LEGISLATIVE COUNCIL

Tuesday 22 November 2011

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:02 and read prayers.

SUMMARY OFFENCES (PRESCRIBED MOTOR VEHICLES) AMENDMENT BILL

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (11:03): I move:

That the sitting of the Legislative Council be not suspended during the continuation of the conference with the House of Assembly on the bill.

Motion carried.

SITTINGS AND BUSINESS

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (11:03): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15pm.

Motion carried.

ROXBY DOWNS (INDENTURE RATIFICATION) (AMENDMENT OF INDENTURE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 November 2011.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (11:04): I rise as one of many speakers from the opposition to speak to the Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Bill 2011.

I will start my contribution by saying that I think that people should picture what may have happened in the meeting room in Melbourne when premier Rann, minister Foley and minister Koutsantonis flew to Melbourne to sign the deal before 20 October and before the premier and minister Foley left. We know that this negotiation had been going on for some six years or longer and that it is a project that has been around for some 40-plus years. But in the end, this particular arrangement had a deadline, which had been imposed by two members of the government—in fact, a deadline imposed by a union movement that had decided that the premier had to go. So, we arrived at 20 October.

Just picture what you think happened in that meeting when the agreement was signed: the premier, the former treasurer and minister for the expansion of the mine, and the mineral resources minister signed the deal and, I presume, they shook hands—I am sure it was a cordial sort of meeting—and then they left.

What do you think the BHP executives did? Did they sit there with their heads in their hands saying, 'Gee whizz, we've just been done over by the state government. How on earth are we ever going to face the board? How are we going to sell this to our shareholders? This government has got the best deal of the century'? Or, as the door closed behind premier Rann, ministers Foley and Koutsantonis and as they left, what do you think Marius Kloppers and his mates did? I am sure they would have jumped for joy and said, 'Yes, we have got the deal of the century.'

It is from that position that the Liberal Party already in the House of Assembly has agreed to support the amendments to the indenture, but it is our view that, once you put a deadline on a negotiation, you then forfeit a whole range of leverages that you might be able to get out of that particular negotiation. From that point of view, the opposition supports the bill, but we assert we would have been able to get a better deal than the one the government claims it has got.

The Olympic Dam expansion will define the future of our state. A project of this size always requires strong leadership, and I think history will show that that strong leadership really has only

ever been provided consistently in this state by the Liberal Party. They are not the hallmarks of this Labor government which, over the last decade, unfortunately, has shown no sign of strong leadership at all, especially under the new Premier, Hon. Jay Weatherill.

I think we should look at the record, and I will spend a little bit of time this morning going over some historical facts. I have had the library provide me with some *Hansard* from the original indenture and it is interesting to look at that to see how the debate has moved and changed; and, in some ways, nothing really changes at all. For the record, the state Liberals have a proud history of supporting resources development in South Australia, and we have long been a consistent advocate for investment and mining in our state. When I was the minerals shadow minister, the department provided me with some chronological posters of the development of this industry, and I am proud to say the Liberal Party has always been a strong advocate for the resources sector.

It was the Tonkin government that ensured the Olympic Dam became a reality in 1982, and we have to remember they did this against the backdrop of strong opposition from Labor and, in particular, Mike Rann as an adviser. In relation to the Labor record and the indenture bill of 1982, in a press release issued by John Bannon in 1982, he said:

> Our attitude to the bill will be determined in the light of our policy of opposition to uranium development and the nuclear fuel cycle, unless it is proved safe.

Of course, we know, and I will talk a little bit about this further in my contribution, that in June 1982 the Labor MLC Norm Foster resigned from the Labor Party and crossed the floor in this place to support the Tonkin government's bill.

I will talk about the Rann years. For years, Mike Rann has been an antinuclear campaigner. He campaigned against French nuclear testing in the Pacific Ocean and, during the 1980s, was tasked as a member of Labor's anti-uranium nuclear hazards committee and famously said the Olympic Dam project would be a mirage in the desert. It is really only in recent times that Mike Rann—it is almost with hypocrisy—has jumped on board the support of the Olympic Dam project. He did all he could to undermine it in its early days, despite the huge opportunities it has created for this state. It is interesting to note that the GST, which gives this state significant streams of revenue, was also opposed by Mike Rann.

Mike Rann, the former premier, is a bit of a Johnny-come-lately in supporting Olympic Dam. Despite being an anti-uranium campaigner, he credits himself with being the one who successfully overturned Labor's no new mines policy. I think the record really shows it was Martin Ferguson who publicly advocated for that change.

It has been put to me that that policy almost shut down exploration in South Australia, and minerals experts will tell you that you are likely to find uranium pretty much anywhere in northern South Australia. There was no capacity to mine it, so the exploration sector was reluctant to come, look and really explore here in South Australia because of that concern that, if we discovered something that is rich in uranium, then, of course, we had no capacity to mine it.

We often talk about not being as advanced in our minerals sector as Western Australia and Queensland. Sure, they have resources that are perhaps a little easier to access, but I wonder whether that three mines policy has not actually set South Australia back, probably some 20 or 30 years.

Before I get into more detail on the particular indenture, I point out that mining under Labor has been something that this government has bragged about, yet I think we just need to look at some facts. There has actually been a fall in South Australia's mining investment. We are yet to see the economic benefits that have been seen in Western Australia and Queensland. South Australia only has 8,500 mining jobs, compared with 91,000 in Western Australia and 67,000 in Queensland.

In fact, there are fewer jobs in mining here today than there were in 1985. The number of South Australian mining jobs has dropped 32 per cent in the last four years. If we exclude Roxby Downs and what we are talking about today, South Australia has only 0.2 per cent of national mining projects, worth about $0.4 billion, compared to $173 billion. Mining only represents 3.8 per cent of the state's economy, compared to 11.6 per cent for manufacturing.

In the last year of the former Liberal government, 2000-01, mining represented—wait for it, Mr President—3.8 per cent of the state's economy. So, a decade on, and after a decade of Labor saying they have been the superstars of the mining sector and have delivered all of these

wonderful benefits, it still only represents the same percentage of our economy as it did over a decade ago.

It is interesting to look at some of the comments in *Hansard*. In light of where we are at today, I will just spend a couple of moments quoting the former premier, the Hon. David Tonkin. He said:

> This measure is one of the most important ever to...come before the South Australian Parliament. It represents a very real opportunity to South Australia to substantially broaden its economic base while at the same time providing direct assistance to existing industries. With the possible exception of Japan, most Western industrial economies are at present experiencing severe contraction. No-one is suggesting for a moment that South Australia can avoid the impact of this world-wide trend, which has been caused by [various] factors outside the control or influence of any State Government—rising inflation, rising interest rates, and declining international markets. The O.E.C.D, in its latest forecast, points out that the Australian economy will feel the effects of these international difficulties throughout 1982. But it does give two specific areas of encouragement: a reasonably healthy consumer market, and continuing investment in resource development.
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> These are two areas in which South Australia can and must benefit. Our key manufacturing industries, particularly motor vehicles and white goods, must work aggressively in the local, interstate and overseas market place to maintain their existing...viability. These industries have already undergone major rationalisation, in South Australia in particular, making them more efficient and [more] competitive. The rich petroleum and mineral wealth which we have in the North of the State must be developed, processed and marketed responsibly.
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> With the [kind of] assistance of the hundreds of millions of dollars which resource development will ensure is spent in South Australia in the immediate future, the State can and will survive the current economic difficulties better than most others. Already the advantages of the massive growth in exploration and development which has taken place in the past 30 months are now beginning to reflect in South Australia's improved economic situation. Major economic indicators show clearly that South Australia is bearing the brunt of current difficulties better than are most States, and that that situation is improving.

Some 30-odd years on not much has changed. Okay, we have world decline in economic activity, we have a concern about our state's economy (in fact, our state debt is climbing), unemployment is climbing, and we all see, 30 years on, that this expansion as proposed at Olympic Dam will again be something that we all need to support and hope that it will deliver the economic benefits that we are promised it will.

In recent times, people have thought that this resource has become much bigger and better defined, but, just looking back to what the Hon. Roger Goldsworthy (who was minister for mines and energy at the time) said:

> Members will be aware at the last election the Government undertook to 'encourage a full-scale development of the copper/uranium deposits at Roxby Downs'. This was in the context of a well recognised need for a major new project to be encouraged in order to provide the necessary diversity for South Australia's economy to grow and develop, thus ensuring that South Australia shared in the benefits of economic growth taking place elsewhere in Australia.

Again, I think that nothing much has changed over the last 30 years. Just to put this in context, later in his contribution he then goes on to say:

> Over the past two years the exploration activity has been intense. A total of 300 diamond drill holes have been drilled to outline the mineralised zone elongated north west-south east, with dimensions of 7 km by 4 km, at depths below the surface between 350 metres and 1,100 metres. Thus, the deposit ranks among the world's largest concentrations of both copper and uranium with grades likely to average about 1.5 per cent of copper and .05 per cent uranium oxide. However, there are significant zones of higher grades of these metals.
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> This is a remarkable deposit in the terms of size of contained metals and mineralogy, and it appears to be unique, genetically—it is quite unlike any known ore body.

That is some of the debate that the government has spoken about here in recent times in the last few years—that is, about the magnitude of it. The magnitude was well known some 30 years ago, and yet the government, I guess, has been wanting to reinvent history. I am just highlighting the fact that it was apparent to the Liberal government 30 years ago that this sensible project that, for the future of our state, we needed to develop and also that it was a massive project back then—and nothing much has changed.

I think it is interesting in the context of some of the comments that the opposition leader (the Hon. John Bannon) made in relation to the project that was proposed by the Tonkin government. He said:

> In the 2½ years since coming to office, this Government has chosen to create completely unrealistic expectations about the extent and the timing of possible benefits from the resources project at Roxby Downs. We have seen a barrage of grossly inflated claims, and a crazy auction of predictions, particularly about employment and possible royalty income.

This Government has encouraged the fiction that the commencement of the project was beyond doubt and only a year or two away. It has abused anyone who has questioned the wisdom of South Australia locking itself into the nuclear fuel industry, and for 2½ years it has tried to divide the community on the question of uranium mining, simply because it believed that to do so would give it some electoral advantage.

Certainly, there are some similarities between the comments that the Hon. John Bannon had made about the Tonkin government and some of the over-spruiking that has happened in the mining sector under this government for the last 10 years. Of particular interest—and I think it is something that former premier Rann made a whole range of noises about—are the potential jobs, and I refer again to the comments made by the Hon. John Bannon. He said:

I refer now to jobs. On the question of the possible employment arising with this project, this Government has been most cynical and most dishonest. While still in Opposition, the present Premier claimed that 20,000 jobs would be directly created. Immediately after the election, he increased it to 'about 50,000', both directly and indirectly. Meanwhile, the Minister of Industrial Affairs had entered the lists with a prediction of 10,000 new jobs immediately and a potential for 30,000 or 40,000 [more jobs]. All of these predictions were wrong. All of them were hopelessly exaggerated. All of them point up the way in which this project has been used by the government in totally cynical and dishonest terms. We are now talking about 2,000 to 3,000 jobs. We are now talking about an employment level which would not even erase the increase in jobless since this government came to office, even assuming that these jobs could somehow be created now and not, as is more likely, by the most optimistic predictions, in the next decade.

Surrounding all this rhetoric, all these exaggerated boasts about the project, we have the spectre created by the government of a 'Mount Isa of the South'. The government has tried to associate this project with the Mount Isa mine and township in Queensland.

