkers across a wide range of topics. Speakers include international, national and local guests who are all experts in their fields.

Members interjecting:

The Hon. M.D. RANN: I can see it is angering, even though it occurred in their time, and they funded it, but, clearly, Diana Laidlaw was alone. I have this vision that the day she walked into the cabinet and said, 'I've got the next Festival director for you. His name is Peter Sellars,' and I reckon, around the room, they were all saying, 'We used to see him in the *Pink Panther* movies.'

I am pleased to inform the house that this year's Festival of Ideas will include an expanded footprint, which will extend beyond the traditional program of lectures and debates in North Terrace institutions to incorporate a second stream of programming based in and around the Adelaide Town Hall and the RiAus at the old Stock Exchange building. The festival's traditional winter dates will also shift, with 2011 events set to take place in the spring, from Friday 7 October to Sunday 9 October. The expanded program will include initiatives that will be less formal in nature and provide more interactive opportunities to explore ideas.

Some of the new offerings will include focus groups, speaker's corners, question and answer sessions, a mini-documentary screening program, live web streaming from festival events and pitching sessions involving presentations of innovative new ideas to key industry figures. This year will also mark the first Festival of Unpopular Culture—

An honourable member interjecting:

The Hon. M.D. RANN: —yes—an event that will run alongside the Adelaide Festival of Ideas. This new alternative festival will be held in venues across the West End of the city and will cater to young and emerging artists as well as creative thinkers. It will provide opportunities for panel discussions, artistic presentations and festivities around topics such as pop music, sport, spirituality, the environment, youth and politics.

Each year's Festival of Ideas has a theme. This year's theme will be 'planning for uncertainty'—sounds like a job for Liberal leaders of the opposition. The program will focus on a twist in what has been termed the 'two cultures debate', meaning that it will focus, not on the division between the arts and the sciences, but rather between those who are comfortable with doubt, probability and possibility and those who demand the promise of certainty.

Along with Adelaide's famous literary festival, Writers' Week—which will be annual from 2012—and the Adelaide Thinkers in Residence program, our Festival of Ideas brings great minds to Adelaide from around the world to challenge us with new ideas and insights and to engage us in public debate. It is part of the intellectual enrichment that is such an important part of South Australia's cultural life.

I know that a number of organisations are involved. The Don Dunstan Foundation, the Hawke Centre, the Australian Centre for Social Innovation, the Integrated Design Commission, the Centre for Muslim and Non-Muslim Understanding, the Goyder Institute, the RiAus and the Australian Science Media Centre are all examples of a government that invests in ideas. I am pleased that a number of these organisations will be taking part.

Members interjecting:

The Hon. M.D. RANN: You think the Goyder Institute for water is a waste of an idea; that is very interesting.

Members interjecting:

The SPEAKER: Order! There is too much background noise.

The Hon. M.D. RANN: The first round of speakers for 2011 includes behavioural economist and bestselling author Paul Ormerod who, of course, is a Vladimir Nabokov expert—

Ms Fox: Is he?

The Hon. M.D. RANN: —yes—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —and also literature revolution specialist, distinguished Professor Brian Boyd and human rights lawyer, Professor Sarah Joseph. It is interesting. The Leader of the Opposition has just declared that Di Laidlaw and the former government's Festival of Ideas is a waste of money; that is the difference.

Members interjecting:

The SPEAKER: Order! Far too much background noise. Member for Goyder.

ADELAIDE OVAL

Mr GRIFFITHS (Goyder) (15:08): My question is to the Premier. Will the Premier confirm that the government has already provided to the Stadium Management Authority at least $28 million for the Adelaide Oval project but that the government still cannot reveal the final design and cost of the project?

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (15:08): I can reveal that the final cost of the project, in terms of the government's commitment, at this moment and at this time—$535 million.

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: $535 million—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —which is a lot cheaper than the billion-dollar stadium that was promised by the Leader of the Opposition before the election, plus car parks underground—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —plus a railway system that would rival the Metro in Paris.

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: She found out—

An honourable member interjecting:

The Hon. M.D. RANN: No, they have got a metro; it goes underground; the trains run underground. She came back—it was going to be like the Big Dipper. It was going to go under the car parks, the multilevel car parks. So, there we go—$535 million, not $1 billion for the Liberal model. We will have 50,000 capacity, not the 38,000 capacity that the Leader of the Opposition supports for her billion-dollar design.

Members interjecting:

The SPEAKER: Order!

GRIEVANCE DEBATE

MOUSE PLAGUE

Mr PEDERICK (Hammond) (15:10): I rise today to talk about the mouse plague which has the ability to cripple South Australian farmers this season. It certainly had the potential to do the same thing to our farming community last year. Thankfully, last year, farmers had a reasonable season and got through with an over 10 million tonne harvest, a harvest that the government would like to benefit from by talking about the boom in agriculture this year.

Mouse plagues are a nasty business. I lived through one in 1993, after another big year in 1992. Mice were that bad through the Mallee and the Upper South-East, and throughout the state, but they were certainly in plague proportions throughout the Mallee. At night you got sick of them running over your face while you were sleeping. During that plague, many women from country areas either left and went to live in Adelaide if they had the opportunity, or put up mosquito nets around their beds to keep the mice out.

It was a disgusting situation. That year we managed to use strychnine which was mixed with wheat at regional mixing sites. Local councils got on board, and that was a fantastic product for killing a mouse. In fact, a mouse would live for about eight seconds after eating this bait; it was a direct hit. At the time I was living in the farmhouse and the only other occupant was my father. I was sick of him grumbling about the mice through the house and I said, 'Dad I will get rid of them but it is going to stink.' So, I used those little Vacola tin lids you get on the preserving jars, filled them up with strychnine, put them throughout the house and, I was right, I got rid of the mice and the place stank, but these are the things that people have had to do in the past.

Let me come forward to the last couple of years and the issues that farmers had last year. We have had meetings with the government over 12 months to talk about the issues of the cost of zinc phosphide and the commercial product called Mouseoff. The problem is that the product is $10 per hectare to apply, and many people are having to spend many tens of thousands of dollars to apply this product to their farming land to protect their freshly sown crops, because the mice just run up the rows and pull the grain out of the ground. The problem we have at the moment is that not only is it expensive but also it is almost impossible to get in places.

Applications have been put in by other companies like 4Farmers to bring in zinc phosphide, and to try to get clearances to mix on-farm with wheat. I am led to believe that you can mix zinc phosphide on-farm with wheat in other First World countries. So, I ask the question: why can't we do it here? I heard the comments from the Australian Pesticides and Veterinary Medicines Authority spokesman the other day, who indicated there is a potential health risk in allowing farmers to mix on-farm. Well, people need to be aware, and the government needs to be aware, that farmers have ChemCert accreditation. They are used to handling S7 chemicals. They are used to operating in the field with very dangerous chemicals, they have to be certified to do it, and they go through regular courses to keep up their accreditation.

The problem we have at the moment and what we are hearing anecdotally is that farmers are being forced to use off-label options. This is not good for anyone. It is not good for the farming community and it is not good for the Australian Pesticides and Veterinary Medicines Authority because they need, along with the state government, to get out in the real world and see what is happening out there, and to listen to the anecdotal stories, because farmers do not want to see their whole sowing program taken away by millions of rodents pulling their grain out of the ground.

We need to get a solution. I respect the fact that we have another meeting with minister O'Brien and minister Caica this afternoon, but we need to find a resolution for the state's farmers. Not only is it affecting grain farmers but the owner of one chicken shed in my area is spending $1,000 a week protecting their chickens from mice. Also, throughout regional areas there is the impact on schools, hospitals, other public buildings and housing. I wonder if we would have some more action if these mice were invading the homes of Springfield.

WOMEN IN POWER

Ms FOX (Bright) (15:15): I rise today to speak about women in power, but I would like to tell the member for Hammond that there is currently a mouse in my home.

Mr Pederick: One mouse?

Ms FOX: Yes, one mouse, and I can tell him right now it is very upsetting. The elevation of the Hon. Gail Gago to government leader in another place is something to be acknowledged and celebrated, and I congratulate her on becoming the most powerful Labor woman in this state. As the media has pointed out, she is now third in line in the cabinet hierarchy. Her elevation provides us with an opportunity to recognise the progressive role of female politicians in South Australia's legislative history. What I also wish to reflect upon is gender in politics and gender as a variable in political leadership.

Australians currently have more women political leaders than ever before—the Prime Minister Julia Gillard, the Queensland Premier Anna Bligh, the Tasmanian Premier Lara Giddings, and the newly elected ACT Chief Minister Katy Gallagher. In South Australia we have the

Hon. Gail Gago in another place, and, of course, we have Isobel Redmond here, who is the Leader of the Opposition.

Mr Marshall: The deputy leader.

Ms FOX: No, the deputy leader is not a woman.

Mr Marshall: In the upper house.

Ms FOX: That may be. It is both tempting and easy to dismiss the role of gender in politics because, so often, we hear people claim that they do not care who does a job as long as it is done well, but inherent in that statement are the underlying assumptions that society has about successful leadership. Deeply entrenched cultural values about women's attributes often collide with long-held views about leadership. One recent American study explored the assumptions embedded in society that men are rational and women emotional and thus irrational. Given the public's assumed preference for rational leaders, this stereotyping is a powerful barrier for female leaders.

How often have I heard in this place female members being described as 'pushy' or 'arrogant' while their male counterparts have been described as 'assertive' and 'focused'. Female MPs have their leadership legitimacy undermined by accusations of being too emotional, while their male counterparts are praised for their passion and commitment. While political ambition is expected from men in power, ambition in women can be perceived as slightly distasteful because ambition in women can violate widely-held concepts of what is feminine. The power of these symbols, this language and the purposes that it serves cannot and must not be ignored.

When Lara Giddings became Premier of Tasmania, some 48 hours of media speculation ensued not about her policies, potential or ideas but about her romantic life. One particularly noticeable headline read, 'Leftist Lara Giddings still looking for Mr Right'. Other female premiers and, indeed, the Prime Minister herself have been the focus of a number of stories about their emotional lives, their appearance and even, famously, the lack of fruit in their fruit bowls.

Discussing this matter in the intellectual hothouse which is this parliament this morning, it became apparent that women from all sides of politics are aware of the scrutiny, the double standards and the constant gender stereotyping. What we choose to do about it is another thing entirely. Trying to change these cultural beliefs, traditional media frameworks and current notions of femininity is an enormous task. Perhaps agreeing to publicly acknowledge it ourselves would be a start.

The Editor of *The Australian Women's Weekly*, Helen McCabe, has certainly taken that step. When the magazine's profile of Queensland Premier Anna Bligh led to criticism of the Premier's impeccable grooming, Ms McCabe said:

> Gee, it is tough being a female politician in this country. The Prime Minister [Julia Gillard] cops it because she doesn't always have perfect hair and make-up. And now Anna Bligh cops it because she did take the time to have [her] hair and make-up [done]. I look forward to the day when women are no longer a novelty in politics.

As the Deputy Speaker—and, indeed, the Speaker—I have discovered in this place that we receive responses and attitudes that I think we would not receive were we gentlemen—or, indeed, just men—and that is something I would like to point out in finishing.

DODGY DOCUMENTS

Mr HAMILTON-SMITH (Waite) (15:19): On Thursday 12 May, I was contacted by a journalist from *The Australian* who had been advised that a settlement had been reached between myself and the state of South Australia as defendants and minister Koutsantonis, Labor Party fundraiser and former senator Nick Bolkus, Labor Party secretary Michael Brown, and Labor Party treasurer John Boag as plaintiffs.

The case related to their claims that they had been defamed with regard to the use by the opposition of documents as the basis for questions and other statements; documents which turned out to have been forged by others. *The Australian* said it had been advised that a settlement sum had been paid by me and the state of South Australia, which was understood to be around $250,000. As that information has not come from me, I can only assume it came from another party involved in the matter, in circumstances of the terms of the settlement being subject to a confidentiality clause. This was a confidentiality clause not requested by me, but sought by others.

I can confirm that the matter has been resolved and that the plaintiffs have now discontinued their proceedings. I am extremely happy with the overall outcome and sincerely wish I

was able to explain why in detail. Although someone else appears to have leaked suggested information concerning the confidential settlement, I will not. However, I will say this: the people of South Australia expect their MPs to focus their efforts on bettering the state and not on squabbles and spats amongst politicians.

As a matter of principle, and save in exceptional circumstances, taxpayers find it distasteful when MPs run about suing each other instead of resolving their differences in the parliament, thus wasting their publicly-funded time and resources and instead of getting on with the job of bettering the lives of the South Australians who elected them. In cases where an honest mistake is made and there is a prompt apology, the public may well be furious when they see politicians and political party officials seeking money and large sums of costs from the state of South Australia, provided, essentially, by taxpayers. These are the taxes paid by hardworking people.

Unlike members of the general public, ministers and MPs have the privilege of sorting out their differences in the parliament. That includes representing concerns raised by political party officials. Parliament should always be the preferred course for resolving misunderstandings or disputes, not raiding the public purse. It was and remains a particular concern for me in the present case that we had a minister of the Crown seeking compensation and substantial costs from the state of South Australia. The people of South Australia can cast their judgement on that at the next election.

In this particular matter in 2009, the opposition asked questions based on documents that had been received, which were considered at the time to be a genuine leak from a senior Labor source. That turned out not to be so. Someone with access to Labor Party documentation had gone to a great deal of trouble to set up an elaborate forgery and to falsify a story. I was opposition leader. I did not seek to find scapegoats or to spread the blame to others. I accepted responsibility.

Part of the recent discussion on this matter has included criticism of a former member of my staff as being responsible for taxpayers' liability. The staff member, Kevin Naughton, is, and always has been, bound by the confidentiality provisions of his position in the opposition leader's office. He also has not been party in any of the legal actions because of his immunity from civil liability under section 74 of the Public Sector Management Act. As a result, he cannot defend himself against the recent pointed remarks of two government ministers and others who seek to background the media. Such attacks on his integrity are unfair and without foundation, but are part of what we have come to expect from the state Labor Party: a divided party, awash with scandal and dishonour, and which has lost its legitimacy in the eyes of most South Australians.

Those who can vote can decide themselves on the motivations and appropriateness—or otherwise—of the legal actions taken by those associated with the Labor Party. The only issue remaining about the dodgy documents saga is: who forged the documents? None of us yet know the answer to that question. I remain hopeful that we will in the future. The police investigation remains open and I would encourage anyone with information about this criminal act to take that information to the Commissioner of Police, Mal Hyde. I look forward to the perpetrators being caught. Their actions are a disgrace. They have demeaned our democracy and our parliament. They need to face the full force of both the criminal and the civil law, and on that day South Australia will be a better place.

LIGHT ELECTORATE

Mr PICCOLO (Light) (15:24): As members of the house would be aware, last week was National Volunteer Week and I spoke about volunteers in the community earlier this week. On Tuesday, and reported locally in the papers this Wednesday, an award was given to a constituent of mine, Mr Ian Skewes for police officer of the year. Today I would like to acknowledge not only Ian but also another person in my community whose work for Gawler and surrounding areas has been acknowledged through an award. Volunteers are very important to our community and I think we can never say enough about their contribution.

I wish to congratulate Senior Constable Ian Skewes who, on Tuesday night, was announced as a joint winner of one of the highest SAPOL awards: the Police Officer of the Year. To win, a police officer has to demonstrate high standards of professionalism in serving the community, as well as performing significant acts of courtesy, kindness, understanding or courage. Senior Constable Skewes has delivered in spades on all of those points in the Gawler and surrounding community for many years.

The award recognises his untiring work and leadership on a large number of committees and organisations in the Gawler area. His work includes fundraising and providing comfort for

distressed families, Neighbourhood Watch, working on the youth development program—the Duke of Edinburgh Award—and encouraging young SAPOL recruits through the Blue Light program. Under his leadership the local Blue Light program has really blossomed. His work in the Gawler area has already been recognised this year, when he and his wife, Suzie, were named joint 2011 Gawler Citizens of the Year. They did a remarkable job and they are a remarkable couple.

Senior Constable Skewes lives at Roseworthy and is based at the Nuriootpa local service area in my electorate. He began his career as a police officer in 1997 at age 40. He shared the police award with a close friend, Senior Constable Monique Anderson, from Whyalla. I would also like to congratulate the Unley branch of the Rotary club, which sponsors the award.

The other person I would like to acknowledge today and congratulate is Lisa Frahm, who works as a clinical midwife with great dedication at the Gawler hospital. Lisa's hard work, professionalism and commitment has seen her receive one of the 2011 nursing and midwifery excellence awards presented on 6 May 2011.

Midwives are trusted and respected because of the lasting difference they make to the lives of women, their families and communities. I would like to acknowledge the midwifery program at the Gawler Health Service which is highly regarded and very much supported, obviously, by women (and also their families) for the program and service it provides.

Lisa first registered as a midwife in 1993, and obtained a Masters of Midwifery in 2004, working as a midwife at Eudunda and Kapunda hospitals before commencing at the Gawler Health Service. She has a particular interest in continuity of care for women throughout their pregnancies, and has been working as a caseload midwife since 2009.

Lisa appreciates the opportunity to get to know women and their families throughout their pregnancies and birth. The increased satisfaction levels for Lisa and her clients have led to numerous compliments and two award nominations from grateful clients. She came to our attention when a member of our community came to my office to ensure that the Minister for Health and others were aware of her great work in Gawler.

Lisa works as part of the One on One program, which was established in 2009 in response to best-practice evidence about birth outcomes for women with a known midwife and which is based on the ideal that having the opportunity to develop a relationship between the client and the midwife improves satisfaction and outcomes during pregnancy, labour and early parenting. Lisa is a role model for the program and I, personally, would like to pass on my congratulations to her.

Lisa's work and professional approach is deeply appreciated by her clients, in particular for her efforts which go above and beyond the call of duty. Gerry Lloyd, Director of Nursing and Midwifery, and staff at the Gawler hospital are delighted with her nomination and her award—and also recognise that she is well supported by others in the area.

Lisa understands that this level of care cannot be provided by one person, and the high level support she receives from midwifery, medical and management colleagues is fully appreciated. As I mentioned, Lisa was nominated for two awards. She also received the Australian College of Midwives Johnson's Baby Midwife of the Year National Award for 2011, which further underlines the quality of her care. I congratulate Lisa, and also the Gawler Health Service, for their care of women in our community.

EASLING, MR T.

The Hon. I.F. EVANS (Davenport) (15:30): During the week, the member for Croydon has taken upon himself to use a couple of grievances to make comment about the government's supposed inquiry into the trial of Tom Easling. I want to comment in response to some of the issues raised by the member for Croydon so that the house has some balance in relation to that matter. Let's be quite clear. Mr Easling's lawyers wrote to the government, and the calls from the opposition were for an independent inquiry into—

The Hon. M.J. Atkinson: A royal commission.

The Hon. I.F. EVANS: —an independent inquiry—royal commission or judicial—into the investigation of Tom Easling. What the government produced was a government inquiry into the trial of Tom Easling. That is exactly what it is entitled. The Crown Solicitor was asked by the then attorney-general to conduct an inquiry into the trial of Tom Easling. The Crown Solicitor, of course, provided advice to the investigations unit of the Department for Families and Communities that conducted the original investigation into Tom Easling.

The same Crown Solicitor's Office, or the Crown Solicitor's department, was then asked to conduct a supposed independent inquiry into the very investigation that it had given legal advice to. Even I can see the conflict of interest about the same law office providing an independent inquiry into an investigation to which it provided legal advice. For the attorney not to see that conflict and for the Crown Solicitor's Office not to see that conflict makes you wonder how they missed such an obvious conflict.

One might question why the government chose to exclude from this particular inquiry undertaken by the Crown Solicitor all of the committal hearing transcript—hundreds of pages of it. The concern about that is simply this: there are a lot of conflicts in the transcripts—evidence given at the committal trial and evidence given at the main trial.

The Crown Solicitor's investigation totally ignored the committal trial evidence. So, any conflict between the committal trial and the main trial was conveniently ignored. How can you have a proper, independent inquiry of the issue if you deliberately set up the inquiry to ignore one total set of transcript evidence, the whole committal trial, that is in direct conflict with the main trial? Why would the government do that? I will tell you why the government would do that. Because it wanted a particular outcome. That is my view.

There is no other excuse for not considering the committal trial evidence, but, of course, the Crown Solicitor only looked at the particular transcript and the judge's summing up. No other documents, no-one was actually spoken to or interviewed—it was simply a desktop review, if you like, of that information.

The then attorney-general walked in on the last day of parliament before the election, having raised these matters over a long period of time, and tabled that report, so that he as attorney-general cannot be questioned on it at any future sitting of parliament. Then, to his great embarrassment, he had to step down as attorney-general after the election so that he is not ultimately questionable on the report anyway.

The reality is that the Easling lawyers and the opposition asked for an independent inquiry into the investigation. We get a government inquiry into the trial. So I have not commented on it very much because, frankly, it is not worth a lot of comment because it was not anywhere near the task that the opposition asked it to do.

You only had to be in the house yesterday to see the bias from the member for Croydon in relation to this issue. He was shaking about this issue, and if that was the mindset overseeing the administration of justice on this issue, then that is a sad day for the state. The reality is that I wrote to the then attorney-general saying that we wanted an inquiry and would he send out an instruction to stop any departments shredding any documents. I submitted an FOI later about whether the attorney had done that and, of course, he had not. Why would the attorney do that?

The reality is the former attorney-general turned the attorney-general's office from a legal office of great integrity in the state to political office of absurdity. There are lots of other issues, and I will go to one simple point: it is a travesty for this state that this government still maintains that when a witness is given money by the investigators and by the government—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order!

The Hon. I.F. EVANS: —that the government maintained that there was nothing wrong with the investigation.

The SPEAKER: Order! The member's time has expired.

Members interjecting:

The SPEAKER: Order! No quarrels.

Members interjecting:

The SPEAKER: Order, the member for Davenport and the member for Croydon!

The Hon. I.F. Evans interjecting:

The SPEAKER: Order! The member for Torrens.

JENNY RESERVE

Mrs GERAGHTY (Torrens) (15:35): Today I rise to talk about the efforts of two of my constituents to have reversed a decision of the City of Tea Tree Gully to sell off one of its local parks. The reserve is on the corner of Scot Road and Jenny Avenue at Dernancourt and was earmarked for sale along with a couple of other reserves in the Tea Tree Gully council area.

I was approached by a number of constituents regarding this proposed sale of Jenny Reserve, and they expressed their concern over loss of local open space. This is not the first time that this particular reserve has been threatened with sale. About 20 years ago, the same reserve was earmarked for sale. Some 20 years ago, when this occurred, the constituents actually raised the issue with the then state member John Klunder, and John assisted them with organising a petition, which I believe was subsequently tabled in this house and had over 100 signatures on it.

You can certainly understand that long-term residents in the area were concerned that the council was once again trying to flog off their reserve and, along with providing support to my constituents, I also sought the assistance of our local councillor for that area, Joy Ricci, who sat down with the residents and went through their concerns with them.

My constituents then went out and collected signatures for another petition and councillor Ricci, with the support of those residents, drafted a rescission motion that was put to council. The motion called for the sale of the Jenny Reserve to be reversed, and I believe that they collected about 100 signatures on that petition.

I am very pleased to say that councillor Joy Ricci, with the support of one of my constituents, Brian Trowbridge, who I think actually instigated the first petition 20 years ago, carried the day at last week's council meeting. Both Joy and Brian presented sincere and persuasive arguments to the council. As a result, councillor Ricci was able to gain the support of the majority of council members and have the rescission motion carried. Councillor Ricci said:

> The residents fought a hard battle for their reserve 23 years ago and it is causing them stress that they have to fight the battle again.

She went on to say:

> I'm 67—

referring to herself, and a most delightful 67 she is—

> and I can tell you, you don't want to fight battles you fought when you were 40 again. We are the council who put them through the ringer in 1988 and now we want to do it again.

Those who know councillor Ricci know how hard she works for her local community. Joy's recent efforts are to be commended particularly as she has been dealing with a death in her family, and most tragic those circumstances are.

I also wish to acknowledge the efforts of my local constituents, particularly Brian Trowbridge and his wife who brought the matter to my attention. They are to be commended for their efforts as they played a significant role in again saving Jenny Reserve from sale. Finally, the words of another local resident, Jenny Gully, I think, say it all. She says, 'I think it is a wonderful decision by council to take it off the list,' referring to Jenny Reserve. I think that indicates how strongly local people feel. I do hope that, having to revisit this issue 20 years later, in another 20 years—whoever the member is in 20 years, because I doubt it will be me—

Mr Williams: Oh, come on, Robyn. Somebody as popular as you?

Mrs GERAGHTY: Oh yes, in 20 years, I think I might have a few more aches and pains. I hope that they do not have to revisit this issue in 20 years. It is very important that we have little open spaces where residents can sit and commune with nature, and also for young children, where we can take them to a nice little reserve and let them run around and stretch their legs, particularly given that we have such small-sized blocks these days.

SAFE DRINKING WATER BILL

The Legislative Council agreed to the bill without any amendment.

CORONERS (REPORTABLE DEATH) AMENDMENT BILL

The Legislative Council agreed to the bill without any amendment.

WORK HEALTH AND SAFETY BILL

The Hon. M.F. O'BRIEN (Napier—Minister for Agriculture and Fisheries, Minister for Forests, Minister for Energy, Minister for the Northern Suburbs) (15:42): Obtained leave to introduce a bill for an act to provide for the health, safety and welfare of persons at work; to make consequential amendments to certain acts; to repeal the Occupational Health, Safety and Welfare Act 1986; and for other purposes. Read a first time.

The Hon. M.F. O'BRIEN (Napier—Minister for Agriculture and Fisheries, Minister for Forests, Minister for Energy, Minister for the Northern Suburbs) (15:43): I move:

That this bill be now read a second time:

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

Leave granted.

I introduce the *Work Health and Safety Bill 2011* into the House of Assembly today to meet South Australia's commitment to the national agreement to enact consistent occupational health and safety laws across all Australian jurisdictions to be operational by 1 January 2012. The Bill will enact the nationally agreed Model Work Health and Safety Act in this jurisdiction. It will be supplemented by Model Regulations and Model Codes of Practice that were recently the subject of a four month public consultation period. I am aware of local industry concerns about these draft regulations. A large number of comments were received and concerns raised during the public consultation, and Safe Work Australia is now putting its resources into carefully considering those comments, with a view to producing a revised set of Model Regulations and Codes of Practice. These revised regulations and Codes will be available in the coming months.

National harmonisation of occupational health and safety laws has been on the agenda of successive governments for over 20 years. The Bill represents the culmination of many years of multilateral and tripartite engagement and discussion between the Commonwealth, State and Territory governments, business, union and employer groups. Compromises were made by all parties involved to ensure that the overall objective of enacting harmonized laws by 2012 could be achieved.

Momentum continues to build towards nationwide adoption of the Model Work Health and Safety Act. The New South Wales and Queensland governments have already introduced legislation to enact the Model Act in those states, with legislation already passing the lower house in New South Wales. The Commonwealth intends to introduce the Model Act in the winter session of the Parliament. Other States and Territories are also on track to deliver on the national commitment to enact consistent laws to be operational by 1 January 2012.

Key South Australian stakeholders have been involved at every step in the process towards harmonisation through the SafeWork SA Advisory Committee, and through other consultative forums.

Harmonisation of work health and safety laws will bring many benefits to South Australian businesses, employers, workers and unions through the creation of a single, nationally consistent and modernised legislative regime.

Research and modelling by Access Economics has identified that the most significant cost to business from the existing occupational health and safety system arises from the duplication required to comply with regulatory differences across multiple jurisdictions. With the implementation of a nationally harmonised system, this duplication will be removed, and there will be consistent regulations across the country.

Business will benefit from a national system through reduced complexity and red tape. Employers will also benefit from greater certainty and a simplified system of legislation.

Workers will benefit from the enhanced protection provided by modernised laws and rights that are easier to understand and apply. For example, the Bill recognises the changing face of the workplace, and does not rely on the traditional concepts of employer and employee. This means greater fairness, as all workers will have access to the same rigorous system of workplace health and safety regulation, wherever they are in Australia, and irrespective of whether they are employees, labour-hire workers or contractors.

The new system will improve transferability of permits, licences and training qualifications across State and Territory borders. This means that workers' safety-related qualifications and training will be recognised wherever they work in Australia. This will assist in the mobility of individual workers, and the Australian workforce as a whole.

The enactment of the Bill will further enhance South Australia's efforts in meeting the important objective in the State's Strategic Plan of reducing the rate of workplace injury and fatality, as well as national targets for safer workplaces. The Bill also contains a number of important policy innovations that will assist governments, businesses and workers to achieve safe, healthy and productive workplaces.

The Bill is an example of co-operative federalism, and demonstrates what can be achieved when all levels of government work together. This legislative approach is also innovative in the OHS area because it creates a national occupational health and safety system while at the same time maintaining the important role of democratic oversight by this Parliament.

On 1 February 2008, through the leadership of the Federal Labor Government and then Federal Workplace Relations Minister Julia Gillard, the Workplace Relations Ministerial Council (WRMC) agreed to a Commonwealth

proposal to develop model occupational health and safety laws to be enacted in each jurisdiction, to create a nationally harmonised system.

In July 2008, South Australia signed, along with other States and Territories, the Intergovernmental Agreement for Regulatory Reform in Occupational Health and Safety (the IGA). Part of what was agreed in the IGA was the establishment of a national OHS body, and in September 2009, Safe Work Australia was formally established by an Act of the Commonwealth Parliament. Safe Work Australia is a national authority with representation from each State and Territory, and with employer and employee representatives.

The development of the model laws followed a comprehensive review of Australia's OHS laws by a review panel of independent OHS experts. The National Review into Occupational Health and Safety Laws consulted widely with business, employer and union groups, took submissions from the public, and made a number of detailed recommendations. Following this review, Safe Work Australia commenced the development of the Model Work Health and Safety Act (the Model Act). The resulting national consultation process concluded with the finalisation of the Model Act, endorsed by the WRMC on 11 December 2009.

Importantly, the WRMC resolved that the model laws would come into effect in each jurisdiction by 1 January 2012. Here in South Australia, local consultation in the development of the Bill has also been extensive. Stakeholders contributed to the public consultation on the Model Act exposure draft through the SafeWork SA Advisory Committee, which is a tripartite body representing business, employer and union groups. Many South Australian business, employer and union groups also made separate submissions to both the national review process and during the public comment period for the Model Act.

The Model Act contained a number of jurisdictional notes which allowed jurisdictions to include provisions to ensure its operation within the relevant legal, judicial and other local frameworks. Those parts of the Bill that are specific to South Australia have been drafted and developed in close consultation with the Safe Work SA Legislative Development Committee, a tripartite sub-committee of the SafeWork SA Advisory Committee. Organisations directly affected by the jurisdictional notes relating to local administrative and judicial arrangements have also been directly consulted. These include the Industrial Relations Court and Commission of South Australia, the Attorney-General's Department and WorkCover SA.

The Bill establishes a legal framework based on concepts we are very familiar with in South Australia. These include the establishment of duties of care for individuals and organisations that engage workers, the requirement to consult with workers on matters relating to health and safety, and criminal penalties for conduct which risks health and safety in a workplace. The duties are all based on a standard of what is reasonably practicable with a definition of that term included in the Bill.

The Bill requires officers of duty-holding organisations to exercise due diligence to ensure that their organisations comply with their duties. This requirement is consistent with the duty of officers under current South Australian OHS and industrial law.

Importantly, volunteers are immune from prosecution for offences committed under the Bill in their capacity as an officer. This is an important protection for those performing socially valuable work to the community, and enables them to undertake that work in good faith, without fear of prosecution.

Additionally, the Bill provides for the election of Health and Safety Representatives (HSRs). When appropriately trained, Health and Safety Representatives are empowered to take action for the health and safety of those around them by effecting a cessation of unsafe work, and issuing provisional improvement notices. Provisional improvement notices will be required to be confirmed by the regulator, to ensure greater accountability and oversight.

The Bill encourages the productive involvement of workers and employers in ensuring health and safety by the establishment of Health and Safety Committees.

The Bill also introduces new and innovative approaches to enforcement, and tougher penalties, to allow Government to enforce compliance and punish those who threaten the health and safety of others at work.

The concept of 'enforceable undertakings' is one such innovation. Enforceable undertakings offer flexibility to the regulator to deal with breaches of the provisions of the Bill, without compromising the health and safety of our workplaces. Enforceable undertakings enable a person conducting a business or undertaking, who is suspected of a breach, to enter into an undertaking with the agreement of the regulator. The undertaking is capable of enforcement in court, and a breach of an undertaking attracts severe penalties. This innovation provides the regulator with an additional tool to enforce compliance, without the need for costly and time-consuming litigation.

Enforceable undertakings have been used with positive effect in other jurisdictions, such as Queensland. A recent study by a Griffith University research team confirmed the effectiveness of this innovative measure, and their introduction gives our regulator the option of using them here. Serious breaches of the Model Act, involving reckless conduct which risks health and safety, will continue to be prosecuted and punished.

The Bill imposes strong penalties for a breach or contravention. Three categories of penalty are introduced, based on the degree of culpability, risk and harm. The highest category of offence, involving proven recklessness, attracts a maximum fine of $3 million for bodies corporate, and for individuals, a maximum fine of $300,000 or a maximum of five years imprisonment or both.

The penalties are higher than those currently in place in South Australia, and demonstrate the Government's commitment to punish the very small minority of employers and businesses who disregard the health and safety of their workforce. The severity of the penalties reflects the strength of this legislation as a deterrent to reckless conduct that endangers health and safety.

The Bill establishes a primary duty to ensure as far as reasonably practicable the health and safety of workers. The test of reasonable practicability is important, because it places that duty in the context of what a reasonable person could have foreseen as a risk to the health and safety of a worker, and encompasses reasonable action by a person to mitigate that risk. It allows a duty holder to demonstrate that they did all that could reasonably have been done to avoid any risk to the health and safety of a worker.

The Bill defines a worker widely, to provide protection to people who may be engaged on a site under the direction of a duty holder but who are not directly engaged by that duty holder.

The Bill also imposes duties on persons who manage or control workplaces; persons who manage or control fixtures, fittings or plant at workplaces; persons who design, manufacture, import or supply plant, substances or structures; and persons who install, construct or commission plant or structures. In terms of outcome, the Bill is consistent with the duties established under current South Australian OHS laws.

In another policy innovation, the Bill recognises the changing workplaces of the 21st century by defining the primary duty holder as a *person conducting a business or undertaking*. Under this more comprehensive definition, a person holding a duty includes a body corporate, an unincorporated body, or a partnership.

The definition applies to activities whether they are conducted alone or together with others, for profit or not for profit and with or without the engagement of workers. The intention of the provision is to cover a broad range of work relationships and business structures. Importantly, it does not extend to a person's private or domestic activities, or to volunteer associations as they are defined in the Model Act.