In closing this quotation, he goes on to say:

Anyone looking for immediate economic salvation and comfort from this comparison (and we have immediate and major problems in this state which must be tackled and solved) should remember that the Mount Isa ore body was discovered in 1923 and the town reached a population of 7,000 in 1956, the year in which Mount Isa Mines paid its first dividend. It took a further 25 years to reach its present population of 26,000.

There has been a whole range of speculation about employment and this project for 30 years. It is interesting that the Hon. John Bannon talked about the increased employment that may have been coming from the project back then, and that it might not erase the joblessness. I am aware that the latest statistics show that we have lost 4,500 full-time jobs in South Australia so, while what is proposed at Olympic Dam is significantly more than that, if the trend continues it may well be our salvation but they may not be additional jobs; they may just be jobs that have been replaced.

While we are touching on a fraction of history, the library has provided me with some clippings of the era and I think that, for the record and because this is now able to be searched electronically, it might be useful to put a couple of these points in *Hansard*. One that jumped out at me concerns former Labor senator the Hon. Nick Bolkus and an anti-uranium mining rally at Elder Park:

About 2,000 people marched from Victoria Square on Saturday to hear speakers at the rally. Senator Bolkus said there was no sign of the Olympic Dam site being mined. 'The economics of Roxby are too risky,' he said. Senator Bolkus said the SA Liberal government was pinning its hopes on the 'Roxby Horror Show'.

He went on to say:

The Minister for Mines and Energy, Mr Goldsworthy, 'the minister for mining, milling and mutations' was making uranium lobbyists look like amateurs.

It is interesting to note, 30 years on, that on the lobbyists' register of interests the company Bespoke Approach that Mr Bolkus represents is a lobbyist for a number of firms, including Marathon Resources, which of course has been attempting to mine uranium at the Arkaroola site.

It is interesting how nearly everyone in this debate on the Labor side of politics has changed their spots. In fact, former senator Chris Schacht, when he was ALP secretary, was on the nuclear hazards committee with Mike Rann in 1982 when the Play It Safe pamphlet was written. We also know that Mr Schacht is on the board of Marathon Resources. So there has been quite a significant shift in time, and I wonder whether, back in those days, they were really opposed to uranium mining or whether it was just a political convenience that saw the former bill delayed for quite some time in this place. In fact, it was defeated until Normie Foster crossed the floor and supported it.

I may not have brought the right clipping down with me, which is a little disappointing. Nonetheless, there is a time line that I might provide to the Hon. Stephen Wade about when Norm Foster resigned and when the press conferences were held on the steps of parliament in the

middle of the night. It really was quite an interesting time in South Australian politics, so I will provide that to my colleague the Hon. Stephen Wade to perhaps look at. It is now appropriate that I do address my comments to the bill we are here debating today rather than just going over history.

The Hon. G.E. Gago: Hear, hear!

The Hon. D.W. RIDGWAY: The minister interjects, 'Hear, hear!' but I think this is one of the most significant pieces of legislation we will deal with in her lifetime—and in the very short little bit of her political lifetime she has left—and in my political lifetime. It was 30 years ago; it has been a very important part of our state and I am sure it will go on to be a very significant part of the future of South Australia.

The Olympic Dam operation is subject to an indenture, signed by the governor in 1992, ratified by the Roxby Downs (Indenture Ratification) Act 1992. The proposed expansion of mining at Olympic Dam and the establishment of an open-cut mine and eventual cessation of the existing underground mine has been the subject of a lengthy process of approvals, which culminated in the completion of an EIS project under the Development Act and the signing of the variation agreement between the government and BHP Billiton to vary the original indenture. The bill, as presented, amends the original ratification act and ratifies the indenture as varied.

The bill introduces new definitions and updates to the act and further minor amendments. Amendments are made to section 9, which covers the application of the Aboriginal Heritage Act and substitutes section 12, which relates to the operation of the Local Government Act and inserts new parts 4, 5 and 6. New part 4 provides for the protection and construction and operation of a desalination plant and associated infrastructure. It also authorises the minister to acquire land as an authority under the Land Acquisition Act. It also clarifies project approvals and the varied indenture declaration made under the Development Act of 21 August 2008. New part 5 allows the appointment of authorised officers and establishes their powers. New part 6 clarifies matters concerning the charging for water and electricity within the town.

Clause 11 provides for the variation of ratifications and variations to the indenture. Clause 12 allows for the variation of special mining lease, as per clause 4 of the variation deed, and clause 13 provides for a variation date, being the date on which BHP Billiton notifies the minister that they have approved the project and an action which triggers the variation to the indenture. It must occur within 12 months of the date of this act coming into operation. It also provides for an extension period by agreement between the company and the minister and, as such, an extension being disallowable by either house within five sitting days. Schedule 1 to the bill is the variation deed and the indenture as is varied.

There has been a significant amount of debate in the House of Assembly in relation to this. I would like to work through some of the issues in relation to the indenture. The public debate has not been so much of a technical nature, but more about the aspects of the main community concerns, that is, issues about greenhouse gas, groundwater usage, radiation, the tailings storage system, the long-term security of that storage and also the environment in and around the mine. One of the issues of particular interest has been the desalination plant, its location and maybe its impact on the marine environment.

As members on this side of the chamber—and probably most in this place—know, I am a connoisseur of South Australian Spencer Gulf prawns, and I note they have just received a Marine Stewardship Council award for one of the best managed fisheries of its type in the world. So, understandably, the prawn industry has been quite concerned about this particular development. Also of interest is any other aquaculture in that marine environment and the landing facility at Port Augusta. The honourable—well, he is not honourable yet—Dan van Holst Pellekaan, the member for Stuart, had some constituents who have been quite concerned about the impact.

The PRESIDENT: He is going to be honourable?

The Hon. D.W. RIDGWAY: I am sure that at some point in his career Dan van Holst Pellekaan will be honourable. His constituents have been quite concerned with some of the impacts of that landing facility.

I was given an opportunity by the government, along with others within the opposition, to look at some of these documents prior to them being tabled in the parliament. I thank the government for that opportunity. At that time, I made a number of notes and raised a few questions. I think the best way for me to deal with this is to work through those notes and put any questions

that I have on the record for the minister to answer. So, I will start with the variation deed, at point 2—Initial Obligations of the State and the Minister, which provides:

> The Minister shall cause the Government of the State, as soon as practicable after the execution of this Deed, to introduce into and sponsor in the Parliament of the State a Bill, in the form initialled by or on behalf of the parties, for an Act to be entitled the 'Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Act 2011' which will, among other things, approve and ratify the amendment of the Indenture and SML1 as specified in this Deed. The Minister will endeavour to secure the passage of the Bill through the Parliament and have it come into operation as an Act on or before 20 December 2011 (or such later date as may be agreed by the Minister and ODC)...

That, of course, is a sunset date. It is a little unusual. I know we often see bills that the government of the day would like to see come into operation, but I think it is a little unusual that we have, if you like, a gun held to our head, that we have to have this through so that it can come into effect by 20 December. I am wondering why that date was chosen. This was the last scheduled week of sitting of the parliament. Why did it have to be 20 December? Why was it not 1 December? Why was it not 10 December? Why was it not the middle of next week? It seems strange to be the date of 20 December. I would like the minister to give a little background as to why that date was chosen. Did it reflect 60 days from the date that the former premier signed the agreement? The deed continues:

> If the Bill referred to in clause 2, or a Bill on other terms agreed in writing by ODC and the Minister (and failure to agree is not arbitrable), is not passed by the Parliament of the State and does not come into operation as an Act on or before the Sunset Date, this Deed will thereupon cease and determine and none of the parties will have any claim against any other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed pursuant to this Deed.

So, again, it states that we have a deadline, but then if we do not reach that deadline it does not matter anyway. I am a little surprised as to why on earth that was put in to the variation deed. It goes on to 5—Variation Date, and states:

> 5.1 Latest time for Variation Date
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> ...must not be later than 12 months after the Ratification Date.

So, we know that BHP has 12 months to get board approval and commence the project. It continues:

> The period between the Ratification Date and the Variation Date may be extended, in accordance with the following procedure:
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> (a) ODC may give notice in writing to the Minister (by delivering the notice to the Minister's office at the time in Adelaide with a copy delivered to the Crown Solicitor's Office at the time in Adelaide) requesting an extension of the period as a result of an unforeseen change of economic, physical or other circumstances which ODC (in its discretion) decides will be materially adverse to the Project;
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> (b) the Minister may thereupon determine (in his discretion), by instrument under the Ratification Act signed by the Minister, to extend the period for whatever extra time the Minister determines (in his discretion) is warranted by the circumstances;

I was a little intrigued. We had a sunset date by which it had to be done. We then had a clause that said there would be no penalty if we did not pass the bill, yet, we were told that we had to pass it. Then, of course, we have the unforeseen circumstances. We all know that, at the end of the day, the BHP board will do what it believes is in the best interests of its shareholders at the time. There is an expectation that once this bill is passed (this week, or next week, whenever we finish the debate in this chamber) there will be green lights and it will go ahead.

We note that all over the world there are some significant economic concerns. We certainly hope that it goes ahead but, clearly, we can see that there are a number of outs within the variation deed which really do not bind BHP to start the project in the time frame stated. It really allows BHP to make an assessment and a judgement which best serves the company, which it is very much entitled to do, but I think it also flies in the face of the rhetoric from this government to say that it has to happen and that, if it does not happen now, we put the whole project at risk. BHP will make a decision based on what suits it, and it alone, regardless of what the former premier and the former treasurer and the now Minister for Mineral Resources Development say.

I now turn to the indenture itself and to some questions I would like to ask the minister in relation to point V in the recitals, I think. It states:

The company has proposed the development of an open pit mine and processing facilities at Olympic Dam and supporting infrastructure. The company has obtained development authorisation under the Development Act 1993 for the following major components—

(a) an open pit mine producing up to 72,000,000 tonnes per annum of ore—

we all know that, but then at point (c)—

(c) new concentrator and hydrometallurgical plants to process additional ore;

I ask the minister: how much additional ore? I note that BHP and departmental people are at the back of the room, so I am sure they are probably taking a couple of notes. I was unable to get to one of the final briefings and question-and-answer sessions with them, so I may well have asked those questions then. I am just interested to know how much additional ore? We are all aware that there will be a certain amount of capacity. Point (b) provides:

(b) the expansion of the existing on-site smelter from around 400,000 tonnes of copper concentrate per annum to approximately 800,000 tonnes of copper concentrate per annum.

But then they want additional capacity. I just wonder whether at some point in the future, if the economics or the technology is such, more and more of the concentrate can be processed in Australia, and particularly in South Australia, and we can have more of the add-on value-adding, if you like, to that particular product. Point (d) goes on, 'to build a 280 megalitres a day desalination plant in the Upper Spencer Gulf', which is one of the recitals, and I will come back to that later.

One area that has not been covered is the new accommodation village for workers located between Roxby Downs and Andamooka; I think it is the Hiltaba Village. Since becoming a member of parliament, I have had some three or four visits to the township of Andamooka. I know that BHP Billiton does not want anything to do with Andamooka. I guess this is probably also a question to the minister handling this, the Hon. Gail Gago, who is the Minister for Regional Development.