The concept of a *person conducting a business or undertaking* will provide greater certainty about workplace duties by removing the ambiguity around responsibilities between a principal contractor and subcontractors, for example.

The Government is committed to harmonious workplaces, built on good communication and consultation. There is no doubt that when workers and employers cooperate, they can achieve safer and more productive workplaces. The Bill requires a person conducting a business or undertaking to consult with workers so far as is reasonably practicable. Guidance is provided to businesses, workers and employers through a definition of what consultation is, as well as how and when it should be undertaken.

The Bill provides for a limited right of entry by union officials for the purposes of investigating a suspected contravention. This is new to South Australia. However, the right is consistent with that of the federal *Fair Work Act 2009*. Indeed, a union official may not be issued with a WHS entry permit unless he or she holds or will hold a *Fair Work Act 2009* entry permit or equivalent permit under state industrial relations law.

Processes familiar to South Australia will remain, including a continuing role for industrial magistrates, tripartite Review Committees, and the important role of the SafeWork SA Advisory Committee.

The Industrial Relations Commission of South Australia will be empowered as the authorising authority to issue WHS entry permits. The Commission will ensure that only those officials entitled to a permit are issued with one, and will be empowered to suspend or revoke such a permit in the case of abuse by a WHS entry permit holder.

The Bill has been drafted to ensure that the local, tripartite consultation processes presently in place in South Australia will continue. These successful, local processes ensure the representation of business, employer and union groups in the development of OHS policy and legislation, and the administration of SafeWork SA's compliance and enforcement activities.

The Bill also enables the creation of regulations which will deal with risks relevant to specific industries and sectors of the workforce.

The Government, through SafeWork SA, will assist businesses, employers and workers to ensure they are ready for this new compliance regime. As well as this, there will be national co-ordination of operational policies and guidelines amongst State, Territory and Commonwealth regulators, to ensure that businesses, employers and workers benefit from a fair and consistent approach to implementation across Australia.

The Heads of Workplace Safety Authorities, comprised of the leaders of each State and Territory OHS regulator, as well as Safe Work Australia, have established a number of national project groups to co-ordinate a nationally consistent approach to the implementation of the new laws, and SafeWork SA is actively participating.

To support this effort to ensure nationally consistent application of the harmonised laws, SafeWork SA has established an internal WHS Harmonisation Implementation Group to effectively manage the implementation of the nationally harmonised system in South Australia's inspectorate.

To complement this, SafeWork SA will also deliver an externally-focussed implementation and communication strategy, to inform South Australian stakeholders and the community of the impact of the new, nationally harmonised system of laws, regulations and codes of practice. The strategy will make use of new and innovative means of social communications, and will incorporate the use of the SafeWork SA web site; media releases and magazine articles in business, industry and union publications; advertisements in the print media; public information forums and other publications and guidance material.

The aim is to provide a smooth transition, recognising the specific needs of all of those affected by the changes.

The Bill will ensure less complexity and red tape for business, more certainty for employers and those who engage workers, and through this, provide enhanced protection for workers wherever they work. The Bill will ensure greater mobility of the Australian workforce, and less duplication of regulation between States and Territories.

Through the inclusion of many policy innovations, the Bill strengthens the capacity of regulators to work with businesses and workers to improve health and safety, and reduce the tragedy of workplace death and injury. The Bill will establish South Australia's participation in a nationally consistent system of work health and safety regulation, while at the same time maintain the democratic oversight of this parliament, and the successful model of local, tripartite consultation in this state. The Bill is strong, flexible, innovative and fair, and demonstrates what can be achieved through a mature, co-operative federalism. I am proud to introduce this Bill into the House of Assembly to maintain the momentum towards implementing this important national agreement to harmonise occupational health and safety laws.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

Division 1—Introduction

1—Short title

This clause is formal.

2—Commencement

Clause 2 provides for commencement of the measure on a day to be fixed by proclamation.

Division 2—Object

3—Object

Clause 3 sets out the main object of the proposed Act, which is to provide a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by the means set out in the clause.

Clause 3(2) extends the object of risk management set out in clause 3(1)(a) by applying the overriding principle that workers and other persons should, so far as is reasonably practicable, be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work.

Division 3—Interpretation

Subdivision 1—Definitions

4—Definitions

Clause 4 includes a dictionary of terms used in the proposed Act. Key definitions are explained below in alphabetical order.

The term *authorising authority* is defined to mean the Industrial Relations Commission of South Australia.

The term *compliance powers* is used throughout the proposed Act as a short-hand way of referring to all of the functions and powers of WHS inspectors under the proposed Act.

The *Department* is the administrative unit of the Public Service that is responsible for the administration of the Act.

The term *employee record* takes its meaning from the *Privacy Act 1988* of the Commonwealth.

The term *health* is defined to clarify that it is used in its broadest sense and covers both physical and psychological health. This means that the proposed Act covers psychosocial risks to health like stress, fatigue and bullying.

The term *import* is defined to mean importing into the jurisdiction from outside Australia. This means that interstate movements are excluded from the definition. It is not intended to capture any movement of goods to or from the external territories as defined by the *Acts Interpretation Act 1901* of the Commonwealth.

The *IRC* is the Industrial Relations Court of South Australia.

A *local authority* is a council under the *Local Government Act 1999*;

The term *officer* is defined by reference to the 'officer' definitions in section 9 of the *Corporations Act 2001* of the Commonwealth, but does not include a partner in a partnership. It also includes 'officers' of the Crown within the meaning of clause 247 and 'officers' of public authorities within the meaning of clause 252. All of these 'officers' owe the officers' duty provided for in clause 27, subject to the volunteers' exemption from prosecution in clause 34.

The term *plant* is defined broadly to cover a wide range of items, ranging from complex installations to portable equipment and tools.

The definition includes 'anything fitted or connected', which covers accessories but not other things unconnected with the installation or operation of the plant (e.g. floor or building housing the plant).

The *regulator* is the Executive Director. The *Executive Director* is the person for the time being holding, or acting in, the position of Executive Director of that part of the Department that is directly involved in the administration and enforcement of the Act.

The term *volunteer* is defined to mean a person who acts on a voluntary basis, irrespective of whether the person receives out-of-pocket expenses. Whether an individual is a 'volunteer' for the purposes of the Act is a question of fact that will depend on the circumstances of each case.

'Out-of-pocket expenses' are not defined but should be read to cover expenses an individual incurs directly in carrying out volunteer work (e.g. reimbursement for direct outlays of cash for travel, meals and incidentals) but *not* any loss of remuneration. Any payment over and above this amount would mean that the person was not a volunteer for the purposes of the Act and the volunteers' exemption would not apply. For example, a director of a body corporate that received money in the nature of directors' fees would not be covered by the volunteers' exemption.

Subdivision 2—Other important terms

5—Meaning of *person conducting a business or undertaking*

The principal duty holder under the proposed Act is a 'person conducting a business or undertaking' (PCBU).

Clause 5 provides that a person may be a PCBU whether—

- the person conducts a business or undertaking alone or with others (e.g. as a partner in a partnership or joint venture) (clause 5(1)(a)); or
- the business or undertaking is conducted for profit or gain or not (clause 5(1)(b)).

The term 'person' is defined in the *Acts Interpretation Act 1915* to include bodies corporate.

To ensure consistency, clause 5(2) makes it clear that the term covers partnerships and unincorporated associations.

Clause 5(3) clarifies that PCBU duties and obligations under the Act fall on each partner of a partnership. This means each partner could be prosecuted in his or her capacity as a PCBU and the relevant penalty for individuals would apply.

Who is a PCBU?

The phrase 'business or undertaking' is intended to be read broadly and covers businesses or undertakings conducted by persons including employers, principal contractors, head contractors, franchisors and the Crown.

Running a household

The proposed Act will cover householders where there is an employment relationship between the householder and a worker.

However, the following kinds of persons are not intended to be PCBUs:

- individuals who carry out domestic work in and around their own home (e.g. domestic chores etc);
- individual householders who engage persons other than employees for home maintenance and repairs in that capacity (e.g. tradespersons to undertake repairs);
- individual householders who organise one-off events such as dinner parties, garage sales, lemonade stalls etc.

PCBU duties do not apply to workers or 'officers'

Clause 5(4) clarifies that a worker or officer is not, solely in that capacity, a PCBU for the purposes of the Act.

PCBU duties do not apply to elected members of local authorities

Clause 5(5) provides that an elected member of a local authority is not a PCBU in that capacity for the purposes of the Act.

Exclusions

Clause 5(6) allows the regulations to exclude prescribed persons from application of the Act, or part of the Act.

The duties and obligations under the Act are placed on 'persons conducting a business or undertaking'. This is a relatively new concept to work health and safety and is currently only used in two jurisdictions in Australia. An exemption contemplated by clause 5(6) may be required to remove unintended consequences associated with the new concept and to ensure that the scope of the Act does not inappropriately extend beyond work health and safety matters. For example, regulations could be made to exempt—

- prescribed agents from supplier duties under the Act (the duties would instead fall to the principal); and
- prescribed 'strata title' bodies corporate from PCBU duties under the Act.

'Volunteer associations' not covered by Act

Clause 5(7) excludes 'volunteer associations' from PCBU duties and obligations under the Act. Volunteer associations are only excluded if they have one or more community purposes and they do not have any employees

(e.g. employed by one or more of the volunteers) carrying out work for the association (clause 5(8)). Hiring a contractor (e.g. to audit accounts, drive a bus on a day trip etc) would not, however, jeopardise exempt status under this provision.

Volunteer associations with one or more employees owe duties and obligations under the Act to those employees and to any volunteers who carry out work for the association.

The term 'community purposes' is not defined in the Act but is intended to cover purposes including—

- philanthropic or benevolent purposes, including the promotion of art, culture, science, religion, education, medicine or charity, and
- sporting or recreational purposes, including the benefiting of sporting or recreational clubs or associations.

6—Meaning of *supply*

Clause 6 defines the term 'supply' broadly to cover both direct and indirect forms of supply, such as the sale, re-sale, transfer, lease or hire of goods in a company that owns the relevant goods. A 'supply' is defined to occur on the passing of possession of a thing from either a principal or agent to the person being supplied.

The term 'possession' is not defined but should be read broadly to cover situations where a person has any degree of control over supply of the thing.

A supply of goods does not include—

- sale of goods by an agent who never takes physical custody or control of the thing (see below)—the principal is the supplier in those circumstances; or
- the return of goods to their owner at the end of a lease or other agreement (clause 6(3)(a)); or
- any other kind of supply excluded by the regulations (clause 6(3)(b)).

Supply involving a 'financier'

Clause 6(4) excludes passive financing arrangements from the definition of 'supply'. This means that the suppliers' duty under the Act would not apply to a financier who, in the course of his or her business as a financier, acquires ownership or some other kind of right in plant, a substance or a structure for or on behalf of a customer. Action not taken on behalf of the customer would however attract the duty (e.g. on selling the specified plant, substance or structure at the conclusion of a financing arrangement).

If the exemption applies, clause 6(5) provides that the suppliers' duty instead applies to the person (other than the financier) who had possession of the goods immediately before the financier's customer.

7—Meaning of *worker*

The Act adopts a broad definition of 'worker' instead of 'employee' to recognise the changing nature of work relationships and to ensure health and safety protection is extended to all types of workers.

Clause 7 defines the term *worker* as a person who carries out work in any capacity for a PCBU, including work in any of the capacities listed in the provision. The examples of workers in the provision are illustrative only and are not intended to be exhaustive. That means that there will be other kinds of workers covered under the Act that are not specifically listed in this clause (e.g. students on clinical placement and bailee taxi drivers).

The term 'work' is not defined in the Act but is intended to include work, for example, that is carried out—

- under a contract of employment, contract of apprenticeship or contract for services; or
- in a leadership role in a religious institution, as part of the duties of a religious vocation or in any other capacity for the purposes of a religious institution; or
- as an officer of a body corporate, member of the committee of management of an unincorporated body or association or member of a partnership; or
- as practical training as part of a course of education or vocational training.

Clause 7(2) is included for the avoidance of doubt only. This subclause clarifies that a police officer is a 'worker' for purposes of the Act, while on duty or lawfully performing duties as a police officer.

Clause 7(3) clarifies that a self-employed person may simultaneously be both a PCBU and a worker for purposes of the Act.

8—Meaning of *workplace*

Clause 8 defines *workplace* broadly to mean a place where work is carried out for a business or undertaking. It includes any place where a worker goes, or is likely to be, while at work (e.g. areas like corridors, lifts, lunchrooms and bathrooms).

This definition is a key definition that in many ways defines the scope of rights, duties and obligations under the Act.

For example, the term 'workplace' is used in the primary duty under the Act and extensively throughout the Act. Parts 9 and 10 of the Act give extensive powers to WHS inspectors to conduct inspections, to require production

of documents and answers to questions (clause 171), to seize certain things at workplaces for examination and testing or as evidence (clause 175) and to direct that a workplace not be disturbed (clause 198).

Clause 8(2) is an avoidance of doubt provision that clarifies that a 'place' should be read broadly to include things like vehicles, ships, off-shore units and platforms.

Clause 8(2)(b) clarifies that a place includes any waters and any installation on land, on the bed of any waters or floating on any waters.

No requirement for an immediate temporal connection

A 'workplace' is a place where work is performed from time to time and is treated as such under the Act even if there is no work being carried out at the place at a particular time.

In other words, there is no requirement for an immediate temporal connection between the place or premises and the work to be performed: see *Telstra Corporation Ltd v Smith* [2009] FCAFC 103. That is because the main object of the Act is to secure the health and safety of workers at work as well as others who are in the vicinity of a workplace. A place does not cease being a workplace simply because there is no work being carried out at a particular time.

This means for example that a shearing shed used for shearing only during the few weeks of the shearing season does not cease to be a workplace outside of the shearing season and a department store does not cease to be a workplace when it is closed overnight.

9—Examples and notes

This clause provides that an example or note at the foot of a provision forms part of the Act.

Division 4—Application of Act

10—Act binds the Crown

This Division deals broadly with the application of the Act to the Crown and also beyond the territorial boundaries of the relevant jurisdiction.

This Division also allows for provisions to deal with the relationship between the Act and other Acts.

Clause 10 provides for the Crown to be bound by the Act and clarifies that the Crown is liable for an offence against the Act. This clause makes it clear that the 'Crown shield' that would otherwise provide immunity against prosecution for the Crown does not apply.

11—Extraterritorial application

The Act is intended to apply as broadly as possible but in a way that is consistent with the national work health and safety framework and the legislative power of the State. This means that some provisions will have some extra-territorial application.

For example, it is intended that the Act apply to all PCBUs who operate South Australian registered ships out of the State, subject to Commonwealth maritime work health and safety laws. To the extent that there is overlap between the laws of jurisdictions (e.g. where a South Australian ship is in the coastal waters of another State or the Northern Territory), the principles of double jeopardy would preclude conviction for a criminal offence in respect of conduct for which a person had already been convicted of an offence.

Importantly, inspection powers (Parts 9 and 10) and powers of inquiry (Part 7) would not have any extra-territorial application to workplaces outside the jurisdiction.

12—Scope

Clause 12 provides that the provisions of the Act are in addition to and do not derogate from the provisions of any other Act. The provisions of the Act do not limit or derogate from any civil right or remedy. Compliance with the Act does not necessarily indicate that a common law duty of care has been satisfied.

Application to public health and safety

The primary purpose of the Act is to protect persons from work-related harm. The status of such persons is irrelevant. It does not matter whether they are workers, have some other work-related status or are members of the wider public. They are entitled to that protection. At the same time, the Act is not intended to extend such protection in circumstances that are not related to work. There are other laws, including the common law, that require such protection and provide remedies where it is not supplied.

The duties under the Act are intended to operate in a work context and will apply where work is performed, processes or things are used for work or in relation to workplaces. It is not intended to have operation in relation to public health and safety more broadly, without the necessary connection to work.

These elements are reflected in the model Act by the careful drafting of obligations and the terms used in the Act and also by suitably articulated objects.

The intention is that further, nationally consistent guidance about the application of the work health and safety laws to public safety be made available by the regulator.

Part 2—Health and safety duties

Division 1—Introductory

Subdivision 1—Principles that apply to duties

13—Principles that apply to duties

14—Duties not transferrable

15—Person may have more than one duty

16—More than one person can have a duty

This Subdivision sets out the principles that apply to all duties under the Act, including health and safety duties in Part 2, incident notification duties in Part 3 and the duties to consult in Divisions 1 and 2 of Part 5. They also apply to the health and safety duties that apply under the regulations.

These clauses provide that duties under the Act are non-transferable. A person can have more than one duty and more than one person can concurrently have the same duty.

Clause 16(2) provides that each duty holder must comply with that duty to the required standard even if another duty holder has the same duty. If duties are held concurrently, then each person retains responsibility for his or her duty in relation to the matter and must discharge the duty to the extent to which the person has capacity to influence or control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity (clause 16(3)).

In formulating these principles, the Act makes it clear that—

- a person with concurrently held duties retains responsibility for the duty and must ensure that the duty of care is met; and
- the capacity to control applies to both 'actual' or 'practical' control; and
- the capacity to influence connotes more than just mere legal capacity and extends to the practical effect the person can have on the circumstances; and
- where a duty holder has a very limited capacity, that factor will assist in determining what is 'reasonably practicable' for the person in complying with his or her duty of care.

The provisions of the Act do not permit, directly or indirectly, any duty holders to avoid their health and safety responsibilities.

Proper and effective coordination of activities between duty holders can overcome concerns about duplication of effort or no effort being made.

17—Management of risks

Clause 17 specifies that a duty holder can ensure health and safety by managing risks, which involves—

- eliminating the risks, so far as is reasonably practicable; and
- if not reasonably practicable—to minimise the risks, so far as is reasonably practicable.

Subdivision 2—What is reasonably practicable

18—What is *reasonably practicable* in ensuring health and safety

The standard of 'reasonably practicable' has been generally accepted for many decades as an appropriate qualifier of the duties of care in most Australian jurisdictions. This qualifier is well known and has been consistently defined and interpreted by the courts.

'Reasonably practicable' represents what can reasonably be done in the circumstances. Clause 18 provides meaning and guidance about what is 'reasonably practicable' when complying with duties to ensure health and safety under the Act, regulations and codes of practice. To determine what is (or was at a particular time) reasonably practicable in relation to managing risk, a person must take into account and weigh up all relevant matters, including—

- the likelihood of the relevant hazard or risk occurring; and
- the degree of harm that might result; and
- what the person knows or ought reasonably to know about the hazard or risk and the ways of eliminating or minimising the risk; and
- the availability and suitability of ways to eliminate or minimise the risk.

After taking into account these matters, only then can the person consider the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

Division 2—Primary duty of care

19—Primary duty of care

This Division specifies the work health and safety duties for the Act. Generally the provisions identify the duty holder, the duty owed by the duty holder and how the duty holder must comply with the duty.

The changing nature of work organisation and relationships means that many who perform work activities do so under the effective direction or influence of someone other than a person employing them under an employment contract. The person carrying out the work—

- may not be in an employment relationship with any person (e.g. share farming or share fishing or as a contractor working under a contract for services); or
- may work under the direction and requirements of a person other than his or her employer (as may be found in some transport arrangements with the requirements of the consignor).

For these reasons, the Act provides a broader scope for the primary duty of care, to require those who control or influence the way work is done to protect the health and safety of those carrying out the work.

Clause 19 sets out the primary work health and safety duty which applies to PCBUs.

The PCBU has a duty to ensure, so far as is reasonably practicable, the health and safety of workers that are—

- directly engaged to carry out work for the PCBU's business or undertaking; or
- placed with another person to carry out work for that person; or
- influenced or directed in carrying out their work activities by the person,

while the workers are at work in the business or undertaking.

Duties of care are imposed on duty holders because they influence one or more of the elements in the performance of work and in doing so may affect the health and safety of themselves or others. Duties of care require duty holders—in the capacity of their role and by their conduct—to ensure, so far as is reasonably practicable, the health and safety of any workers that they have the capacity to influence or direct in carrying out work.

Primary duty of care not limited to physical 'workplaces'

The primary duty of care is tied to the work activities wherever they occur and is not limited to the confines of a physical workplace.

Duty extends to 'others'

Clause 19(2) extends whom the primary duty of care is owed to beyond the PCBU's workers to cover all other persons affected by the carrying out of work. It requires PCBUs to ensure, so far as is reasonably practicable, that the health and safety of all persons is not put at risk from work carried out as part of the business or undertaking.

This wording is different to that used in clause 19(1). Unlike the duty owed to workers in clause 19(1), the duty owed to others is not expressed as a positive duty, as it only requires that persons other than workers 'not [be] put at risk'.

However, the general aim of both clauses 19(1) and (2) is preventative and both require the primary duty of care to be discharged by managing risks (see clause 17).

Specific elements of the primary duty

Clause 19(3) outlines the key things a person must do in order to satisfy the primary duty of care. The list does not limit the scope of the duties in clauses 19(1) and (2).

PCBUs must comply with the primary duty by ensuring, so far as is reasonably practicable, the provision of the specific matters listed in the subclause, or that the relevant steps are taken. This means that compliance activities can be undertaken by someone else, but the PCBU must actively verify that the necessary steps have been taken to meet the duty.

Where there are multiple duty holders in respect of the same activities, a PCBU may comply with the duty of care by ensuring that the relevant matters are attended to.

For example, a PCBU may not have to provide welfare facilities if another PCBU is doing so. However, the PCBU must ensure that the facilities are available, accessible and adequate.

Duty in relation to PCBU-provided accommodation

Clause 19(4) requires workers' accommodation provided by a PCBU to be maintained, so far as is reasonably practicable, so that the worker occupying the premises is not exposed to risks to health and safety. This duty only applies in relation to accommodation that is owned by or under the management or control of the PCBU, in circumstances where the occupancy is necessary for the purposes of the worker's engagement because other accommodation is not reasonably available.

Self-employed persons

Clause 19(5) deals with the situation where a self-employed person is simultaneously both a PCBU and a worker. In that case, the self-employed person must ensure, so far as is reasonably practicable, his or her own health and safety while at work. The duties owed to others at the workplace would also apply (see clause 19(2)).

Division 3—Further duties of persons conducting businesses or undertakings

20—Duty of persons conducting businesses or undertakings involving management or control of workplaces

This Division sets out the work health and safety duties of a person conducting a business or undertaking who is involved in specific activities that may have a significant effect on work health and safety. These activities include the management or control of workplaces, fixtures, fittings and plant, as well as the design, manufacture, import, supply of plant, substances and structures used for work.

Designers, manufacturers, installers, constructors, importers and suppliers of plant, structures or substances can influence the safety of these products before they are used in the workplace. These people are known as 'upstream' duty holders. Upstream duty holders are required to ensure, so far as is reasonably practicable, that products are made without risks to the health and safety of the people who use them 'downstream' in the product lifecycle. In the early phases of the lifecycle of the product, there may be greater scope to remove foreseeable hazards and incorporate risk control measures.

Clause 20 sets out the additional health and safety duties a person conducting a business or undertaking has if that business or undertaking involves, in whole or in part, the management or control of a workplace. 'Workplace' is defined in clause 8. The duty requires the person with management or control of a workplace to ensure, so far as is reasonably practicable, that the workplace and the means of entering and leaving the workplace are without risks to the health and safety of any person.

Clause 20(1)(a) excludes the application of the duty to an occupier of a residence if that residence is not occupied for the purpose of the conduct of the business or undertaking. The exclusion does not apply if the residence is partially used to conduct the business or undertaking.

The duties of a person who owns and controls a workplace and the duties of a person who occupies and manages that workplace differ. For example, the owner of an office building has a duty as a person who controls the operations of the building, to ensure it is without risks to the health and safety of any person. The owner is required to ensure people can enter and exit the building and that anything arising from the workplace is without risk to others. Concurrently, a tenant who manages an office premises in the building has a duty to ensure people can enter and exit those parts of the premises. For example, this could include entry into facilities for workers. A tenant also has the duty to ensure that anything arising in that office is without risks to the health and safety of any person. For example, this could include ensuring the safe maintenance of kitchen appliances.

21—Duty of persons conducting businesses or undertakings involving management or control of fixtures, fittings or plant at workplaces

Clause 21 sets out the additional health and safety duties a person conducting a business or undertaking has if that business or undertaking involves the management or control of fixtures, fittings or plant at a workplace. 'Plant' is defined in clause 4 and 'workplace' is defined in clause 8. The duty requires the person with management or control of fixtures, fittings or plant at a workplace to ensure, so far as is reasonably practicable, that those things are without risks to health and safety of any person.

For example, a person who manages or controls workplace fixtures, fittings or plant has a duty to ensure, so far as reasonably practicable, that torn carpets are repaired or replaced in that workplace to eliminate or, if that is not reasonably practicable, minimise the risk of tripping or falling.

Clause 21(1)(a) excludes the application of the duty to an occupier of a residence if that residence is not occupied for the purpose of conducting a business or undertaking. The exclusion does not apply if the residence is partially used to conduct the business or undertaking.

22—Duties of persons conducting businesses or undertakings that design plant, substances or structures

Clause 22 sets out the additional health and safety duties a person conducting a business or undertaking has if that business or undertaking involves designing plant, substances or structures that are to be used or could reasonably be expected to be used at a workplace. In the case of plant or structures this duty also applies if these things are used or to be used as a workplace.

For example, the designer of call centre workstations must ensure, so far as reasonably practicable, that the workstations are designed without risks to the health and safety of the persons who use, construct, manufacture, install, assemble, demolish or dispose of the workstations. This would include designing workstations to be adjustable and supportive of ergonomic needs.

Designers of structures have a duty to ensure, as far as is reasonably practicable, that the design does not create health and safety risks for those who construct the structure, as well as those who will later work in it.

The duty is for the designer to ensure, so far as is reasonably practicable that the plant, substance or structure is without risks to the health and safety of the persons listed in subclause (2)(a) to (f). The list captures those persons who use the plant, substance or structure for its primary intended purpose as well as those persons involved in carrying out other reasonably foreseeable activities related to the intended purpose listed in subclause (2)(e), such as storage, decommissioning, dismantling, demolition or disposal.

Clause 22(3) to (5) outline further requirements that a designer must comply with in order to satisfy the duty including ensuring the carrying out of testing and the provision of information. Clause 22(5) limits the duty to provide current relevant information, on request, only to persons who do or will carry out one of the activities listed in subclause (2)(a) to (f). The type of information that must be provided is limited by clause 22(4).

The duty to provide current relevant information is based on what the designer knows, or ought reasonably to know, at the time of the request in relation to the original design. If another person modifies or changes the

original design of the plant or structure, this person then has the responsibility of providing information in relation to the redesign or modification, not the original designer.

23—Duties of persons conducting businesses or undertakings that manufacture plant, substances or structures

Clause 23 sets out the duties for a PCBU who manufactures plant, substances or structures that are to be used or could reasonably be expected to be used at a workplace. In the case of plant or structures these duties also apply if these things are used or are to be used as a workplace.

The duty is for the manufacturer to ensure, so far as is reasonably practicable, that the plant, substance or structure is without risks to the health and safety of the persons listed in subclause (2)(a) to (f). The list captures those persons who use the plant, substance or structure for its primary intended purpose as well as those persons involved in carrying out other reasonably foreseeable activities related to the intended purpose listed in subclause (2)(e), such as assembly, storage, decommissioning, dismantling, demolition or disposal.

For example, a manufacturer of a commercial cleaning substance must ensure, so far as reasonably practicable, that the substance is without risks to the health and safety of the persons who handle, store and use the substance at a workplace. This may involve ensuring the substance is packaged to reduce the risk of spills and that the container is correctly labelled with appropriate warnings and a Safety Data Sheet is prepared for safe use.

Clause 23(3) to (5) outline requirements that a manufacturer must comply with in order to satisfy the duty, including ensuring the carrying out of testing and the provision of information. Clause 23(5) limits the duty to provide current relevant information, on request, only to persons who do or will carry out one of the activities listed in subclause (2)(a) to (f). The type of information that must be provided is limited by clause 23(4).

24—Duties of persons conducting businesses or undertakings that import plant, substances or structures

Clause 24 sets out the duties for a PCBU who imports plant, substances or structures that are to be used or could reasonably be expected to be used at a workplace. In the case of plant or structures these duties also apply if these things are used or to be used as a workplace.

The duty is for the importer to ensure, so far as is reasonably practicable that the plant, substance or structure is without risks to the health and safety of the persons listed in subclause (2)(a) to (f). The list captures those persons who use the plant, substance or structure for its primary intended purpose as well as in carrying out other reasonably foreseeable activities related to the intended purpose listed in subclause (2)(e), such as storage, decommissioning, dismantling, demolition or disposal.

For example, a person who imports machinery must ensure, so far as reasonably practicable, that the imported product is without risks to the health and safety of the persons who assemble, use, maintain, decommission or dispose of the machinery at a workplace. This would involve ensuring the machinery is designed and manufactured to meet relevant safety standards.

Clauses 24(3) to (5) outline further requirements that an importer must comply with in order to satisfy the duty including ensuring the carrying out of testing and the provision of information. Clause 24(5) limits the duty to provide current relevant information, on request, only to persons who do or will carry out one of the activities listed in subclause (2)(a) to (f). The type of information that must be provided is limited by clause 24(4).

25—Duties of persons conducting businesses or undertakings that supply plant, substances or structures

Clause 25 sets out the duties for a PCBU that supplies plant, substances or structures that are to be used or could reasonably be expected to be used at a workplace. In the case of plant or structures these duties also apply if these things are used or to be used as a workplace.

The duty is for the supplier to ensure, so far as is reasonably practicable that the plant, substance or structure is without risks to the health and safety of the persons listed in subclause (2)(a) to (f).The list captures those persons who use the plant, substance or structure for its primary intended purpose as well as those persons involved in carrying out other reasonably foreseeable activities related to the intended purpose listed in subclause (2)(e), such as storage, decommissioning, dismantling, demolition or disposal.

Clause 25(3) to (5) outline further requirements that a supplier must comply with in order to satisfy the duty, including ensuring the carrying out of testing and the provision of information. Clause 25(5) limits the duty to provide current relevant information, on request, only to persons who do or will carry out one of the activities listed in subclause (2)(a) to (f). The type of information that must be provided is limited by clause 25(4).

For example, a person who supplies chemicals to a workplace must ensure that the chemicals are properly labelled and packaged and that current Safety Data Sheets are provided at the time of supply.

26—Duty of persons conducting businesses or undertakings that install, construct or commission plant or structures

This clause sets out the duty of a PCBU who installs, constructs or commissions plant or substances.

The duty on that person is to ensure, so far as reasonably practicable, that the plant or structure is installed, constructed or commissioned in a way that does not pose a risk to the health and safety of persons listed in subclause (2)(a) to (d).

For example, a person who installs neon business signs must ensure, so far as reasonably practicable, that they are installed without risks to the health and safety of himself or herself as well as people who will use, decommission, dismantle and work within the vicinity of the sign. This would involve ensuring the equipment is correctly installed, connected and grounded.

Division 4—Duty of officers, workers and other persons

27—Duty of officers

This Division sets out the work health and safety duties owed by 'officers' of bodies, workers and other persons at workplaces.

Clause 27 casts a positive duty on officers (as defined in clause 4) of a PCBU to exercise 'due diligence' to ensure that the PCBU complies with any duty or obligation under the Act.

Clause 27(2) applies if officers fail to exercise due diligence to ensure that the PCBU complies with its health and safety duties under Part 2. Maximum penalties for these offences by officers are specified in clauses 31 to 33.

Clause 27(3) sets the maximum penalties if an officer fails to exercise due diligence to ensure the PCBU complies with other duties and obligations under the Act. In that case, the maximum penalty is the penalty that would apply to individuals for failing to comply with the relevant duty or obligation.

Clause 27(4) clarifies that an officer may be convicted or found guilty whether or not the PCBU was convicted or found guilty of an offence under the Act.

These provisions reflect a deliberate policy shift way from applying 'accessorial' or 'attributed' liability to officers, which is an approach currently adopted by several jurisdictions. The positive duty requires officers to be proactive and means that officers owe a continuous duty to ensure compliance with duties and obligations under the Act. There is no need to tie an officer's failure to any failure or breach of the relevant PCBU for the officer to be prosecuted under this clause.

Importantly, this change helps to clarify the steps that an officer must take to comply with the duty under this clause.

Clause 27(5) contains a non-exhaustive list of steps an officer must take to discharge his or her duties under this provision, including acquiring and keeping up-to-date knowledge of work health and safety matters and ensuring the PCBU has, and implements, processes for complying with any duty or obligation the PCBU has under the Act.

An officer must have high, yet attainable, standards of due diligence. These standards should relate to the position and influence of the officer within the PCBU.

What is required of an officer should be directly related to the influential nature of the officer's position. This is because the officer governs the PCBU and makes decisions for management. A high standard requires persistent examination and care, to ensure that the resources and systems of the PCBU are adequate to comply with the duty of care required by the PCBU. This also requires ensuring that they are performing effectively. Where the officer relies on the expertise of a manager or other person, that expertise must be verified and the reliance must be reasonable.

28—Duties of workers

Clause 28 sets out the health and safety duties of workers. Workers have a duty to take reasonable care for their own health and safety while at work and also to take reasonable care so that their acts or omissions do not adversely affect the health and safety of other persons at the workplace.

The duty of care, being subject to a consideration of what is reasonable, is necessarily proportionate to the control a worker is able to exercise over his or her work activities and work environment.

Clause 28(c) makes it clear that workers must comply so far as they are able with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with the Act and regulations.

Clause 28(d) provides that workers must also cooperate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers.

Whether an instruction, policy or procedure is 'reasonable' will be a question of fact in each case. It will depend on all relevant factors, including whether the instruction, policy or procedure is lawful, whether it complies with the Act and regulations, whether it is clear and whether affected workers are able to cooperate.

29—Duties of other persons at the workplace

Clause 29 sets out the health and safety duties applicable to all persons while at a workplace, whether or not those persons have another duty under Part 2 of the Act. This includes customers and visitors to a workplace.

Similar to the duties of workers, all other persons at a workplace must take reasonable care for their own safety at the workplace and take reasonable care that their acts or omissions do not adversely affect the health and safety of others at the workplace.

Other persons at a workplace must also comply, so far as they are reasonably able to, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with the Act.

Division 5—Offences and penalties

30—Health and safety duty

This Division sets out the offences framework in relation to breaches of health and safety duties under the Act.

Contraventions of the Act and regulations are generally criminal offences, although a civil penalty regime applies in relation to right of entry under Part 7. This generally reflects the community's view that any person who has a work-related duty of care but does not observe it should be liable to a criminal sanction for placing another person's health and safety at risk. Such an approach is also in line with international practice.

The Act provides for three categories of offences against health and safety duties. Category 1 offences are for breach of health and safety duties that involve reckless conduct and carry the highest maximum penalty under the Act.