This will have a significant impact on the township of Andamooka. The last time there was an expansion or a refit or a refurbishment at Roxby Downs, at Olympic Dam, the township of Andamooka underwent some additional pressures, with extra people living there, some unsavoury elements, prostitution, drugs and a whole range of things. Bikies moved into Andamooka. I know that we have an increased police presence planned. I just want to know what the government's response is to making sure we do not have this sort of lawless community on the outskirts of Hiltaba. As I said, I understand fully that BHP does not want anything to do with it because it is going to be an awkward thing to manage. But I think that the South Australian government has a responsibility to look after that community because, potentially, it will be an issue that will have to be managed.

My understanding from the discussions I have had with the expansion group and BHP is that this project will be staged. The company will provide the minister with a project notice in relation to stage 1 of the project as soon as practicable after the board of directors approves that project. Our understanding is that that will be somewhere in the first or second quarter of next year. I have heard March and April as roughly the time, but I would like the minister, if she is able, to give this chamber some idea of when the government expects the board will come together to make that decision, because it is their decision, and we accept that other economic factors will also potentially play out in that decision. It goes on to say:

If the Company decides to proceed with a Project, it shall, subject to the terms of this Indenture, notify the Minister of its decision with respect to proceeding with the Project and, within two months after that notice, shall provide to the Minister details in respect of all matters covered by the notice...

including matters covered by that notice. That is for stage 1, I assume, because that is what it says in the indenture. In relation to stages 2, 3, and 4, from my understanding from the briefings, this project will be staged over a long period of time. In fact, the only way in which the project team really has been able to get it to a point where the board may consider it is to take it off in small bites. My question to the minister is: will subsequent stages have to go through a notification process, or will they just roll on as being part of the initial stage 1 and it just flows on from there?

The environment is certainly an issue that will need to be monitored. It will be a huge project, with a range of potential areas of concern, the desalination plant being one, the landing facility will be another, and then the mine operation itself. I notice that it states that, if there is a problem the minister may:

require the Company, and if required, the Company shall, within such a time as is reasonable in the circumstances, submit to the Minister a plan to manage or mitigate the adverse environmental impact or detriment

and, where applicable, for a return to compliance with the EMP [the environmental management plan] (including, where appropriate, timeframes, monitoring and reporting)('Mitigation Plan').

I am wondering why that would not be available for public notification—that is, if the minister has instructed the company to develop a mitigation plan, why we would not see that being publicly notified to the community so that the community know what is going on. I suspect that it is more from a comfort point of view, rather than to be alarmist, although the Hon. Mark Parnell occasionally has raised some concerns in this chamber in relation to mining operations and, I think, some even at Roxby Downs.

Under the environmental management program, it also goes on to talk about the audit—and this is for the auditor, as follows. If there has been a mitigation plan failure, or if there has been a breach of that, it provides:

(12) If the Minister believes on reasonable grounds either that—

(a) a statement in a report under Clause 11(8) as to the achievement or likely achievement of an outcome specified in an EMP [the environmental management plan];

(b) a statement in a report provided in accordance with the Approved Mitigation Plan as to the achievement or likely achievement of an outcome or an action required under the Approved Mitigation Plan

is incorrect...

If the minister believes that it is incorrect:

The Minister may give the Company notice requiring an independent audit of the relevant outcome reported, and the Company shall engage at its own cost an independent expert approved by the Minister to conduct the audit and the Company shall submit a copy of the audit to the Minister within two months (or any longer period reasonably required...)

after that date. The question I would ask is: in regard to the independent expert approved by the minister, I assume that the EPA, or the department of mineral resources, or PIRSA, whichever one it is, makes a recommendation. The minister appoints somebody but I would like to know where he gets that person. Is there a panel, is it an overseas expert or a local expert? This will be a mine like we have not seen before in the world. Perhaps the ones in Chile and other parts of the world could be of a similar magnitude, but I suspect they may not have the environmental controls that we have in Australia.

I have one other quick point in relation to greenhouse gas and the energy management plan. The company agrees that the environmental management plan for the Olympic Dam project will incorporate a greenhouse gas and energy management plan which the company is required to develop and have in place under the conditions and development authorisation for the project. I think I read that the greenhouse management plan was to come back within 60 per cent of 1990 levels but I am not quite sure if there are any penalties if that is not achieved.

Former premier Rann spoke about how this was going to operate. There would be a little spike in the greenhouse gas emissions while the project was under construction but then it would come back under. It is all very well to have these aspirational goals. The former premier was full of aspirational goals and targets he would have liked to achieve, but I am not sure he has actually ever achieved any of them, whether they be environmental, economic or social targets. The reporting of that greenhouse gas plan is a question I would like the minister to take on notice.

I think one of the areas where most people in South Australia have been excited—and some also have been concerned—is the use of local professional services, labour and materials. It is interesting to note in clause (12), use of local professional services, labour and materials, that subclause (2) states that the state continues to support the availability of analytical process and research development and other scientific and technical services in South Australia. It is interesting to note that there has been a significant contraction in metallurgy and mining-based courses offered in our tertiary institutions since this government came to office, so I am not sure when it says the state continues to support these services that it actually puts much of its money where its mouth is.

Workforce participation is an area in which I have a personal interest. We have this project that we hope will be there for a century or more, but I think we need to make sure that after a century we do not have the world's biggest hole and that is all, and this community and state has not benefited. It is not just about royalties. I know there have been some discussions about royalties and I suspect we will see amendments from some of the crossbenchers in relation to royalties, but it is about the flow-on effects.

The former Liberal government of David Tonkin was talking about Mount Isa and the Hon. John Bannon was poo-pooing that it would ever be a Mount Isa, and I suspect that most people now accept that out in the desert at Olympic Dam or Roxby we will not see a great big city. I think we really need to make sure that we capture as much of the wealth as we possibly can in South Australia. I think it is about workplace participation. We really need to be ever vigilant that it is not just written in here, as subsection (7) states:

> The Company or the Minister may make the Industry and Workforce Participation Plan or annual report publicly available, subject to the excision of any material the Company has identified as confidential.

The biggest key, I think, to this whole project is making sure more and more South Australians live and work in our state. We know that they are constructing a very big airport to fly people in and out, but let us hope they can fly in and out from Adelaide, Port Augusta, Mount Gambier—maybe even the Riverland might be a place where people might like to live but then work up in Roxby Downs or at the Olympic Dam mine.

One of the issues that I know myself and Mitch Williams, the shadow minister in the House of Assembly, were having some debate about was the words 'may' make it public or 'shall' make it public. There was some debate over that, and I just really think that this is an area where the community, the government, the opposition and probably even everybody in the parliament say that we need to leverage the most benefit for the state—it has got to be in employment and giving South Australians and, hopefully, young South Australians and families an opportunity to have jobs and grow some wealth. So, I would like the minister to explain why it is not mandatory that they shall make the plan publicly available.

I know that, in the discussions at some of the meetings we had, people from the Olympic Dam task force and from BHP said, 'Oh well, of course if it's good news the minister will naturally be proud of the performance and naturally make it publicly available,' but if it is not good news I think it should be publicly available. There is a very good chance that it may not be a Labor minister who is delivering that information. It may well be a Liberal minister at some point in the future, so it is really not about politics: it is about saying, 'If we're not delivering the outcomes that we all expected to get from this, what do we need to do to make sure we have a greater industry participation in the work at Olympic Dam?'

I think it is beyond party politics. It is really about making sure we are constantly monitoring what is going on, not leaving it up to the minister of the day to say, 'This is a bit of bad news. We won't release this because we have fewer people employed there now. We will keep it under covers.' I really think, and I think the opposition thinks, that this is something that should be out there and available to everybody to peruse at all times. This section also goes on to say:

> It is the intention of the Company that it will use all reasonable endeavours to implement the Industry and Workforce Participation Plan. However, a failure to implement [this]...Workforce Participation Plan shall not be a breach of this Indenture.

Again, I certainly would not want this indenture to be in breach of industry participation and workforce participation and that the plan agreed on is not achieved, but again, it does not seem to have enough teeth to really make both the government and the company sit down and make this happen.

I know BHP has told us that it is in their best interest to employ South Australians. I suspect there will be a whole range of skills that we do not have and they cannot employ South Australians, but maybe the company and the government of the day will be obliged to try to project forward to make sure we have the certain training and skills development in place so that, if there are periods of time when there are skills that we do not have here in South Australia, they are only temporary skills shortages and not something where people say, 'Look, that's just the way it is. We fly in those particular experts and we'll just leave it the way it is. We won't bother to train those people in South Australia.' Subsection (9) continues:

> Subject to the Company and the Minister agreeing that a meeting or all future meetings are not necessary, the Company shall, at least by-annually, meet with the Chairperson of the State's Economic Development Board and [the] relevant Chief Executives of [the] State Government Departments, to discuss, and provide advice and updates on, current outcomes or issues in relation to the implementation of the Industry and Workforce Participation Plan.

Now this is it:

> Subject to the Company and the Minister agreeing that a meeting or all future meetings are not necessary...

It then says that they should meet at least biennially with the economic development board. What if that board does not exist? Maybe a future government might change the structure of governance or might not have an economic development board. Again, I expect this will not be seen as a breach of the indenture, but it seems to me to be perhaps—I would not go as far as saying 'weasel words'—a whole bunch of words that may not be as strongly worded as they could be to deliver the best possible employment outcome in South Australia.

I refer to 12A—Availability of diesel fuel. It provides:

> (1) If the Minister requests, the Company shall, within 60 days of the Minister's request, give the Minister a written statement of its estimated usage, by month, of diesel fuel in its operations under this Indenture during the period of 12 months starting on the first day of the month following the month during which the statement is given...

I am not quite sure what the amount of diesel fuel the company uses has to do with the minister, but I would be interested to know why that particular diesel fuel clause is in the indenture. It may well just be to do with fuel security for the rest of the users in South Australia, but I am just a little intrigued as to why we have diesel fuel in the indenture.

I would like to make a couple of points in relation to water supply, and in particular, in relation to some of the statements that have been made. There is quite a large section on water, and I know Mitch Williams discussed this in some detail, and I am sure the Hon. Mark Parnell and the Hon. Michelle Lensink (as the environment spokesperson for the opposition), will speak to this in more detail. I refer to clause 13—The company's water requirements, and subsection (9), which provides for the:

> ...search for new or additional underground water sources with a view to restoring or ensuring the full quantity of the mine water requirements...

We are building a desalination plant, so why would we need to search for extra underground water resources? One of the bones of contention with this project has certainly been access to the Great Artesian Basin, and I think it has been done sustainably so far. I do not expect that that refers to looking for extra water out of the Great Artesian Basin; it is probably some other water, but I just wonder, given the huge investment with the desalination plan, why there would be a necessity to look for extra water within the mine site.

One area that I found a bit interesting related to the desalination plant and its location. I have asked this question—I have actually asked it of a couple of government ministers over a cup of coffee—and that refers to clause 17C:

> (b) If the Company or an associated company acquires the Desal Site in accordance with Clause 13(17C)(a) and an operational seawater desalination plant is not constructed on the Desal Site within 30 years after the Variation Date, the State shall have an option, exercisable by written notice given to the Company within six months of expiry of the 30 year period, to buy the Desal Site from the Company, or relevant associated company, at market value, as agreed by the Minister and the Company, or in default of agreement, as determined by an independent property valuer...

I am intrigued. The desal plant has been, I think, the area that the company has probably spent the most money on relation to the monitoring and modelling of the outflow. It has been the area that most public discussion has been about, and I suspect that, in the future, it will still be one that causes significant concern, so I am a bit surprised that there is potential that, after 30 years, we might not have built it.