Penalties under the Act

There is a considerable disparity in the maximum fines and periods of imprisonment that can be imposed under current Australian work health and safety laws.

Penalties and the possibility of imprisonment in the most serious cases are a key part of achieving and maintaining a credible level of deterrence to complement other types of enforcement action, for example, the issuing of infringement notices. The maximum penalties set in the Act reflect the level of seriousness of the offences and have been set at levels high enough to cover the most egregious examples of offence.

31—Reckless conduct—Category 1

Category 1 offences are offences involving recklessness. The highest penalties under the Act apply, including imprisonment for up to five years.

Category 1 offences involve reckless conduct that exposes an individual to a risk of death or serious injury or serious illness without reasonable excuse. The prosecution will be required to prove the fault element of recklessness in addition to proving the physical elements of the offence.

32—Failure to comply with health and safety duty—Category 2

33—Failure to comply with health and safety duty—Category 3

Category 2 and 3 offences involve less culpability than Category 1 offences, as there is no fault element.

In each offence a person is required to comply with a health and safety duty. This is the first element of the offence.

The second element of the offence is that the person commits an offence if the person fails to comply with the health and safety duty.

Category 2 offences have a third element which provides that a person would only commit an offence if the failure to comply with the work health and safety duty exposed an individual to a risk of death or serious injury or serious illness.

Offences without this third element would be prosecuted as Category 3 offences.

Burden of proof

The burden of proof (beyond reasonable doubt) rests entirely upon the prosecution in matters relating to non-compliance with duties imposed by the Act. This includes whether the defendant failed to do what was reasonably practicable to protect the health and safety of the persons to whom the duty was owed.

This reflects the generally accepted principle that in a criminal prosecution, the onus of proof to the standard of beyond reasonable doubt normally rests on the prosecution.

34—Exceptions

Clause 34(1) creates an exception for volunteers so that volunteers cannot be prosecuted for a failure to comply with a health and safety duty, other than as a worker or 'other' person at the workplace (see clauses 28 and 29).

Clause 34(2) creates an exception for unincorporated associations. Although unincorporated associations may be PCBUs for the purposes of the Act, their failure to comply with a duty or obligation under the Act does not constitute an offence and cannot attract a civil penalty. Instead, clause 34(3) makes it clear that liability may rest with either an officer of the unincorporated association (other than a volunteer) under clause 27 (subject to the exception above), or a member of the association under clause 28 or 29.

Part 3—Incident notification

35—What is a *notifiable incident*

All Australian work health and safety laws currently require all workplace deaths and certain workplace incidents, injuries and illnesses to be reported to a relevant authority. Most laws also require workplace incident sites to be preserved by the relevant person.

The primary purpose of incident notification is to enable the regulator to investigate serious incidents and potential work health and safety contraventions in a timely manner.

The duty to report incidents in clause 38 is linked to the duty to preserve an incident site until an inspector arrives or otherwise directs so that evidence is not compromised.

Clause 35 defines the kinds of workplace incidents that must be notified to the regulator and that also require the incident site to be preserved. A 'notifiable incident' is an incident involving the death of a person, 'serious injury or illness' of a person or a 'dangerous incident'.

36—What is a *serious injury or illness*

Clause 36 defines a *serious injury or illness* as an injury or illness requiring a person to have treatment of a kind specified in paragraphs (a) to (c), including: immediate treatment as an in-patient in a hospital; immediate treatment for a serious injury of a kind listed in paragraph (b); or medical treatment within 48 hours of exposure to a substance at a workplace. The regulations may prescribe additional injuries or illnesses for this purpose, and may also prescribe exceptions to the list in this clause.

37—What is a *dangerous incident*

Clause 37 defines a 'dangerous incident' in relation to a workplace as one that exposes a person to serious risk to his or her health or safety arising from an immediate or imminent exposure to the matters listed in clause 37(a) to (l). These matters include an uncontrolled escape, spillage or leakage of a substance, an uncontrolled implosion, explosion or fire and an uncontrolled escape of gas or steam.

Clause 37 enables regulations to be made that add events to this list and also exclude incidents from being dangerous incidents.

38—Duty to notify of notifiable incidents

This clause specifies who must notify the regulator of a notifiable incident and when and how this must be done.

Clause 38(1) requires the PCBU to ensure that the regulator is notified immediately after becoming aware that a 'notifiable incident' arising out of the conduct of the business or undertaking has occurred. The requirement for 'immediate' notification would not however prevent a person from assisting an injured person or taking steps that were essential to making the site safe or from minimising the risk of a further notifiable incident (see clause 39(3)).

Failure to notify is an offence.

Clause 38(2) requires the notice to be given by the fastest possible means.

Clause 38(3) requires the notice to be given by telephone or in writing. A legislative note advises that written notice can be given by facsimile, email and other electronic means.

Notification by telephone must include details requested by the regulator and may require the person to notify the regulator in writing within 48 hours (clause 38(4)). If the person notifying the regulator is not required to provide a written notice, the regulator must give the relevant PCBU details of the information received or an acknowledgement of receiving the notice (clause 38(6)).

Written notice must be in a form, or contain the details, approved by the regulator (clause 38(5)).

Clause 38(7) requires the PCBU to keep a record of each notifiable incident for five years from the date that notice is given to the regulator. Failure to do so is an offence.

39—Duty to preserve incident sites

Clause 39(1) requires the person with management or control of a workplace where a notifiable incident has occurred to take reasonable steps to ensure that the incident site is preserved until an inspector arrives or until such earlier time as directed by an inspector. Failure to do so is an offence.

Clause 39(2) clarifies that this requirement may include preserving any plant, substance, structure or thing associated with the incident.

Clause 39(3) sets out the kinds of things that can still be done to ensure work health and safety at the site, including assisting an injured person or securing the site to make it safe.

Clause 39(3)(e) allows inspectors or the regulator to give directions about the things that can be done.

Part 4—Authorisations

40—Meaning of *authorised*

This Part establishes the offences framework for authorisations that will be required under the model WHS Regulations (e.g. licences for high-risk work).

Authorisations such as licences, permits and registrations are a regulatory tool to control activities that are of such high risk as to require demonstrated competency or a specific standard of safety.

Authorisation systems place costs on duty holders as well as on regulators and so the level of authorisation is intended to be proportionate to the risk, with a defined and achievable safety benefit.

Because authorisations are issued to control high risk activities, it is the Act rather than the regulations that includes the relevant offence provisions.

Clause 40 clarifies that the term *authorised* means authorised by a licence, permit, registration or other authority (however described) that is required by regulation.

It is intended to capture all kinds of authorisations that are required—

- before work can be carried out by a person (e.g. high-risk work); or
- for work to be carried out at a particular place (e.g. major hazard facility), or
- before certain plant or substances can be used at a workplace.

It is not intended to cover notifications to the regulator that do not affect whether work can be carried out lawfully. However, the regulations could require such notifications to be made outside the framework provided for under Part 4.

41—Requirements for authorisation of workplaces

The regulations may require certain kinds of workplaces to be authorised (e.g. major hazard facilities).

Clause 41 makes it an offence for a person to conduct a business or undertaking at such a workplace, or allow a worker to carry out work at the workplace, if the workplace is not authorised in accordance with the regulations.

42—Requirements for authorisation of plant or substance

The regulations may require certain kinds of plant or substances or their design to be authorised (e.g. high risk plant).

Clause 42(1) makes it an offence for a person to use such plant or a substance if it is not authorised in accordance with the regulations.

Clause 42(2) makes it an offence for a PCBU to direct or allow a worker to use such plant or a substance if it is not authorised in accordance with the regulations. A PCBU would 'allow' a worker to use plant or substances in this situation if the PCBU did not take steps to prevent what the person knew to be unauthorised use.

The term 'allowed' is not defined but is intended to capture situations where a worker has not been expressly directed or requested to use the relevant plant or substance, but must do so in order to meet the PCBU's requirements (e.g. to carry out a particular task).

43—Requirements for authorisation of work

The regulations may require certain work, or classes of work, to be carried out only by or on behalf of a person who is authorised.

Clause 43(1) makes it an offence for a person to carry out such work at a workplace if the appropriate authorisations are not in place as required under the regulations.

Clause 43(2) makes it an offence for a PCBU to direct or allow a worker to carry out such work if the appropriate authorisations are not in place under the regulations.

44—Requirements for prescribed qualifications or experience

The regulations may require certain kinds of work, or classes of work, to be carried out only by or under the supervision of a person who is appropriately qualified or experienced.

Clause 44(1) makes it an offence for a person to carry out work at a workplace if these requirements are not met under the regulations.

Clause 44(2) makes it an offence for a PCBU to direct or allow a worker to carry out work at a workplace if the relevant requirements are not met under the regulations.

45—Requirement to comply with conditions of authorisation

Clause 45 makes it an offence for a person to contravene any conditions attaching to an authorisation.

Part 5—Consultation, representation and participation

Division 1—Consultation, co-operation and co-ordination between duty holders

46—Duty to consult with other duty holders

This Part establishes the consultation, representation and participation mechanisms that apply under the Act, including the duties to consult and provision for Health and Safety Representatives (HSRs) and Health and Safety Committees. Other arrangements are still a valid option, providing the duties under the Part are complied with.

Part 5 establishes comprehensive duties to consult in relation to specified work health and safety matters under the Act. Division 1 deals with consultation between duty holders, while Division 2 deals with consultation with workers.

Managing work health and safety risks is more effective if duty holders exchange information on how the work should be done so that it is without risk to health and safety. Cooperating with other duty holders and co-ordinating activities is particularly important for workplaces where there are multiple PCBUs.

Clause 46 requires duty holders to consult, cooperate and co-ordinate activities with all other persons who have a work health and safety duty in relation to the same matter. This duty applies 'so far as is reasonably practicable'. The phrase 'so far as is reasonably practicable' is not defined in this context, so its ordinary meaning will apply.

Division 2—Consultation with workers

47—Duty to consult workers

Clause 47 requires PCBUs to, so far as is reasonably practicable, consult with their workers who may be directly affected by matters relating to work health or safety. Consultation must comply with the Act and regulations, and also with any procedures agreed between the PCBU and its workers (clause 47(2)). Agreed procedures must be consistent with requirements about the nature of consultation in clause 48.

Scope of duty to consult

The duty to consult is qualified by the phrase 'so far as is reasonably practicable'. This qualification requires the level of consultation to be proportionate to the circumstances, including the significance of the workplace health or safety issue in question.

What is reasonably practicable will depend on the circumstances surrounding each situation. A PCBU may need to take into account the urgency of the requirement to change the work environment, plant or systems etc., and the availability of workers most directly affected or their representatives.

The extent of consultation that is reasonably practicable must be that which will ensure that the relevant PCBU has all relevant available information, including the views of workers and can therefore make a properly informed decision. More serious health or safety matters will generally attract more extensive consultation requirements.

The consultation should also ensure that the workers are aware of the reasons for decisions made by the PCBU—and even if they do not agree with the decisions—can understand them. This will make compliance with systems of work, including the use of protective devices or equipment provided, more likely to occur and be effective.

48—Nature of consultation

Clause 48(1) establishes the requirements for meaningful consultation. It requires PCBUs to: share relevant information about work health or safety matters (listed in clause 49) with their workers; give workers a reasonable opportunity to express their views; and contribute to the decision processes relating to those matters. It also requires PCBUs to take workers' views into account and advise workers of relevant outcomes in a timely manner.

Clause 48(2) provides that consultation must involve any HSR that represents the workers.

Consulting with HSRs alone may be sufficient to meet the consultation duty, depending on the work health or safety issue in question.

49—When consultation is required

Clause 49 sets out the kinds of work health and safety matters that must be consulted on under this Division, including at each stage of the risk management process. Additional matters requiring consultation under this Division may be prescribed by the regulations.

Division 3—Health and safety representatives

Subdivision 1—Request for election of health and safety representatives

50—Request for election of health and safety representative

There is considerable evidence that the effective participation of workers and the representation of their interests in work health and safety are crucial elements in improving health and safety performance at the workplace. Under the Act this representation occurs in part through HSRs who are elected by workers to represent them in relation to health and safety matters at work.

This Division provides for the election, functions and powers and entitlements of HSRs and their deputies under the Act.

This Subdivision sets out the process for electing HSRs for workers. The number of HSRs to be elected at a workplace is not limited by the Act but is instead determined following discussions between workers who wish to be represented and the PCBU for whom they carry out work.

The process for electing HSRs is initiated by a worker's request.

Clause 50 provides that a worker may ask a PCBU for whom he or she carries out work to facilitate elections for one or more HSRs.

This clause does not require the request to be in any particular form. The worker's request will trigger the PCBU's obligation to facilitate the determination of one or more work groups providing the worker's request is sufficiently clear.

A PCBU is required to facilitate the election of HSRs. Facilitating the election process requires a PCBU to adopt a supportive role during the election process rather than a directive one (see clause 52(1) below for more information).

Subdivision 2—Determination of work groups

51—Determination of work groups

This Subdivision sets out the process for determining work groups under the Act.

Clause 51 establishes the PCBU's obligation to facilitate the determination of one or more work groups, following a request under clause 50.

Clause 51(2) clarifies that the purpose of dividing workers into work groups is to facilitate representation by HSRs in relation to work health and safety matters.

The legislation does not otherwise limit the determination of work groups, although the regulations may prescribe the matters that must be taken into account (clause 52(5)).

Clause 51(3) clarifies that a work group may span one or more physical workplaces.

52—Negotiations for agreement for work group

Clause 52 sets some parameters around negotiations for work groups.

Clause 52(1) provides that work groups are negotiated and agreed between the relevant parties. That is, the PCBU and the workers who are proposed to form the work group or their representatives. A worker's representative could be a union delegate or official, or any other person the worker authorises to represent him or her (see the definition of 'representative' in clause 4).

Clause 52(2) requires the relevant PCBU to take all reasonable steps to commence negotiations to determine work groups within 14 days after a request is made under clause 50.

Clause 52(3) sets out the matters that are to be determined by negotiation, including the number and composition of work groups and the number of HSRs and deputy HSRs (if any) to be elected to represent them.

Clause 52(4) provides that any party involved with determining an agreement for a work group or work groups, can negotiate a variation to that agreement at any time.

Clause 52(5) prohibits the PCBU from, if asked by a worker, refusing to negotiate with the worker's representative or excluding the representative from negotiations. This includes negotiations for a variation of a work group agreement. A breach of these requirements is an offence.

This provision does not require the PCBU to reach agreement but requires the PCBU to genuinely try to negotiate with representatives.

Clause 52(6) allows the regulations to prescribe the matters that must be taken into account in negotiations for and variation of agreements concerning work groups.

53—Notice to workers

Clause 53(1) requires the PCBU to notify workers of the outcome of negotiations and determination of any work groups, as soon as practicable after the negotiations are completed. Failure to notify is an offence.

Clause 53(2) requires a PCBU who is negotiating to vary an agreement for the determination of a work group or work groups to notify workers of the outcome of those negotiations (if any) as soon as it is practicable after negotiations are complete. Failure to notify workers is an offence.

54—Failure of negotiations

Clause 54 sets out the process for determining work groups if negotiations under clause 52 fail.

Negotiations are taken to have failed if, after 14 days of a request being made under clause 50 or if a party to the agreement requests a variation to an agreement, the PCBU has failed to take all reasonable steps to commence negotiations. Negotiations are also considered to have failed if an agreement cannot be reached on a relevant matter or variation to an agreement within a reasonable time after negotiations commence (clause 54(3)).

Clause 54(1) allows any person who is, or would be, a party to the negotiations to ask the regulator to appoint an inspector to decide the matter. This includes negotiations for a variation of a work group agreement.

Clause 54(2) empowers the inspector to decide on the relevant matters (referred to in clause 52(3) or any matter that is the subject of the proposed variation (as the case requires)) or to decide that work groups should not be established or that the agreement should not be varied (as the case requires). In exercising this discretion, the inspector must have regard to the relevant parts of the Act, including the objects of the Part and the Act overall.

Clause 54(4) provides that the inspector's decision is taken to be an agreement under clause 52. This means that the inspector's decision operates for all purposes as if it had been agreed between the relevant parties.

Subdivision 3—Multiple-business work groups

55—Determination of work groups of multiple businesses

This Subdivision provides a process for establishing and varying multiple-business work groups, that is work groups that span the businesses or undertakings of two or more persons. Unlike single-PCBU work groups, multiple-business work groups can only be determined by agreement between the relevant parties.

Clause 55 allows work groups to be determined in relation to two or more PCBUs (multiple-business work groups).

Clause 55(2) requires multiple-business work groups to be determined by negotiation and agreement between the relevant parties (e.g. each of the PCBUs and the workers proposed to be included in the work groups).

Clause 55(3) provides that any party involved with determining an agreement for a work group or work groups, can negotiate a variation to that agreement at any time.

Clause 55(4) clarifies that the determination of multiple-business work groups would not affect pre-existing work groups or prevent the formation of additional work groups under Subdivision 2.

56—Negotiation of agreement for work groups of multiple businesses

Clause 56(1) limits negotiations for multiple-business work groups to the matters listed in paragraphs (a) to (d), including the number and composition of work groups and the number of HSRs and deputy HSRs (if any) for each work group.

Clause 56(2) establishes representation rights for relevant workers, which mirror the rights explained in relation to clause 52(4) above. A breach of these requirements is an offence.

Clause 56(3) allows an inspector to assist negotiations, if agreement cannot be reached on a relevant matter within a reasonable time after negotiations have commenced.

Clause 56(4) allows the regulations to prescribe the matters that must be taken into account in negotiations for (and variations of) agreements.

57—Notice to workers

Clause 57(1) sets out the matters that must be notified upon the completion of negotiations, namely, the outcome of negotiations and determination of any work groups. A breach of these requirements is an offence.

Clause 57(2) requires a PCBU who is negotiating to vary an agreement for the determination of a work group or work groups to notify workers of the outcome of those negotiations and variations (if any) as soon as it is practicable after negotiations are complete. Failure to do so is an offence.

58—Withdrawal from negotiations or agreement involving multiple businesses

Clause 58 establishes a process that allows a party to withdraw from negotiations for multiple-employer work groups and also to withdraw from an agreement made under this Subdivision. This process is necessary as multiple-employer work groups are voluntary and are only available by agreement between all relevant parties.

Withdrawal by one party to an agreement (involving three or more PCBUs) would trigger the need to negotiate a variation to the agreement (in accordance with clause 56), but would not otherwise affect the validity of the agreement for other parties in the meantime (clause 58(2)).

59—Effect of Subdivision on other arrangements

Clause 59 clarifies that alternative representative arrangements can always be made between two or more PCBUs and their workers, provided that the PCBUs comply with this Subdivision.

Subdivision 4—Election of health and safety representatives

60—Eligibility to be elected

This Subdivision sets out the procedures for electing HSRs.

Clause 60 sets out the eligibility rules for HSRs.

Clause 60 provides that a worker is eligible to be elected as HSR for a work group if the person is a member of that work group and is not disqualified under clause 65.

61—Procedure for election of health and safety representatives

Clause 61 sets out the procedure for the election of HSRs.

The procedures for the election of HSRs are determined by the workers in the work group for which elections are being held. The regulations may prescribe minimum requirements for the conduct of elections (clause 61(1) and (2)).

Clause 61(3) allows elections to be conducted with the assistance of a union or other person or organisation, provided that a majority of affected workers agree.

Clause 61(4) requires the relevant PCBU to provide any resources, facilities and assistance that are reasonably necessary or are prescribed by the regulations to enable elections to be conducted. Failure to do so is an offence.

62—Eligibility to vote

Clause 62 provides that the members of a work group are responsible for electing the HSR or HSRs for that work group and are therefore entitled to vote in the elections conducted for that work group.

63—When election not required

Clause 63 sets out the circumstances in which an election is not required.

An election is not required if the number of candidates for HSR equals the number of vacancies for that position and the number of candidates for deputy HSR equals the number of vacancies for that position.

64—Term of office of health and safety representative

Clause 64(1) provides that an HSR holds office for a maximum term of three years, although that may be shortened upon—

- the person's resignation from office in writing to the PCBU (clause 64(2)(a)); or
- the person ceasing to be part of the work group he or she represents (clause 64(2)(b)); or
- the person being disqualified under clause 65 (clause 64(2)(c)); or
- the person being removed from office by a majority of the work group he or she represents in accordance with the regulations (clause 64(2)(d)).

Clause 64(3) clarifies that an HSR is eligible for re-election, unless the person is disqualified under clause 65 (see clause 60(b)).

65—Disqualification of health and safety representatives

Clause 65 sets out a process for disqualifying HSRs from office for—

- performing a function or exercising a power under the Act for an improper purpose; or
- using or disclosing any information acquired as an HSR for a purpose unconnected with the role as a HSR.

The regulator or any person who has been adversely affected by these actions may apply to the Senior Judge of the IRC for a review committee to have the HSR disqualified from office. If a review committee is satisfied that a ground for disqualification is made out, the review committee may disqualify the health and safety representative for a specified period or indefinitely.

66—Immunity of health and safety representatives

Clause 66 confers immunity on HSRs so they cannot be personally sued for anything done or omitted to be done in good faith while exercising a power or performing a function under the Act, or in the reasonable belief that they were doing so.

67—Deputy health and safety representatives

Clause 67 establishes the procedures for the election of deputy HSRs and establishes their powers and functions under the Act.

Clause 67(1) provides for deputy HSRs to be elected in the same way as HSRs (see the election procedure in clauses 60 to 63).

Deputy HSRs for a work group may only take over the powers and functions of an HSR for the work group if the HSR ceases to hold office or is unable (because of absence or any other reason) to exercise powers or perform functions as HSR under the Act.

Clause 67(2)(b) makes it clear that the Act applies to the deputy HSR accordingly. For example, this means a deputy HSR can exercise the powers and functions of the HSR and the PCBU must comply with the general obligations under clause 70.

Clause 67(3) extends a number of relevant provisions so they apply equally to both HSRs and deputy HSRs. This means that provisions dealing with the term of office, disqualification, immunity and training apply equally to both HSRs and deputy HSRs.

Subdivision 5—Powers and functions of health and safety representatives

68—Powers and functions of health and safety representatives

This Subdivision sets out the powers and functions of HSRs and deputy HSRs. The powers are intended to enable HSRs to most effectively represent the interests of the members of their work group and to contribute to health and safety matters at the workplace.

Clause 68 confers the necessary powers and functions on HSRs to enable them to fulfil their representative role under the Act. Clause 67 sets out the circumstances in which a deputy HSR may take over the powers and functions of the HSR under this clause.

Clause 68(1) sets out HSRs' general powers and functions, while clause 68(2) clarifies the specific powers of HSRs without limiting the general powers in subclause (1).

The primary function of HSRs is to represent workers in their work group in relation to health and safety matters at work (clause 68(1)(a)). As part of that function, HSRs may monitor the PCBU's compliance with the Act in relation to their work group members (clause 68(1)(b)), investigate complaints from work group members about work health and safety matters (clause 68(1)(c)) and inquire into anything that appears to be a risk to the health or safety of work group members, arising from the conduct of the business or undertaking (clause 68(1)(d)).

These powers are generally exercisable in relation to the HSR's work group members, subject to clause 69.

Clause 68(4) makes it clear that nothing in the Act imposes, or should be taken to impose, a duty on HSRs to exercise any of these powers or perform any of these functions at any point in time. The HSR's functions and powers are exercisable entirely at the discretion of the HSR.

Clause 68(2) sets out the specific powers of HSRs, which are intended to reinforce their representative role under the Act.

Clause 68(2)(a) allows HSRs to inspect the place where any work group member carries out work for the relevant PCBU—

- at any time after giving reasonable notice to the person conducting the business or undertaking at that workplace; and
- at any time without notice in the event of an incident or any situation involving a serious risk to a person's health or safety arising from an immediate or imminent exposure to a hazard.

Clause 68(2)(b) entitles an HSR to accompany an inspector during an inspection of the workplace at which a work group member carries out work.

Clause 68(2)(c) entitles an HSR to be present at an interview concerning work health and safety between a worker who is a work group member and either an inspector, the PCBU at the workplace or the PCBU's representative. This entitlement only applies if the HSR has the consent of the worker being interviewed.

Clause 68(2)(d) entitles an HSR to be present at an interview concerning work health and safety between a group of workers and either an inspector, the PCBU at the workplace or the person's representative. This entitlement only applies if the HSR has the consent of at least one of their members being interviewed and regardless of whether non-work group members are present (or even object to the HSR's involvement).

Clause 68(2)(e) allows HSRs to request the establishment of a health and safety committee.

Clause 68(2)(f) entitles HSRs to receive information about the work health and safety of their work group members. However, there is no entitlement to access any personal or medical information about a worker without the worker's consent, unless the information is in a form that does not identify the worker or that could not reasonably be expected to lead to the identification of the worker (clause 68(3)).

69—Powers and functions generally limited to the particular work group

HSRs' and deputy HSRs' powers and functions under the Act are generally limited to work health and safety matters that affect or may affect their work group members (clause 69(1)).

However, an HSR may exercise powers and functions under the Act in relation to another work group for the relevant PCBU if the HSR (and any deputy HSR) for that work group is found, after reasonable inquiry, to be unavailable and (clause 69(2))—

- there is a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard that affects or may affect a member for the work group; or
- a member of the work group asks for the HSR's assistance.

What constitutes 'reasonable inquiry' will depend on all the circumstances of the case and especially the seriousness of the risk to health or safety in question.

Subdivision 6—Obligations of person conducting business or undertaking to health and safety representatives

70—General obligations of person conducting business or undertaking

This Subdivision sets out the obligations of PCBUs to support HSRs in their representative role, including the obligation to have HSRs trained upon request. The course of training that the HSR will be entitled to attend will be prescribed by the regulations.

Clause 70 sets out the general obligations of PCBUs, many of which reflect the corresponding entitlements in clause 68, which establishes HSRs' powers and functions. These obligations will also apply in relation to deputy HSRs while they exercise the powers of HSRs (see clause 67(2)).

It is an offence for a PCBU to fail to comply or refuse to comply with any of these obligations. PCBUs are required to—

- consult so far as is reasonably practicable with their HSRs on work health and safety matters at the workplace (clause 70(1)(a)); and
- confer with HSRs, whenever reasonably requested by the HSR, for the purpose of ensuring the health and safety of their work group members (clause 70(1)(b)); and
- give HSRs access to the information they are entitled to have, consistent with clause 68(2)(f) and clause 68(3) (clause 70(1)(c)); and
- allow their HSRs to attend the kinds of interviews they are entitled to attend under clause 68(2)(c) (clause 70(1)(d) and (e)); and
- provide their HSRs with any resources, facilities and assistance that are reasonably necessary or prescribed by the regulations to enable the HSR to exercise powers and perform functions under the Act (clause 70(1)(f)); and

- allow persons assisting their HSRs (under clause 68(2)(g)) to have access to the workplace, but only if access is necessary to enable the assistance to be provided. This obligation is subject to the qualifications in clause 71(4). Although no notification requirements are prescribed, a person assisting a HSR would need to meet any of the PCBU's policies or procedures that are applicable to workplace visitors including any work health and safety requirements (clause 70(1)(g)), and
- allow their HSRs to accompany an inspector during an inspection of any part of the workplace where the HSR's work group members work (clause 70(1)(h)).

Clause 70(1)(i) allows the regulations to prescribe further assistance that may be required to enable HSRs to fulfil their representative role.

HSRs must be given such time as is reasonably necessary (e.g. during work hours) to exercise their powers and perform their functions under the Act (clause 70(2)). Any time an HSR spends exercising powers and performing functions at work must be paid time, paid at the rate that the HSR would receive had he or she not been exercising powers or performing functions (clause 70(3)). Any underpayment of wages may be recovered under the applicable industrial laws.

71—Exceptions from obligations under section 70(1)

Clause 71 qualifies some of the PCBU's obligations under clause 70(1).

Clause 71(2) ensures that the personal or medical information HSRs receive under clause 70(1)(c) excludes any information that identifies individual workers, or could reasonably be expected to identify individual workers. It would be an offence for a PCBU to release such information to an HSR.

Clause 71(3) clarifies that PCBUs are not required to provide any financial assistance to help pay for HSRs' assistants that are referred to in clause 70(1)(g).

Clause 71(4) applies in relation to certain assistants to HSRs who are or who have been WHS entry permit holders. PCBUs may refuse access to such a person if the person has had his or her WHS entry permits revoked, or during any period that the person's WHS entry permit is suspended or the assistant is disqualified from holding a WHS permit.

Clause 71(5) allows PCBUs to refuse an HSR's assistant access to a workplace on 'reasonable grounds'. 'Reasonable grounds' are not defined, but it is intended that access could be refused, for example, if the assistant had previously intentionally and unreasonably delayed, hindered or obstructed any person, disrupted any work at a workplace or otherwise acted in an improper matter.

Clause 71(6) allows an inspector to assist in any dispute over an assistant's proposed entry, upon the HSR's request. In this situation, an inspector could provide advice or recommendations in relation to the dispute or exercise his or her compliance powers under the Act. This provision is not intended to limit inspectors' compliance powers in any way.

72—Obligation to train health and safety representatives

Clause 72 sets out PCBUs' obligations to train their HSRs and deputy HSRs (see clause 67(3)). This clause establishes the entitlement to HSR training, which is available to HSRs and deputy HSRs upon request to their PCBU (clause 72(1)).

The entitlement allows the HSR or deputy HSR to attend an HSR training course that has been approved by the regulator (clause 72(1)(a)) and that the HSR is entitled under the regulations to attend (clause 72(1)(b)).

An HSR or deputy HSR is also entitled to attend the course of their choice (e.g. in terms of when and where he or she proposes to attend the course), although the course must be chosen in consultation with the PCBU. If the parties are unable to agree, clause 72(5) to (7) will apply.

Clause 72 requires the PCBU to give the HSR or deputy HSR time off work to attend the agreed course of training as soon as practicable within three months of the request being made. The PCBU is also required to pay the course fees and any other reasonable costs associated with the HSR's or deputy HSR's attendance at the course of training.

Clause 72(3)(b) applies to multi-business work groups and provides that only one of the PCBUs needs to comply with this clause.

Clause 72(4) provides that any time an HSR or deputy HSR is given off work to attend the course of training must be must be paid time, paid at the rate that the HSR or deputy HSR would receive had he or she not been attending the course. Any underpayment of wages may be recovered under the applicable industrial laws.

Clause 72(5) to (7) establish a procedure for resolving a disagreement if an agreement cannot be reached—as soon as practicable within the period of three months—on the course the HSR or deputy HSR is to attend or the reasonable costs of attendance that will be met by the relevant PCBU. In that case, either party may ask the regulator to appoint an inspector to decide matters in dispute. The parties would be bound by the inspector's determination and non-compliance by the PCBU would constitute an offence.

73—Obligation to share costs if multiple businesses or undertakings

Clause 73 applies where HSRs or deputy HSRs represent multiple-business work groups and provides for the sharing of costs between relevant PCBUs. In general, costs of the HSR exercising powers under the Act and training-related costs are shared equally, although the parties may come to alternative arrangements by agreement.

74—List of health and safety representatives

Clause 74 requires PCBUs to prepare and keep up-to-date lists of their HSRs and deputy HSRs (if any).

The lists must be displayed in a prominent place at the PCBU's principal place of business and also any other workplace that is appropriate taking into account the constitution of the work groups. PCBUs should select a prominent place to display the list that is accessible to all workers, which could be the workplace intranet.

Non-compliance with these provisions constitutes an offence.

Up-to-date lists must also be forwarded to the regulator as soon as practicable after being prepared.

Division 4—Health and safety committees

75—Health and safety committees

This Division provides for the establishment of health and safety committees for consultative purposes under the Act. Health and safety committees are consultative bodies that are established for workplaces under the Act, with functions that include assisting to develop work health and safety standards, rules and procedures for the workplace (see clause 77).

Clause 75 sets out when a PCBU must establish a health and safety committee, including on the request of one of their HSRs or five or more workers that carry out work for the PCBU at the workplace. The regulations may also require health and safety committees to be established in prescribed circumstances.

A health and safety committee must be established within two months after the request is made and non-compliance constitutes an offence (clause 75(1)(a)).

A health and safety committee may also be established at any time on a PCBU's own initiative (clause 75(2)).

Health and safety committees will usually be established for a physical workplace at one location. However, the provisions are not intended to be restrictive and it would be possible to establish a committee for workers who carry out work for a PCBU in two or more physical workplaces (e.g. at different locations) or for those who do not have a fixed place of work.

Non-compliance with these provisions constitutes an offence.

76—Constitution of committee

Clause 76 sets out minimum requirements for establishing and running health and safety committees. The relevant PCBU and the workers for whom the committee is being established must negotiate on how the committee will be constituted (clause 76(1)).

Unless they do not wish to participate, HSRs are automatically members of a relevant workplace's committee (clause 76(2)). If there is more than one HSR, the HSRs may agree among themselves as to who will sit on the committee (clause 76(3)).

Clause 76(4) ensures genuine worker representation by requiring at least half of the members of the committee to be workers not nominated by the relevant PCBU (clause 76(4)).

Clause 76(5) to (7) establish a dispute resolution procedure if the constitution of the committee cannot be agreed between all relevant parties. In that case, an inspector may decide the membership of the committee or that the committee should not be established. In exercising this discretion, the inspector must have regard to the relevant parts of the Act including the objects of the Act overall. Any decision on how the committee is to be constituted is then taken to be an agreement between the relevant parties.

77—Functions of committee

Clause 77 establishes the functions of health and safety committees, including facilitating co-operation between the PCBU and the relevant workers in instigating, developing and carrying out measures designed to ensure work health and safety and also assisting in developing the relevant standards, rules and procedures for the workplace. Additional functions may be agreed between the health and safety committee and the PCBU or prescribed by the regulations.

78—Meetings of committee

Clause 78 sets minimum requirements for the frequency of health and safety committees. Under this clause, committees must meet at least once every three months and also at any reasonable time at the request of at least half of the committee members.

79—Duties of person conducting business or undertaking

Clause 79 sets out the general obligations of PCBUs in relation to their health and safety committees.

The PCBU must allow committee members to spend such time at work as is reasonably necessary to attend meetings of the committee or carry out functions as a committee member (clause 79(1)).

Clause 79(2) clarifies that such time must be paid time, paid at the rate that the committee member would have been entitled to receive had he or she not been attending meetings of the committee or exercising powers or performing functions as a committee member. Any underpayment of wages may be recovered under the applicable industrial laws.

Clause 79(3) entitles committee members to access the information the relevant PCBU has relating to hazards and risks at the workplace and the work-related health and safety of workers at the workplace. However, there is no entitlement to access any personal or medical information about a worker without the worker's consent, unless the information is in a form that does not identify the worker or that could not reasonably be expected to lead to the identification of the worker (clause 79(4)).

Failure to provide committee members with the entitlements prescribed under clause 79(1) and (3) constitutes an offence. It is also an offence for a PCBU to provide personal or medical information about a worker contrary to clause 79(4).

Division 5—Issue resolution

80—Parties to an issue

This Division establishes a mandatory process for resolving work health and safety issues. It applies after a work health and safety matter is raised but not resolved to the satisfaction of any party after discussing the matter.

Consultation is an integral part of issue resolution and conversely, issue resolution processes may be required to deal with issues arising during consultation. The provisions for consultation are dealt with separately in Divisions 1 and 2 of this Part.

Clause 80 defines the parties to an issue, who are—

the PCBU with whom the issue has been raised or the PCBU's representative (e.g. employer organisation); and

- any other PCBU or their representative who is involved in the issue; and
- the HSRs for any of the affected workers or their representative, and
- if there are no HSRs—the affected workers or their representative.

If a PCBU is represented, clause 80(2) requires the PCBU to ensure that the representative has, for purposes of issue resolution, sufficient seniority and competence to act as the person's representative. The subclause also prohibits the PCBU from being represented by an HSR. This latter restriction is necessary because HSRs are essentially workers' representatives and representing both sides would constitute a conflict of interest.

81—Resolution of health and safety issues

Clause 81 establishes a process for the resolution of work health and safety issues.

Clause 81(1) sets out when the issue resolution process applies, that is, after the work health and safety matter remains unresolved after the matter is discussed by parties to the issue. At that point, the matter becomes a work health and safety issue that is subject to the issue resolution process under this Division.

Clause 81(2) requires each party and his or her representative (if any) to make reasonable efforts to achieve a timely, final and effective resolution of the issue using the agreed issue resolution procedure or—if there is not one—the default procedure prescribed by the regulations.

Provision for default procedures in the Act reflects the view that it is preferable that issue resolution procedures be agreed between the parties. Agreed procedures may accommodate the subtleties of the relationship between the parties, the workplace organisation and the types of hazards and risks that are likely to be the subject of issues.

The intention is that issues should be resolved as soon as can reasonably be achieved to avoid further dispute or a recurrence of the issue or a similar issue; that is, an issue should be resolved 'once and for all' to the extent that is possible in the circumstances.

Clause 81(3) entitles each party's representative to enter the workplace for the purpose of attending discussions with a view to resolving the issue.

82—Referral of issue to regulator for resolution by inspector

Clause 82 gives parties to an issue under this Division the right to ask for an inspector's assistance in resolving the issue if it remains unresolved after reasonable efforts have been made. It applies whether all parties have made reasonable efforts or at least one of the parties has made reasonable efforts to have the work health and safety issue resolved. A party's unwillingness to resolve the issue would not prevent operation of this clause.

Clause 82(3) preserves the rights to cease unsafe work, or direct that unsafe work cease, under Division 6 of Part 5 when an inspector has been called in to assist with resolving a work health and safety issue under this clause.

Clause 82(4) clarifies that the inspector's role is to assist in resolving the issue, which could involve the inspector providing advice or recommendations or exercising any of his or her compliance powers under the Act (e.g. to issue a notice). This provision is not intended to limit inspectors' compliance powers in any way.

Division 6—Right to cease or direct cessation of unsafe work

83—Definition of *cease work under this Division*

This Division covers workers' rights to cease unsafe work and establishes HSRs' power to direct that unsafe work cease. These rights have been drafted in a way that maintains consistency with provisions dealing with

the cessation of unsafe work under the *Fair Work Act 2009* of the Commonwealth. This is found in the exception to the definition of industrial action in section 19 of that Act.

Clause 83 clarifies that 'ceasing work' includes ceasing or refusing to carry out work.

84—Right of worker to cease unsafe work

Clause 84 sets out the right of workers to cease unsafe work. A worker has the right to cease work if—

- he or she has a reasonable concern that carrying out the work would expose him or her to a serious risk to his or her health or safety; and
- the serious risk emanates from an immediate or imminent exposure to a hazard.

This right is subject to the notification requirements in clause 86 and the worker's obligation to remain available to carry out suitable alternative work under clause 87.

'Serious risk'

The term 'serious risk' is not defined, but captures the recommendations of the National Review into Model Occupational Health and Safety Laws, first report, October 2008 (see paragraph 28.42-43 of that report). As the report states, this formulation has the advantage of being effective to deal with risks of diseases of long latency from immediate exposure to a hazard and circumstances of psychological threat or other similar conditions. For the right to cease work to apply, the risk (the likelihood of it occurring and the consequences if it did) would have to be considered 'serious' and emanates from an immediate or imminent exposure to a hazard.

'Reasonable concern'

The requirement for the worker to have a 'reasonable concern' is intended to align with equivalent provisions under the *Fair Work Act 2009* of the Commonwealth.

For this entitlement to apply, it will not be sufficient for a worker to simply assert that his or her action is based on a reasonable concern about a serious and immediate or imminent risk to his or her safety. A 'reasonable concern' for health or safety can only be a concern which is both reasonably held and which provides a reasonable or rational basis for the worker's action. A concern may be reasonable if it is not fanciful, illogical or irrational.

It is not necessary to establish an existing serious health or safety risk to the worker. The question is whether the worker's action was based on a reasonable concern for his or her health or safety arising from a serious and immediate risk, rather than the existence of such a risk.

85—Health and safety representative may direct that unsafe work cease

Clause 85 establishes HSRs' power to direct that unsafe work cease. In general, this power can only be used to direct workers in the HSR's own work group, unless the special circumstances in clause 69 apply. An HSR's deputy could also exercise this power in the circumstances set out in clause 67.

Clause 85(1) sets out the circumstances in which an HSR may direct that unsafe work cease. Similar to clause 84, an HSR may issue the direction under this clause to a work group member if—

- he or she has a reasonable concern that carrying out the work would expose the work group member to a serious risk to the member's health or safety; and
- the serious risk emanates from an immediate or imminent exposure to a hazard.

The term 'serious risk' is explained above in relation to clause 84.

Clause 85(2) requires HSRs to consult with the relevant PCBU and attempt to resolve the work health or safety issue under Division 5 before giving a direction under this clause. However, these steps are not necessary if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction (clause 85(3)). In that case, the consultation must be carried out as soon as possible after the direction is given (clause 85(4)).

Clause 85(5) requires a HSR to inform the PCBU of any direction to cease work that the HSR has given to workers.

Clause 85(6) provides that only an appropriately trained HSR may exercise the powers under this provision, that is, if the HSR has—

- completed initial HSR training as set out under the regulations, whether for the HSR's current work group or another workgroup (including a work group of another PCBU); or
- undertaken equivalent training in another jurisdiction.

86—Worker to notify if ceases work

Clause 86 requires workers who cease work under this Division (otherwise than under a direction from a HSR) to notify the relevant PCBU that they have ceased unsafe work as soon as practicable after doing so. It also requires workers to remain available to carry out 'suitable alternative work'. This would not however require workers to remain at any place that poses a serious risk to their health or safety.

87—Alternative work

Clause 87 allows PCBUs to re-direct workers who have ceased unsafe work under this Division to carry out 'suitable alternative work' at the same or another workplace. The suitable alternative work must be safe and appropriate for the worker to carry out until he or she can resume normal duties.

88—Continuity of engagement of worker

Clause 88 preserves workers' entitlements during any period for which work has ceased under this Division. It does not apply if the worker has failed to carry out suitable alternative work as directed under clause 87.

89—Request to regulator to appoint inspector to assist

Clause 89 clarifies that inspectors may be called on to assist in resolving any issues arising in relation to a cessation of work.

Division 7—Provisional improvement notices

90—Provisional improvement notices

This Division sets HSRs' powers to issue provisional improvement notices under the Act, and related matters. Provisional improvement notices are an important part of the function performed by HSRs.

Clause 90(1) sets out the circumstances when an HSR may issue a provisional improvement notice, that is, if the representative reasonably believes that a person—

- is contravening a provision of the Act; or
- has contravened a provision of the Act in circumstances that make it likely that the contravention will continue or be repeated.

A HSR may only exercise this power at a workplace, in relation to any work health or safety matters that affects, or may affect, workers in the HSR's work group (see clause 69(2)). Clause 69(2) provides that a HSR may also exercise powers and functions under the Act in relation to another work group in some circumstances.

Clause 90(2) sets out the kinds of things a provisional improvement notice may require a person to do (e.g. remedy the contravention or prevent a likely contravention from occurring).

Clause 90(3) requires HSRs to consult with the alleged contravenor or likely contravenor before issuing a provisional improvement notice.

Clause 90(4) provides that only a HSR can exercise the powers under this provision, that is, if the HSR has—

- completed initial HSR training as set out under the regulations, whether for the HSR's current work group or another workgroup (including a work group of another PCBU); or
- undertaken equivalent training in another jurisdiction.

Clause 90(5) relates to the situation where an inspector may have already dealt with a matter by issuing or deciding not to issue an improvement notice or prohibition notice. In that case the HSR would have no power to issue a provisional improvement notice in relation to the matter, unless the circumstances were materially different (e.g. the matter the HSR is proposing to remedy is no longer the same matter dealt with by the inspector).

91—Provisional improvement notice to be in writing

Clause 91 requires provisional improvement notices to be issued in writing.

92—Contents of provisional improvement notice

Clause 92 sets out the kind of information that must be contained in a provisional improvement notice. Importantly, a provisional improvement notice must specify a date for compliance, which must be at least eight days after the notice is issued. The day on which the notice is issued does not count for this purpose.

93—Provisional improvement notice may give directions to remedy contravention

Clause 93 allows provisional improvement notices to specify certain kinds of directions about ways to remedy the contravention, or prevent the likely contravention, that is subject of the notice.

94—Minor changes to provisional improvement notice

Clause 94 enables HSRs to make minor changes to provisional improvement notices (e.g. for clarification or to correct errors or references).

95—Issue of provisional improvement notice

Clause 95 requires provisional improvement notices to be served in the same way as improvement notices issued by inspectors.

96—Health and safety representative may cancel notice

Clause 96 allows HSRs to cancel a provisional improvement notice at any time. This must be done by giving written notice to the person to whom it was issued.

97—Display of provisional improvement notice

Clause 97 establishes the display requirements for provisional improvement notices. It requires a person who is issued with a notice to display it in a prominent place at or near the workplace where work affected by the notice is carried out.

It is an offence for a person to fail to display a notice as required by this clause, or to intentionally remove, destroy, damage or deface the notice while it is in force.

Although not specified, it is intended that there is no requirement to display notices that are stayed under the review proceedings set out in clause 100, as they would not be considered to be 'in force' for the period of the stay.

98—Formal irregularities or defects in notice

Clause 98 ensures that provisional improvement notices are not invalid merely because of a formal defect or an irregularity, so long as this does not cause or is not likely to cause substantial injustice.

99—Offence to contravene a provisional improvement notice

Clause 99 makes it an offence for a person to not comply with a provisional improvement notice, unless an inspector has been called in to review the notice under clause 101. If an inspector reviews the notice, it may be confirmed with or without modifications or cancelled. If it is confirmed it is taken to be an improvement notice and may be enforced as such.

100—Request for review of provisional improvement notice

Clause 100 sets out a procedure for the review of provisional improvement notices by inspectors. Review may be sought within seven days after the notice has been issued by the person issued with the notice or, if that person is a worker, the PCBU for whom the worker carries out the work affected by the notice.

An application under this clause stays the operation of the provisional improvement notice until an inspector makes a decision on the review (clause 100(2)).

101—Regulator to appoint inspector to review notice

Clause 101 sets out the procedure that the regulator and the reviewing inspector must follow after a request for review is made.

The regulator must arrange for a review to be conducted by an inspector at the workplace as soon as practicable after a request is made (clause 101(1)).

The inspector must review the disputed notice and inquire into the subject matter covered by the notice (clause 101(2)). An inspector may review a notice even if the time for compliance with the notice has expired (clause 101(3)).

102—Decision of inspector on review of provisional improvement notice

Clause 102 sets out the kinds of decisions the inspector may make upon review, the persons to whom a copy of the inspector's decision must be given and the effect of the inspector's decision on the notice.

The reviewing inspector must either (clause 102(1))—

- confirm the provisional improvement notice, with or without modifications; or
- cancel the provisional improvement notice.

In some cases the provisional improvement notice under review may have expired before the inspector can make a decision. However, inspectors may still confirm such notices and modify the time for compliance (see clause 101(3)).

Clause 102(2) requires the inspector to give a copy of his or her decision to the applicant for review and the HSR who issued the notice.

Clause 102(3) provides that a notice that has been confirmed (with or without modifications by an inspector) has the status of an improvement notice under the Act.

Division 8—Part not to apply to prisoners

103—Part does not apply to prisoners

Clause 103 provides that Part 5 does not apply to a worker who is a prisoner in custody in a prison or police gaol. This exclusion applies in relation to any work performed by such prisoners, whether inside or outside the prison or police gaol. It would also cover prisoners on weekend detention, during the period of the detention.

This exclusion does not extend to any persons who are not held in custody in a prison or police gaol including persons on community-based orders.

Part 6—Discriminatory, coercive and misleading conduct

Division 1—Prohibition of discriminatory, coercive or misleading conduct

104—Prohibition of discriminatory conduct

Part 6 prohibits discriminatory, coercive and misleading conduct in relation to work health and safety matters. It establishes both criminal and civil causes of action in the event of such conduct.

These provisions complement the remedies contained in Federal and State laws that deal with discrimination including the General Protections in the *Fair Work Act 2009* of the Commonwealth.

The purpose of these provisions is to encourage engagement in work health and safety activities and the proper exercise of roles and powers under the Act by providing protection for those engaged in such roles and activities from being subject to discrimination or other forms of coercion because they are so engaged. They clearly signal that discrimination and other forms of coercion that may have the effect of deterring people from being involved in work health and safety activities or exercising work health and safety rights are unlawful and may attract penalties and other remedies.

Division 1 sets out when conduct or actions will constitute discrimination, coercive or misleading conduct.

Clause 104 provides that it is an offence for a person to engage in discriminatory conduct for a prohibited reason. What is discriminatory conduct is outlined in clause 105 and prohibited reasons are outlined in clause 106.

Clause 104(2) provides that a person will only commit an offence if a reason mentioned in clause 106 was the dominant reason for the discriminatory conduct. The Act contains a rebuttable presumption that once a prohibited reason is proven it will be taken to be the dominant reason (see clause 110(1)).

A note alerts the reader that civil proceedings relating to a breach of clause 104 may be brought under Division 3.

105—What is *discriminatory conduct*

Clause 105(1) sets out what actions will be discriminatory conduct under the Act. The actions include—

- certain actions that may be taken in relation to a worker (e.g. dismissing a worker or detrimentally altering the position of a worker (clause 105(1)(a))); and
- certain actions that may be taken in relation to a prospective worker (e.g. treating one job applicant less favourably than another (clause 105(1)(b)); and
- certain actions relating to commercial arrangements (e.g. refusing to enter or terminating a contract with a supplier of materials to a workplace (clause 105(1)(c) and (d))).

In view of the changing nature of work relationships, this clause is cast in wide terms to protect all those who carry out work, or would do so but for the discriminatory conduct, whether under employment-like arrangements or commercial arrangements.

106—What is a *prohibited reason*

The fact that a person is subjected to a detriment that may amount to discriminatory conduct does not by itself render the conduct unlawful. The conduct is only unlawful under the Act if it is engaged in for a prohibited reason, that is, the person is subjected to a detriment for an improper reason or purpose.

Clause 106 sets out when discriminatory conduct will be engaged in for a prohibited reason. The prohibited reasons include discriminatory conduct engaged in because a worker, prospective worker or other person—

- is involved in, has been involved in, or intends to be involved in work health and safety representation at the workplace by being a HSR or member of a health and safety committee; or
- undertakes, has undertaken, or proposes to undertake another role under the Act; or
- assists, has assisted, or proposes to assist a person exercising a power or performing a function under the Act (e.g. an inspector); or
- gives, has given, or intends to give information to a person exercising a power or performing a function under the Act ; or
- raises, has raised, or proposes to raise an issue or concern about work health and safety; or
- is involved in, has been involved in, or proposes to be involved in resolving a work health and safety issue under the Act; or
- is taking action, has taken action, or proposes to take action to seek compliance with a duty or obligation under the Act.

107—Prohibition of requesting, instructing, inducing, encouraging, authorising or assisting discriminatory conduct

Clause 107 provides that it is an offence for a person to request, instruct, induce, encourage, authorise or assist another person to engage in discriminatory conduct in contravention of clause 104.

This clause ensures that a person who has organised or encouraged other persons to discriminate against a person cannot avoid being potentially penalised under the Act because the person has not directly engaged in the conduct themselves.

A note alerts the reader that civil proceedings relating to a breach of clause 107 may be brought under Division 3 of Part 6.

108—Prohibition of coercion or inducement

Clause 108 prohibits various forms of coercive conduct taken, or threatened to be taken, intentionally to intimidate, force, or cause a person to act or to fail to act in relation to a work health and safety role.

Clause 108(1) provides that a person must not organise or take, or threaten to organise or take, any action against another person with the intention to coerce or induce that person or another (third) person to do, not do or propose to do the things described in paragraphs 108(1)(a) to (d). These things include to: exercise or not exercise a power under the Act; perform or not perform a function under the Act; exercise or not exercise a power or perform a function in a particular way; and refrain from seeking, or continuing to undertake, a role under the Act.

A note alerts the reader that civil proceedings relating to a breach of clause 108 may be brought under Division 3 of Part 6.

Clause 108(2) clarifies that a reference in the clause to taking action or threatening to take action against a person includes a reference to not taking a particular action or threatening not to take a particular action (e.g. threatening not to promote a person if the person exercises a power under the Act).

Clause 108(3) is an avoidance of doubt provision and ensures that a reasonable direction given by an emergency services worker in an emergency is not an action with intent to coerce or induce a person.

109—Misrepresentation

Clause 109 provides that it is an offence for a person to knowingly or recklessly make a false or misleading representation to another person about the other person's rights or obligations under the Act, his or her ability to initiate or participate in processes under the Act, or his or her ability to make a complaint or enquiry under the Act.

Clause 109(2) provides that clause 109(1) does not apply if the person to whom the representation is made would not be expected to rely on it.

Division 2—Criminal proceedings in relation to discriminatory conduct

110—Proof of discriminatory conduct

This Division sets out the burden of proof on the defendant in criminal proceedings and the orders a court may make if a person is convicted of an offence under this Part.

Clause 110 sets out the way that the onus of proof will work in criminal proceedings for discriminatory conduct.

111—Order for compensation or reinstatement

Clause 111 sets out the kind of orders a court may make in a proceeding where a person is convicted or found guilty of an offence under clause 104 or clause 107. In addition to imposing a penalty, a court may make an order that the offender pay compensation, that the affected person be reinstated or re-employed, or the affected person be employed in the position he or she applied for or in a similar position. A court may make one or more of these orders.

Division 3—Civil proceedings in relation to discriminatory or coercive conduct

112—Civil proceeding in relation to engaging in or inducing discriminatory or coercive conduct

Division 3 enables a person affected by discriminatory or other coercive conduct to seek a range of civil remedies. Civil proceedings under Division 3 are additional to criminal proceedings under Divisions 1 and 2.

Clause 112(1) provides that an eligible person may apply to the IRC for an order provided for in subclause (3). 'Eligible person' is defined in clause 112(6) as a person affected by the contravention or a person authorised to be his or her representative. The person's representative may be any person, including a union representative.

Clause 112(2) outlines the persons against whom a civil order may be sought.

Clause 112(3) sets out the kind of orders that can be made in civil proceedings. These include injunctions, compensation, reinstatement of employment orders and any other order that the IRC considers appropriate.

Clause 112(4) provides that, for the purposes of clause 112, a person may be found to have engaged in discriminatory conduct for a prohibited reason only if the reason mentioned in clause 106 was a substantial reason for the conduct. This is a lower threshold than that applicable to criminal proceedings where the prohibited reason must be the dominant reason.

Clause 112(5) clarifies that nothing in clause 112 limits any other power of the IRC.

113—Procedure for civil actions for discriminatory conduct

Clause 113(1) imposes a time limit on civil proceedings brought under clause 112. A proceeding under clause 112 must be commenced no later than one year after the date on which the applicant knew or ought to have known that the cause of action arose.

Clause 113(2) to (4) clarify the way that the onus of proof works in a civil proceeding under clause 112.

Clause 113(2) provides that if the plaintiff proves a prohibited reason for discriminatory conduct, that reason is presumed to be a substantial reason for that conduct unless the defendant proves otherwise on the balance of probabilities.

Clause 113(3) provides that it is a defence to a civil proceeding in respect of engagement in or encouragement of discriminatory conduct if the defendant proves that the conduct was reasonable in the circumstances and a substantial reason for the conduct was to comply with the requirements of the Act or a corresponding work health and safety law.

Clause 113(2) to (4) reverse the onus of proof applicable to civil proceedings. Generally, the plaintiff is required to establish on the balance of probabilities that the action complained of was carried out for a particular reason or with a particular intent. However, clause 113(2) provides that once the plaintiff has proven that a person's discriminatory conduct is motivated by a prohibited reason, to avoid civil consequences that person (the defendant) must then establish, on the balance of probabilities, that the prohibited reason was not a substantial reason for the discriminatory conduct. Such a provision is necessary as the intention of the person who engages in discriminatory conduct will be known to that person alone.

Clause 113(4) is an avoidance of doubt provision and provides that the burden of proof on the defendant outlined in clause 113(2) and (3) is a legal, not an evidential, burden of proof. The legal burden of proof means the burden of proving the existence of a matter.

Division 4—General

114—General provisions relating to orders

This Division contains provisions dealing with the interaction between criminal and civil proceedings under Part 6.

Clause 114(1) provides that the making of a civil order in respect of conduct referred to in clause 112(2)(a) and (b) does not prevent the bringing of criminal proceedings under clause 104 or 107 in respect of the same conduct.

Clause 114(2) limits the ability of a court to make an order under clause 111 in criminal proceedings under clause 104 or 107 if the IRC has made an order under clause 112 in civil proceedings in respect of the same conduct (i.e. the conduct referred to in clauses 112(2)(a) and (b)).

Conversely, clause 114(3) limits the ability of the IRC to make an order under clause 112 in civil proceedings in respect of conduct referred to in clause 112(2)(a) and (b) if a court has made an order under clause 111 in criminal proceedings brought under clause 104 or 107 in respect of the same conduct.

115—Prohibition of multiple actions

Clause 115 ensures that a person may not initiate multiple actions in relation to the same matter under two or more laws. Specifically, a person may not—

- commence a proceeding under Division 3 of Part 6 if the person has commenced a proceeding or made an application or complaint in relation to the same matter under a law of the Commonwealth or a State and the action is still on foot; or
- recover any compensation under Division 3 if the person has received compensation for the matter under a law of the Commonwealth or a State; or
- commence or continue with an application under Division 3 if the person has failed in a proceeding, application or complaint in relation to the same matter under another law. This does not include proceedings, applications or complaints relating to workers' compensation.

Part 7—Workplace entry by WHS entry permit holders

Division 1—Introductory

116—Definitions

Clause 116 contains the key definitions for Part 7.

Official of a union

Official of a union is used in this Part to describe an employee of a union or a person who holds an office in a union.

Relevant person conducting a business or undertaking

A *relevant PCBU* is used throughout Part 7 and is defined to mean a person conducting a business or undertaking in relation to which a WHS entry permit holder is exercising, or proposes to exercise, a right of entry.

There may be more than one *relevant PCBU* at a workplace that a WHS entry permit holder is exercising, or proposes to exercise, a right of entry.

Relevant union

Relevant union is defined in this Part as the union that a WHS entry permit holder represents.

Relevant worker

The term *relevant worker* is used in this Part to describe a worker whose workplace a WHS entry permit holder has a right to enter. A relevant worker is one—

- who is a member, or potential member, of a union that the WHS entry permit holder represents; and
- whose industrial interests the relevant union is entitled to represent, and
- who works at the workplace at which the WHS entry permit holder is exercising, or intending to exercise, a right of entry under this Part.

Division 2—Entry to inquire into suspected contraventions

117—Entry to inquire into suspected contraventions

This Division sets out when the WHS permit holder may enter a workplace to inquire into a suspected contravention of the Act and the rights that the WHS permit holder may exercise while at the workplace for that purpose.

Clause 117 allows a WHS entry permit holder to enter a workplace and exercise any of the rights contained in clause 118 in order to inquire into a suspected contravention of the Act at that workplace.

These rights may only be exercised in relation to suspected contraventions that relate to, or affect, a relevant worker (as defined in clause 116).

Clause 117(2) requires the WHS entry permit holder to reasonably suspect before entering the workplace that the contravention has occurred or is occurring. If this suspicion is disputed by another party, the onus is on the WHS entry permit holder to prove that the suspicion is reasonable.

118—Rights that may be exercised while at workplace

Clause 118 lists the rights that a WHS entry permit holder may exercise upon entering a workplace under clause 117 to inquire into a suspected contravention. A WHS permit holder may do any of the following:

- inspect any thing relevant to the suspected contravention including work systems, plant, substances etc;
- consult with relevant workers or the relevant PCBU about the suspected contravention;
- require the relevant PCBU to allow the WHS entry permit holder to inspect and make copies of any document that is directly relevant to the suspected contravention that is kept at the workplace or accessible from a computer at the workplace, other than an employee record;
- warn any person of a serious risk to his or her health or safety emanating from an immediate or imminent exposure to a hazard that the WHS entry permit holder reasonably believes that person is exposed to.

Clause 118(2) provides that the relevant PCBU must comply with the request to provide documents related to the suspected contravention unless allowing the WHS entry permit holder to access a document would contravene a Commonwealth, State or Territory law.

The approach in clause 118(3) and (4) reverses the onus of proof generally applicable to civil proceedings because only the PCBU is in a position to show whether the reason the PCBU refused or failed to do something was reasonable. It would be too onerous to require the plaintiff in civil proceedings to prove that a refusal or failure to comply with a request of a WHS entry permit holder was unreasonable as he or she may not be privy to the reasons for that refusal or failure to comply.

Subclause (4) clarifies that the burden of proof on the defendant under subclause (3) is an evidential burden.

119—Notice of entry

Clause 119(1) requires a WHS entry permit holder to provide notice, in accordance with the regulations, to the relevant PCBU and the person with management or control of the workplace as soon as is reasonably practicable after entering a workplace under clause 117 to inquire into a suspected contravention. The contents of the notice must comply with the regulations.

However, clause 119(2) provides that a WHS entry permit holder is not required to comply with the notice requirements in clause 119(1), including to provide any or all of the information required by the regulations, if to do so—

- would defeat the purpose of the entry to the workplace; or
- would cause the WHS entry permit holder to be unreasonably delayed in an inquiry in an urgent case, i.e. in an emergency situation.

Clause 119(3) provides that the notice requirements in clause 119(1) do not apply to entry to a workplace under clause 120 to inspect or make copies of employee records or records or documents directly relevant to a suspected contravention that are not held by the relevant PCBU.

120—Entry to inspect employee records or information held by another person

Clause 120 authorises a WHS entry permit holder to enter a workplace to inspect, or make copies of, employee records that are directly relevant to a suspected contravention or other documents directly relevant to a suspected contravention that are held by someone other than the relevant PCBU.

Clause 120(3) requires the WHS entry permit holder to provide notice, in accordance with the regulations, of his or her proposed entry to inspect or make copies of these documents to the relevant PCBU and the person who has possession of the documents.

Clauses 120(4) and (5) require the entry notice to comply with particulars prescribed in the regulations and to be given during the normal business hours of the workplace to be entered at least 24 hours, but not more than 14 days, before the proposed entry.

Division 3—Entry to consult and advise workers

121—Entry to consult and advise workers

This Division authorises a WHS entry permit holder to enter a workplace for the purpose of consulting with and providing advice to relevant workers about work health and safety matters and provides the requirements that must be met before that right can be exercised.

Clause 121 authorises a WHS entry permit holder to enter a workplace to consult with and advise relevant workers who wish to participate in discussions about work health and safety matters.

While at a workplace for this purpose, a WHS entry permit holder may warn any person of a serious risk to his or her health or safety that the WHS entry permit holder reasonably believes that person is exposed to.

122—Notice of entry

Clause 122 requires a WHS entry permit holder to give notice, in accordance with the regulations, of the proposed entry under clause 121 to consult with workers to the relevant PCBU during the normal business hours of the workplace at least 24 hours and not more than 14 days, before the proposed entry. The contents of the notice must comply with the regulations.

Division 4—Requirements for WHS entry permit holders

123—Contravening WHS entry permit conditions

This Division sets out the mandatory requirements that WHS permit holders must meet when exercising or proposing to exercise a right under Division 2 and 3 of the Act.

The authorising authority may impose conditions on a WHS entry permit holder at the time of issuing the permit (e.g. to provide a longer period of notice for a specific PCBU than otherwise required under the Act (see clause 135)). Clause 123 requires a permit holder to comply with any such condition.

This clause is a civil penalty provision.

124—WHS entry permit holder must also hold permit under other law

This clause prohibits a WHS entry permit holder from entering a workplace unless he or she also holds an entry permit under the *Fair Work Act 2009* of the Commonwealth or under the *Fair Work Act 1994*. The *Fair Work Act 2009* requires a union official of an organisation (as defined under that Act) seeking to enter premises under a State or Territory OHS law (also as defined under that Act) to hold a Fair Work entry permit. A person who has a right of entry to a workplace under section 140 of the *Fair Work Act 1994* will be taken to hold an entry permit under that Act.

This clause is a civil penalty provision.

125—WHS entry permit to be available for inspection

Clause 125 requires a WHS entry permit holder to produce his or her WHS entry permit and photographic identification, such as a driver's licence, when requested by a person at the workplace.

This clause is a civil penalty provision.

126—When right may be exercised

Clause 126 prohibits the exercise of a right of entry under the Act outside of the usual working hours at the workplace the WHS entry permit holder is entering. This refers to the usual working hours of the workplace the WHS entry permit holder wishes to enter.

This clause is a civil penalty provision.

127—Where the right may be exercised

Clause 127 provides that when exercising a right of entry, a WHS entry permit holder may only enter the area of the workplace where the relevant workers carry out work or any other work area at the workplace that directly affects the health or safety of those workers.

128—Work health and safety requirements

Clause 128 requires a WHS entry permit holder to comply with any reasonable request by the relevant PCBU or the person with management or control of the workplace to comply with a work health and safety requirement, including a legislated requirement that is applicable to the specific type of workplace. Clause 142 would allow the authorising authority to deal with a dispute about whether a request was reasonable.

This clause is a civil penalty provision.

129—Residential premises

Clause 129 prohibits a WHS entry permit holder from entering any part of a workplace that is used only for residential purposes. For example, a WHS entry permit holder could enter a converted garage where work is being conducted but could not enter the living quarters of the residence if no work is undertaken there.

This clause is a civil penalty provision.

130—WHS entry permit holder not required to disclose names of workers

The operation of the definition of 'relevant worker' means that a WHS entry permit holder may only exercise a right of entry at a workplace where there are workers who are members, or eligible to be members, of the relevant union.

Clause 130 protects the identity of workers by providing that a WHS entry permit holder is not required to disclose the names of any workers to the relevant PCBU or the person with management or control of the workplace.

However, a WHS entry permit holder can disclose the names of members with their consent.

Clause 148 deals separately with unauthorised disclosure of information and documents obtained during right of entry in relation to all workers.

Division 5—WHS entry permits

131—Application for WHS entry permit

This Division sets out the processes for the issuing of WHS entry permits. It also details the process of revocation of a WHS entry permit.

Clause 131 allows a union to apply for a WHS entry permit to be issued to an official of the union.

Clause 131(2) lists the matters that must be included in an application including a statutory declaration from the relevant union official declaring that the official meets the eligibility criteria for a WHS entry permit. This clause duplicates the eligibility criteria that are listed in clause 133 of the Act.

132—Consideration of application

Clause 132 lists the matters the authorising authority, when considering whether to issue a WHS entry permit, must take into account when determining an application. This includes the objects of the Act (in clause 3) and the object of enabling unions to enter workplaces for the purposes of ensuring the health and safety of workers.

133—Eligibility criteria

Clause 133 provides that the authorising authority must not issue a WHS entry permit unless satisfied of the matters listed in paragraphs (a) to (c).

The requirement in clause 133(c) that the union official will hold an entry permit issued under another law has been included to deal with situations where a person has applied for such an entry permit and is simply waiting for it to be issued.

134—Issue of WHS entry permit

Clause 134 allows the authorising authority to issue a WHS entry permit if it has taken into account the matters listed in clauses 132 and 133

135—Conditions on WHS entry permit

Clause 135 allows the authorising authority to impose specific conditions on a WHS entry permit when it is issued.

136—Term of WHS entry permit

Clause 136 states that the term of a WHS entry permit is 3 years.

137—Expiry of WHS entry permit

Clause 137 sets out when a WHS entry permit expires. Clause 137(1) provides that unless it is revoked it will expire when the first of the following occurs:

- three years elapses since it was issued;
- the relevant industrial relations entry permit held by the WHS entry permit holder expires;
- the WHS entry permit holder ceases to be an official of the relevant union;
- the relevant union ceases to be an organisation registered under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth or the an association of employees or independent contractors, or both, that is registered or recognised as such an association under the *Fair Work Act 1994*.

Clause 137(2) makes it clear that an application for the issue of a subsequent WHS entry permit may be submitted before or after the current permit expires.

138—Application to revoke WHS entry permit

Clause 138 allows the regulator, a relevant PCBU or any other person affected by the exercise or purported exercise of a right of entry of the WHS entry permit holder to apply to the authorising authority for the revocation of the WHS entry holder's permit.

Clause 138(2) provides the grounds for making an application to revoke the WHS entry permit holder's permit. These include—

- the permit holder no longer satisfies the eligibility criteria for a WHS entry permit or for an entry permit under a corresponding work health and safety law, or the *Fair Work Act 2009* of the Commonwealth or the *Workplace Relations Act 1996* of the Commonwealth, or is no longer able to exercise a right of entry under section 140 of the *Fair Work Act 1994*; and
- the permit holder has contravened any condition of the WHS entry permit he or she currently holds; and
- the permit holder has acted, or purported to act, in an improper manner in the exercise of any right under the Act; and
- the permit holder has intentionally hindered or obstructed a person conducting the business or undertaking or workers at a workplace when exercising, or purporting to exercise, a right of entry under Part 7 of the Act.

The applicant is required to give written notice of the application, including the grounds on which it is made, to the WHS entry permit holder to whom it relates and the relevant union.

Both the WHS entry permit holder and the relevant union will be parties to the application for revocation (clause 138(4)).

139—Authorising authority must permit WHS entry permit holder to show cause

Clause 139 provides that if the authorising authority receives an application for revocation of a WHS entry permit and believes that a ground for revocation exists, the authority must give notice to the WHS entry permit holder of this, including details of the application. The authorising authority must also advise the WHS entry permit holder of his or her right to provide reasons (within 21 days) as to why the WHS entry permit should not be revoked.