While it is certainly not required in the initial digging of the open pit, additional water is required as the operation starts to expand. I was of the assumption that this would be built not at the same time, but in a time frame that would give them first water at an appropriate time so that it could be used as they expand their operations. So I am very intrigued as to why there would be a clause in this indenture that provides that if they have not built it in 30 years they have to sell it back, or the government may buy it back.

I would have thought that maybe they should only be given freehold title when a plant is constructed, that it is not freehold title until a plant is constructed, so that the state is not required to buy it back. I also wonder what the market value of a site is in 30 years' time. I would like the minister to explain, in some detail, why we would see the site that has been chosen for the desalination plant potentially offered backup; built into this indenture agreement there appears to be a risk that it will not be built.

As I said earlier, I am a great fan of the consumption of prawns, and in the briefings we had with the government, the task force, government officers and BHP, I was interested that we talked about all the things around that—the outfall, the extra work they are doing there, and of course the king prawns, oyster, snapper, mulloway. There is certainly a rich marine environment. They claimed that there is only a dodge tide occasionally and that the EPA will have the right to shut it down if the conditions are such that the dilution is not taking place. We are given these assurances that all will be well, but my question to the minister is: in the event that all is not well, is there a contingency plan in 20 or 30 years' time, if the site has not been developed?

The mine is clearly there today using water from the Great Artesian Basin, and if they have been able to find additional water resources in the area, as it says earlier on in the water section, they may well be able to get sufficient water to have some expansion, perhaps not build this desalination plant and then look to build it somewhere else. That is why the time line of some 30 years has been put into this particular indenture. My understanding is that the open-cut mine will replace the underground mine so, when the pit is dug and they have accessed the first ore, they will basically close the underground mine and have the open-cut mine—which may well be at the same production level, initially. That is in five or six years, and then there is a ramp-up from that point.

That is stage 1; then there are stages 2, 3 and 4, and probably 5, as I spoke of earlier. I am just wondering whether there are some links between the stages, water consumption, and this 30-year time frame for the site; that is, if they can find other suitable water, or quantities of other water, within the mine site—it may be saline water, it may not be potable water—it means that the company does not need to pursue the desalination plant option. I think that is the one that people in the community are most concerned about when it comes to environmental concerns. I would certainly like the minister to clarify that, if she is able to; of course, sadly, she might not be able to.

I have noticed some of the other infrastructure to be built, and I note that in respect of roads, clause 14(5) of the schedule provides:

> The Company shall not be or be deemed to be liable for the maintenance or repair of any road except private roads, which the Company has an obligation to maintain pursuant to Clause 14(1)(a)...

It then goes on about liability and compensation to the state and provides:

> ...will not limit any liability the Company may have at law to pay compensation to the State for damage or injury caused to any portion of a road.

I am concerned with the road from Port Augusta up from the landing facility. My understanding is that the state will build that but then be reimbursed by the company, so that will be a public road and it will certainly be a key piece of infrastructure. The clause says that they will be deemed not liable for any maintenance or repair except for private roads. That road will have massive vehicles and trucks on it and quite heavy vehicles, and if there is any damage to the roads that is one that is likely to be damaged. I wonder who will be responsible for that road.

The airstrip and related facilities, which would be better described as an airport than an airstrip, the airstrips I am familiar with in that part of the world are the gravel ones that the Hon. Graham Gunn would take us to on some of the trips around the north of the state. I know that third-party access has been a concern and was raised in the other chamber by a number of contributors to the debate. My understanding of third-party access of any facilities that BHP Billiton own themselves are such that there will not be any automatic right of third-party access.

Can the minister clarify that, if a proposal is put to the company and there is capacity in that bit of infrastructure and it does not put their operations at risk, would they would be prepared to enter into commercial negotiations with other people who might want to access those facilities? That is my recollection of it. There is a railway line, the port landing facilities and potentially the airstrip. They are the ones that are bits of infrastructure that will be deemed to be company owned and not subject to any third-party access regime promoted by the government, but would they be prepared to enter into commercial arrangements?

I am interested in the power supply: a 600 megawatt power station needs to be built. I assume it will be built by a third party. Does this indenture or the agreement limit that third party to building just a 600 megawatt power plant for the needs of the particular proposal or does the capacity exist for that provider of power to build a bigger power plant if they choose to and to provide additional off-takes from that plant, notwithstanding the fact that any new company may need to build its own transmission lines, but is there a potential capacity for a power plant to be bigger than the 600 megawatts?

I refer also to the gas pipeline. That will probably come from Moomba to Olympic Dam. Who will own that pipeline and is it being put in by the company, BHP Billiton, or potentially being installed by a gas company or somebody who is perhaps tied up with the provision of the power plant? It may be connected in a contractual arrangement with the provider of the power and therefore there may well be third-party access opportunities for other people to tap into that pipeline. I would be interested to hear the minister's views on that as well. I am getting close to finishing—

The Hon. J.M. Gazzola: Hear, hear!

The Hon. D.W. RIDGWAY: And the Hon. John Gazzola says, 'Hear, hear!' This is a very important part of our state. In some of the discussions in relation to extra infrastructure, some figures have been figures quoted. I think Dr Heithersay from the department quoted these figures, but I would like the minister to put them on the record in relation to other infrastructure costs. It was stated:

> Subject to Clause 22(4), the State shall pay all costs of the provision of the following...infrastructure:

We know that some has been provided, a school etc., but we are now looking at a significant expansion. I will read these out, and I would like to minister to be able to provide some costs and also some time frames. I am sure Treasury has done some work on these particular points. The first one is:

(a) allotment development costs in respect of allotments within the townsite required for public and civic facilities and for housing referred to in Clause 22(2)(b);

(b) all housing accommodation within the townsite for married and single personnel connected with the operation and maintenance of the infrastructure and facilities referred to in Clause 21(2) (other than accommodation for construction purposes);

(c) police station, lock-up and court house within the townsite;

I know that a police station has recently been built because I was there when the foundations were poured. I am not certain whether the courthouse has been completed. It continues:

(d) necessary air conditioned child care centres within the townsite;

(e) necessary air conditioned kindergartens and pre schools within the townsite;

(f) necessary air conditioned primary schools within the townsite, including adequate teaching spaces, administration block, shaded or covered play areas, amenities block, tuck shop and staff facilities;

(g) necessary air conditioned secondary schools within the townsite, including library, administration block, staff facilities and senior centre lecture theatre;

(h) a ten bed acute facility providing facilities for accident and emergency, minor surgical services, community health services and private dental services and such other additional health facilities as the Minister, with the agreement of the Minister for Health, on request from the Company from time to time or otherwise, reasonably considers to be required for the township of Roxby Downs, after taking into consideration its location and demographic factors and other relevant factors for the provision of health facilities at that time;

That sounds a bit like the country health plan: let us talk to the minister and then make up a whole heap of factors that mean that we do not provide the health services. It continues:

(j) local authority offices within the townsite, including municipal offices, meeting room, public toilets, library, civic auditorium, works depot and workshop;

(k) swimming pool complex within the townsite, including 50m unheated pool, wading pool, gardens, change rooms and car parks;

(l) necessary sporting facilities and playing fields within the townsite, together with appropriate changeroom facilities;

(m) premises and facilities within the townsite for creative, performing and visual arts;

(n) fire services within the townsite, including a two bay fire station equipped with a fire tender and an additional pump and trailer unit;

(o) State Government offices within the townsite;

(p) 50% of the cost of the upgrading or construction of the Pimba Road;

(q) ambulance centre and equipment within the townsite, including vehicle;

(r) parks and gardens within the townsite;

(s) garbage disposal facilities for the town; and

(t) plant and equipment (including vehicles) necessary for the provision within the townsite of State and Local Authority services and facilities.

I am aware that a lot of those facilities have been provided. I have seen the pool and the civic arts centre. I am interested to know what additional facilities and expenditure will be required over the next 10 to 15 years that the state will be responsible for. I would request that the minister get that from Treasury, because I am sure they would have done some work on it.

My final point, before I make some closing remarks, is on the rehabilitation bond. I think that is a very sensible way forward for this project. It provides an opportunity for there to be some financial mechanism to start rehabilitation work in relation to, I suspect, initially the tailings area, once some of those cells become full, and that will provide some money to address some of those concerns.

My understanding, from some of the meetings and briefings I have had with officials, is that the rehabilitation bond is quite a new concept and may well be a template for future mine development. History has shown, around the world, that mining is great but it is the legacy that is left once the ore body has been depleted. We have a rehabilitation fund within our extractive industries for small quarries, sandpits and the like, and I think it is a very sensible way forward for the government and the company to come to the understanding that there will be a rehabilitation bond.

As I said at the start, the opposition supports this particular piece of legislation. We have supported this particular project for 30-odd years, and probably longer. It is something that has been of immense benefit to our state. I remember the Hon. Caroline Schafer, when she was here—formerly from Kimba on the West Coast, Eyre Peninsula—talking about some tough farming times and how the farming community were able to drive up to Olympic Dam and get some work. Whether it was regular work in the mine or when some refurbishments were being undertaken, it gave them an opportunity to sustain themselves on their farming properties.

Members would know that I originally grew up in Bordertown. I am aware of at least one car load, if not two car loads, of farmers—I think a couple of them may have sold their properties now—men of about my age (or a bit older) who are employees up there today. Again, they saw this as a way of maintaining their lifestyle in a country town and perhaps sustaining their farming operations during more difficult times—droughts and low commodity prices—and being able to use this opportunity for employment to subsidise or provide some assistance to keep their farms going.

It has been a project 30 or 40 years in the making, and it has a long way to go. I am very proud to be a Liberal and to be able to say that we were the party that started the ball rolling 30 years ago, and we are very happy to make sure that the ball keeps rolling as we enter this next 100-year phase of the mine. However, we need to make sure that we are ever vigilant about making sure that we capture the most benefits for the South Australian community, regardless of which party is in power. Our goal should always be to maximise the economic benefits for not just this generation but for the many generations to come. With those words, I commend the bill to the council.

The Hon. J.A. DARLEY (12:16): I rise very briefly to indicate my support for the second reading of the Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Bill. As members are aware, this bill will allow for expanded project components that were not envisaged under the original agreement between the state government and BHP Billiton. The project is expected to contribute some $45.7 billion in net present value to South Australia's gross state product over a 30-year time frame, as well as considerable employment and development opportunities, particularly in regional areas of the state. This is a once-in-a-lifetime opportunity for South Australia and for its future generations.

My main concern with the project is that South Australian businesses be given the first bite of the cherry with respect to the tendering process for various stages of the project. I have already spoken to a number of South Australian businesses that share this concern. Many of them are excited and enthusiastic about the prospects that the expansion presents but, at the same time, they are concerned that they will miss out on the opportunity for economic growth.

As I said before, this is a unique opportunity for South Australia, and it is only reasonable that some home-grown companies that contribute to the state through employment and other means be given an every chance to share in the many benefits that this project will bring. We should not only support but also encourage, as far as possible, their involvement in the expansion.

I note that this issue is addressed in the bill under the banner of the use of professional local services, labour and materials; however, I would ask the minister to provide this chamber with details about how this process may be further facilitated. It is my view that the minister should also encourage the government to further consider value adding in terms of enrichment of uranium and other similar processes.

Lastly, I note that the Greens will be moving a number of amendments to this bill, which we are yet to receive. I am mindful of their concerns and will deal with these when and as they arise. With that, I support the second reading of the bill.

The Hon. D.G.E. HOOD (12:19): I think it is probably true of most members in this chamber, but I am certainly a proud South Australian. I think my friends, my colleagues and my family, etc., would have said about me over the years that I am somebody who always, at every opportunity, takes the time, where possible, to talk up our state, if I can put it that way.

A number of members in this place would be aware that I used to work for a company called Johnson & Johnson. My job was based in Sydney, even though I had the privilege, if you like, of living in Adelaide. So that meant I had to get on a plane every Monday morning and fly off to Sydney and to all other parts of the country—indeed, right around the world quite often. One thing that stood out when I was doing all that travelling is that, for whatever reason—and, I think, entirely for the wrong reasons—it is true that sometimes South Australia can cop the bad end of comments from people living in other states in Australia, particularly in New South Wales but it is true in other states as well, and I think that is grossly unfair. That is the reason I am very, very pleased to endorse the bill that is before this chamber today.

I think this indenture bill will go a long way, at least to some extent, in terms of our mining industry putting South Australia firmly on the map. It is good for many, many reasons, and I will outline some of the specifics in a moment. At the very least, it is good from the point of view of showing our interstate rivals, or counterparts perhaps, that South Australia really can deliver outstanding results and very, very substantial projects. We have done well in a number of areas. In relation to the submarine projects and the air warfare destroyer projects, etc., we have performed extremely well.

This is a genuinely huge project; it is one that puts our great state firmly on the map. I think that, as South Australians, it will go part of the way to ensuring that we can have confidence with our interstate colleagues in saying that there is lots to be proud of in this state. It is not that we are necessarily proud of a hole in the ground; we are proud of the fact that we can deliver something very substantial for the benefit of others, and, indeed, we can be proud of the fact that the product that is being produced here will benefit people right around the world.

The other thing I would like to say before going into the specifics of the bill is that one thing that has really pleased me personally about the early phases of the debate on this bill, both in the media and, indeed, in the lower house and now in our chamber, is that it is the first time I remember seeing such very clear-cut bipartisan cooperation between the major parties, and I take this opportunity to commend them for that. I think that is what politics should be, where possible; it is not always possible, obviously. Ultimately, politics is a clash of ideas, and people will disagree deeply at times. However, I think that this has been an example of all of us—certainly the major parties—being at our best, and I take this opportunity to put that firmly on the record.

Perhaps the one thing worthy of mention on the downside of the lead-up to this bill is that, given the fact that the opposition has decided to support what is obviously a government bill, to some extent, votes from the crossbenches in terms of providing passage of this bill are not as significant as they are when the government and the opposition are in disagreement. Because the government and the opposition are in agreement in this bill, I do feel that the crossbenches have missed out in terms of the speed of consultation and perhaps the deliberate attempt to provide quality consultation—and that is not a criticism of the government necessarily. I do not think that it is necessarily the government's doing, but it has been the result of what has happened, and I put that on the record for further consideration.

This indenture bill amends the current Roxby Downs (Indenture Ratification) Act 1982 to provide for the unprecedented proposed changes to the expansion of the Olympic Dam mine at Roxby Downs. Olympic Dam is the world's fourth largest copper resource, the fourth largest gold resource and by far the largest known uranium resource. The bill before us today represents a significant change to the face of South Australia and has the potential to attract other large-scale

international operations by signalling, through our deal with BHP, that South Australia is a state with which an excellent commercial relationship can be fostered.

The bill also represents a significant change in the way in which BHP Billiton does business with the South Australian government and, indeed, its people. The Olympic Dam expansion is, without doubt, a phenomenal step forward of unprecedented measure in Australia, and it has the capacity to change the landscape of the South Australian economy. As we have heard, this expansion will triple the capacity of what the mine currently produces, and it is estimated that over a 30-year period this mine will contribute around $45.7 billion to the South Australian gross state product. It is estimated that there will be 6,000 new jobs in construction, 4,000 full-time positions at the expanded pit mine and about 15,000 new indirect jobs from this expansion.

Additionally, South Australia will see royalty payments of 3.5 per cent for refined mineral products, such as copper and gold, and 5 per cent for uranium oxide and uranium-bearing copper concentrates. Indeed, some people have taken to saying that, as a result of this project, South Australia has the potential to be to uranium what Saudi Arabia is to oil. Any one of these factors alone would foster a change for the South Australian economy and have the potential for a broadscale benefit for all South Australians.

The government has also indicated that there will be increased changes to South Australian regional community areas, and places like Roxby Downs, Andamooka, Woomera, the Upper Spencer Gulf and the Eyre Peninsula will see the benefits of the Olympic Dam expansion through regional development and all the associated benefits.

Family First has long supported regional development and will continue to support any measures that would see a beneficial change to our regional areas, in particular. We welcome, as I am sure we all do in this place, any proposal that allows for an increase in employment and social development and a bolstering of our economic conditions, particularly in the regions, where we have a relatively small population compared to other major regional centres nationally.

Family First supports this indenture. However, we have some questions and some issues that we would like to have responded to by the government in the summing up. I would say, though, just to be absolutely clear, that Family First certainly supports this bill. We believe it is a tremendous step in the right direction for our state.

Under the proposed bill, however, BHP is required to use the services, skills and workforce of South Australians as far as is reasonably and economically practicable before employing people from other states or nations. I commend this provision in the bill, and there obviously would be a great injustice to having such a wonderful economic structure such as the Olympic Dam mine within the state only to have a minimal South Australian workforce sourced from our own backyard. I am pleased to hear this will not be the case.

The steps the government has taken within the indenture go some way to providing jobs for South Australians. However, we do have questions about the specifics of how this will happen. I understand it is the intention that predominantly South Australians will be hired. Our questions are about how it will actually take place. What steps have been taken, and how is it clearly delineated to the extent that some South Australians may still have the opportunity to be employed in this project? Let me explain this point a little further.

According to the provisions that are written into the indenture bill before us, the company, BHP, does not have a minimum employment quota to meet from the South Australian workforce. The company is only required to meet a standard that is measured by what is 'reasonably and economically practicable'. I understand that economics fuels all of these sorts of decisions, and I am certainly no critic of that, and that this provision has been drafted to give business efficacy to the contract, otherwise the purpose for which the indenture was made would be defeated and circumstances would be somewhat difficult for the organisation. However, I do wonder how effective these provisions will be in ensuring that South Australian workers—whether they be miners, manufacturers, tradespeople, suppliers, or other professionals—are actually employed.

On a very strict reading of these provisions, one could argue—and I note that it will be very unlikely for this to occur, but not impossible—that the entire workforce in fact could be made up of interstate or international workers. Again, I understand this is not BHP's intention nor, obviously, the South Australian government's intention, but there is no minimum requirement of the number of South Australian workers that should be hired, nor is there any strict requirement that South Australians should actually be hired.

What we have, on the face of it, are several clauses that could reasonably be argued to be an agreement by BHP to act in good faith towards South Australian workers in the recruitment process. I should add that I have no doubt that BHP has every intention of acting in good faith and, again, I do not suggest they do not; but the provisions give the impression that BHP is concerned about the wellbeing of South Australians and that the government has diligently done what it can in order to ensure that this is, in fact, the outcome. This may well be the case, and I am not saying it is or it is not, but it is clear that the intention is that South Australian workers are at least considered for a position within the ambit of this indenture agreement. The notion that as many South Australians as possible should benefit from this project I think is something that would be important to all of us and we would hold dear.

I want to draw attention to the fact that, should better qualified workers present for the job, according to the wording of this provision, BHP would be entitled to hire other workers over South Australian workers. To clarify that, I understand that it would be contrary to the best business practices for BHP to negotiate anything other than a general clause acknowledging that they would at least consider South Australian workers. The reason I make this point is that we have been told on countless occasions that there will be approximately 6,000 new jobs in construction, with 4,000 full-time positions available at the expanded pit mine and something in the vicinity of 15,000 new indirect jobs.

This brings me to the real crux of the situation. What is the government doing now to ensure that we have an adequate number of qualified tradespeople and miners, qualified now, so that, when the jobs actually do become available, South Australians are employed and, therefore, can benefit from this unprecedented employment opportunity?

I just make it clear that I have no doubt at all that the company will act in good faith and employ as many South Australians as they can. The point I am making is they are not bound by the wording of this particular provision. It does encourage them to, and it is an agreement that they have entered into. We can only take that take on good faith. I have no reason to doubt that. I just place firmly on record that I urge the company to pursue that in the spirit that it is intended and, indeed, even beyond that, if it is possible.

For example, during construction, there will be demand for project managers, engineers, geologists and a whole lot of other people with various qualifications. Truck drivers and machine operators will be needed in the operation phase and the question has to be asked: do we currently have people trained or, indeed, training for these positions? What preparation are we making as a state to ensure we have enough people to satisfy the demand as it comes online?

South Australia's current unemployment rate for the month of October is 5.3 per cent. It will be a tragedy should the implementation of these colossal changes not improve our unemployment rate, especially if, through a lack of planning, we do not appropriately skill the people now who can take these jobs as they become available.

I compliment the government for its $194 million investment into the Skills for All program, which will run from 2011 to 2014. However, what is not clear is how much of that funding will go specifically towards training workers for the available jobs at Olympic Dam and training for other regional-specific trades to avoid skilled workers being poached from the non-mining sectors. It is also unclear what specific targeted approach has been given so that people are trained and able to work immediately upon this indenture being passed by parliament and at the commencement of the actual work at Olympic Dam.

It is one thing to tout the benefits of this agreement for South Australians and to mention the job numbers that are potentially available. However, the fact remains that, if South Australians are not qualified for these positions by that time the jobs become available, the jobs will, by necessity, have to go elsewhere. That is not the fault of the company; that is the fault of the systems we have in place to train people to be ready when the company is ready.

I say we need to be ready. I formally put the question on notice to the government: other than the program I have just announced, which is a good program, what are we doing to train people in these specific areas?

This parliament has a responsibility to act in the best interests of the state, that we do our utmost to ensure the best possible outcome for all South Australians and that that is, in fact, achieved. We need to proactively ensure that there are enough qualified people for the soon to be available jobs—and very well-paid jobs, I might add—that this state will enjoy.

If well managed, this could be—as I have heard the term used in the media by some people—a so-called game changer for the state. I concur with that. If well managed, this has the potential to be something that our children and grandchildren look back on as a turning point.

BHP reported that, during the consultation process, a major concern of South Australians was the effect of the mine on surrounding rural towns and, ultimately, the businesses, as workers were enticed towards jobs in the mining sector. This is a genuine issue. According to recent articles in *The Advertiser* back on 14 October, reports have already started coming in of workers in the non-mining sector being lured into the mining sector.

There is nothing wrong with that. People will go where they can do the same work and be paid more. I am not critical of that, but whilst there will naturally be some movement between the industries to accommodate the expansion to the Olympic Dam mine as people search for better pay and working conditions, we must ensure that there are enough qualified workers so that the newly-created jobs at Olympic Dam do not come to the detriment of the other regional centres.

For instance, we have all seen the media reports of people working in service towns around large mining ventures in other states, and the service facilities (the shops, the pizza shops, and the like) physically cannot get people to work there. We want to do everything we can to avoid that as this mine comes online.

Whyalla is South Australia's second largest regional city after Mount Gambier, and it is a major industrial city and exporter and a significant contributor to the state's economy through steel production. Whyalla's industry is now expanding, with new global industries being targeted, including aquaculture, sustainable development, and renewable technologies.