Clause 139(1)(b) requires the authorising authority to suspend a WHS entry permit while deciding the application for revocation if it considers that suspension is appropriate. The WHS entry permit holder must be notified if this occurs.

140—Determination of application

Clause 140 allows the authorising authority to make an order to revoke a WHS entry permit or an alternative order, such as imposing conditions on or suspending a WHS entry permit if satisfied on the balance of probabilities of the matters listed in clause 138(2). Clause 140(2) lists a number of matters that the authorising authority must take into account when deciding the appropriate action to take.

In addition to revoking a current WHS entry permit, the authorising authority may make an order about the issuing of future WHS entry permits to the person whose WHS entry permit is revoked.

Division 6—Dealing with disputes

141—Application for assistance of inspector to resolve dispute

This Division sets out the powers of an inspector and the authorising authority to deal with a dispute that arises about an exercise or purported exercise of a right of entry.

Clause 141 allows the regulator, on the request of a party to the dispute, to appoint an inspector to assist in resolving a dispute about the exercise or purported exercise of a right of entry.

An inspector may then attend the workplace to assist in resolving the dispute. However, an inspector is not empowered to make any determination about the dispute. This does not prevent the inspector from exercising his or her compliance powers.

142—Authorising authority may deal with a dispute about a right of entry under this Act

Clause 142 allows the authorising authority, on its own initiative or on application, to deal with a dispute about a WHS entry permit holder's exercise, or purported exercise, of a right of entry. Clause 142(1) specifically notes that this would include a dispute about whether a request by the relevant PCBU or the person with management or control of the workplace that a WHS entry permit holder comply with work health and safety requirements is reasonable. It would also include, for example, a dispute about a refusal by a PCBU to allow the WHS permit holder to exercise rights.

Clause 142(2) provides that the authorising authority may deal with the dispute in any manner it thinks appropriate, such as by mediation, conciliation or arbitration.

Clause 142(3) provides the orders available to the authorising authority if it deals with the dispute by arbitration. The authorising authority may make any order it considers appropriate and specifically may make an order revoking or suspending a WHS entry permit or about the future issue of WHS entry permits to one or more persons.

In exercising its power to make an order about the future issue of WHS entry permits to one or more persons under clause 142(3)(d), the authorising authority could, for example, ban the issue of a WHS entry permit to a person for a certain period. This provision is intended to ensure that a permit holder cannot gain a new permit while his or her previous permit is revoked or is still suspended.

However, the authorising authority may not grant any rights to a WHS entry permit holder that are additional to, or inconsistent with, the rights conferred on a WHS entry permit holder under the Act.

143—Contravening order made to deal with dispute

Clause 143 provides that if the authorising authority makes an order following arbitration of a right of entry dispute a person could be liable to a civil penalty if the person contravenes that order.

This clause is a civil penalty provision.

Division 7—Prohibitions

144—Person must not refuse or delay entry of WHS entry permit holder

This Division outlines the type of actions and conduct that are prohibited under the Part. The prohibitions relate to both permit holders and others.

This clause and clause 145 prohibit a person taking certain actions against a WHS entry permit holder who is exercising rights in accordance with this Part.

Clause 144 prohibits a person from unreasonably refusing or delaying entry to a workplace that the WHS entry permit holder is entitled under the Part to enter.

Clause 144(2) provides that if civil proceedings are brought against a person for a contravention of this provision the evidential burden is on the person, the defendant, to show that he or she had a reasonable excuse for refusing or delaying the entry of the WHS entry permit holder. A reasonable excuse in such an instance might be, for example, that the person reasonably believed that the WHS entry permit holder did not hold the correct entry permits.

This clause is a civil penalty provision.

145—Person must not hinder or obstruct WHS entry permit holder

Clause 145 prohibits a person from intentionally and unreasonably hindering or obstructing a WHS entry permit holder who is exercising a right of entry or any other right conferred on the person under this Part. This would cover behaviour such as making repeated and excessive requests that a WHS entry permit holder show his or her entry permit or failing to provide access to records that the permit holder is entitled to inspect.

This clause is a civil penalty provision.

146—WHS entry permit holder must not delay, hinder or obstruct any person or disrupt work at workplace

Clause 146 prohibits a WHS entry permit holder from intentionally and unreasonably delaying, hindering or obstructing any person, or disrupting any work, while at a workplace exercising or seeking to exercise rights conferred on him or her in the Part, or from otherwise acting in an improper manner. Conduct by a permit holder that would hinder or obstruct a person includes action that intentionally and unreasonably prevents or significantly disrupts a worker from carrying out his or her normal duties.

This clause is a civil penalty provision.

147—Misrepresentations about things authorised by this Part

This clause provides that a person must not take action with the intention of giving the impression, or be reckless as to whether he or she gives the impression, that the action is authorised by the Part when it is not the case. An example of this behaviour would include where a person represents himself or herself as a permit holder when he or she does not hold a valid entry permit.

However, clause 147(2) provides that a person has not contravened this clause if, when doing that thing, he or she reasonably believed that it was authorised by the Part. For instance, if a WHS entry permit holder reasonably believed that he or she was exercising a right of entry in an area of the workplace where relevant workers worked or that affected the health and safety of those workers.

This clause is a civil penalty provision.

148—Unauthorised use or disclosure of information or documents

Clause 148 provides that a person must not use or disclose information or documents obtained by a WHS entry permit holder when inquiring into a suspected contravention.

This clause is intended to operate to prevent the use or disclosure of the information or documents for a purpose other than that for which they were acquired. The exceptions at paragraphs (a) to (e) are the only other authorised reasons for use or disclosure.

Clause 148(a) authorises use or disclosure if the person reasonably believes that it is necessary to lessen or prevent a serious risk to a person's health or safety or a serious threat to public health or safety.

Clause 148(b) authorises use or disclosure as part of an investigation of a suspected unlawful activity or in the reporting of concerns to relevant persons or authorities of concerns of suspected unlawful activity.

Clause 148(c) authorises use or disclosure if it is required or authorised by or under law.

Clause 148(d) authorises use or disclosure if the persons doing so believes it is reasonably necessary for an enforcement body (as defined in the *Privacy Act 1988* of the Commonwealth) to do a number of things such as prevent, detect, investigate, prosecute or punish a criminal offence or breach of a law.

Clause 148(e) provides that disclosure or use is also authorised if it is made or done with the consent of the individual to whom the information relates.

This clause mirrors section 504 of the *Fair Work Act 2009* of the Commonwealth.

This clause is a civil penalty provision.

Division 8—General

149—Return of WHS entry permits

This Division details when WHS entry permits must be returned, the information the relevant union is required to provide to the authorising authority and the authorising authority's obligation to keep a register of WHS entry permit holders.

If a person's WHS entry permit is revoked, suspended or expired, clause 149 requires the person to return it to the authorising authority within 14 days.

Clause 149(2) provides that at the end of a suspension period, the authorising authority must return any WHS entry permit that has not expired to the WHS entry permit holder if the person, or the union he or she represents, applies for its return.

This clause is a civil penalty provision.

150—Union to provide information to authorising authority

Clause 150 requires the relevant union to advise the authorising authority if a WHS entry permit holder leaves the union, has a relevant industrial relations law entry permit suspended or revoked or is no longer eligible to exercise a right of entry under the *Fair Work Act 1994*, or if the union ceases to be registered or recognised under the *Fair Work Act 1994* or the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth.

A civil penalty may be imposed if the union does not comply with this clause.

151—Register of WHS entry permit holders

Clause 151 requires the authorising authority to maintain an up-to-date, publicly accessible register of all WHS entry permit holders in the jurisdiction.

The regulations may provide for the particulars of the register.

Part 8—The regulator

Division 1—Functions of regulator

152—Functions of regulator

This Division sets out the regulator's functions and allows additional functions to be prescribed by regulations. This Division also establishes the regulator's ability to delegate powers and functions under the Act and to obtain information.

Other functions and powers of the regulator are included elsewhere under the Act (e.g. powers and functions in relation to incident notification, inspector notices and WHS undertakings).

Clause 152 lists the broad areas in which the regulator has functions.

Functions set out in clause 152(a) to (d) include advising and making recommendations to the Minister, monitoring and enforcing compliance and providing work health and safety advice and information. Clause 152(e) to (g) describe the functions of the regulator in fostering and promoting work health and safety. Clause 152(h) enables the regulator to conduct and defend legal proceedings under this Act.

Clause 152(i) is a catchall provision that clarifies that the regulator has any other function conferred on it under the Act.

153—Powers of regulator

Clause 153(1) confers a general power on the regulator to do all things necessary or convenient in relation to the regulator's functions.

Clause 153(2) confers on the regulator all the powers and functions that an inspector has under the Act.

154—Delegation by regulator

Clause 154(1) allows the regulator to delegate the regulator's powers and functions under the Act to any person by instrument in writing.

Clause 154(2) clarifies that delegation may be made subject to conditions, is revocable and does not derogate from the regulator's power to act.

A delegated power or function may, if the instrument of delegation so provides, be further delegated.

Division 2—Powers of regulator to obtain information

155—Powers of regulator to obtain information

Powers under this Division are intended to facilitate the regulator's function of monitoring and enforcing compliance with the Act and ensure effective regulatory coverage of work health and safety matters (clause 152(b)). Provisions have been designed to provide robust powers of inquiry and questioning subject to appropriate checks and balances to ensure procedural fairness.

Powers under this Division are only available if the regulator has reasonable grounds to believe that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of the Act or that will assist the regulator to monitor or enforce compliance under the Act. These powers are only exercisable by way of written notice, which must set out the recipient's rights under the Act (e.g. entitlement to legal professional privilege and the 'use immunity').

Additionally, powers to require a person to appear before the regulator to give evidence are only exercisable if the regulator has taken all reasonable steps to obtain the relevant information by other means available under the clause but has been unable to do so. The time and place specified in the notice must be reasonable in the circumstances, including taking into account the circumstances of the person required to appear.

Clause 155 sets out the powers of the regulator to obtain information from a person in circumstances where the regulator has reasonable grounds to believe that the person is capable of—

- giving information; or
- producing documents or records; or
- giving evidence,

in relation to a possible contravention of the Act or that will assist the regulator to monitor or enforce compliance with the Act.

Clause 155(2) requires the regulator to exercise these powers by written notice served on the person.

Clause 155(3) sets out the content requirements for the written notice, which must include statements to the effect that the person—

- is not excused from answering a question on the ground that it may incriminate the person or expose him or her to a penalty; and
- is entitled, if he or she is an individual, to the use immunity provided for in clause 172(2); and
- is entitled to claim legal professional privilege (if applicable); and
- if required to appear—is entitled to attend with a lawyer (clause 155(3)(c)(ii)).

Additional prerequisites apply if the regulator wishes to obtain evidence from a person by requiring the person to appear before a person appointed by the regulator (clause 155(4)). First, the regulator cannot require a person to appear before the nominated person unless the regulator has first taken all reasonable steps to obtain the information by other means (i.e. by requiring production of documents or records etc).

Second, if the person is required to appear in person, then the day, time and place nominated by the regulator must be reasonable in all the circumstances (clause 155(2)(c)).

Clause 155(5) prohibits a person from refusing or failing to comply with a requirement under clause 155 without a reasonable excuse. Clause 155(6) clarifies that this places an evidential burden on the accused to show a reasonable excuse.

Clause 155(7) makes it clear that the provisions dealing with self-incrimination, including the use immunity, apply to a requirement made under this clause, with any necessary changes.

Part 9—Securing compliance

Division 1—Appointment of inspectors

156—Appointment of inspectors

This Part establishes the WHS inspectorate and provides inspectors with powers of entry to workplaces and powers of entry to any place under a search warrant issued under the Act. Part 9 also provides inspectors with powers upon entry to workplaces.

The Division sets out the process for appointing, suspending and terminating inspector appointments. It also provides a process for dealing with conflicts of interest that may arise during the exercise of inspectors' compliance powers.

Clause 156 lists the categories of persons who are eligible for appointment as an inspector. Only public servants, holders of a statutory office and WHS inspectors from other jurisdictions may be appointed as inspectors (clause 156(a) to (c)).

Clause 156(d) additionally allows for the appointment of any person who is in a prescribed class of persons. Regulations could be made, for example, to allow for the appointment of specified WHS experts to meet the regulator's short-term, temporary operational requirements.

Restrictions on inspectors' compliance powers are provided for in clauses 161 and 162, which deal with conditions or restrictions attaching to inspectors' appointments and regulator's directions respectively.

Clause 156(2) provides that the following are to be taken to have been appointed as inspectors:

- in relation to mines to which the *Mines and Works Inspection Act 1920* applies—an inspector of mines under that Act;
- in relation to operations to which the *Offshore Minerals Act 2000* applies—an inspector under that Act;
- in relation to operations to which the *Petroleum and Geothermal Energy Act 2000* applies—an authorised officer under that Act;
- in relation to operations to which the *Petroleum (Submerged Lands) Act 1982* applies—an inspector under that Act;
- any other person who may exercise statutory powers under another Act brought within the ambit of the subclause by the regulations.

157—Identity cards

Clause 157 provides for the issue, use and return of inspectors' identity cards.

Inspectors are required to produce their identity card for inspection on request when exercising compliance powers (clause 157(2)). Additional requirements may also apply when exercising certain powers (see clause 173).

158—Accountability of inspectors

Clause 158(1) requires inspectors to report actual or potential conflicts of interest arising out of their functions as an inspector to the regulator.

Clause 158(2) requires the regulator to consider whether the inspector should not deal, or should no longer deal, with an affected matter and direct the inspector accordingly.

159—Suspension and ending of appointment of inspectors

Clause 159(1) provides the regulator with powers to suspend or end inspectors' appointments.

Clause 159(2) clarifies that a person's appointment as an inspector automatically ends upon the person ceasing to be eligible for appointment as an inspector (e.g. the person ceases to be a public servant).

Division 2—Functions and powers of inspectors

160—Functions and powers of inspectors

This Division summarises inspectors' functions and powers under the Act (referred to collectively as 'compliance powers') and specifies the general restrictions on those functions and powers.

Clause 160 lists the functions and powers of inspectors and cross-references a number of important compliance powers which are detailed elsewhere (e.g. the power to issue notices).

However, clause 160(a) is a stand-alone provision that empowers inspectors to provide information and advice about compliance with the Act.

161—Conditions on inspectors' compliance powers

Clause 161 allows conditions to be placed on an inspector's appointment by specifying them (if any) in the person's instrument of appointment. For example, an inspector may be appointed to exercise compliance powers only in relation to a particular geographic area or industry or both.

162—Inspectors subject to regulator's directions

Clause 162(1) provides that inspectors are subject to the regulator's directions, which may be of a general nature or may relate to a specific matter (clause 162(2)). For example, the regulator could direct inspectors to comply with investigation or litigation protocols that would apply to all matters. An inspector must comply with these directions. This ensures a consistent approach to the way that inspectors' compliance powers are exercised.

Division 3—Powers relating to entry

Subdivision 1—General powers of entry

163—Powers of entry

This Division sets out general powers of entry and makes special provision for entry under warrant and entry to residential premises. Inspectors have access to a range of powers to support their compliance and enforcement roles.

Clause 163(1) provides for entry at any time by an inspector into any place that is, or the inspector reasonably suspects is, a workplace.

Clause 163(2) clarifies that such entry may be with or without the consent of the person with management or control of the workplace.

Clause 163(3) requires an inspector to immediately leave a place that turns out not to be a workplace. The note following the clause explains that this requirement would not prevent an inspector from passing through residential premises if this is necessary to gain access to a workplace under clause 170(c).

Clause 163(4) provides for entry by an inspector under a search warrant.

164—Notification of entry

Clause 164(1) clarifies that an inspector is not required to give prior notice of entry under section 163.

Clause 164(2) requires the inspector, as soon as practicable after entering a workplace or suspected workplace, to take all reasonable steps to notify relevant persons of his or her entry and the purpose of entry. Those persons are—

- the relevant PCBU in relation to which the inspector is exercising the power of entry (clause 164(2)(a)); and
- the person with management or control of the workplace (clause 164(2)(b)); and
- any HSR for either of these PCBUs (clause 164(2)(c)).

The requirements in clause 164(2)(a) and (b) address multi-business worksites where the worksite is managed by some sort of management company (e.g. principal contractor on a construction site). In those situations, the management company, as well as any other PCBUs whose operations are proposed to be inspected, are subject to the notification requirements in this provision.

Clause 164(3) provides that notification is not required if it would defeat the purpose for which the place was entered or would cause unreasonable delay (e.g. during an emergency).

Special notification rules apply to entry on warrant (see clause 168).

165—General powers on entry

Clause 165(1) sets out inspectors' general powers on entry. The list of powers reflects a consolidation of powers currently included in work health and safety Acts across Australia.

Clause 165(1)(a) confers a general power on inspectors to inspect, examine and make inquiries at workplaces, which is supported by more specific powers to conduct various tests and analyses in clause 165(1)(b) to (e).

Clause 165(1)(g) allows inspectors to exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for purposes of the Act. This provision must be read subject to Subdivisions 3 and 4 of Part 9, which place express limitations around the exercise of specific powers (e.g. production of documents).

Requirements for reasonable help

Clause 165(1)(f) allows an inspector to require a person at the workplace to provide reasonable help to exercise the inspector's powers in paragraphs (a) to (e).

This clause provides, in very wide terms, for an inspector to require any person at a workplace to assist him or her in the exercise of his or her compliance powers. Although this could include an individual such as a self-employed person or member of the public at the workplace, the request would have to be reasonable in all the circumstances to fall within the scope of the power.

Limits on what may be required

Inspectors may only require reasonable help to be provided if the required help is—for example—

- connected with or for the purpose of exercising a compliance power; or
- reasonably required to assist in the exercise of the inspector's compliance powers; or
- reasonable in all the circumstances; or
- connected to the workplace where the required assistance is being sought.

Clause 165(2) makes it an offence for a person to refuse to provide reasonable help required by an inspector under this clause without a reasonable excuse.

What will be a reasonable excuse will depend on all of the circumstances. A reasonable excuse for failing to assist an inspector as required may be that the person is physically unable to provide the required help.

Clause 165(3) places the evidentiary burden on the individual to demonstrate that he or she has a reasonable excuse. That is because that party is better placed to point to evidence that he or she had a reasonable excuse for refusing to provide the inspector with the required reasonable help.

166—Persons assisting inspectors

Clause 166(1) provides for inspectors to be assisted by one or other persons if the inspector considers the assistance is necessary in the exercise of his or her compliance powers. For example, an assistant could be an interpreter, WHS expert or information technology specialist.

Clause 166(2) provides that assistants may do anything the relevant inspector reasonably requires them to do to assist in the exercise of his or her compliance powers and must not do anything that the inspector does not have power to do, except as provided under a search warrant (e.g. use of force by an assisting police officer to enter premises). This provision ensures that assistants are always subject to directions from inspectors and the same restrictions that apply to inspectors.

Clause 166(3) provides that anything lawfully done by the assistant under the direction of an inspector is taken for all purposes to have been done by the inspector. This means that the inspector is accountable for the actions of the assistant. This provision is intended to ensure the close supervision of assistants by the responsible inspector.

Subdivision 2—Search warrants

167—Search warrants

This Subdivision provides for search warrants to allow inspectors to search places (whether workplaces or not) for evidence of offences against the Act. This power to apply for and act on a search warrant is additional to inspectors' compliance powers under Subdivisions 1 and 4 of Division 3.

Search warrants would be issued in accordance with each individual jurisdiction's law relating to warrants.

Clause 167 establishes an application process for obtaining search warrants under the Act and establishes the process and requirements for their issue. Under this provision, an inspector may apply to a magistrate for the issue of a search warrant in relation to a place if the inspector believes on reasonable grounds that there is particular evidence of an offence against the Act at the place, or such evidence may be at the place within the next 72 hours.

The search warrant would enable the stated inspector to, with necessary and reasonable help and force, enter the place and exercise the inspector's compliance powers and seize the evidence stated in the search warrant, subject to the limitations specified in the search warrant (clause 167(5)).

Clause 167(6) sets out a procedure for applying to a magistrate for a search warrant by telephone, fax or other prescribed means if the inspector considers the urgency of the situation requires it.

The power to seize evidence is subject to the relevant provisions in the Act (clauses 175 to 181), in addition to any other limitations specified in the warrant.

168—Announcement before entry on warrant

169—Copy of warrant to be given to person with management or control of place

Clauses 168 and 169 set out the notification requirements that apply to entry on warrant.

Subdivision 3—Limitation on entry powers

170—Places used for residential purposes

Clause 170 limits entry to residential premises to hours that are reasonable, having regard to the times at which the inspector believes work is being carried out at the place. It also provides that an inspector may only pass through those parts of the premises that are used only for residential purposes for the sole purpose of accessing a suspected workplace and only if the inspector reasonably believes that there is no reasonable alternative access.

Entry to residential premises is also permitted with the consent of the person with management or control of the place (clause 170(a)) and under a search warrant (clause 170(b)).

Subdivision 4—Specific powers on entry

171—Power to require production of documents and answers to questions

This Subdivision provides for specific information-gathering powers on entry and for seizure and forfeiture of things in certain circumstances. It is intended that inspectors will obtain documents and information under the Act co-operatively, as well as by requiring them under this Subdivision.

Identify who has relevant documents

Clause 171(1)(a) authorises an inspector to require a person at a workplace to tell him or her who has custody of, or access to, a document for compliance-related purposes.

The term 'document' is defined to include a 'record'. It is intended that the term 'document' includes any paper or other material on which there is writing and information stored or recorded by a computer (see for example section 4 of the *Acts Interpretation Act 1915*).

Request documents

Clause 171(1)(b) permits an inspector who has entered a workplace to require a person who has custody of, or access to, a document to produce it to the inspector while the inspector is at that workplace or within a specified period.

Clause 171(2) provides that requirements for the production of documents must be made by written notice unless the circumstances require the inspector to have immediate access to the document.

There is no guidance in the Act as to the time that may be stated for compliance with a notice, but it is intended that the time must be reasonable taking into consideration all of the circumstances giving rise to the request and the actions required by the notice.

The required information must be provided in a form that is capable of being understood by the inspector, particularly in relation to electronically stored documents (see, for example, section 51 of the *Acts Interpretation Act 1915*).

Interview

Clause 171(1)(c) authorises inspectors to require persons at workplaces to answer any questions put by them in the course of exercising their compliance powers.

Clause 171(3) provides that an interview conducted under this provision must be conducted in private if the inspector considers it appropriate or the person being interviewed requests it.

Clause 171(4) clarifies that a private interview would not prevent the presence of the person's representative (e.g. lawyer), or a person assisting the inspector (e.g. interpreter).

Clause 171(5) clarifies that a request for a private interview may be made during an interview.

Offence provision

Clause 171(6) makes it an offence for a person to fail to comply with a requirement under this clause, without having a reasonable excuse. This provision is subject to—

- legal professional privilege, if applicable (see clause 269); and
- the requirements to provide an appropriate warning, as referred to in clause 173(2).

Clause 171(7) clarifies that subclause (6) places an evidential burden on the accused to prove a reasonable excuse for not complying with a requirement under that subclause.

Clause 173 also sets out the steps an inspector must take before requiring a person to produce a document or answer a question under Part 9.

172—Abrogation of privilege against self-incrimination

The Act seeks to ensure—

- that the strongest powers to compel the provision of information currently available to regulators across Australia are available for securing ongoing work health and safety; and
- that the rights of persons under the criminal law are appropriately protected.

Clause 172(1) clarifies that there is no privilege against self-incrimination under the Act, including under clauses 171 (Power to require production of documents and answers to questions) and 155 (Powers of regulator to obtain information).

This means that persons must comply with requirements made under these provisions, even if it means that they may be incriminated or exposed to a penalty in doing so.

These arrangements are proposed because the right to silence is clearly capable of limiting the information that may be available to inspectors or the regulator, which may compromise inspectors' or the regulator's ability to ensure ongoing work health and safety protections. Securing ongoing compliance with the Act and ensuring work health and safety are sufficiently important objectives as to justify some limitation of the right to silence.

Clause 172(2) instead provides for a 'use immunity' which means that the answer to a question or information or a document provided by an individual under clause 171 is not admissible as evidence against that individual in civil or criminal proceedings. An exception applies in relation to proceedings arising out of the false or misleading nature of the answer, information or document.

173—Warning to be given

Clause 173 sets out the steps an inspector must take before requiring a person to produce a document or answer a question under Part 9. These steps are not required if documents or information are provided voluntarily.

Under clause 173, an inspector must first identify himself or herself by producing his or her identity card or in some other way and then—

- warn the person that failure to comply with the requirement or to answer the question without reasonable excuse would constitute and offence (clause 173(1)(b)); and
- warn the person about the abrogation of privilege against self-incrimination in clause 172 (clause 173(1)(c)); and
- advise the person about legal professional privilege, which is unaffected by the Act (clause 173(1)(d)).

This ensures that persons are fully aware about the legal rights and obligations involved when responding to an inspector's requirement to produce a document or answer a question.

If requirements to produce documents are made by written notice (see clause 171(2)), the notice must also include the appropriate warnings and advice.

Clause 173(2) provides that it is not an offence for an individual to refuse to answer an inspector's question on grounds of self-incrimination, unless he or she was first given the warning about the abrogation of the privilege against self-incrimination.

Clause 173(3) clarifies that nothing in the clause would prevent the inspector from gathering information provided voluntarily (i.e. without requiring the information and without giving the warnings required by clause 173).

174—Powers to copy and retain documents

Clause 174(1) allows inspectors to copy, or take extracts from, documents given to them in accordance with a requirement made under the Act and retain them for the period that the inspector considers necessary.

Clause 174(2) provides for access to such documents at all reasonable times by the persons listed in clause 174(2)(a) to (c).

Separate rules apply to documents that are seized under section 175.

175—Power to seize evidence etc

This clause deals with the seizure of evidence under Part 9.

If the place is a workplace, then the inspector may seize anything (including a document) that the inspector reasonably believes constitutes evidence of an offence against the Act (clause 175(1)(a)). The inspector may also take and remove for examination, analysis or testing a sample of any substance or thing without paying for it (clause 175(1)(b)).

If a place (even if it is not a workplace) has been entered with a search warrant under this Part, then the inspector may seize the evidence for which the warrant was issued (clause 175(2)).

In either case, the inspector may also seize anything else at the place if the inspector reasonably believes the thing is evidence of an offence against the Act, and the seizure is necessary to prevent the thing being hidden, lost, destroyed, or used to continue or repeat the offence (clause 175(3)).

176—Inspector's power to seize dangerous workplaces and things

Clause 176 allows inspectors to seize certain things, including plant, substances and structures, at a workplace or part of the workplace that the inspector reasonably believes is defective or hazardous to a degree likely to cause serious illness or injury or a dangerous incident to occur.

177—Powers supporting seizure

Clause 177 provides that a thing that is seized may be moved, made subject to restricted access or, if the thing is plant or a structure, dismantled.

Clause 177(2) makes it an offence to tamper, or attempt to tamper, with a thing that an inspector has placed under restricted access.

Clause 177(3) to (7) enable inspectors to require certain things to be done to allow a thing to be seized.

Clause 177(3) allows an inspector to require a person with control of the seized thing to take it to a stated place by a certain time, which must be reasonable in all the circumstances.

Cause 177(4) provides that the requirement must be made by written notice unless it is not practicable to do so, in which case the requirement may be made orally and confirmed in writing as soon as practicable.

Clause 177(5) allows the inspector to make further requirements in relation to the same thing if it is necessary and reasonable to do so. For example, a requirement could be made to de-commission or otherwise make plant safe once it has been moved to the required place.

Clause 177(6) makes it an offence for a person to refuse or fail to comply with a requirement made under this clause if he or she does not have a reasonable excuse. The evidentiary burden is on the individual to demonstrate that he or she has a reasonable excuse (clause 177(7)).

178—Receipt for seized things

Clause 178 requires inspectors to give receipts for seized things, as soon as practicable. This includes things seized under a search warrant. The receipt must be given to the person from whom the thing was seized or, if that is not practicable, the receipt must be left in a conspicuous position in a reasonably secure way at the place of seizure (clause 178(2)).

Clause 178(3) sets out the information that must be specified in the receipt.

Clause 178(4) sets out the circumstances in which a receipt is not required.

179—Forfeiture of seized things

Clause 179 provides that a seized thing may be forfeited if, after making reasonable inquiries, the regulator cannot find the 'person entitled' to the thing or, after making reasonable efforts, the thing cannot be returned to that person.

Clause 179(2) and (3) provide that inquiries or efforts to return a seized thing are not necessary if this would be unreasonable in the circumstances (e.g. the person entitled to return of the thing tells the regulator he or she does not want the thing returned to him or her).

Clause 179(1)(c) provides for a seized thing to be forfeited by written notice if the regulator reasonably believes it is necessary to retain the thing to prevent it from being used to commit an offence against the Act (clause 179(4)). However, written notice is not required if the regulator cannot find the 'person entitled' to the thing after making reasonable inquiries or it is impracticable or would be unreasonable to give the notice (clause 179(5)).

Clause 179(6) specifies the matters that must be stated in a notice of forfeiture, including the reasons for the decision and information about the right of review.

Clause 179(7) specifies matters that must be taken into account in taking steps to return a seized thing or give notice about its proposed forfeiture, including the thing's nature, condition and value.

Cause 179(8) allows the State to recover reasonable costs of storing and disposing of a thing that has been seized to prevent it being used to commit an offence against the Act.

Clause 179(9) defines the 'person entitled' to mean the person from whom the thing was seized (which will usually be the person entitled to possess the thing) or if that person is no longer entitled to possession, the owner of the thing.

180—Return of seized things

Clause 180 sets out a process for the return of a seized thing after the end of six months after seizure. Upon application from the person entitled to the thing, the regulator must return the thing to that person, unless the regulator has reasonable grounds to retain the thing (e.g. the thing is evidence in legal proceedings).

The applicant may be the 'person entitled' to the thing, that is, either the person entitled to possess the thing or the owner of the thing (clause 180(4)).

Clause 180(3) allows the regulator to impose conditions on the return of a thing, but only if the regulator considers it appropriate to eliminate or minimise any risk to work health or safety related to the thing.

181—Access to seized things

Clause 181 provides a person from whom a thing was seized, the owner of the thing or an authorised person with certain access rights, including the right of inspection and, if the thing is a document, the right to copy it.

This does not apply if it is impracticable or would be unreasonable to allow inspection or copying (clause 181(2)).

Documents produced to an inspector under clause 171 are subject to the separate access regime under clause 174.

Division 4—Damage and compensation

182—Damage etc to be minimised

Clause 182 requires inspectors to take all reasonable steps to ensure that they and any assistants under their direction cause as little inconvenience, detriment and damage as is practicable.

183—Inspector to give notice of damage

Clause 183 sets out a process for giving written notice to relevant persons of any damage (other than damage that the inspector reasonably believes is trivial) caused by inspectors or their assistants while exercising or purporting to exercise compliance powers.

184—Compensation

Clause 184(1) allows a person to make a claim for compensation if the person incurs a loss or expense because of the exercise or purported exercise of a power under Division 3 of Part 9.

Clause 184(2) specifies the forum and process for claiming compensation.

Clause 184(3) limits the compensation that is recoverable to compensation that is 'just' in all the circumstances of the case. This means that compensation is not recoverable simply because the relevant powers have been exercised or purportedly exercised at a workplace. The intention is to limit the recovery of compensation to those cases where there is a sufficient degree of unreasonableness or unfairness in the exercise or purported exercise of those powers to warrant an award of just compensation. For example, compensation may be awarded if the taking of a sample of a thing by an inspector or forfeiture of a thing resulted in the acquisition of property other than on just terms, or in circumstances where an error by an inspector caused significant detriment.

Clause 184(4) allows the regulations to prescribe the matters that may or must be taken into account by the court when considering whether it is just to make the order for compensation.

Division 5—Other matters

185—Power to require name and address

Clauses 185(1) and (2) allow an inspector to require a person to tell the inspector his or her name and residential address if the inspector—

- finds the person committing an offence against the Act (clause 185(1)(a)); or
- reasonably suspects the person has committed an offence against the Act, based on information given to the inspector, or the circumstances in which the person is found (clause 185(1)(b)); or
- reasonably believes the person may be able to assist in the investigation of an offence against the Act (clause 185(1)(c)).

Before making a requirement under this provision, the inspector must give the person his or her reasons for doing so and also warn the person that failing to respond without reasonable excuse would constitute an offence (clause 185(2)).

If the inspector reasonably believes the person's response to be false, the inspector may further require the person to give evidence of its correctness (clause 184(3)). For example, an inspector could ask to see the person's driver's licence.

Clause 185(4) makes it an offence for a person to refuse or fail to comply with a requirement under this clause if the person does not have a reasonable excuse. Subclause (5) clarifies that there is an evidential burden on the accused to show a reasonable excuse.

186—Inspector may take affidavits

Clause 186 clarifies that an inspector may take affidavits for any compliance-related purpose under the Act.

187—Attendance of inspector at inquiries

This clause of the Model Work Health and Safety Act, which clarifies that an inspector may attend coronial inquests into the cause of death of a worker while the worker was carrying out work and allows inspectors to examine witnesses at the inquest, has been omitted because it is adequately covered by other local laws.

Division 6—Offences in relation to inspectors

188—Offence to hinder or obstruct inspector

This Division establishes offences against inspectors.

Given the importance of the role of the inspector and that the inspector is the most immediate personification at the workplace of the regulatory system, offences in relation to inspectors are considered to be serious and the subject of significant penalties.

Clause 188 makes it an offence to intentionally hinder or obstruct an inspector in exercising compliance powers under the Act, or induce or attempt to induce any other person to do so. This would include unreasonably refusing or delaying entry, as well as behaviour such as intentionally destroying or concealing evidence from an inspection.

Any reasonable action taken by a person to determine his or her legal rights or obligations in relation to a particular requirement (e.g. the scope of legal professional privilege) is not intended to be caught by this provision.

189—Offence to impersonate inspector

Clause 189 makes it an offence for a person who is not an inspector to hold himself or herself out to be an inspector.

190—Offence to assault, threaten or intimidate inspector

Clause 190 makes it an offence to assault, threaten or intimidate, or attempt to do so, an inspector or a person assisting an inspector.

Although this is also an offence at general criminal law, the inclusion of this provision is intended to ensure greater deterrence by giving it more prominence and allowing its prosecution by the regulator.

Part 10—Enforcement measures

Division 1—Improvement notices

191—Issue of improvement notices

Part 10 provides for enforcement measures including notices (i.e. improvement notices, prohibition notices and non-disturbance notices), remedial action and court-ordered injunctions.

Many of the decisions that can be made under this Part are subject to review (see Part 12).

This Division provides for inspectors to issue improvement notices. Improvement notices and prohibition notices have for many years been fundamental tools used by inspectors to achieve compliance with work health and safety laws.