Similarly, last year, the combined income to the food and agricultural industry in regional South Australia was quite a significant $12.4 billion; should either of these industries be irretrievably hurt (for want of a better word) or impacted by the mining sector through the loss of workers and the inability to function properly, it goes without saying that the South Australian economy would also be affected.

We do not want the threat of viable businesses closing, families having to relocate and having to learn new job skills because their employment has been swallowed up in what will be the huge Olympic Dam expansion. We should be actively ensuring that workers are sufficiently qualified to avoid workers being stripped from the non-mining industries. The planning phase for the introduction of this huge development and huge mining venture is really the most significant one in the coming years.

Under this bill, the company is required to submit an industry and workforce participation plan to the minister. The intention of the participation plan is, of course, to create opportunities for young people, Aboriginal people, local suppliers, research and development, and regional development, to name just a few. According to the Variation Deed, the company is required to use reasonable endeavours to implement the industry and workforce participation plan; should the company fail to do this, then the failure would not breach the indenture.

So, the question naturally arises: what guarantee do we have for the development of the industries and people at whom the industry and workforce participation plan would be aimed, should the company fail to implement the plan? In the light of the agreement with BHP, the government needs a separate contingency plan for regional development. There is no doubt that the state will profit from the royalties received from the mine, and much of these royalties can go towards the development of regions.

Members would be aware that Family First has tabled an amendment on that issue, and I will allow my colleague the Hon. Robert Brokenshire to explain it more fully. It is a very simple amendment, simply diverting funds once acquired from a company (that is, after the company has paid their royalties) to the regional sector—or a portion of those funds, I should say. Family First is especially interested in regional development and how the government plans to use the wealth created from the Olympic Dam expansion to benefit our regional communities—hence, the amendment.

A report released in July 2011 by Infrastructure Australia to COAG shows the need for reform in the financing of major infrastructure projects across Australia. Admittedly, this is an Australia-wide report on infrastructure, but the principles will hold true for South Australia. We currently have before us the opportunity to turn South Australia into a thriving state, to develop regions which have been overlooked for far too long.

In a media release from the Australian government, the chairman of Infrastructure Australia (Sir Rod Eddington) acknowledged that the report found that government reforms to infrastructure planning and delivery were frustratingly slow, which meant time lost in travel, delays at ports, and lost production, which all resulted in a slowing of Australia's productivity. An appropriate spending on regional development has several natural flow-on effects: areas are developed and provided with need-specific infrastructure, which improves the quality of life for those within the region through economic prosperity, and the development of rural and regional communities through industry growth and job creation.

Regional growth is something that South Australia must continue to take seriously and, indeed, take to the next level. We cannot ignore the wider needs of rural South Australia and expect that our valuable industries will continue to flourish. Regional development also proves to have a major impact on the productivity of South Australian industries in trade intrastate, interstate, and internationally. Without the appropriate regional development and support for businesses, these industries will not continue to grow but will decline and potentially take a large amount of the state economy with it. We simply cannot allow this to occur. Indeed, it is incumbent on us—and particularly the government—to ensure this does not occur.

Better infrastructure leads to reduced costs and, as we are well aware, increases in costs will always be borne to some degree by the end user of any product; therefore, anything the government does to reduce the cost burden on industries by supporting regional development and encouraging growth within the industries will mean that each industry becomes more competitive. Reducing the cost burden to increase competition is particularly important in relation to the bill before us. The indenture provides:

> The Company shall, for the purposes of this Indenture, as far as it is reasonable and economically practicable...
>
> (d) give proper consideration and, where possible, preference, to South Australian suppliers, manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies, where price, quality, delivery and service are equal to or better than that obtainable elsewhere.

Mr President, I draw your attention to that last part, where it says 'where price, quality, delivery and service are equal to or better than that obtainable elsewhere'. A question has to be: if that were the case, why would BHP not do it anyway? Do they want a supplier where the price is more, where the quality is lower and where the delivery and service are actually worse than what is available? Of course not. I find those sorts of comments in the bill to be almost superfluous to what a company would do in the first place. Companies go for lower prices, they go for better quality, and they want better delivery and service from their suppliers. If BHP was not doing that successfully it would not be the single biggest company in Australia. I think they have already worked that out, if I can put it in those simple terms.

The sheer volume and capacity of minerals that BHP requires to implement and maintain their mine means—by virtue of common sense—that many South Australian suppliers, manufacturers and the like will actually find it difficult to be the sole supplier, although they can, perhaps, enjoy some of the economic benefits of being at least a supplier of BHP. We welcome that; indeed, we encourage it.

To be competitive in this market you must first have a system that enables price and delivery to be competitive. For example, the excess cost for transport travelling via Yorkeys Crossing would mean the refusal of a tender, because the inbuilt cost to the company of those transport costs means that an interstate or international tenderer is more financially viable. To further elaborate, Yorkeys Crossing forms part of the Perth-Adelaide corridor, which is of significant importance to South Australia, obviously, as it links some of Australia's richest mining and agricultural areas to international markets. The corridor shares the road and rail network between Adelaide, Port Augusta, Tarcoola, Darwin, Eyre Peninsula, the Far North, the Northern Territory and the eastern and western states.

In 2007 the Perth-Adelaide corridor strategy report said that a short-term priority was to upgrade and seal Yorkeys Crossing. Four years on and there is still no change. In fact, we now face threats of the road closing because the Port Augusta council cannot afford to maintain the 23 kilometres of unsealed road. The road is estimated to have up to 125 trucks daily, hauling not insignificant loads such as mining equipment, dangerous goods at times, portable houses, and other sorts of dangerous goods, which all support our state's economy.

The Hon. J.S.L. Dawkins: The minister refused to go and have a look at it, if you remember.

The Hon. D.G.E. HOOD: I was aware of that, yes.

The PRESIDENT: Order!

The Hon. D.G.E. HOOD: Despite the additional increased transport costs being for increased travel time and operation costs for the vehicles forced to take this route, users face additional challenges in wet conditions. This is a very serious issue that needs remedying. Yorkeys Crossing becomes dangerous to negotiate in even just minimal rain, and it has been reported to restrict the passage of oversize loads for a minimum of at least one day in wet conditions. This is simply not good enough and must be addressed.

When one considers the sheer extent of use on this road, and for such important purposes as mining and agriculture, it is incomprehensible that it has not been upgraded. An upgrade of Yorkeys Crossing is in the best interests of the state economy, especially in light of the materials that will need to get to Roxby Downs until such time as the train line is complete. This is something that the government cannot ignore any longer, and Family First calls on it to address this issue urgently.

With the royalties that the state will be receiving from Olympic Dam, we will be seeking confirmation from the government regarding how much money it intends to place back into regional development in order to develop and maintain networks, to allow the improvement of transport for industry and agriculture throughout rural South Australia and to other parts of the nation. Indeed, as I said, Family First intends to move an amendment to that effect.

The South Australian government stands to make a substantial windfall from the mining royalties that are associated with the Olympic Dam indenture. It is therefore incumbent upon the government to use the money it accumulates for the benefit of the state, both in conjunction with and separately to BHP. I am not suggesting that this is not the government's intention, but I think that areas like Yorkeys Crossing, for example, really point out priorities that need addressing in the short term.

Family First recognises the need for the desalination plant in light of the massive changes that have been proposed at the Olympic Dam site. We are not opposed to the desalination plant; however, we are aware of concerns that have been raised with respect to potential harm to the environment. Let me explain. I do not accept that that is necessarily the case, but I believe it is important that these questions are answered. Of course, it is a major concern regarding desalination plants in general that the effects of releasing waste discharge water, and particularly the brine it includes, can have a detrimental effect on marine life and the aesthetics of the bay.

I was fortunate enough to have a discussion this morning with the BHP Billiton Vice-President for External Affairs, Mr Kym Winter-Dewhirst. He certainly satisfied my initial concerns about this issue and gave me quite a detailed response on the extent that the company had gone to to ensure this would not be the case. I believe I am quoting him correctly—forgive me if I am not: he claimed that within 100 metres of the outlet points of the brine being released into the gulf there was in fact no discernable difference with normal sea water. If that is in fact the case, then I am certainly very encouraged by that.

There are many variables in the desalination process, which I will not endeavour to explain in this brief contribution. Family First's concern is that the salinity of the brine being discharged back into the sea may actually end up being higher than has been projected. As with many endeavours such as this one, you never know exactly what the outcome will be until you are several years into the process and see the hard evidence of what is occurring. We know some credible studies have been conducted on the effects of desalination on marine ecology. In 2010 the University of New South Wales published a report which stated that in some instances discharges had led to substantial increases in salinity and temperature and the accumulation of hydrocarbons and toxic anti-fouling components in the water.

Family First recognises the science behind these issues and the fact that, with the desalination plant, in reality a good deal of effort, it appears to me, from the company has been put in to ensure this will not be the case with this particular development. We are relying on the information presented to us. We do not have any other information available to us. Again, I am not suggesting that BHP will in any way mislead us on that; I am simply saying that that is the only information we have. We are, however, hopeful that this turns out to be the case, and we look

forward to ongoing monitoring with respect to BHP providing those figures. Again, Mr Winter-Dewhirst assured me this morning that those figures would be publically available on the ongoing monitoring of brine releases into the gulf as they go, in real time, live on the internet was my understanding. That is about as highly scrutinised as we could possibly expect of them or any other organisation with respect to this issue.

I think the brine issue is a genuine issue. I understand conservationists and others have concern about it. I travelled to Israel and had a personalised tour of the largest desalination plant in the world, at Ashkelon in Southern Israel near the Gaza strip border. They informed me that within 100 metres of their openings the brine levels were neutral compared with normal sea water. I have heard the same claim from BHP this morning, so if that proves to be the case, then frankly I think that is satisfactory and should be regarded as very good practice. The fact that they can get it down to zero within only 100 metres of the opening is quite commendable. Let us hope that turns out to be the case in reality.

In winding up, I will put a few questions on the record for the minister to respond to in summing up, and I accept that they may not be able to be answered by the government in minute detail. Some of these are very difficult to answer, but if the government can give us the best feel it has we would be appreciative, and the first one is a fairly simple but very important one:

1. How many South Australians are projected to actually be employed from this mine directly and indirectly?

2. Secondly, how many South Australian workers are currently trained to a level suitable for work once this mine is underway and as it progresses?

3. What efforts has the government made in relation to training South Australians to ensure we have an adequate workforce to meet the employment requirements of the mine and to maximise the number of South Australians employed?

4. How many South Australian manufacturers and companies are to get work or contracts under this indenture?

5. What percentage of profit does the government propose to spend per annum on regional development within South Australia, and on what basis will the government determine how to spend this money on regional development? This is a very important question. I had the privilege of travelling through the West Coast last week and I can assure you that our regions are thriving, but they need help. They need infrastructure. The tenacity of the individuals and people in towns never ceases to amaze me, but in many cases they need infrastructure spending.

6. What specific regional development does the state have planned for Whyalla, Port Pirie and Port Augusta in light of the changes that the Olympic Dam indenture will bring to these areas? Specifically, how is the government planning to redevelop Yorkeys Crossing to enable transport of the materials needed for the construction of the plant at Roxby?

7. According to the select committee report that was laid on the table in the House of Assembly on 18 October, the indenture is estimated to contribute $45.7 billion to the state economy over 30 years. We have heard that royalties are not expected for another nine to 10 years. What is the estimated benefit to the state in the first five years and then the next five to 10-year period and ongoing?

8. The sale of uranium, should the current ALP federal government lift the sale ban, as has been proposed, has been estimated to net some $17.4 billion per annum. This would have obvious flow-on benefits for the Olympic Dam indenture. What would be the net benefit to the state of South Australia if we did in fact decide in this country to export uranium to India?

9. What is the estimated impact of fly-in/fly-out workers on both the expansion of the Roxby Downs community and the sustainability of Roxby Downs as a municipality?

10. Much criticism has been made of the effect of the desalination plant on the giant Australian cuttlefish, and I addressed that in my contribution. What are the reasons the government has identified for the decrease in the cuttlefish population in South Australia if it is not through these sort of activities?

11. What recorded effects have similar desalination plants had on their surrounding environments?

12. What is the percentage of permeate water that will be produced from the desalination plant?

13. What is the estimated salinity of the brine waste and what is the estimated variation of water salinity in the ocean once the brine has been dumped? We have the figures from BHP. I am not querying those. I am really just asking: does the government agree with them, and, if so, will they confirm them?

That is essentially my contribution on this bill. I would just say, in summing up, that Family First welcomes this legislation. This is a great thing for our state. It comes with risk, as all great projects do. We cannot ignore that. However, we need to confront them and deal with them as best as we can. This is an exciting time for our state and this one thing alone will add so much to our state pride. It will be something that we can take some genuine pride in. I am sure that other states are looking at us quite enviously, which is a nice change.

The Hon. M. PARNELL (12:53): A number of members of parliament, here and in the other place, have said recently that this is probably the most important bill they will consider in their parliamentary careers. I think those people are right. The decisions that we make in this parliament now will have ramifications well beyond the life of this parliament, in fact well beyond the lifetimes of every single person in this parliament, and potentially well beyond the end of the century.

When it comes to the biggest industrial project in South Australia's history, we have one chance to get this right and that chance is now. There is no point in coming back in 10 or 15 years' time and saying, 'We wish we had not made so many commitments. We wish we had not given up so much for so little.' There is no point coming back saying, 'We wish we had been more thorough and given this project more scrutiny.' There is no point coming back and saying, 'I wish we hadn't got caught up in all the hype. I wish we had focused more on what was in the state's long-term interests', because by then it will be too late. We will have passed into law a deal which locks in future generations and locks in low standards and high public subsidy.

We have to recognise at the outset that there is an enormous power imbalance at play here. There has been a totally predictable and rather depressing game taking place between one party, who we are told has all the cards—BHP Billiton, the world's largest and richest diversified resource company—and the other party, who we are told has very little bargaining power—the government of the state of South Australia. However, BHP Billiton does not hold all the cards. In fact, we hold the ace, and that is the ultimate ability to determine how, when and by whom our non-renewable resources are exploited.

Ultimately, the approval is up to us. However, once that approval has been given, the train essentially leaves the station with BHP Billiton in the driving seat and the rest of us, including the government, sitting back in third class watching as the scenery flashes past out of our control. So, that is the choice we have before us today. We have these two players: we have BHP Billiton and we have the executive arm of the South Australian government, which has signed a contract. However, this contract is only a piece of paper until it is ratified by the parliament, and that is the purpose of this bill.

The contract before us even includes a clause saying that, if the parliament does not sign it, all bets are off. Yet what the government and the world's richest resource company have been discussing, and what the contract determines, is the future of our collective asset. These resources belong to the people of South Australia. They do not belong to BHP Billiton, they do not belong to the executive; they belong to the people of this state, and that includes people yet to be born. That fact well and truly brings each and every one of us in this parliament—the formal elected representatives of the people of South Australia—into a pivotal role. We have to decide what we want to happen to our communal resources.

I want to speak briefly about the process of this bill and the indenture and the role that the parliament has to play in it. The mining minister in another place and various other ministers have said that this parliament has no role in tinkering with the indenture. We are told that we can only say yes or no. I disagree utterly with that notion. Just because the executive arm of government has negotiated a deal, I do not accept that that means the parliament has no role and must meekly roll over and accept the deal no matter what the contract says, no matter what rights have been given away and no matter how poor the deal actually is. Certainly a yes or no outcome is the final result, but I think parliament has an important role; I think it is our responsibility to go through this contract in some detail. In fact, it would be a gross dereliction of our duty as representatives of the people of this state if we were not to do so.

If we as a parliament do not think that this is the best possible deal for the use of our non-renewable resources, then I believe we are duty bound to try to improve the deal. If we cannot improve it, we need to reject it, but, at the very least, the parties—being the executive and BHP Billiton—need the guidance of parliament as to what is and what is not acceptable so that they can renegotiate a better deal that is in the interests of all South Australians. As I say, these are non-renewable resources; it is not a magic pudding. We can only use these resources once. If we as a society want to be responsible, we are bound to maximise the benefit for the one time that these resources can be used.

The government has been spinning the line that if one single sentence or one single word of the indenture is altered in this contract, BHP will walk away. The truth is that that is rubbish. The government knows that that is rubbish and BHP Billiton knows that that is rubbish. I am afraid that I have been around long enough to see a veritable conga line of corporations threatening to take their bat and ball and go home if they do not get everything their own way, but, guess what? They cannot take our resources with them. Those resources are staying here in South Australia and they are not going anywhere until we have settled on the arrangements for their extraction and their exploitation.

I also challenge the notion that parliament, by scrutinising this legislation and proposing changes to it, is somehow creating a problem of sovereign risk. The argument goes that, if the executive goes away and negotiates a contract which the government then votes to change, somehow this presents an unacceptable risk to our reputation and that business will no longer to seek to invest in our state. Of course, that is absolute rubbish as well. The only real uncertainty is which favoured corporate players will get to write their own laws and which companies will have to comply with the general law of South Australia. That is the only uncertainty at play here. Sovereign risk may exist in Angola or Zimbabwe, but it certainly does not exist in a modern, effective and educated democracy such as Australia. Companies can cry wolf, but we should focus on the facts and we should not focus on scare campaigns. So, parliament can and should be able to change the rules as it sees fit.

Corporations, on the other hand, never talk about sovereign windfall when the parliament lowers their corporate tax rate or changes the planning rules in their favour. You never hear sovereign windfall discussed; it is only ever sovereign risk. But we should name it for what it is. It is just risk—it is not sovereign risk—and corporations, especially ones that operate on a global stage, deal with risk every single day. For example, they have to work with daily fluctuations in exchange rates and even unforeseen weather events. Corporations use the term sovereign risk to try to bully governments into giving into their demands. I seek leave to continue my remarks.

Leave granted; debate adjourned.

[Sitting suspended from 13:01 to 14.19]

SMALL BUSINESS COMMISSIONER BILL

His Excellency the Governor assented to the bill.

RAILWAYS (OPERATIONS AND ACCESS) (ACCESS REGIME REVIEW) AMENDMENT BILL

His Excellency the Governor assented to the bill.

CRIMINAL LAW CONSOLIDATION (CHILD PORNOGRAPHY) AMENDMENT BILL

His Excellency the Governor assented to the bill.

NATURAL RESOURCES MANAGEMENT (COMMERCIAL FORESTS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

PAPERS

The following papers were laid on the table:

By the President—

Supplementary Report of the Auditor-General concerning Agency Audit Reports, November 2011

Report of the Ombudsman SA on an Audit of Complaint Handling in South Australian Councils, November 2011

Reports, 2010-11
- City of West Torrens
- Rural City of Murray Bridge
- District Councils—
  - Ceduna
  - Cleve
  - Franklin Harbour
  - Tatiara

By the Minister for Agriculture, Food and Fisheries (Hon. G.E. Gago)—

Report on the Interim Operation of the Mid Murray Council—River Murray Zone Minor Amendments Development Plan Amendment

Regulations under the following Acts—
- Aquaculture Act 2001—Fees
- Development Act 1993—Regulated Trees
- Gaming Machines Act 1992—Exemptions
- Liquor Licensing Act 1997—Dry Areas—
  - Long Term—
    - Victor Harbor Area 1 and Area 2
  - Short Term—
    - Victor Harbor Area 1, Area 2 and Area 3
- Supreme Court Act 1935—Definition of Prescribed Court

Rules of Court—
- Magistrates Court—Magistrates Court Act 1991—
  - Amendment No. 38
  - Amendment No. 41
- Supreme Court—Supreme Court Act 1935—
  - Civil—Amendment No. 17

By the Minister for Industrial Relations (Hon. R.P. Wortley)—

Reports, 2010-11—
- Adelaide Festival Centre
- Australian Health Practitioner Regulation Agency
- Bordertown and District Health Advisory Council Inc
- Construction Industry long Service Leave Board (Amended Version)
- Country Arts SA
- Far North Advisory Council
- Freedom of Information Act 1991
- Health Performance Council
- Health Services Charitable Gifts Act 2011
- Industrial Relations Advisory Committee
- Naracoorte Area health Advisory Council Inc
- Pharmacy Regulation Authority of South Australia
- Port Lincoln Health Advisory Council
- Port Pirie Health Advisory Council
- Quorn Health Services Health Advisory Council
- Retirement Villages Act 1987
- SAAS Volunteer Health Advisory Council
- SafeWork SA Advisory Committee
- SA Lotteries
- Southern Flinders Health Advisory Council
- The Senior Judge of the Industrial Relations Court and the President of the Industrial Relations Commission
- The Whyalla Hospital and Health Services health Advisory Council
- Veterans Health Advisory Council

Regulations under the following Act—
- Technical and Further Education Act 1975—General Variation 2011

Australian Children's Performing Arts Company Charter, October 2011

By the Minister for State/Local Government Relations (Hon. R.P. Wortley)—

Mining and Quarrying Occupational Health and Safety Committee—Report, 2010-11
District Council By-laws—Cleve—
No. 1—Permits and Penalties
No. 2—Moveable Signs
No. 3—Roads
No. 4—Local Government Land
No. 5—Dogs
No. 6—Cats

By the Minister for Communities and Social Inclusion (Hon. I.K. Hunter)—

Reports, 2010-11—
Adelaide Dolphin Sanctuary Act 2005 (including the Adelaide Dolphin Sanctuary Advisory Board
Board of the Botanic Gardens and State Herbarium
Child Death and Serious Injury Review Committee
Coast Protection Board
General Reserves Trust
Native Vegetation Council
Save the River Murray Fund

LEGISLATIVE REVIEW COMMITTEE

The Hon. G.A. KANDELAARS (14:26): I bring up the report of the committee on its inquiry into stillbirths.

Report received and ordered to be published.

MEMBERS' TRAVEL PROVISIONS

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:26): I table a copy of a ministerial statement by the Premier, the Hon. Jay Weatherill from another place, on travel allowances. I think it is important enough to actually read his ministerial statement in this chamber:

Madam Speaker, over the past week there has been significant debate about the use of travel allowances by members of parliament. I think there is legitimate community concern about aspects of the travel provisions, and so I intend to initiate a review into those arrangements.

The debate I spoke of has focused upon, but not been confined to, the use of the allowance by the Minister for Education and Child Development for her daughter to travel with her to India in April this year. As we know, the minister had enquired in 2007 whether she was entitled to have her daughter as her nominated travel companion in lieu of her partner. This was approved, and then re-approved following the March 2010 election.

This approval was provided by officers of the parliament quite independent of the political process. This process of approval by officers of the parliament was the same process as has been applied to a number of members on both sides of the chamber who have nominated their children as their nominated travel partner. And of course, the actual travel itself was approved.