Improvement notices may require a person to remedy a contravention, prevent a likely contravention of the Act or take remedial action.

Clause 191 allows an inspector to issue improvement notices if the inspector reasonably believe a person—

- is contravening a provision of the Act; or

- has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated.

Clause 191(2) lists what action an improvement notice may require, including that the person remedy the contravention or take steps to prevent a likely contravention from occurring.

192—Contents of improvement notices

Clause 192(1) sets out the mandatory and optional content for improvement notices. The mandatory content aims to ensure that the person who is issued with the notice understands the grounds for the inspector's decision, including (in brief) how the laws are being or have been contravened. The optional content includes such things as directions about measures to be taken to remedy the contravention or prevent the likely contravention from occurring (clause 192(2)).

Improvement notices must also specify a date for compliance with the notice (clause 192(1)(d)). The day stated for compliance with the improvement notice must be reasonable in all the circumstances. Relevant factors could include the seriousness of the contravention or the likely contravention.

193—Compliance with improvement notice

Clause 193 makes it an offence for a person to fail or refuse to comply with an improvement notice within the time allowed for compliance as stated in the notice, including any extended time for compliance (see clause 194). This is subject to provisions for review of decisions, including stays of decisions to issue notices (see Part 12).

194—Extension of time for compliance with improvement notices

Clause 194 allows inspectors to extend the time for compliance with improvement notices. An extension of time to comply with an improvement notice must be in writing and can only be made if the time for compliance stated in the notice (or as extended) has not expired.

Division 2—Prohibition notices

195—Power to issue prohibition notice

Prohibition notices are designed to stop workplace activity that involves a serious risk to a person's health or safety and are found in the current work health and safety laws of all Australian jurisdictions.

Clause 195 allows inspectors to issue prohibition notices to stop or prevent an activity at a workplace, or modify the way the activity is carried out, if they reasonably believe that—

- if the activity is occurring—it involves or will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard; or
- if the activity is not occurring but may occur, and if it does—it will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.

Clause 195(2) provides that the notice may be issued to the person who has control over the activity. This would ordinarily be a PCBU.

Pre-requisites for issue of prohibition notices

The use of 'serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard' in clause 195(1) has the advantage of being effective to deal with risks of diseases of long latency from immediate exposure to a hazard and circumstances of psychological threat or other similar conditions. For a prohibition notice to be issued, the risk would have to be considered 'serious' and be associated with an immediate or imminent exposure to a hazard.

Operation of prohibition notices

A prohibition notice takes effect immediately upon being issued and ordinarily continues to operate—subject to the review provisions in Part 12—until an inspector is satisfied that the matters that give or will give rise to the risk have been remedied.

There is no requirement for an inspector to visit a workplace to verify that the risks identified in the notice have been remedied. This recognises that an inspector may be satisfied of compliance with a prohibition notice in some circumstances without the need for a workplace visit (e.g. if an independent expert report is provided to the inspector, or independently verified video footage of the affected activity is submitted).

Oral directions

Because prohibition notices are designed as a response to serious risks to work health or safety, directions may be issued orally at first instance, but must be confirmed by a written notice as soon as practicable (clause 195(3)). In general, for such oral directions to be enforceable the inspector must make it clear that the directions are being given under this provision and that it would be an offence for the person not to comply.

196—Contents of prohibition notice

Clause 196 sets out the mandatory and optional content for prohibition notices. The mandatory content requirements are designed to ensure that the person who is issued with the notice understands the inspector's decision, including the basis for the inspector's belief that a notice should be issued and (in brief) the activity the inspector believes involves or will involve a serious risk and the matters that give or will give rise to the risk. It must

also cite the provision of the Act or regulations that the inspector believes is being or is likely to be contravened by the activity.

Prohibition notices may also include directions about measures to be taken to remedy the risk, activities to which the notice related, or any contravention or likely contravention mentioned in the notice (clause 196(2)).

Clause 196(3) gives examples of the ways in which a prohibition notice may prohibit the carrying on of an activity, but does not limit the inspector's power to issue prohibition notices in clause 195.

197—Compliance with prohibition notice

Clause 197 provides that it is an offence for a person to fail or refuse to comply with a prohibition notice or a direction issued under subsection 195(2) of the Act. The penalties reflect the consequences that may result from failure to remedy serious risks to health or safety.

Division 3—Non-disturbance notices

198—Issue of non-disturbance notice

199—Contents of non-disturbance notice

This Division provides for non-disturbance notices. Non-disturbance notices are issued by inspectors and designed to ensure non-disturbance of 'notifiable incident' sites and also other sites if an inspector reasonably believes that this is necessary to facilitate the exercise of his or her compliance powers.

Clauses 198 and 199 allow an inspector to issue non-disturbance notices to the person with management or control of a workplace if the inspector reasonably believes that it is necessary to ensure non-disturbance of a site to facilitate the exercise of his or her compliance powers.

A non-disturbance notice may require the person to whom it is issued to preserve the site of a notifiable incident for a specified period or prevent a particular site being disturbed for a specified period. A 'notifiable incident' occurs where a person dies, suffers a serious injury or illness or where there is a dangerous incident (clause 35). The terms 'serious injury or illness' and 'dangerous incident' are defined in clauses 36 and 37 respectively.

A site includes any plant, substance, structure or thing associated with that site (clause 199(3)).

A non-disturbance notice must specify how long it operates (this cannot be more than seven days), what the person must do to comply with the notice and the penalty for contravening the notice (clause 199(2)).

Clause 199(4) allows certain activities to proceed, despite the non-disturbance notice. These activities generally relate to ensuring health or safety of affected persons, assisting police investigations or activities expressly permitted by an inspector.

200—Compliance with non-disturbance notice

Clause 200 makes it an offence for a person to, without reasonable excuse, fail or refuse to comply with a non-disturbance notice. This is subject to the provisions for review of decisions, including stays of decisions to issue notices (see Part 12).

Clause 200(2) clarifies that the evidential burden of showing a reasonable excuse is on the accused.

201—Issue of subsequent notices

Clause 201 allows inspectors to issue one or more subsequent non-disturbance notices in relation to a site, whether or not the previous notice has expired.

This would be subject to the requirements in clauses 198 and 199, which relate to the issue and contents of non-disturbance notices.

Division 4—General requirements applying to notices

202—Application of Division

This Division co-locates the provisions of a procedural nature that apply to all notices issued under this Part, unless otherwise specified.

203—Notice to be in writing

Clause 203 requires that all notices issued under this Part be given in writing, although enforceable directions may be given orally in advance of a prohibition notice (clause 195).

204—Directions in notices

Improvement and prohibition notices may include directions (see clauses 192(2), 196(2) and 196(3)).

Clause 204 clarifies that a direction included in an improvement or prohibition notice may refer to a Code of Practice and offer the person to whom it is issued a choice of ways to remedy the contravention.

205—Recommendations in notice

Clause 205 clarifies that improvement and prohibition notices may include recommendations. The difference between a direction and recommendation is that it is not an offence to fail to comply with recommendations in a notice (clause 205(2)).

206—Changes to notice by inspector

207—Regulator may vary or cancel notice

Clauses 206 and 207 allow for notices to be varied or cancelled.

Clause 207 provides that a notice issued by an inspector may only be varied or cancelled by the regulator. Clause 207 is subject to clause 206, which empowers an inspector to make minor changes to improvement, prohibition and non-disturbance notices for certain purposes.

Clause 206 allows inspectors to make minor technical changes to a notice to improve clarity and to correct errors or references, including to reflect changes of address or other circumstances.

Clause 206(2) makes it clear that this provision is in addition to the inspector's power to extend the period for compliance with an improvement notice under clause 194.

Clause 207 requires substantive variations to notices to be made by the regulator. It also empowers the regulator to cancel notices issued under this Part.

208—Formal irregularities or defects in notice

Clause 208 makes it clear that formal defects or irregularities in notices issued under this Part do not invalidate the notices, unless this would cause or be likely to cause substantial injustice.

Clause 208(b) clarifies that a failure to use the correct name of the person to whom the notice is issued falls within this provision, if the notice sufficiently identifies the person and has been issued or given to the person in accordance with clause 209.

209—Issue and giving of notice

Clause 209(1) specifies how notices may be served. The regulations may prescribe additional matters such as the manner of issuing or giving a notice and the steps that must be taken to notify all relevant persons that the notice has been issued (clause 209(2)).

'Issuing' and 'giving' notices

The terms 'issued' and 'given' in relation to serving notices have been used differently in current work health and safety laws in Australia.

Under this Part, a notice is 'issued' to a person who is required to comply with it, but may be 'given' to another person (e.g. a manager or officer of a corporation). Those persons who are given the notice need not comply with it, unless they are also the person to whom it was issued.

210—Display of notice

Clause 210(1) requires the person to whom a notice is issued to display a copy of that notice in a prominent place in the workplace at or near the place where work affected by the notice is performed. This must be done as soon as possible.

It is an offence for a person to refuse or fail to display a notice as required by this clause.

It is also an offence for a person to intentionally remove, destroy, damage or deface the notice while it is in force (clause 210(2)).

There is no requirement to display notices that are stayed under review proceedings, as they would not be considered to be 'in force' for the period of the stay.

Division 5—Remedial action

211—When regulator may carry out action

Clause 211 allows the regulator to take remedial action in circumstances where a person issued with a prohibition notice has failed to take reasonable steps to comply with the notice.

The regulator may take any remedial action it believes reasonable to make the workplace or situation safe, but only after giving written notice to the alleged offender of the regulator's intent. The written notice must also state the owner's or person's liability for the costs of that action.

212—Power of the regulator to take other remedial action

Clause 212 allows the regulator to take remedial action if the regulator reasonably believes that—

- a prohibition notice can and should be issued in a particular case; but
- the notice cannot be issued after reasonable steps have been taken because the person with management or control of the workplace cannot be found.

In these circumstances, the regulator may take any remedial action necessary to make the workplace safe. The word 'necessary' is intended to imply that the regulator should take the least interventionist approach possible, while making the workplace safe (e.g. erecting barricades around a site).

213—Costs of remedial or other action

Clause 213 enables the regulator to recover the reasonable costs of remedial action taken under clauses 211 or 212 as a debt due to the regulator.

For costs to be recoverable from a person under clause 211, the person must have been notified of the regulator's intention to take the remedial action and the person's liability for costs.

Division 6—Injunctions

214—Application of Division

This Division allows the IRC to make injunctions to enforce notices issued under this Part (i.e. excluding provisional improvement notices, unless confirmed by an inspector). This provides a timely means for the regulator to ensure that contraventions of health and safety duties are addressed, rather than having to wait for the lengthy process of prosecution.

215—Injunctions for noncompliance with notices

Clause 215 allows the regulator to apply to the IRC for an injunction to compel a person to comply with a notice or restrain the person from contravening a notice issued under this Part.

Injunctive relief may be sought in relation to an improvement notice even if any time for complying with the notice has expired (clause 215(2)(b)).

Part 11—Enforceable undertakings

216—Regulator may accept WHS undertakings

Part 11 allows for written, enforceable undertakings to be given by a person as an alternative to prosecuting the person. Such undertakings are voluntary—a person cannot be compelled to make an undertaking and the regulator has discretion whether or not to accept the undertaking.

Clause 216 enables the regulator to accept a WHS undertaking relating to a breach or alleged breach of the Act, with the exception of a breach or alleged breach relating to a Category 1 offence. A Category 1 offence, as defined in clause 31, is the most serious work health and safety offence and involves reckless conduct by a duty holder that exposes an individual to a risk of death or serious illness or injury without reasonable excuse. The use of enforceable undertakings would not be appropriate in such circumstances.

A legislative note following clause 216(1) directs the reader to clause 230(3), which requires the regulator to publish general guidance for the acceptance of WHS undertakings on the regulator's website.

217—Notice of decision and reasons for decision

Clause 217(1) requires the regulator to give the person wanting to make a WHS undertaking a written notice of the regulator's decision to accept or reject the undertaking, along with reasons for that decision.

In the interests of transparency, if the regulator accepts a WHS undertaking the reasons for that decision must be published on the regulator's website (clause 217(2)). However, the decision is not subject to internal review.

218—When a WHS undertaking is enforceable

Clause 218 deals with when an undertaking becomes enforceable. That is, when the regulator's decision to accept is given to the person or at any later date specified by the regulator.

219—Compliance with WHS undertaking

Clause 219 provides that it is an offence to contravene a WHS undertaking.

220—Contravention of WHS undertaking

Clause 220 applies if a person contravenes a WHS undertaking. Where, on an application by the regulator, the Magistrates Court is satisfied that the person has contravened the undertaking it may, in addition to imposing a penalty, direct the person to comply with the undertaking, or discharge the undertaking. The court may also make any other order it considers appropriate in the circumstances, including orders that the person pay the costs of proceedings and orders that the person pay the regulator's costs in monitoring compliance with the WHS undertaking in the future.

Clause 220(4) provides that an application for, or the making of, any orders under the clause will not prevent proceedings being brought for the original contravention or alleged contravention in relation to which the WHS undertaking was made.

221—Withdrawal or variation of WHS undertaking

Clause 221(1) provides that, with the written agreement of the regulator, a person who has made a WHS undertaking may withdraw or vary the undertaking, but only in relation to the contravention or alleged contravention to which the WHS undertaking relates.

Once again, in the interests of transparency and accountability, variations and withdrawals must be published on the regulator's website (clause 221(3)).

222—Proceeding for alleged contravention

Clause 222 prevents a person being prosecuted for a contravention or alleged contravention of the Act to which a WHS undertaking relates if that WHS undertaking is in effect or if the undertaking has been completely discharged.

Clause 222(3) enables the regulator to accept a WHS undertaking while related court proceedings are on foot but before they have been finalised. In such circumstances, the regulator is required to take all reasonable steps to have the proceedings discontinued as soon as possible (clause 222(4)).

Part 12—Review of decisions

Division 1—Reviewable decisions

223—Which decisions are reviewable

Part 12 establishes the procedures for the review of decisions that are made under the Act. In general, reviewable decisions are those that are made by—

- inspectors—these are reviewable by the regulator internally at first instance, and then may go on to external review; and
- the regulator—these go directly to external review.

Clause 223 contains a table that sets out the decisions made under the Act that are reviewable decisions.

The table in clause 223(1) lists the reviewable decisions by reference to the provisions under which they are made and lists who is eligible to apply for review of a reviewable decision.

Item 13 in the table allows the regulations to prescribe further decisions that can be reviewable and who would be eligible to apply for the review of any such decision.

Clause 223(2) states that, unless a contrary intention appears, a reference in Part 12 to a decision includes a reference to a number of actions listed in paragraphs (a) to (g), and includes a refusal to make a decision.

Clause 223(3) defines a person entitled to a thing, for the purposes of a reviewable decision made under clauses 179 or 180.

Division 2—Internal review

224—Application for internal review

Clause 224(1) allows an eligible person to apply for internal review of a reviewable decision within 14 days of the decision first coming to the attention of the eligible person or a longer period as determined by the regulator.

In the case of a decision to issue an improvement notice, an application for internal review must be made within the period allowed for compliance specified in the notice if it is less than 14 days.

An application for internal review cannot be made in relation to a decision of the regulator or a delegate of the regulator (clause 224(1)).

Subclause (2) requires that an application be made in the manner and form required by the regulator.

225—Internal reviewer

Clause 225 provides that the regulator may appoint a body or person to conduct internal reviews applied for under this Division. However, clause 225(2) provides that the regulator cannot appoint the person who made the original decision.

226—Decision of internal reviewer

Clause 226(1) requires an internal reviewer to make a decision as soon as reasonably practicable and within 14 days after receiving the application for internal review.

Clause 226(2) allows the internal reviewer to confirm or vary the reviewable decision, or set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.

Clause 226(3) to (5) provide a process for seeking further information from an applicant. If the internal reviewer seeks further information, the 14 day decision making period will cease to run until that information is provided. Clause 226(4) states that the internal reviewer can specify a period of not less than seven days in which additional information must be provided. If the information is not provided within the specified period, clause 226(5) states that the reviewable decision is taken to be confirmed by the internal reviewer.

Clause 226(6) provides that if the internal reviewer does not vary or set aside a decision within 14 days the reviewable decision is taken to have been confirmed.

227—Decision on internal review

Clause 227 requires an internal reviewer to provide to the applicant in writing the decision on internal review and reasons for it as soon as practicable after making that decision.

Division 3—External review

228—Stays of reviewable decisions on internal review

This clause sets out a scheme relating to the operation of reviewable decisions of a decision is subject to internal review proceedings.

229—Application for external review

Clause 229(1) provides that an eligible person may apply to the Senior Judge of the IRC for review of any reviewable decision made by the regulator or a decision made, or taken to have been made, on internal review.

Clause 229(2) provides when an application for external review must be made. An application for external review must be made: within 28 days after an applicant is notified where a decision was to forfeit a thing; within 14 days after an applicant was notified where a decision does not involve forfeiting a thing; or within 14 days if the regulator is required by the external review body to give the eligible person a statement of reasons.

The review is to be conducted by a review committee.

The Senior Judge of the IRC will be able to stay the operation of a reviewable decision pending the outcome of the proceedings (if he or she thinks fit).

Part 13—Legal proceedings

Division 1—General matters

230—Prosecutions

This Part is divided as follows:

- Division 1 deals with the prosecution of offences;
- Division 2 covers sentencing for offences;
- Division 3 provides for infringement notices;
- Division 4 deals with offences committed by bodies corporate;
- Divisions 5 and 6 deal with offences committed by the Crown and public authorities;
- Division 7 provides for WHS civil penalty proceedings;
- Division 8 deals with the effect of the Act on civil liability.

Clause 230(1) provides that proceedings for an offence against the Act can only be brought by the regulator or an inspector authorised in writing (generally or in a particular case) by the regulator.

Clause 230(2) provides that the regulator's authorisation is sufficient to authorise an inspector to continue proceedings in a case where the court amends the charge, warrant or summons.

The transparency and accountability of proceedings for an offence against this Act are facilitated by—

- providing that the regulator must issue and publish on the regulator's website general guidelines about the prosecution of offences against the Act and the acceptance of WHS undertakings under the Act (clause 230(3)); and
- clarifying that nothing in clause 230 affects the ability of the Director of Public Prosecutions (DPP) to bring proceedings for an offence against the Act (clause 230(9)). Therefore, if the regulator does not bring proceedings for an offence against the Act the DPP can.

Clause 230(4) provides that an indictable offence against the Act may be charged on complaint. If this occurs, the offence will be taken to be a summary offence. However, if the court determines that a person found guilty of such an offence should be subject to a fine exceeding $300 000, the court may require that the person appear for sentence in the District Court. An offence constituting a summary offence under subclause (4) is to be taken to be an industrial offence that is to be heard by an industrial magistrate.

Subclause (4) does not apply to—

- a Category 1 offence; or
- a Category 2 offence where the alleged offender is a body corporate; or
- a Category 3 offence where the alleged offender is a body corporate.

A preliminary examination for an indictable offence under the Act is to be conducted by the Magistrates Court constituted by an industrial magistrate. A charge for a minor indictable offence under the Act that is to be dealt with as a charge for a summary offence under the *Summary Procedure Act 1921* will be taken to be an industrial offence under that Act (and dealt with by an industrial magistrate).

231—Procedure if prosecution is not brought

Clause 231 allows for the review by the DPP of a regulator's decision not to prosecute a serious offence, that is, a Category 1 or Category 2 offence.

Clause 231(1) allows a person who reasonably believes that a Category 1 or 2 offence has been committed but no prosecution has been brought to ask the regulator, in writing, to bring a prosecution. The request can be made if no prosecution has been brought between six and 12 months after the occurrence of the act, matter

or thing that the person reasonably believed occurred. Clause 231(7) clarifies that an application may be made about the occurrence of, or failure in relation to, an act, matter or thing.

Clause 231(2) sets out how and when the regulator must respond to a request made in clause 231(1). In particular, the regulator must provide a written response to a request within three months and must advise the person whether a prosecution will be brought and, if the decision has been made to not bring a prosecution, the reasons for that decision.

In the interests of transparency and fairness, clause 231(2)(b) requires the regulator to inform the person whom the applicant believes committed the offence of the application and of the regulator's response.

If the regulator advised under clause 231(2) that a prosecution for an offence will not be brought, clause 231(3) provides that the regulator must also inform the applicant that he or she may ask for the matter to be referred to the DPP. If the applicant makes a written request, the regulator must refer the matter to the DPP within one month.

Clause 231(4) requires the DPP to consider the referral and advise the regulator in writing within one month whether the DPP considers that a prosecution should be brought.

Clause 231(5) requires the regulator to ensure that a copy of the DPP advice is given to the applicant and again for transparency, the person whom the applicant believes committed the offence.

Clause 231(6) provides that if the regulator declines to follow the advice of the DPP to bring proceedings, the regulator must give written reasons for the decision to the applicant and the person whom the applicant believes committed the offence.

232—Limitation period for prosecutions

The limitation periods provided in clause 232 balance the need of a duty holder to have proceedings brought and resolved quickly with the public interest in having a matter thoroughly investigated by the regulator so that a sound case can be brought.

Clause 232(1) sets out the limitation periods for when proceedings for an offence may begin. Proceedings must be commenced—

- within 2 years after the offence first came to the regulator's attention; or
- within 1 year after a coronial report or inquiry where it appears from the report or proceedings that an offence has been committed against the Act; or
- if a WHS undertaking has been given in relation to the offence, within six months of the undertaking being contravened or when the regulator becomes aware of a contravention or agrees under clause 221 to withdraw the undertaking.

Reflecting the seriousness of Category 1 offences, clause 232(2) enables proceedings for such offences to be brought after the end of the applicable limitation period if fresh evidence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period.

233—Multiple contraventions of health and safety duty provision

Clause 233 modifies the criminal law rule against duplicity. This rule means that, ordinarily, a prosecutor cannot charge two or more separate offences relating to the same duty in one count of an indictment, information or complaint.

Unless modified, the rule could complicate the prosecution of work health and safety offences and impede a court's understanding of the nature of the defendant's breach of duty particularly when an offence is ongoing. For example, the duplicity rule might prevent a charge from including all the information about how the defendant had breached his or her duty of care because information about a second breach of the duty could not be provided in the prosecution for a first breach of that duty. Presenting only one aspect of a defendant's failure might deprive the court of the opportunity to appreciate the seriousness of the failure and result in inadequate penalties or orders being made.

Clause 233(1) provides that more than one contravention of one health and safety duty provision by a person in the same factual circumstances may be charged as a single offence or as separate offences.

Clause 233(2) clarifies that the clause does not authorise contraventions of two or more health and safety duty provisions being charged as a single offence.

Clause 233(3) provides that only a single penalty may be imposed when more than one contravention of a health and safety duty provision is charged as a single offence.

Clause 233(4) provides that in the clause a 'health and safety duty provision' means a provision of Division 2, 3 or 4 of Part 2.

Division 2—Sentencing for offences

234—Application of this Division

Contemporary Australian OHS laws provide courts with a variety of sentencing options in addition to the traditional sanctions of fines and custodial sentences. The national review of OHS laws concluded that judicious combinations of orders can enhance deterrence, make meaningful action by an offender more likely, be better

targeted and permit a more proportionate response. In these ways, the Act's goals of increased compliance and a reduction in work-related injury and disease will be promoted. A range of sentencing options is provided for the court in Division 2. The court may—

- impose a penalty; or
- make an adverse publicity order; or
- make a restoration order; or
- make a community service order; or
- release the defendant on the giving of a court-ordered WHS undertaking; or
- order an injunction; or
- make a training order.

Clause 234 provides that Division 2 applies if a court convicts a person or finds the person guilty of an offence against the Act.

235—Orders generally

Clause 235(1) provides that one or more orders under Division 2 may be made against an offender. Clause 235(2) provides that orders can be made under the Division in addition to any penalty that may be imposed or other action that may be taken in relation to an offence.

236—Adverse publicity orders

Adverse publicity orders can be an effective deterrent for an organisation that is concerned about its reputation. Such orders can draw public attention to a particular wrongdoing and the measures that are being taken to rectify it.

Clause 236(1) sets out the kinds of adverse publicity orders that a court may make. For instance, the court may order an offender to publicise the offence or notify a specified person or specified class of persons of the offence, or both. The offender must give the regulator evidence of compliance with the order within seven days of the end of the compliance period specified in the order.

Clause 236(2) allows the court to make an adverse publicity order on its own initiative or at the prosecutor's request.

Clause 236(3) to (4) enable action to be taken by the regulator if an offender does not comply with the adverse publicity order or fails to give evidence to the regulator.

Clause 236(5) provides that if action is taken by the regulator under clause 236(3) or (4), the regulator is entitled to recover from the offender reasonable expenses associated with it taking that action.

237—Orders for restoration

Clause 237(1) allows the court to order an offender to take steps within a specified period to remedy any matter caused by the commission of the offence that appears to be within the offender's power to remedy.

Clause 237(2) enables the court to grant an extension of the period to allow for compliance, provided an application for extension is made before the end of the period specified in the original order.

238—Work health and safety project orders

Clause 238(1) allows the court to make an order requiring an offender to undertake a specified project for the general improvement of work health and safety within a certain period.

Clause 238(2) provides that a work health and safety project order may specify conditions that must be complied with in undertaking the project.

239—Release on the giving of a court-ordered WHS undertaking

Clause 239(1) enables a court to adjourn proceedings, with or without recording a conviction, for up to two years and make an order for the release of an offender on the condition that the offender gives an undertaking with specified conditions. This is called a court-ordered WHS undertaking.

Court-ordered WHS undertakings must be distinguished from WHS undertakings. WHS undertakings are given to the regulator and are voluntary in nature.

Clause 239(2) sets out the conditions that must be included in a court-ordered WHS undertaking. The undertaking must require the offender to appear before the court if called on to do so during the period of the adjournment. Furthermore, the offender must not commit any offence against the Act during the period of adjournment and must observe any special conditions imposed by the court.

Clause 239(3) and (4) allow the court to call on an offender to appear before it if the offender is given not less than four days notice of the court order to appear.

Clause 239(5) provides that when an offender appears before the court again, if the court is satisfied that the offender has observed the conditions of the undertaking, it must discharge the offender without any further hearing of the proceeding.

240—Injunctions

Clause 240 allows a court to issue an injunction requiring a person to stop contravening the Act if the person has been found guilty of an offence against it. This power can be an effective deterrent where a penalty fails to provide one.

A note to this clause reiterates that an injunction for non-compliance with a non-disturbance notice, improvement notice or prohibition notice may also be obtained under clause 215.

241—Training orders

Training orders enable a court to make an offender take action to develop skills that are necessary to manage work health and safety effectively. Clause 241 allows a court to make an order requiring a person to undertake, or arrange for workers to undertake, a specified course of training.

242—Offence to fail to comply with order

Clause 242(1) makes it an offence for a person to fail to comply with an order made under Division 2 without reasonable excuse.

Clause 242(3) provides that the clause does not apply to an order under clauses 239 or 240. If a person does not comply with a court-ordered undertaking (made under clause 239) the person may be prosecuted for the original offence to which the undertaking related and if a person does not comply with an injunction (issued under clause 240) the person may be prosecuted for the contravention he or she has been ordered to cease. If a person fails to comply with a court ordered sanction the person may be prosecuted and charged with contempt of court.

Division 3—Infringement notices

243—Infringement notices

A reference in the Act to an infringement notice is to be taken to be a reference to an expiation notice issued under the *Expiation of Offences Act 1996*. An expiation notice may be issued with respect to any matter that may be the subject of an infringement notice under the Act.

Division 4—Offences by bodies corporate

244—Imputing conduct to bodies corporate

A body corporate is an artificial entity that can only act and make decisions through individuals. Therefore, clause 244(1) provides that any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate is conduct also engaged in by the body corporate. Importantly, the operation of this rule is limited to actions that are within the actual or apparent scope of a person's employment or within his or her actual or apparent authority.

Clause 244(2) provides that if an offence requires proof or knowledge, intention or recklessness, it is sufficient for an employee, agent or officer of a body corporate to prove he or she had the relevant knowledge, intention or recklessness in proceedings against a body corporate concerning that offence.

Clause 244(3) provides that if for an offence against the Act mistake of fact is relevant to determining whether a person is liable, it is sufficient for an employee, agent or officer of a body corporate to prove he or she made a mistake of fact in proceedings against a body corporate.

Division 5—The Crown

245—Offences and the Crown

Clause 245(1) provides that if the Crown is guilty of an offence against the Act the penalty to be applied is the penalty applicable to a body corporate.

The Crown is also an artificial entity that acts and makes decisions through individuals. Clause 245(2) provides that conduct engaged in on behalf of the Crown by an employee, agent or officer of the Crown is also conduct engaged in by the Crown. The conduct must be within the actual or apparent scope of the person's employment or authority. Clause 247 defines when a person will be an 'officer of the Crown'.

Clause 245(3) provides that in proceedings against the Crown requiring proof of knowledge, intention or recklessness, it is sufficient to prove that the person referred to in clause 245(2) possessed the relevant knowledge, intention or recklessness.

Clause 245(4) provides that if mistake of fact is relevant in determining liability in proceedings against the Crown for an offence against the Act, it is sufficient that the person referred to in clause 245(2) made that mistake of fact.

246—WHS civil penalty provisions and the Crown

Clause 246(1) provides that if the Crown contravenes a WHS civil penalty provision then the monetary penalty to be imposed is the monetary penalty applicable to a body corporate.

Clause 246(2) mirrors clause 245(2). That is, any conduct that is engaged in on behalf of the Crown by an employee, agent or officer acting within the actual or apparent scope of his or her employment or authority is conduct also engaged in by the Crown for the purposes of a WHS civil penalty provision of the Act.

Clause 246(3) mirrors clause 245(3) in providing that if a WHS civil penalty provision requires proof of knowledge, it is sufficient in proceedings against the Crown to prove that the person referred to in clause 246(2) had that knowledge.

247—Officers

Clause 247(1) defines when a person will be an officer of the Crown for the purposes of the Act. A person will be taken to be an officer if the person makes, or participates in making, decisions that affect the whole or a substantial part of the business or undertaking of the Crown.

However, clause 247(2) clarifies that, when acting in an official capacity, a Minister of a State or the Commonwealth is not an officer for the purposes of the Act.

248—Responsible agency for the Crown

Clause 248(1) provides that certain notices for service on the Crown may be given to or served on the relevant responsible agency. The relevant notices are provisional improvement notices, prohibition notices, non-disturbance notices, infringement notices or notices of WHS entry permit holder entry.

Clauses 248(2) and (3) provide, respectively, that if an infringement notice is to be served on the Crown or proceedings are to be brought against the Crown for an offence or contravention of the Act, the responsible agency may be specified in the infringement notice or document initiating or relating to the proceedings.

Clause 248(4) provides that the responsible agency in respect of an offence is entitled to act for the Crown in proceedings against the Crown for the offence. Also, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused are conferred or imposed on the responsible agency.

Clause 248(5) allows the prosecutor or the person bringing the proceedings to change the responsible agency during the proceedings with the court's leave.

Clause 248(6) defines the expression 'responsible agency' and includes rules governing what happens if the relevant agency of the Crown has ceased to exist.

Division 6—Public authorities

249—Application to public authorities that are bodies corporate

Clause 249 provides that Division 6 is applicable only to public authorities that are bodies corporate.

250—Proceedings against public authorities

Clause 250(1) provides that proceedings under the Act can be brought against a public authority in its own name. Clause 250(2) clarifies that Division 6 does not affect any privileges that such a public authority may have under the Crown.

251—Imputing conduct to public authorities

Clause 251(1) is an imputation provision that is similar to clause 244 (relating to bodies corporate) and clause 245(2) (relating to the Crown). That is, conduct engaged in on behalf of a public authority by an employee, agent or officer within the actual or apparent scope of his or her employment or authority is conduct also engaged in by the public authority.

Clause 251(2) provides that in proceedings against the public authority requiring proof of knowledge, intention or recklessness, it is sufficient to prove that the person referred to in clause 251(1) possessed the relevant knowledge, intention or recklessness.

Similarly, clause 251(3) provides that where proof of mistake of fact is relevant in proceedings against the public authority for an offence against the Act, it is sufficient if the person referred to in clause 251(1) made that mistake of fact.

252—Officer of public authority

The expression 'officer of a public authority', which is used in clause 251, is defined in clause 252 as a person who makes or participates in making decisions that affect the whole or a substantial part of the business or undertaking of a public authority.

253—Proceedings against successors to public authorities

Clause 253(1) provides that where a public authority has been dissolved, proceedings for an offence committed by that authority that were, or could have been, instituted against it before its dissolution, action can be taken against its successor if the successor is a public authority. A similar rule applies to infringement notices (clause 253(2)).

Clause 253(2) and (3) provide, respectively, that an infringement notice served on a public authority for an offence against the Act or a penalty paid by a public authority in respect of such an infringement notice is taken to be an infringement notice served on, or penalty paid by, its successor if the successor is a public authority.

Division 7—WHS civil penalty provisions

254—When is a provision a WHS civil penalty provision

Clause 254(1) clarifies that a provision in Part 7 is a 'WHS civil penalty provision' if it is identified as such in that Part.

Clause 254(2) clarifies that 'WHS civil penalty provisions' will also be identified as such in regulations made under the Act.

255—Proceedings for contravention of WHS civil penalty provision

Clause 255 provides that, subject to Division 7, court proceedings may be brought against a person for a contravention of a WHS civil penalty provision.

256—Involvement in contravention treated in same way as actual contravention

Clause 256(1) provides that a person who is involved in a contravention of a WHS civil penalty provision is taken to have contravened that provision.

Clause 256(2) clarifies that a person will be involved in a contravention of the civil penalty provision only if the person has been involved in one of the acts listed in paragraphs (a) to (d). For example, if the person has aided and abetted the contravention or conspired in the contravention.

257—Contravening a civil penalty provision is not an offence

Clause 257 clarifies that it is not a criminal offence to contravene a WHS civil penalty provision.

258—Civil proceeding rules and procedure to apply

Clause 258 requires a court to apply the civil proceeding rules of evidence and procedure when hearing proceedings for a contravention of a WHS civil penalty provision.

259—Proceeding for a contravention of a WHS civil penalty provision

Clause 259(1) provides that in a proceeding for a contravention of a WHS civil penalty provision, if the court is satisfied that a person has contravened a WHS civil penalty provision, it may order the person to pay a monetary penalty and make any other order it considers appropriate, including an injunction.

Clause 259(2) provides that a monetary penalty imposed under subclause (1) cannot exceed the maximum specified under Part 7 or the regulations in respect of the WHS civil penalty provision contravened.

260—Proceeding may be brought by the regulator or an inspector

Similar to the bringing of proceedings for an offence against the Act, clause 260 provides that proceedings for a contravention of a WHS civil penalty provision can only be brought by the regulator or an inspector authorised in writing by the regulator. Authorisation may be granted generally or to bring proceedings in a particular case.

261—Limitation period for WHS civil penalty proceedings

The limitation period for bringing proceedings for a contravention of a WHS civil penalty is two years after the contravention first came to the regulator's notice.

262—Recovery of a monetary penalty

Clause 262 provides that a pecuniary penalty is payable to the State, and the State may enforce the order as if it were a judgment of the court.

263—Civil double jeopardy

Clause 263 applies the rule against double jeopardy to civil penalty proceedings under the Act. That is, it disallows a court from making an order against a person under clause 259 if an order has been made against that person under a civil penalty provision of the Commonwealth, a State or a Territory in relation to conduct substantially the same as the conduct constituting the contravention of the Act.

264—Criminal proceedings during civil proceedings

Clause 264(1) provides that proceedings against a person for a contravention of a WHS civil penalty provision are stayed if criminal proceedings commence or are already on foot against the person for an offence constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention of the WHS civil penalty provision.

If the person is not convicted of the criminal offence, clause 264(2) allows the proceedings for the civil contravention to be resumed. If proceedings are not resumed they are taken to be dismissed.

265—Criminal proceedings after civil proceedings

Clause 265 provides that regardless of any court order made under clause 259 for a contravention of a civil penalty provision that a person has found to have made, criminal proceedings may be commenced against the person for conduct that is substantially the same as the conduct constituting the civil contravention.

266—Evidence given in proceedings for contravention of WHS civil penalty provision not admissible in criminal proceedings

Clause 266(1) provides that evidence of information given or documents produced by an individual in proceedings against him or her for contravention of a WHS civil penalty provision is not admissible in criminal

proceedings against the individual if conduct alleged to constitute the criminal offence involved substantially the same conduct. This is the case regardless of the outcome of the proceedings.

Clause 266(2) is an exception to clause 266(1). It provides that such evidence is admissible in a criminal prosecution for giving false evidence.

Division 8—Civil liability not affected by this Act

267—Civil liability not affected by this Act

Clause 267 provides that except as provided in Parts 6 and 7 and Division 7 of Part 13, nothing in the Act is to be interpreted as conferring a right of action in civil proceedings because of a contravention of the Act, conferring a defence to a civil action or otherwise affecting a right of action in civil proceedings, or as affecting the extent to which a right of action arises with respect of breaches of duties or obligations imposed by the regulations.

Part 14—General

Division 1—General provisions

268—Offence to give false or misleading information

This Part collates a number of miscellaneous provisions.

Division 1 contains provisions relating to the giving of false or misleading information, legal professional privilege, immunity from liability, confidentiality of information, contracting out and levying workers.

Division 2 deals with codes of practice.

Division 3 sets out regulation making powers.

Clause 268 provides for the offence of giving false or misleading information.

Clause 268(1) prohibits a person from giving information, when complying or purportedly complying with the Act, knowing either that the information is false or misleading in a material particular or that it omits any thing without which the information is false or misleading.

Clause 268(2) prohibits a person from producing a document, when complying or purportedly complying with the Act, knowing that it is false or misleading in a material particular unless the person—

- indicates how the document is false or misleading and, where practicable, provides the correct information; or
- accompanies the document with a written statement indicating that the document is false or misleading in a material particular and setting out or referring to the material particular in which the document is false or misleading.

269—Act does not affect legal professional privilege

This clause provides that nothing in the Act requires a person to produce a document disclosing information or otherwise provide information that is the subject of legal professional privilege.

270—Immunity from liability

Inspectors, in particular, have a crucial role to play in the promotion of work health and safety and in eliminating or minimising serious risks to health and safety. They may be required to exercise judgment, make decisions and exercise powers with limited information and in urgent circumstances.

As a result, it is important that they and others engaged in the administration of the Act are not deterred from exercising their skill and judgment due to fear of personal legal liability.

Clause 270(1) provides that inspectors and others engaged in the administration of the Act are not personally liable for acts or omissions so long as those acts or omissions are done in good faith and in the execution or purported execution of their powers and functions.

Clause 270(2) states that any civil liability that would otherwise attach to the person instead applies to the State.

271—Confidentiality of information

Inspectors are given broad powers and protections under the Act. Clause 271 is one of a number of mechanisms designed to ensure that inspectors are accountable and credible when they perform functions and exercise powers.

Clause 271 applies where a person obtains information or gains access to a document in exercising a power or function under the Act, other than under Part 7. Part 7 deals with workplace entry by WHS permit holders and contains its own provisions dealing with the use or disclosure of information or documents.

Clause 271(2) prohibits the person who has obtained information or a document from doing any of the following:

- disclosing the information or the contents of the document to another person; or
- giving another person access to the document; or

- using the information or document for any purpose, other than in accordance with clause 271(3).

Prohibited disclosures are an offence.

Clause 271(3) provides a list of circumstances in which clause 271(2) does not apply. These include where disclosure is necessary to exercise powers or functions under the Act, certain disclosures by the regulator, or where it is required by law or by a court or tribunal or where it is provided to a Minister. It also enables the sharing of information between inspectors who exercise powers or functions under different Acts. Personal information can be disclosed with the relevant person's consent.

Clause 271(4) prohibits a person from intentionally disclosing to another person the name of an individual who has made a complaint against that other person unless the disclosure is made with the consent of the complainant or is required by law.

272—No contracting out

This clause deems void any term of any agreement or contract that purports to exclude, limit or modify the operation of the Act or any duty owed under the Act, or that purports to transfer to another person any duty owed under the Act. This upholds the principle that duties of care and obligations cannot be delegated; therefore, agreements cannot purport to limit or remove a duty held in relation to work health and safety matters.

273—Person not to levy workers

This clause prohibits a PCBU from charging workers for anything done or provided relating to work health and safety.

Division 2—Codes of practice

274—Approved codes of practice

Codes of practice play an important role in assisting duty holders to meet the required standard of work health and safety. This Division sets out—

- how codes of practice are approved; and
- the role that codes of practice play in assisting duty holders to meet their legislated obligations; and
- how codes of practice may be used in proceedings for an offence against the Act.

Clause 274(1) permits the Minister to approve a code of practice for the purposes of the Act and to revoke or vary such a code.

Clause 274(2) provides that tri-partite consultation between State, Territory and Commonwealth governments, unions and employer organisations is a prerequisite for approving, varying or revoking a code of practice.

Clause 274(3) provides that a code of practice can apply, incorporate or adopt anything in a document, with or without modification as in force at a particular time or from time to time.

Clause 274(4) provides that an approval, variation or revocation of a code of practice takes effect when a notice is published in the Government Gazette or on a later date that is specified.

Clause 274(5) provides that, as soon as practicable after approving, varying or revoking a code of practice, the Minister must ensure that notice is published in the Government Gazette and a newspaper circulating generally throughout the State.

Clause 274(6) provides that a regulator must ensure that members of the public are able to inspect free of charge, at the office of the regulator during normal business hours, a copy of each code of practice that is currently approved and each document applied, adopted or incorporated by a code of practice.

275—Use of codes of practice in proceedings

Currently, provisions about how codes of practice are used vary in two significant ways across the jurisdictions:

- in some jurisdictions non-compliance with approved codes of practice creates a rebuttable presumption of non-compliance with a duty; and
- other jurisdictions provide that compliance with an approved code constitutes 'deemed compliance' with a duty.

The Act does not adopt either approach.

Codes of practice provide practical guidance to assist duty holders to meet the requirements of the Act. A code of practice applies to anyone who has a duty of care in the circumstances described in the code. In most cases, following an approved code of practice would achieve compliance with the health and safety duties in the Act, in relation to the subject matter of the code.

Duty holders can demonstrate compliance with the Act by following a code or by another method which provides an equivalent or higher standard of health and safety than that provided in a code. This allows duty holders to take into account innovation and technological change in meeting their duty and to implement measures most appropriate for their individual workplaces without reducing safety standards.

Clause 275(2) provides that a code of practice is admissible in proceedings as evidence of whether or not a duty or obligation under the Act has been complied with.

Clause 275(3) enables a court to use a code of practice as evidence of what is known about hazards, risk, risk assessment and risk control. A code may also be used to determine what is reasonably practicable in the circumstances to which the code relates.

Clause 275 does not prevent a person introducing evidence of compliance with the Act apart from the code of practice—so long as this provides evidence of compliance at a standard that is equivalent to or higher than the code of practice (clause 275(3)).

Division 3—Regulation-making powers

276—Regulation-making powers

The function of regulations is to specify, in greater detail, what steps are required for compliance with the general duties in relation to particular hazards or risks.

Clause 276(1) contains broad regulation making powers that allow for the making of regulations for or with respect to any matter relating to work health and safety and any matter or thing required or permitted by the Act, or necessary or convenient to give effect to the Act.

Without limiting the broad power in clause 276(1), clause 276(2) contains more specific regulation making power in relation to Schedule 3.

Clause 276(3) makes further provision in relation to the nature of regulations. For instance, regulations may—

- be of general or limited application; or
- leave particular matters to the discretion of the regulator or an inspector; or
- apply, adopt or incorporate matters contained in any document; or
- prescribe exemptions or allow the regulator to make exemptions from compliance with a regulation; or
- prescribe fees; or
- prescribe expiation fees for infringement offences and other penalties for contravention of a regulation.

Schedule 1—Application of Act to dangerous goods and high risk plant

Schedule 1 extends the application of the Act by providing that—

- the term 'carrying out work' refers to the operation and use of high risk plant affecting public safety as well as the storage and handling of dangerous goods; and
- the term 'workplace' refers to places where high risk plant affecting public safety is situated or used as well as where dangerous goods are stored and handled; and
- for the purposes of storage and handling of dangerous goods or the operation or use of high risk plant affecting public safety, the term 'work health and safety' includes a reference to public health and safety.

Schedule 2—Local tripartite consultation arrangements

Part 1—The SafeWork SA Advisory Council

Division 1—Establishment of Advisory Council

1—Establishment of Advisory Council

This clause establishes the SafeWork SA Advisory Council.

Division 2—Membership

2—Composition of the Advisory Council

This clause deals with membership of the Council. Nine members of the Council will be appointed by the Governor, one will be the Executive Director and one will be the Chief Executive of WorkCover. One of the members appointed by the Governor will be the presiding member of the Council. Four members will be persons who, in the Minister's opinion, are suitable to represent the interests of employers, while four will be persons who, in the Minister's opinion, are suitable to represent the interests of employees. The clause requires the Minister to consult before making an appointment.

3—Terms and conditions of office

Clause 3 sets out the terms and conditions of office for a member of the Advisory Council.

4—Allowances and expenses

This clause provides that an appointed member is entitled to fees, allowances and expenses approved by the Governor. The amount of any fees, allowances and expenses is to be recoverable from the Compensation Fund

under the *Workers Rehabilitation and Compensation Act 1986* under a scheme established or approved by the Treasurer.

5—Validity of acts

This clause provides that an act or proceeding of the Advisory Council is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Division 3—Proceedings

6—Proceedings

This clause deals with certain matters relating to the proceedings of the Advisory Council, such as the quorum, telephone and video conferences, resolutions and record keeping.

7—Conflict of interest under Public Sector (Honesty and Accountability) Act

This clause provides that a member of the Advisory Council will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* only because the member has an interest in the matter that is shared in common with employers or employees generally or a substantial section of employers or employees.

This clause also provides that a member of the Advisory Council who has made a disclosure of an interest in a matter decided or under consideration by the Council may, if permitted to do so by other members, attend or remain at a meeting where the matter is under consideration. The member must withdraw from the room following the Council's deliberations and cannot take part in any deliberation or vote on the matter.

Division 4—Functions and powers

8—Functions of the Advisory Council

This clause sets out the functions of the Council, which are as follows:

- to keep the administration and enforcement of the Act, and any other legislation relevant to occupational health, safety and welfare, under review, and to make recommendations for change as the Advisory Council thinks fit;
- to advise the Minister (on its own initiative or at the request of the Minister) on—
- legislation, regulations, codes, standards and policies relevant to occupational health, safety and welfare; and
- national and international developments in the field of occupational health, safety and welfare; and
- the establishment of public inquiries and legislative and other reviews concerning issues associated with occupational health, safety and welfare;
- to provide a high level forum for ensuring consultation and co-operation between WorkCover, associations representing the interests of employees or employers, industry associations, Government agencies and other public authorities, and other interested persons or bodies, in relation to occupational health, safety or welfare matters;
- to prepare, adopt, promote or endorse prevention strategies, standards, codes, guidelines or guidance notes, and to recommend practices, to assist people in connection with occupational health, safety and welfare;
- to promote education and training with respect to occupational health, safety and welfare, to develop, support, accredit, approve or promote courses or programmes relating to occupational health, safety or welfare, and to accredit, approve or recognise education providers in the field of occupational health, safety and welfare;
- to keep the provision of services relevant to occupational health, safety and welfare under review;
- to collect, analyse and publish information and statistics relating to occupational health, safety or welfare;
- to commission or sponsor research in relation to any matter relevant to occupational health, safety or welfare;
- to initiate, co-ordinate or support projects and activities that promote public discussion or comment in relation to the development or operation of legislation, codes of practice and other material relevant to occupational health, safety or welfare;
- to promote occupational health, safety or welfare programs, and to make recommendations with respect to the making of grants in support of projects and activities relevant to occupational health, safety or welfare;
- to promote occupational health, safety and welfare within the broader community and to build the capacity and engagement of the community with respect to occupational health, safety and welfare;
- to consult and co-operate with relevant national, State and Territory authorities;

- to report to the Minister on any matter referred to the Advisory Council by the Minister;
- as it thinks fit, to consider any other matter relevant to occupational health, safety or welfare;
- to carry out other functions assigned to the Advisory Council by or under this or any other Act.

Division 5—Use of staff and facilities

9—Use of staff and facilities

This clause authorises the Advisory Council to make use of the services of the staff, equipment or facilities of an administrative unit by agreement with the Minister responsible for the administrative unit. The Council may, by agreement with the relevant agency or instrumentality, make use of the services of the staff, equipment or facilities of any other agency or instrumentality of the Crown.

Division 6—Related matters

10—Confidentiality

This clause prohibits a member of the Advisory Council from divulging, without the approval of the Council, information that the member acquired as a member of the Council if the member knows the information to be of a commercially sensitive, or of a private or confidential, nature, or if the Advisory Council has classified the information as confidential.

11—Annual report

The Advisory Council is required under this clause to report on work of the Council and other matters relevant to the administration of the Act for each financial year. The report must be provided to the Minister on or before 30 September following the year to which it relates.

Part 2—The Mining and Quarrying Occupational Health and Safety Committee

Part 2 of Schedule 2 contains provisions relating to the Mining and Quarrying Occupational Health and Safety Committee. These provisions are carried over from Schedule 3 of the *Occupational Health, Safety and Welfare Act 1986*.

Schedule 3—Regulation-making powers

Schedule 3 details a variety of matters that may be the subject of regulations (see clause 276). These include duties imposed by the Act, the protection of workers, and matters relating to records, hazards, work groups, health and safety committees and WHS entry permits. These more specific regulation-making powers deal with matters that are not expressly identified within the scope or objects of the Act for which regulations may be required. They do not limit the broad regulation making power in clause 276(1).

Schedule 4—Review committees

Schedule 4 contains provisions relating to review committees. These provisions are carried over from Part 7 of the *Occupational Health, Safety and Welfare Act 1986*.

Schedule 5—Provisions of local application

1—Provision of information by WorkCover

This clause, which provides for the provision of certain information by WorkCover to the Advisory Council and the Department to the extent required by a scheme established by the Minister, reenacts section 54A of the *Occupational Health, Safety and Welfare Act 1986*.

The relevant information is as follows:

- information about any work-related injury, or about any specified class of work-related injury, reported to or investigated by WorkCover;
- the steps being taken by any employer, or any employer of a specified class, to protect employees from injury or risks to health, safety or welfare, or to assist in the rehabilitation of employees who have suffered injuries in connection with their work;
- information relating to the cost or frequency of claims involving a particular employer, or class of employers, so as to allow comparisons between employers in a particular industry, or part of an industry;
- the outcome of any investigation, inquiry or other action undertaken by WorkCover;
- other information of a kind prescribed by the regulations.

2—Registration of employers

This clause, which provides for registration under the Act of persons who are required to be registered as employers under the *Workers Rehabilitation and Compensation Act 1986*, reenacts section 67A of the *Occupational Health, Safety and Welfare Act 1986*.

The clause provides that a periodical fee, the amount of which is to be set by WorkCover, is payable in relation to registration under the clause. In setting the fee, WorkCover is to take into account certain prescribed criteria. A prescribed percentage of the prescribed amount for a financial year is to be paid to the Department in

accordance with guidelines established by the Treasurer. The prescribed amount for a financial year will be an amount fixed for that financial year by the regulations.

3—Portion of WorkCover levy to be used to improve occupational health and safety

This clause, which is based on section 67B of the *Occupational Health, Safety and Welfare Act 1986*, provides for payment of a portion of the levy paid to WorkCover under Part 5 of the *Workers Rehabilitation and Compensation Act 1986* to the Department. The amount paid is to be applied towards the costs associated with the administration of the Act.

Schedule 6—Consequential amendments, repeal and transitional provisions

Part 1—Related amendments

1—Amendment provisions

This clause is formal.

Part 2—Amendment of *Criminal Law (Sentencing) Act 1988*

2—Amendment of section 19—Limitations on sentencing powers of Magistrates Court

This clause amends section 19 of the *Criminal Law (Sentencing) Act 1988* to replace a reference to the *Occupational Health, Safety and Welfare Act 1986* with a reference to the *Work Health and Safety Act 2011*.

Part 3—Amendment of *Dangerous Substances Act 1979*

3—Amendment of section 14—Offence to keep dangerous substances without a licence

Under section 14, it is an offence for a person to keep a prescribed dangerous substance in any premises unless the person holds a licence under Division 2. Under the section as amended by this clause, there will be an ability to prescribe cases or circumstances by regulation in relation to which Division 2 does not apply.

4—Amendment of section 18—Offence to convey dangerous substances without a licence

Under section 18, it is an offence for a person to convey a prescribed dangerous substance unless the person holds a licence under Division 3. Under the section as amended by this clause, there will be an ability to prescribe cases or circumstances by regulation in relation to which Division 3 does not apply.

Part 4—Amendment of *Environment Protection Act 1993*

5—Amendment of Schedule 1—Prescribed activities of environmental significance

This clause amends Schedule 1 of the *Environment Protection Act 1993* with respect to the status of railways used as amusement devices.

Part 5—Amendment of *Mines and Works Inspection Act 1920*

6—Amendment of section 18—Regulations

This clause amends section 18 of the *Mines and Works Inspection Act 1920* by removing an obsolete reference to codes of practice issued by the South Australian Occupational Health and Safety Commission. In place of this, reference is made to codes of practice approved by the relevant Minister under Part 14 Division 2 of the *Work Health and Safety Act 2011*.

Part 6—Amendment of *Tobacco Products Regulation Act 1997*

7—Amendment of section 4—Interpretation

The current definition of *employee* in section 4 of the *Tobacco Products Regulation Act 1997* refers to the *Occupational Health, Safety and Welfare Act 1986*. This definition is to be replaced with a definition referring to employment under a contract of service or work under a contract of service. A definition of *contract of service* is also to be inserted.

8—Amendment of section 46—Smoking banned in enclosed public places, workplaces and shared areas

This clause amends section 46 of the *Tobacco Products Regulation Act 1997* to replace a reference to the *Occupational Health, Safety and Welfare Act 1986* with a reference to the *Work Health and Safety Act 2011*.

Part 7—Amendment of *Workers Rehabilitation and Compensation Act 1986*

9—Amendment of section 64—Compensation Fund

This clause amends section 64 of the *Workers Rehabilitation and Compensation Act 1986* to replace a reference to the *Occupational Health, Safety and Welfare Act 1986* with a reference to the *Work Health and Safety Act 2011*.

10—Amendment of Schedule 1—Transitional provisions

This clause amends clause 4 of Schedule 1 of the *Workers Rehabilitation and Compensation Act 1986* (relating to the Mining and Quarry Industries Fund) to replace a reference to Schedule 3 of the *Occupational Health, Safety and Welfare Act 1986* with a reference to the Part 2 of Schedule 2 of the *Work Health and Safety Act 2011*.

Part 8—Repeal

11—Repeal of Act

This clause repeals the *Occupational Health, Safety and Welfare Act 1986*.

Part 9—Transitional provisions

This Part deals with transitional issues associated with the repeal of the *Occupational Health, Safety and Welfare Act 1986* and the commencement of the *Work Health and Safety Act 2011*.

Matters covered by the transitional provisions include the following:

- the duties of designers, manufacturers, importers, suppliers and persons who install, construct or commission plant or structures;
- the appointment of persons holding office as inspectors, health and safety representatives or deputy health and safety representatives before the commencement of the new Act;
- processes and procedures relating to the appointment of health and safety representatives and deputy health and safety representatives, or the establishment of health and safety committees, commenced but not completed before the commencement of the new Act;
- recognition of training completed before the commencement of the new Act;
- membership of the SafeWork SA Advisory Council and the Mining and Quarrying Occupational Health and Safety Committee;
- functions and powers of inspectors in relation to matters arising under or relevant to the *Occupational Health, Safety and Welfare Act 1986*;
- the effect of disqualifications under section 30 of the *Occupational Health, Safety and Welfare Act 1986*;
- the ongoing operation of codes of practice under section 63 of the *Occupational Health, Safety and Welfare Act 1986*;
- the ongoing effect of registrations, licences, permits, accreditations and other forms of authorisation under the *Occupational Health, Safety and Welfare Act 1986* or the *Dangerous Substances Act 1979*;
- the ongoing effect of exemptions in force under section 67 of the *Occupational Health, Safety and Welfare Act 1986* immediately before the repeal of that Act;
- the making of additional provisions of a saving or transitional nature by regulation.

Debate adjourned on motion of Mr Pederick.

ELECTRICITY (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 April 2011.)

Mr WILLIAMS (MacKillop—Deputy Leader of the Opposition) (15:43): I indicate that I will be the lead speaker for the opposition on this matter. I start off by saying that I do not think any piece of legislation or any scheme introduced into this parliament and put upon the people of South Australia has failed so miserably as this piece of legislation. It has failed the people of South Australia in many, many ways, and I am going to outline most of that over the next few minutes.

The problem with this piece of legislation—and I am not talking about the amendment we are looking at today; I am talking about the original legislation—is that it was introduced for pure political purposes, and it has cost the people of South Australia dearly; and now, with the amendments that the government is being forced to make, it is going to cost an industry that has been established in this state and it is going to bring that industry to its knees. It has delivered very little benefit to anyone.

The Premier had to make a speech to a solar cities conference being held in Adelaide a couple of years ago, and the Premier wanted South Australia to be the first jurisdiction in this nation to have a solar feed-in tariff. That is the only reason we have been through this fiasco, and a hell of a lot of people are going to be hurt before it is finished.

If I go back, the government decided that it was necessary to get a headline. The headline was going to be about the Premier's green credentials. It was decided that it would be built around PV systems and installations in South Australia and that we needed to be the first state in the

nation, as I said, to have a solar feed-in scheme legislated. The scheme was legislated to start on 1 July 2008 and it offered a fairly generous feed-in rebate.

I remember that, when debating the original legislation with the previous minister, I made the comment at the time that this was about a headline, not about genuine carbon abatement. This was about the Premier having to make that speech at the solar cities conference which was due, I think, in February 2008. I am going from memory there. I think it was at about that time. The Premier wanted to make a speech and wanted to be able to laud his green credentials.

The generosity of the scheme saw that those who installed small-scale photovoltaic cells on their home got a net feed-in of 44¢ for each kilowatt hour that they put back into the grid. At the first instance, the people who were encouraged to take advantage of the scheme were those genuine people who believed they could make a difference. They were encouraged by a rather generous scheme which gave them a payback on their systems. In that early stage, the payback was about 17 years.

What we have seen in the meantime is that the cost of the systems—the photovoltaic cells, in particular—has decreased dramatically. We have had a range of changes at the federal level. There has been a range of systems of rebates applied to the initial capital expenditure, and that has changed all over the place, and we have seen the real price of electricity go up substantially. That has all meant that, even if the existing scheme was left alone, the payback time for somebody putting in a system today would be well under 10 years. I think it is probably getting down to the order of five or six years, which is a giant step from where we were only those few years ago.

The reality is that we were rapidly approaching the point where people would be encouraged to put in PV systems without any subsidy from the taxpayer whatsoever. We were rapidly approaching that situation and I would suggest that, within probably as few as four or five years, certainly inside 10 years, people will be ahead of the game by putting in PV systems without any subsidy whatsoever, but the story gets worse.

In the original legislation, there was a clause that said, when the installed capacity in the state reached 10 megawatts, that would trigger a review of the scheme. I believe that occurred about May 2009, when the installed capacity in South Australia reached that trigger point, yet there was no review instigated by the then minister. I am well aware of this because I have put in a series of private members' bills before the house in an endeavour to have retailers, who are benefiting from electricity being fed back into the system and then onselling that energy, obliged to pay for it.

As I said, there have been several attempts to do that. I remember in June 2009 (I have not gone back to the *Hansard* but I think it was around 15, 17 or 18 June) when we debated that in private members' business. The government voted it down. The member for Light spoke on behalf of the government and said that the review was under way and that in the government's opinion the real value of electricity fed back in should be about 6¢, and that we should have the government answers to the review by September.

The reality was that no review had been instigated at that stage and, in late October 2009, when both the former minister and myself were on the Leon Byner show, I raised the fact that the minister was obliged to have a review into the scheme, and months and months after he still had not instigated the review. It was about two days after that, it might have been the next day, it was about 29 October from memory, that the minister announced the review, and he announced that the review would be completed by the end of that year.

Everybody in the industry expected that the government would make an announcement on its response to the review prior to the March 2010 election. Everybody in the industry expected that that is what the review was about. Yet we heard nothing from the government, remembering in the meantime those other factors that I talked about a few minutes ago: the decrease in price of the systems; various changes at the federal level; and the increasing real price of electricity—all mitigating towards further encouragement and inducement for people to install schemes. The government had taken its eye right off the ball.

Finally, we got a response from the former minister in August of last year. In fact I think the response came from the Premier. I think he made an announcement about the government's response to the review, and, amongst other things, he announced the matters which are encompassed in the bill that we are debating today, including an increase in the feed-in tariff from 44¢ to 54¢. At this point the opposition will be opposing that because we think it is sheer madness.

Since the government made that announcement in August of last year, some 40,000 systems have been installed in South Australia—either installed or ordered and ready to be installed, and will be installed over the ensuing months. I cannot believe that the government is seriously going to progress with that increase when it has already seen what the current demand is.

The government also announced that it would cut the scheme off when it reached an installed capacity of about 60 megawatts. The reality is that we have probably sailed straight past that, and by the time we get to the end of September when the scheme is due to be cut off, the installed capacity will possibly be of the order of 110 megawatts, maybe more.

The scheme, if we accept the government's proposal in this bill, will be shut off at the end of September but, as I understand it, that will not be shut off to those participants or entrants who have installed their system and have it up and running. It will be shut off to those who have signed their contract and ordered their system at that point. So we are not quite sure what the installed capacity will get to. It will certainly be well over 110 megawatts.

The government's proposal is that all of those who have signed up to the scheme at that point will receive a 54¢ rebate and a payment from their retailer for a value from the energy that is put back into the system, but those who have not signed up by that date will not only get nothing if they seek to put in PV cells at a later date but also they will spend the next 17 years paying that money to those who have signed up.

What the feed-in tariff has done is transferred wealth from those who are least able to afford it to those who are most wealthy. Those who have installed PV systems in South Australia are not those who cannot afford to pay their electricity bills; it is those who have thousands of dollars of spare cash to afford to put in systems. Those who struggle to pay their electricity bills are, in fact, paying an additional amount to those who have the spare capital to put in these systems.

The net result of the South Australian feed-in tariff has been to create a bubble in the PV industry. Since August last year we have seen this huge uptake of 40,000 people wanting to put in these systems, so we have created this huge bubble. We have a significant number of people working flat out installing schemes, and now we have come to the point where we are going to put even a bit more pressure into that bubble because we have announced an additional rebate and also that the scheme will cut off so you have to get in by a certain date. That has created an avalanche of applications, but it has also created a huge amount of work which is going to come to an absolute standstill some time post October this year.

The reasoning for starting the scheme in the first place was flawed. The scheme was not, in my opinion, developed on good science or good public policy. The review that was held was not held in a timely fashion, and the response to the review was certainly not given in a timely fashion. The government has failed to recognise the changing circumstances and has seriously failed to recognise the impact of its proposed changes.

The fact that it made announcements last August which were not going to come into effect for over a year has created this bubble, which is going to burst and put a lot of people out of work; it will cost a lot of people who have invested in this industry a lot of money and create a lot of heartache; and it is going to continue, for another 17 years, to shift wealth from those least able to afford it to those who do not need a handout.

So, it is the equivalent of a regressive tax. It is a very shoddy piece of public policy. It will cost South Australian mum and dad electricity consumers for another 17 years; and the government, notwithstanding the statements made last August, should understand the problems that have been created and should be addressing those problems. The government should not be proceeding with this piece of legislation. It should be recognising the mistakes that have been made and come out with something much more sensible.

I would suggest that there are opportunities for the government to change or modify the scheme dramatically. Firstly, I would argue that we should never increase the feed-in tariff from 44¢ to 54¢. That is just sheer wanton stupidity, and it is only proceeding because the Premier announced it last August. Notwithstanding what has happened since then, the government does not have the wit to understand that it was a stupid thing to do and it should change its position.

If the feed-in tariff ever had any sound basis, it was in order to aid a fledgling industry and to encourage those who would want to do something for the environment. If that is what the scheme was designed to do, we could modify the scheme dramatically and still achieve those

ends, without putting an ongoing burden onto the rest of South Australia's electricity consumers and without destroying the industry that has been developed overnight.

The scheme should be changed, in my opinion, so that, as the real price of electricity increases, the feed-in tariff decreases. You could do that quite readily without impacting on the payback time to those who have invested in small-scale photovoltaic systems. In fact, I would argue, as I said a few minutes ago, that it will not be long before the real price of electricity will be such that people will be able to afford to put in a PV system without any subsidy at all; it will be a good business decision and stand on its own merits. However, this government does not recognise that. Certainly, if we had the scheme extend in time but with a much reduced feed-in tariff, which was reducing commensurate with the real price increase of electricity, we would not see the bubble burst later this year. The industry would continue. The industry would have some time to adjust.

I do not blame the current minister because he has not been in the role very long, and I am sure that, if he had been in the role for longer, he would have been much more diligent and kept his eye on this scheme. The previous minister, unfortunately, did not care. He got the headline for his Premier and I do not think he had his eye on the scheme or what was going on at all. I do not think he cared.

It is pity—a grave pity—that the government does not go back to the drawing board and have a serious rethink about this. It will have a little egg on its face, I am sure, but the reality is that, if the government had the will, it could quite easily mount the case and make a valid argument that the scheme needs to be rejigged. Those who signed up in the early days of the scheme did so with an estimated payback period, as I said, of some 17 years, so even if the rebates were reduced substantially, taking into account the real price increases in electricity over the last few years, they would still see their payback period well inside that 17 years. They would not be any worse off than the position they signed up to.

People who have signed up more recently might wear a little more pain because they have signed up under much more favourable circumstances, but I still for the life of me cannot understand why the government is not game enough to go out and say, 'As circumstances are changing quite rapidly in the energy market, we can modify the scheme as we go forward. Individuals will not be worse off. You will be protected, yet we will not be foisting this additional burden on all those others in the community who have not installed PV systems'—in many cases, members of the community who struggle to pay their electricity bills.

I reiterate that the opposition will oppose the clause which seeks to increase the feed-in tariff from 44¢ to 54¢. We will not oppose the rest of the measures in this particular bill, but I still urge the government to rethink its position, for all the reasons I have laid before the house.

Mr MARSHALL (Norwood) (16:06): I also rise to speak on this flawed piece of legislation which the government has brought to this house today. It is difficult to understand who has actually informed this legislation. Who has the government actually been out there and consulted with? Like the member for MacKillop, I suspect this is another example of this government developing policy based around the opportunity to get a press release out to the people of South Australia. It is very difficult to see who will be the major beneficiaries, apart from this lame government which is intoxicated by spin.

I can tell you who will suffer from this legislation. As the member for MacKillop has already pointed out, the rebate which is paid to people who have installed these systems is not paid for by the government; in fact it is paid for by every other member of the public in South Australia who pays an electricity bill. It is a very strong point that the member for MacKillop makes: it is the people in our community who are less able to pay for this subsidy who are going to be the ones to suffer.

This is very unfortunate, and the proposal in this amendment in the legislation to raise the rebate to 54¢ will attack every other person in South Australia who is paying for electricity. Of course, the other major group of people who will suffer from this flawed legislation is the industry which revolves around the solar industry here in South Australia.

They, of course, have not been lobbying the government to increase the rebate to 54¢—nothing of the sort. They have put up a number of suggestions to the government which would be cost-neutral on the taxpayers of South Australia and, to my mind, seem far more sensible than the legislation which is brought before the house today.

They claim (and quite rightly so) that this will have a major detrimental effect on the industry in South Australia. I understand that this industry is leading Australia in many ways. There

are more than 1,000 people—in fact more than 1,250 people—directly employed in this industry. People in this industry talk to me about their plans for the future, not only to install systems in South Australia, but many of them are making significant capital investments in the manufacture of these cells for South Australia.

That is all going to be lost, Madam Deputy Speaker. People who are directly employed in this industry, and also the capital that is flowing into this industry in South Australia, will all be lost. The original aim of this legislation—to develop an industry in South Australia which is going to be supporting the environment—is all going to be lost because the government basically has not got the courage to recognise that this bill before the house today is flawed.

It needs to go back to the drawing board. It needs to consult with the people who are going to be affected, it needs to speak to the people who are going to lose their jobs, it needs to speak to the people who are going to have to pay this ridiculous 54¢ rebate which has never been called for by the industry. It needs to go back to the drawing board and to consider this very, very carefully.

This is really legislation at its worst. It is legislation which is being driven by a press release, by an announcement. It is ill-conceived, and it must be considered again before it goes through both houses of this parliament.

Mr PENGILLY (Finniss) (16:10): I also support the shadow minister and the words that the member for Norwood has had to say on this legislation. I just would have thought that any reasonable, sensible cabinet would have thought through this and not brought this, as the member for Norwood says, seriously flawed legislation into the parliament. Unfortunately, the current member is wearing the nonsense of his predecessor. He probably could not put anything together by way of legislation. What has happened is that the current minister, who does have some knowledge of business and industry, is having to carry this nonsense through the parliament when it is seriously flawed and not required.

This government is a government in freefall. We are looking at 24 per cent, and I am wondering—and I am almost prepared to take money on it—if it is going to go lower. Why? Because the government is not listening to people. It is not listening to people on this particular bill, it is not listening to people on forestry, and it is not listening to people on marine parks. It has totally failed to listen to anything and, quite frankly, it has the political version of golden staphylococcus. It is gone. It is dead and buried. It is an irretrievable position and it is finished. I have no mercy for it whatsoever. How it fronts up in 2014 will not matter. It is that much on the nose with the people of South Australia and it has such a political stench about it that any sort of medicine that it tries to administer is not going to work.

This particular bill is ridiculous. We have companies in South Australia; for example, ZEN. ZEN is the seventh fastest growing company in Australia. It is South Australian based, and particularly active. The chairman of directors is Mr Raymond Spencer, who also happens to be on the Economic Development Board. When is it going to start listening to these people? The solar industry has been terrific.

The Premier has lauded his conservation and environmental credentials. It is well known outside this place that the Premier has been promised a job by Dr David Suzuki, if he keeps going down the same line when he leaves this place. That is the message loud and clear outside. He is going to wave goodbye. He has done all these things and he is out the door and gone. Heavens to Betsy, we know that my children, your children and our grandchildren are going to pick up this almighty mess in South Australia for the next couple of generations.

This is just bloody stupid legislation, Madam Deputy Speaker, I am sorry. It is stupid. Why are you seeking to destroy a solar industry that is leading the nation? Why do you want to go out and do this? There is no sense in it whatsoever. If government members had the courage of their convictions, they would go back into cabinet and say, 'This is foolish; this is stupid. We'll pull the legislation and not go on with it.'

I have a huge uptake of solar panels and the solar industry in my electorate. A regular number of constituents come in with problems with installation, and this and that. Generally speaking, we can fix them up. They are not government instrumentalities, but the private companies are very good and they go back, and if there is a mess made, they do it.

There is a no greater example of environmentally friendly construction, a way forward for future, than the Beyond development on the road to Port Elliot run by Mr Steve Wright and his family. It is well worth looking at. I do not know whether any member of this place has been there,

apart from myself. The minister may have, I do not know—in fact, he may well have been. It is a stupid decision to bring in this legislation and to persevere with it in this place when we have a burgeoning and growing solar industry in South Australia.

Heaven alone knows that we need the industry to continue. We lost Mitsubishi—3,000 jobs. We have a promise of things to come in the mining industry, but there is a long way to go there. You are going to kill the solar industry—kill it, or mortally wound it, and it will be mortally wounded alongside a mortally wounded government, quite frankly. It is absolutely ridiculous. I call on the government to pull the legislation, to go away and think about it, and come back.

Ms SANDERSON (Adelaide) (16:15): I rise to speak on the bill before the house which I believe has some extremely detrimental effects on both the uptake of solar panels and the industry as a whole, with around 1,000 predicted job losses. For years now this government has lauded Adelaide as the green capital of Australia, with the Premier regularly raising in this house and in the media his green energy vision for South Australia. On 20 July 2010, the Premier stated his desire for South Australia to:

> ...be in an internationally leading position by having 33 per cent of our electricity supply being generated by green sources by 2020.

The Premier's plan is to turn our state into a green powerhouse of energy for the rest of the country, so how can it be that this government is now turning its back on the development of green energy? The installation of solar power and the onselling of solar powered electricity to the grid is an opportunity for families and households in South Australia to meaningfully contribute to the generation of sustainable energy.

On 2 June 2009, the Premier recognised that investment by South Australian families in solar power generated, grid-feed electricity reduces greenhouse gas emissions and importantly creates jobs for South Australians now and into the future. Similar to the expected loss of jobs by this government's planned sale of the harvesting rights of our forests, this legislation will mean the loss of renewable energy jobs in our state. It is predicted within the industry that approximately 1,000 jobs will be lost. The loss of jobs in what is considered a future industry in our state is absolutely unacceptable.

The Clean Energy Council advises that, within the solar feed-in grid industry, there are approximately 1,500 people employed and millions of dollars of investment in skills and equipment. The council does not agree with the bill's plan to raise the tariff for existing customers. It states that it is unnecessary and overly generous for existing customers. The council believes that a lower rate available for potential customers would benefit both the industry and consumers. The council has estimated that the cost of the proposed increase to existing customers is $85 million. The council believes that this money should be used to continue to assist the industry by providing an incentive, albeit at a lower rate, for new customers until grid parity is reached.

The majority of jobs threatened by this legislation are in small businesses. One such business is Natural Technology Systems, a small business within my electorate. The family-owned business has grown to a staff of 14 employees. However, the future of that business and the livelihood of the majority of its employees will be prejudiced if this bill becomes law.

I ask whether the government has consulted with the Clean Energy Council in relation to the proposed legislation. On the face of it, one would assume that the government has not consulted with the council or the small businesses and the 1,500 employees who will be affected by this proposed legislation. In closing, I quote from the Clean Energy Council briefing paper on this bill:

> The next few years are a crucial window for solar energy...the industry is in a critical phase of employment and economic activity for decades to come. Now is exactly the wrong time to put the brakes on the industry.

The Hon. M.F. O'BRIEN (Napier—Minister for Agriculture and Fisheries, Minister for Forests, Minister for Energy, Minister for the Northern Suburbs) (16:18): The member for MacKillop's contribution, I thought, was very solid and very well argued, but there are a few areas to which I take exception. One is the failure of the scheme. At the time of closing off later this year, there will be between 70,000 and 80,000 South Australian households that have taken up this technology. If that is failure, I would like to see success because that is a truly remarkable take-up rate. When the scheme was introduced we were going to review it at 10 megawatts. When we closed down the scheme, we will probably settle at around 100 to 110.

So, the take-up has been ten-fold greater than originally intended, and rather than the 7,000 or 8,000 households in South Australia, we have between 70,000 and 80,000 households—a truly significant success which mirrors what has happened elsewhere in Australia, and also elsewhere in the world. There have been similar outcomes in Germany, Spain and Italy, and the result of what has occurred in Europe and Australia is that a boutique industry that was producing a panel with a high unit cost—through the actions of governments internationally and nationally—has allowed a fledgling industry to get the economies of scale that have brought down the cost of this technology remarkably, in a very short space of time.

In fact, we are now at the situation where, within probably four to six years, if not sooner, we may have brought down the cost of PV solar panels to the point where the payback period is a matter of a year or two, and these panels can generate electricity at the same cost as a large number of baseload generators. In fact, there is one technology in the United States that is not relying on the current swag of technology but is looking at very thin metal as the electricity generator, and there is speculation in technical circles that the cost of this technology will be of breakthrough proportions, in terms of it being very cheap and able to generate large amounts of electricity at very low unit costs.

The member for MacKillop may be aware of the actions of the New South Wales government within the last 48 hours where—to put too fine a point on it—it seems to be reneging on an election commitment made to the people of New South Wales, that it would maintain the fundamentals of the feed-in regime that was in place in New South Wales. Within the last 48 hours, my understanding is that it has closed down the scheme without any warning whatsoever and has retrospectively reduced the feed-in tariff.

The result of this was a rally of 1,000 individuals on the steps of the Opera House yesterday, and the dropping of its reference to the solar feed-in tariff from the New South Wales Liberal party website. So, I just say to the Liberal Party, in opposing our stated position in this legislation, of moving from 44¢ to 54¢, you may bring upon yourselves the travails that are currently afflicting the Liberal Party in New South Wales.

The member for MacKillop also talked about the wealth distribution effects of this scheme, and I would just say to him that, in large part, these wealth distribution effects are the results of a Liberal Party/Greens agreed position in the Legislative Council when the original legislation was introduced, where the Liberal Party supported an amendment from the Greens to extend the tariff feed-in period from five to 20 years. Our legislation saw a five-year period to kick-start the industry. We are now in a situation where this will go on for another, I think, 18 years.

The member for Norwood talked about proposals from industry. I have had some modelling done, and if we look at their proposal to run another scheme—a complementary scheme—for a period of 10 years, with a feed-in tariff of around 33¢—that was one proposal that I saw—the impact of that will be an additional $3 a year on those households that do not have the panels. Over the 10 years of the scheme, put to me by industry, that will add $30 to an electricity bill in South Australia.

The member for Finniss, again, alluded to the scheme and talked about the impact of cutting the scheme off. He talked about the uptake. He did not name Victor Harbor but I know he was referring to Victor Harbor, where we have had one of the highest take-ups in the state. We put that down to a very proactive local council—the Victor Harbor council, as are a number of councils around the state—and a large retiree population. Our analysis of the marketplace tends to indicate that there has been a large take-up from retirees.

Again, the impact of the scheme, as it currently stands, is around a $27 to $32 cross-subsidy from those who do not have the panels to those who do. Unfortunately, the scheme, as I said, has been a tearaway success but there has been a consequence. What we are dealing with, in large part, is that particular issue and the fact that the industry is now at a point where it is largely self sustainable, where the cost of the technology is coming down day by day and may, as I said, reach a situation within several years where we are looking at a whole host of new technologies that we will be able to generate electricity at a cost comparable to that that can be provided by a baseload generator.

In fact, if we were to heed the advice of the member for Finniss and do nothing with this technology, we could find that, within a number of years, we have a situation where, for argument's sake, two-thirds of South Australians have panels of any description on their roofs and are effectively being subsidised by the remaining one-third. That is our fear and that is why we have

introduced the legislation, in addition to the legislation having done its job in taking a boutique industry into mainstream South Australian life.

The member for Adelaide made some points. I have consulted with the Clean Energy Council and with other individual companies. I have looked at their proposals. I have had modelling done on them, which I have alluded to, and, as far as we are concerned, it poses more risk than solving the problem. I think, the conclusion we have come to is that, both the commonwealth government's scheme (which subsidises the price of the panels) and our scheme of feed-in tariff have achieved the objective.

We have flagged our intention well in advance. I think we have given industry a period of nearly 12 months notice prior to cut off. We do not believe that there are consequences flowing from the legislation. We believe that the massive take-up—as I said, some 10 to 11 times our initial expectation—is due, in large part, to the extremely generous commonwealth government incentives and the fact that it has announced a bringing forward or the phasing out of those incentives.

The four-times multiplier was brought forward 12 months and I think it announced, within the last week to fortnight, that the three-times multiplier would be brought forward as well. It is our understanding that that factor, in particular, has brought forward purchase—and these are purchases that may have been made over the next two, three, four or five years—and industry at this particular point in time is the beneficiary. Irrespective of what we do with our feed-in tariff, it would have very little impact in terms of altering those particular purchase decisions.

In summary, I am pleased that the opposition is generally supportive. I have had two meetings with the member for MacKillop where we worked through the issues in quite some depth, and it is certainly the way that I prefer to do business. We have done modelling for the member for MacKillop on issues that he has raised, and I am hopeful that the detail of analysis that we provided him was adequate.

We have a disagreement on one point only in the legislation and that is the move from 44¢ to 54¢. Our view is that people have made purchase decisions on the basis of the 54¢ incentive. I did some talkback radio the same morning as the member for MacKillop. I think he was dealing with a slightly different issue. One individual who phoned in wanted surety that the 54¢ proposition would remain in place. My understanding is that the Department of the Premier and Cabinet, the division that is responsible for a lot of this work in the renewable energy sector, has received a large number of phone calls also wanting assurance that the level of incentive would remain in place. People are pointing out that they did their financial calculations on the basis of the feed-in tariff being increased. I really do not feel that it is fair to those South Australians, and we are now literally talking about tens of thousands of South Australians who have made a decision over the last few months, that we can effectively renege on that undertaking.

Bill read a second time.

In committee.

Clause 1.

Ms CHAPMAN: I have a general question for the minister on clause 1. I think he indicated that there are many more than 40,000—I think something like 70,000 or so—who are expected to complete the take-up, and he also mentioned that a significant number of people in the Victor Harbor region have apparently availed themselves of this. Do I assume from that, minister, that you actually have a record of the addresses of all these people who have taken this up? I am not asking for the addresses, but is there a way to identify numbers by council region or preferably by state electorate? I am not asking for them today necessarily, but is that information available? It may be on a website.

The Hon. M.F. O'BRIEN: I thank the honourable member for the question. I asked an identical question myself, and obviously ETSA has a record of where the installations have occurred because it has to approve them. My understanding is that, at this point, ETSA does not have the software written into its general business program that can print out a report that gives a postcode by postcode rundown of the number of households with the PV panels installed. A body of work commissioned by AGL gives some understanding of the spread, and I believe that other work is being done.

Apparently, since having asked the question some weeks ago, it was discovered that ETSA can do it. It is wonderful what can happen when you ask. I have a printout here, which I can make available to the member.

Clause passed.

Clauses 2 to 6 passed.

Clause 7.

Mr VAN HOLST PELLEKAAN: I have one quick question. I was contacted about 15 minutes ago by a young business woman in Stuart who is clearly bound for greatness because she has either impeccable timing or great ESP. I would like to have something clarified. She runs bed and breakfast businesses in the town of Orroroo and has signed up for seven of these systems under four different entity names—a different combination of family businesses and partnerships, and that sort of thing.

My question really is about retrospectivity. I understand that one person or entity under this new legislation will only be entitled to one set of benefits. She signed up after October 2010 but will have all of her systems installed before the end of June 2011. Can you tell me how retrospectivity will apply to her case specifically?

The Hon. M.F. O'BRIEN: The simple answer is that if she has separate corporate structures, in law, they are treated as separate entities; and if she is running her business affairs in that manner, she would find that she can take advantage of the legislation for one site per separate legal entity, and that is the intent of the legislation.

When we get into the hazy areas where we do not have a strictly defined legal entity, then it is within ETSA's purview to make a decision. But I think, from what the member for Stuart was saying, we are talking about a hybrid of partnerships and corporations.

Mr VAN HOLST PELLEKAAN: The question was more about the retrospectivity. Could you outline exactly how it applies to her? I think she is quite well organised with regard to her entities, and I am sure that it is all 100 per cent above board. She has two operating businesses in each of three different entities and one operating business in one fourth entity. The query is more about how the retrospectivity catches her, given that she will have them all installed, I believe, before this actually comes into effect.

The Hon. M.F. O'BRIEN: The Premier made an announcement on 31 August 2010 in which he outlined the intended objectives of this piece of legislation. We have taken that as the point at which people were informed. The cut-off is 1 October 2011, and there is some leeway. If an application is made to ETSA prior to 1 October 2011 and it takes, say, three months for installation to occur, they still sit within the scheme.

From what you have said, I think she sits within the scheme as outlined in this piece of legislation. If she had made application to ETSA prior to 31 August 2010, then the provisions of the act as it currently stands would apply. However, I think, from what you are saying, she would be caught up in the current legislation, which only allows her one site.

Mr WILLIAMS: I move:

Page 5, line 29 [clause 7, inserted section 36AE(1)(b)]—Delete '$0.54 per kWh' and substitute '$0.44 per kWh'

The effect of this amendment would be to leave the feed-in rate at 44¢ rather than increasing it to 54¢. As I mentioned in my second reading contribution, there has been an incredible take-up—and it has been less than 12 months—based on a number of factors. I do not think the 10¢ increase is the determining factor in that take-up. In fact, in his summing up the minister said—and I hope I have this right; it is largely right (I wrote it down when he said it)—'Irrespective of what we do with the feed-in tariff, it will have very little effect on the uptake.'

The minister was talking about the implications of the federal decisions. He was suggesting that the announcements by the federal government to drop down the multiplier with respect to the rebate that it pays into PV installations is driving the uptake. So, the minister has even admitted, when summing up the second reading, that he does not think that it is the increase from 44¢ to 54¢ that has been driving people's decisions. I think that probably is the case.

In any case, I think it is nonsensical for this parliament to increase this feed-in tariff from 44¢ to 54¢, bearing in mind that this scheme and those who will be lucky enough to get in on this

scheme will be paid at that rate for another 17 years. I think it is nonsensical. We all know that within a very short time—probably a matter of only a few years—the cost of electricity for people who have put in a PV scheme will be such that they will be making money out of their PV scheme without any feed-in tariff at all. Why on earth would we be increasing the tariff from 44¢ to 54¢? It is almost a 25 per cent increase on what has already been proved to be a very, very generous incentive.

The Hon. M.F. O'BRIEN: The government cannot accept the amendment. The Premier went to the people of South Australia on 31 August last year and informed them that the feed-in tariff would increase from 44¢ to 54¢. I indicated earlier that a large number of individuals have contacted the Department of the Premier and Cabinet to gain certainty that the government will persist with the increase. We believe that it would be widely viewed by a large number of South Australians—and it may be around 30,000 to 40,000—that the government has reneged on a very clear undertaking to the community. So, for that reason we will stay the course on this particular decision.

Mr WILLIAMS: I thank the minister for his explanation. I was suspicious, and I hinted at that in my second reading contribution, that the reason the government will not take the sensible decision to go back and revisit this is that the Premier made an announcement at the end of August last year. Might I remind the house that the Premier promised the people of South Australia that there would be no privatisations, yet he is going to sell the forests. He promised the people of South Australia that he particularly would not sell the forests, yet he is leading a government that is now committed to selling our forests.

Mr Marshall interjecting:

Mr WILLIAMS: My colleague the member for Norwood reminds us that the Premier said that we were going to spend about $890 million rebuilding Mount Bold reservoir to hold two years' worth of water. We were going to build a new prison at Mobilong.

The Hon. M.F. O'BRIEN: Point of order.

The CHAIR: Certainly. Excuse me, member for MacKillop, there is a point of order.

The Hon. M.F. O'BRIEN: Relevance. I think the member for MacKillop is raising a whole range of totally extraneous issues. This really does come down to the 44¢ or 54¢ feed-in issue, not Mount Bold or the forests in the South-East.

The CHAIR: Yes, there is a point of order. I accept that. Carry on, member for MacKillop.

Mr WILLIAMS: Madam Chair, in my defence—

The CHAIR: No, you do not need to defend yourself.

Mr WILLIAMS: No, I—

The CHAIR: Member for MacKillop, sit down. The thing is that when the Chair or the Speaker makes that ruling, that is it!

Mr WILLIAMS: Thank you, Madam Chair. I simply respond to the point raised by the minister that the reason we seem to be travelling down this path of stupidity is that the Premier made an announcement. I am just pointing out to the house that, as strange as it might seem, the Premier is capable of changing his position. To reinforce that that is the case, I wish to put before the house a number of cases where the Premier has changed his position.

I remember the Premier telling the people of South Australia that the home of football was at West Lakes, and I think he has changed his position. I will not bore the house with the full range of examples where the Premier has changed his position. The reality is that it is not unique, it is not even rare for this Premier to change his position; he does it almost on a daily basis.

Amendment negatived; clause passed.

Remaining clause (8), schedule and title passed.

Bill reported without amendment.

The Hon. M.F. O'BRIEN (Napier—Minister for Agriculture and Fisheries, Minister for Forests, Minister for Energy, Minister for the Northern Suburbs) (16:45): I move:

That this bill be now read a third time.

Bill read a third time and passed.

[Sitting extended beyond 17:00 on motion of Hon. J.R. Rau]

SUMMARY OFFENCES (PRESCRIBED MOTOR VEHICLES) AMENDMENT BILL

The Legislative Council insisted on its amendments to the bill to which the House of Assembly had disagreed.

Consideration in committee.

The Hon. J.R. RAU: I move:

That the disagreement to the amendments be insisted on.

Motion carried.

The Hon. J.R. RAU: I move:

That a message be sent to the Legislative Council requesting a conference be granted to this house respecting certain amendments from the Legislative Council in the bill, and that the Legislative Council be informed that, in the event of a conference being agreed to, this house will be represented at such conference by five managers and that Mr Piccolo, Mr Sibbons, Ms Chapman, Mr van Holst Pellekaan, and the mover be the managers of the conference on the part of the House of Assembly.

Motion carried.

CORPORATIONS (COMMONWEALTH POWERS) (TERMINATION DAY) AMENDMENT BILL

The Legislative Council agreed to the bill without any amendment.

CONTROLLED SUBSTANCES (OFFENCES RELATING TO INSTRUCTIONS) AMENDMENT BILL

(Second reading debate adjourned on 5 May 2011.)

Bill read a second time.

In committee.

Clauses 1 to 3 passed.

New clause 3A.

Ms CHAPMAN: I move:

Page 2, after line 10—Insert:

3A—Amendment of section 33A—Sale, manufacture etc of controlled precursor

Section 33A(1), (2) and (3)—delete subsections (1), (2) and (3) and substitute:

(1) A person who—

(a) sells a large commercial quantity of a controlled precursor; or

(b) has possession of a large commercial quantity of a controlled precursor intending to sell it,

believing that the person to whom it is, or is to be, sold or another person intends to use any of it to unlawfully manufacture a controlled drug is guilty of an offence.

Maximum penalty: $200,000 or imprisonment for 25 years, or both.

(2) A person who—

(a) sells a commercial quantity of a controlled precursor; or

(b) has possession of a commercial quantity of a controlled precursor intending to sell it,

believing that the person to whom it is, or is to be, sold or another person intends to use any of it to unlawfully manufacture a controlled drug is guilty of an offence.

Maximum penalty: $75,000 or imprisonment for 15 years, or both.

(3) A person who—

(a) sells a controlled precursor; or

(b) has possession of a controlled precursor intending to sell it,

believing that the person to whom it is, or is to be, sold or another person intends to use any of it to unlawfully manufacture a controlled drug is guilty of an offence.

Maximum penalty: $50,000 or imprisonment for 10 years, or both.

As I indicated in the second reading debate, this is to facilitate some consistency between the two pieces of legislation to ensure that we fill in all the gaps. Rather than repeat all the matters I raised in the second reading, I point out that, essentially, what I attempted to do on that occasion was to highlight that, although we already had a situation where being in possession of the document (that is, instructions) already had offences attached to it, there were some gaps in respect of the—

The Hon. J.R. RAU: I am sorry, member for Bragg, but I am already persuaded and I accept the amendment.

Ms Chapman: I am shocked into silence almost!

The CHAIR: Did you say you were shocked into silence, member for Bragg?

Ms CHAPMAN: I said, 'almost'. In response, I thank the minister for that indication.

New clause inserted.

Clause 4 passed.

Clause 5.

The Hon. J.R. RAU: I move:

Page 3, after line 13 [clause 5, inserted section 33DA]—Insert:

(2) In this section—

document includes any record of information whether in documentary, magnetic, electronic or other form.

I will just explain this briefly. This amendment, in effect, defines a document to include a variety of descriptions of what might be called an electronic document. At first sight, it was thought that the definition in the Acts Interpretation Act was sufficient. However, the Acts Interpretation Act relevantly says, amongst other things, that a document includes:

(d) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

It is paragraph (d) (that I just read out) which is applicable and, on second thoughts and prompted by a submission from the Law Society, it seems that the definition requires that there be an article or material. An electronic document—a download, for example—or a URL (which, I gather, is some sort of electronic thing) need not have material form.

Therefore, the government thinks it is better to be safe, taking into account the remarks made by the Law Society, and make this amendment. In due course, we will also be looking at the definition in the Acts Interpretation Act to see whether that also needs to be examined.

Ms CHAPMAN: I thank the Attorney and also record my appreciation to the Law Society for bringing this deficiency to the attention of the house. We will consent to it.

Amendment carried; clause as amended passed.

Clause 6.

The Hon. J.R. RAU: I move:

Page 3, after line 26 [clause 6, inserted section 33GB]—Insert:

(2) In this section—

document includes any record of information whether in documentary, magnetic, electronic or other form.

This is virtually the same amendment and I have explained the reasons for moving it.

Amendment carried; clause as amended passed.

Clause 7.

The Hon. J.R. RAU: I move:

Page 3, lines 28 to 30—Delete all words in these lines and substitute:

Section 33LA(2)—delete subsection (2)

This amendment was also prompted by a comment from the Law Society. In the Controlled Substances Act, a great many serious things are dealt with by regulations. The normal drafting convention is that it is referred to be describing a matter as 'prescribed'. That word suffices to authorise the regulation. The Acts Interpretation Act says:

prescribed means—

(a) when used in an Act—prescribed by the Act or by a statutory instrument made, or to be made, under the Act.

In this particular instance, the drafters specified that the matter would be prescribed by regulation. That was not necessary and is formally inconsistent with the design of the rest of the act. So, it is intended to remove the unnecessary description.

The CHAIR: I am advised that, because the member for Bragg's amendment, although also on clause 7, is a number of lines earlier, we do, in fact, need to attend to your amendment first, member for Bragg.

Ms CHAPMAN: I was all ready to consent to that being remedied but, to ensure that we follow proper process, I move:

Page 3, lines 27 to 30—Delete the clause and substitute:

7—Substitution of section 33LA

Section 33LA—delete the clause and substitute:

33LA—Possession or supply of prescribed equipment

A person who, without reasonable excuse (proof of which lies on the person)—

(a) has possession of any prescribed equipment; or

(b) supplies to another person any prescribed equipment; or

(c) has possession of any prescribed equipment intending to supply it to another person,

is guilty of an offence.

Maximum penalty: $10,000 or imprisonment for two years, or both.

Again, this is to be consistent across the board so that we fill in the gaps. So, not just sale and intent—

The Hon. J.R. RAU: Harmony must be in the air today because I am compelled again by the remarks of my learned and honourable friend—

The CHAIR: Which she has not finished.

The Hon. J.R. RAU: It doesn't matter. She has already got me. In fact, to terribly abuse a great line from a film, 'She had me at hello.'

The CHAIR: Oh, that's sweet. So, can I just get this very clear. Everybody is very happy to delete the words in clause 7, page 3, lines 27 to 30, and make the substitution; and then we are happy to delete some words in the lines 28 to 30 of clause 7, page 3.

The Hon. J.R. RAU: More good news. I am withdrawing my amendment because it has been adequately attended to by the work of the member for Bragg.

Hon. J.R. Rau's amendment withdrawn; Ms Chapman's amendment carried; clause as amended passed.

Clause 8.

Ms CHAPMAN: I indicate again that, in the spirit of agreement, the foreshadowed amendment which is to cover the Law Society recommendation of the Attorney-General will be consented to. I think it is still needed, actually, but, in any event, I move amendment No. 3 in my name, for the reasons as previously outlined:

Page 4, after line 3 [clause 8, inserted section 33LAB]—After paragraph (b) insert:

(c) has possession of a document containing instructions for the manufacture of a controlled drug or the cultivation of a controlled plant to supply it to another person,

The Hon. J.R. RAU: Having regard to the fantastic spirit that is in the chamber today, I also accept the amendment moved by the honourable member. There is an atmosphere here today which is truly beautiful. I move:

Page 4, after line 5 [clause 8, inserted section 33LAB]—Insert:

(2) In this section—

document includes any record of information whether in documentary, magnetic, electronic or other form.

Amendments carried; clause as amended passed.

New clause 9.

Ms CHAPMAN: I move:

Page 4, after line 5—Insert:

9—Amendment of section 33LB—Possession or supply of prescribed quantity of controlled precursor

Section 33LB(1), (2), (3) and (4)—delete subsections (1), (2), (3) and (4) and substitute:

(1) A person who, without reasonable excuse (proof of which lies on the person)—

(a) has possession of a prescribed quantity of a controlled precursor; or

(b) supplies to another person a prescribed quantity of a controlled precursor; or

(c) has possession of a prescribed quantity of a controlled precursor intending to supply it to another person,

is guilty of an offence.

Maximum penalty: $10,000 or imprisonment for three years, or both.

(2) A person who, without reasonable excuse (proof of which lies on the person)—

(a) —

(i) has possession of a prescribed quantity of a controlled precursor; or

(ii) supplies to another person a prescribed quantity of a controlled precursor, or

(iii) has possession of a prescribed quantity of a controlled precursor intending to supply it to another person; and

(b) —

(i) has possession of a prescribed quantity of another kind of controlled precursor or any prescribed equipment, or

(ii) supplies to another person a prescribed quantity of another kind of controlled precursor or any prescribed equipment; or

(iii) has possession of a prescribed quantity of another kind of controlled precursor or any prescribed equipment intending to supply it to another person,

is guilty of an offence.

Maximum penalty: $15,000 or imprisonment for five years, or both.

I move this amendment for the reasons previously outlined.

The Hon. J.R. RAU: I cannot let this opportunity pass without saying I consent.

New clause inserted.

Title passed.

Bill reported with amendment.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice, Minister for Urban Development, Planning and the City of Adelaide, Minister for Tourism, Minister for Food Marketing) (15:14): I move:

That this bill be now read a third time.

I take great pleasure in moving that this bill now be read a third time and, in so doing, I would like to congratulate the member for Bragg in having assisted us all today in seeing the legislative equivalent of the model litigant at work.

Bill read a third time and passed.

SUMMARY OFFENCES (TATTOOING, BODY PIERCING AND BODY MODIFICATION) AMENDMENT BILL

In committee.

(Continued from 5 May 2011.)

Clause 1.

The Hon. J.R. RAU: I will just indicate what I understand the state of play to be so that it might assist members about the matter. There are a number of amendments that have been filed by me and they are largely amendments that arose from the second reading debate and undertakings I gave to the house when we last spoke on this matter. They deal with tongue-splitting, dental and medical practitioner point and essentially deal with the matters, I think, that were raised by the member for Bragg and others with two exceptions.

One is that I think there is a more recent amendment that the honourable member is seeking in relation to earlobes. In relation to that particular amendment, I just foreshadow that I am not in a position to be able to agree to that amendment having regard to the time. It is a matter that we can consider between the houses, but there will be formal opposition to that matter.

There is a difference of opinion between the member for Bragg and me in relation to the police power matter. She has heard my views and I have heard hers, so I can foreshadow that there will be formal opposition here to that but, otherwise, I think the amendments that we are putting forward are actually amendments that were generated by the second reading debate. That might assist people so that we can move through it more swiftly.

Ms CHAPMAN: I thank the Attorney-General for outlining that. Essentially the amendments as indicated by the Attorney in his name were generated from our second reading debate and I thank him for that. When we come to government amendment No.5, however, this deals with the question of whether people under the age of 18 years should be able to have a defence against being prosecuted if they use false identification material.

I am not asking you to follow in detail the argument on this but, during the course of the debate, our position was that they should not be able to use false identification to get access to the service of being provided with a tattoo or body modification, or whatever. In other words, if they use someone's 20-year-old identification to get the service, they should not be eligible for a defence which is otherwise provided to them if they use these false IDs to get into a hotel to get alcohol or cigarettes, etc.

The reason I had raised the issue in the second reading debate—and I thought I had made it clear, but obviously I did not—was that in fact they should not be eligible and whether 'product' would cover these people. Our position was, if it was not clear to the Attorney before, that I was not very happy when this part of the act was made when we discussed the issues surrounding the Heaven nightclub and the legislation that went with that.

It was very clear from the then attorney-general that he thought it was important that children or those under the age of 18 years should not have the heavy penalties that using false IDs would attract, and they were quite significant if they were going to use it to get into a nightclub or to buy cigarettes and the like.

I do not want to revisit the argument on that, but I raised the fact that the current legislation in the Criminal Law Consolidation Act may allow a 15 year old who wanted to get a body modification and used a false identity to be excused from prosecution because of the wording. The Attorney has, in his amendments, in fact cemented (I suppose, directly the reverse) in it the defence of under-18 year olds in relation to this. The way I was proposing to deal with that was that we would formally oppose that amendment. It would leave it unresolved.

The Hon. J.R. RAU: I am happy to withdraw it. You have convinced me.

The CHAIR: I'm struggling to hear. Excuse me, member for Bragg. Attorney, did you say that you agreed with everything?

The Hon. J.R. RAU: I misunderstood which one the honourable member was dealing with. This is one where we do not see eye to eye, but it will be sorted out.

Ms CHAPMAN: So it will remain in there opposed. We have the question of whether earlobes are included in the legislation, we have the police search issue, and we have the question of defence to use of identify theft as issues in dispute, and each of us will take advice from our respective party rooms. On that basis, I am happy for the matters to be left to another place.

The Hon. J.R. RAU: With the concurrence of the committee, I suggest we move through the bill.

Clause passed.

Clauses 2 to 3 passed.

Clause 4.

The Hon. J.R. RAU: I move:

Page 3—

After line 16 [clause 4, inserted section 21A(1), definition of body modification procedure]—After paragraph (d) insert:

(da) tongue splitting; and

After line 23 [clause 4, inserted section 21A(1)]—After the definition of body scarification insert:

dental practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the dental profession (including, if appropriate, a dental therapist, dental hygienist, dental prosthetist or oral health therapist but not including a student);

Lines 28 to 29 [clause 4, inserted section 21A(1), definition of *medical practitioner*]—Delete the definition of *medical practitioner* and substitute:

medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

medical treatment means treatment or procedures administered or carried out by a medical practitioner, dental practitioner or nurse in the course of medical, surgical or dental practice or treatment;

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a student).

Lines 30 to 33 [clause 4, inserted section 21A(2)]—Delete subsection (2) and substitute:

(2) This part does not apply to a body piercing or body modification procedure performed on a person if the procedure is performed—

(a) in the course of medical treatment; or

(b) for a medical or therapeutic purpose of a kind prescribed by the regulations.

Amendments carried.

Ms CHAPMAN: I move:

Page 4, line 17 [clause 4, inserted section 21C(2)(b)]—Delete '(other than an earlobe piercing)'

Page 5—

Lines 5 to 6 [clause 4, inserted section 21D(1)]—Delete '(other than an earlobe piercing)'

After line 25 [clause 4, inserted section 21D]—After line 25 insert:

(1a) Subsection (1) does not apply to an earlobe piercing performed on a person who is at least 16 years old.

Page 7, lines 13 to 37 [clause 4, inserted section 21I]—Delete section 21I

The Hon. J.R. RAU: For the record, we oppose those amendments.

Amendments negatived; clause as amended passed.

New schedule 1.

The Hon. J.R. RAU: I move:

Page 7, after line 37—After clause 4 insert:

Schedule 1—Related amendment to *Criminal Law Consolidation Act 1935*

4—Amendment of section 144F—Application of Part

Section 144F(a)(i)—after 'product' insert 'or service'

Ms CHAPMAN: I formally oppose this amendment.

New schedule inserted.

Long title.

The Hon. J.R. RAU: I move:

After '*Summary Offences Act 1953*' insert:

and to make a related amendment to the *Criminal Law Consolidation Act 1935*

Amendment carried; long title as amended passed.

Bill reported with amendment.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice, Minister for Urban Development, Planning and the City of Adelaide, Minister for Tourism, Minister for Food Marketing) (17:40): I move:

That this bill be now read a third time.

Can I just say thank you to members opposite for the expeditious way in which we have been able to deal with things today; it has been a model afternoon. It is a shame that there were not more children in the gallery, although my children are here, and I think they are very impressed that the parliament is behaving this way. I thank everybody for giving them an elevated view of this place because it is something that they will carry with them for the rest of their lives.

Bill read a third time and passed.

At 17:41 the house adjourned until Tuesday 7 June 2011 at 11:00.