It has been suggested in the media and by others that the officers of the parliament should not have been deciding who the travel partners should be. There has been a suggestion, in particular by the Hon. Robert Lucas in another place, that decisions about application of the rules—

Members interjecting:

The Hon. G.E. GAGO: They are a bit slow, Mr President; I indicated that I would be reading the statement by the Premier, so they are a little slow. I will just repeat that:

There has been a suggestion, in particular by the Hon. Robert Lucas, that decisions about application of the rules can only be made by cabinet. I find this odd, given that these are the travel rules essentially put in place by the previous government—

Members interjecting:

The PRESIDENT: Order! You might want to listen.

The Hon. G.E. GAGO: I will repeat that, Mr President—

The PRESIDENT: Hear, hear!

The Hon. G.E. GAGO: —because of the rowdy lot opposite me. They are embarrassed, Mr President.

I find this odd, given that these are the travel rules essentially put in place by the previous government, and in respect of which Mr Lucas, when treasurer, advised the speaker, 'ultimately, these matters will be a matter for judgement for you as Speaker, as all possible circumstances of travel for members cannot be explicitly provided for in any guidelines'.

So when in government, [the Hon.] Mr Lucas obviously understood the travel provisions to be guidelines, and ones which leave judgement to the Speaker, whereas now in opposition he has tried to persuade the public that they are rules of strict application allowing for no decision-making. But Madam Speaker, there is community disquiet about the travel entitlements—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: —in so far as they provide for spouse, partner and family member travel. In respect of travel generally, while I accept that travel for members of parliament is not particularly popular, I believe that it makes a very valuable contribution to our legislature. If people want to debate the merits or otherwise of any particular travel, the system is transparent and the fact of the travel is all laid out for them in the mandatory travel reports.

For my part, I make clear that I would not want to limit any members from pursuing the ideas or concepts that they believe will assist them to discharge their duties. But I share with the community their concern about whether accessing travel allowance for partners and/or family remains appropriate in the 21st century. It is not something that is commonly provided for people in other walks of life. But I also accept that there may be occasions where it may be appropriate for the member of parliament to be accompanied by a family member.

Last week the Leader of the Opposition stated that she thought a review of the use of travel allowance was appropriate. I indicated that I would support such a review, if undertaken on a bipartisan basis. I spoke to the Leader yesterday to foreshadow an approach which I think is reasonable, independent and allows bipartisan input. I therefore announce that I will refer to the remuneration tribunal the issue of the entitlement of members of parliament to access parliamentary travel allowance to provide for their spouse or partner or family member to accompany them.

I will request that the tribunal convene a sitting for these purposes pursuant to section 8(1) of the Remuneration Act. The government will make a submission to the tribunal. I invite the opposition to do so, as well as individual members, [and other interested parties] and [of course] the public. I will request that the tribunal report on its deliberations by the time parliament reconvenes in the new year.

I call on those members opposite who are genuinely interested in the policy debate and the improvement of the lives of South Australians, rather than political point scoring, to counsel their colleagues to take a bipartisan approach to matters such as this.

QUESTION TIME

GOVERNMENT MEDIA RELEASES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:33): I seek leave to make a brief explanation before asking the Leader of the Government a question about reconnecting with the South Australian people with open and transparent government.

Leave granted.

The Hon. D.W. RIDGWAY: A couple of weeks ago, looking in my office for a copy of the ministerial statement that the Treasurer, the Hon. Jack Snelling, made in relation to the appointment of the forestry round table, I suggested to one of my office staff, 'Just jump on the website; you'll be able to find it.' So they jumped on the website and found the new website of Jay Weatherill, Premier of South Australia, and all his motley crew of ministers lined up next to him, but when you click on that website you cannot find any media releases.

Right at the very top there is a little thing that says 'News Release Archive'. I thought, 'Well, we'll click on that and we'll find the Hon. Jack Snelling's ministerial statement.' But, alas, no, everything has finished. It all starts from 21 October 2011. Nothing exists prior to that time. My questions to the minister are:

1. What are you trying to hide as a government if you have now wiped from the Premier and every ministers' website all press releases prior to 21 October?

2. Why are you trying to hide it, and how can the people in the South Australian community get information if we have a secret government that is ashamed of its past and now only publicises press releases from 21 October going forward?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:36): I thank the honourable member for his most interesting question. I am not aware of changes to the websites. I have not been informed of any changes. I know that these things are managed and changes are made from time to time, but I am happy to check what changes, first, have been made, because we know time and again the opposition comes into this place and makes all sorts of allegations and assertions that are not so at all. I am willing to take the comments on board.

I will check out what has been occurring and see whether there is any rationale behind it. I know there have been some moves, particularly by the Premier's department, to look at going to a far more interactive type of internet exchange, so I know that lots of measures are being put in place to enable more direct engagement with South Australians. For instance, I know that Premier Jay Weatherill, in his former role as education minister, used to go online regularly and talk with students and other interested parties directly using his website in that way. We know that minister Grace Portolesi has done some interactive work with engagement with her constituents in the past.

I have also indicated to the Office for Women, as we are updating and upgrading our websites and looking at more interactive possibilities, my desire to set up online forums again where direct exchanges can take place. So we can see that this is a government that likes to stay in touch and in tune with its constituents in a direct way. We seek to engage directly wherever we can and have looked at a number of innovative ways to do that, and will continue to do that. In respect of the media releases, I will first check out to see what is the current situation and what the rationale behind that may have been, if that is the case, and to bring any relevant findings back to this place.

PARLIAMENTARY REMUNERATION ACT

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:37): I table a copy of ministerial statement relating to state parliamentarians' pay made today in another place by the Hon. Jack Snelling.

QUESTION TIME

MARINE PARKS

The Hon. J.M.A. LENSINK (14:39): I seek leave to make a brief explanation before asking the Minister for Regional Development a question on marine parks.

Leave granted.

The Hon. J.M.A. LENSINK: In response to a question in the last sitting week on this subject the minister said the following:

> PIRSA has been an active participant in the whole-of-government marine parks steering committee, established by DENR to facilitate cross-agency consultation and communication on the development of marine parks.

My question is: can the minister name each of the agencies and departments that are members of the steering committee, and can she advise whether that includes tourism and/or local government?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:40): I thank the honourable member for her important question. As I have said in this place previously, the implementation of the marine parks is a policy issue that is very dear to my heart. In my role as former environment minister, I played a key part in helping to progress the legislation through this place and also in establishing the boundaries of the marine parks.

I have said in this place previously that the management of the marine parks comes under the purview of the Minister for Sustainability, Environment and Conservation in another place. He has direct responsibility for those parks and is responsible for managing the process and managing the public engagement component of that as well.

I have made it quite clear in this place that PIRSA has been working with DENR to assist in attempting to pursue a very pragmatic approach to zoning. I have indicated in this place before that we also seek to minimise the impact on aquaculture and also other commercial and recreational

fishing interests and activities, and that we seek to do that in a way that is environmentally, socially and economically sustainable.

Obviously, we are mindful of the jobs associated with these particular industries and the economic returns they make and, in particular, the contribution they make also to our regional communities. Often, fishing and aquaculture are the backbone of a number of regional communities. We are very mindful of that and very mindful to approach the zoning and how we manage these zones in a very pragmatic way.

I have talked about PIRSA also being active in a whole-of-government marine park steering committee, and, as I said, the Minister for Sustainability, Environment and Conservation is the minister responsible for managing that process.

In terms of the specific membership, I know that it is broad and that it does involve key stakeholders. In terms of the specific membership, I am happy to refer that to the Minister for Sustainability, Environment and Conservation in another place and bring back those details.

LOCAL GOVERNMENT CODE OF CONDUCT

The Hon. S.G. WADE (14:43): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question relating to local government codes of conduct.

Leave granted.

The Hon. S.G. WADE: On 8 November 2011, the Ombudsman provided a report to the Legislative Council on his investigation into Charles Sturt council. Among dozens of recommendations for reform and possible disciplinary action, the Ombudsman made the following comment in relation to the ALP pledge:

> On the face of the wording of the pledge, I am unable to escape the conclusion that the 12 ALP councillors had pledged not to be disloyal to the ALP and not to infringe the state platform. Doing so could potentially result in charges being laid against them.

The pledge is required of all local Labor Party members, including members of parliament. My questions are:

1. Does the minister find it acceptable for elected members of local government to swear allegiance to an external entity above the interests of the council of which they are a member or the constituency they serve?

2. Would the minister be comfortable with elected members swearing allegiance to uphold the interests of a corporate entity, a lobby group or other organisation before the interests of the council of which they are a member or the constituency they serve?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:44): I thank the member for his very important question. First of all, I would like to make it quite clear that when a person is elected to council their first obligation, as an elected member, would be to that council. The government welcomes the report and the Ombudsman's findings. There was no evidence to support the allegation that any member of government acted inappropriately. The government recognises that the Ombudsman has raised issues concerning potential conflicts of interest for councillors and the need for higher standards in this regard. The government will consider the Ombudsman's recommendations to the proposed amendments to the law regarding register of interest, conflict of interest, code of conduct and valuation of community land, in due course.

RIVERLAND TOURISM

The Hon. CARMEL ZOLLO (14:45): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about tourism ventures in the Riverland.

Leave granted.

The Hon. CARMEL ZOLLO: As the weather warms up, one area that has a great reputation as a relaxing place to holiday is the Riverland. My question is: how has the government assisted tourism ventures in the Riverland?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:46): I thank the honourable member for her most important question. The Riverland

Regional Prospectus, which was completed some time ago, is an overarching vision document for the future of the Riverland. It is a document that recognises the role of primary production in the region but also seeks to diversify what the region has to offer. The document outlines five pillars of opportunity for the region, one of which includes tourism.

Members might be aware that I recently travelled to the Riverland and during that trip I announced that the government has committed $340,000 from the Sustainable Futures Fund towards the creation of 4-star and 5-star accommodation at the Pike River Villas. I was able to visit there and look at the villas already in place and look at where they propose to develop further accommodation. It was most impressive. They have done a tremendous job and should be congratulated for their very innovative work.

Further to our commitment to developing the tourism part of the Riverland directions outlook prospectus, I am very pleased to announced today that I have committed just under $1 million, $865,484—I am not too sure what the $4 was for, but there you go—from the Riverland Sustainable Futures Fund, toward upgrading the Loxton Community Hotel's tourism accommodation and conference centre.

The Loxton Community Hotel has a been a community-based business since 1946 and is owned by approximately 1,000 shareholders with $2 shares. As a community-owned facility, I understand that all dividend or surplus profits are invested within the local area. I understand that the hotel prides itself on being a good community citizen and is a sponsor of major events in the region, including the Loxton Christmas lights, a bowling carnival, the Nippy's gift race, as well as the Loxton triathlon, which I understand attracts competitors from around Australia.

I understand that the hotel employs approximately 80 people and provides work experience in front of house, the kitchen and dining room, to young people interested in a career in hospitality, with training covering subjects which form part of SACE. I am advised that the hotel plans to continue this community involvement by employing locally, trading locally, purchasing locally and also spending locally. The complex currently consists of a three bar, hotel, restaurant, bistro, conference/function centre, 21 self-contained rooms in the main building and 30 self-contained motel style units in the garden/pool area. The funding committed from the Riverland Futures Fund is directed to both internal and external upgrades of the hotel's motel units, hotel rooms and conference/function centre facilities and amenities.

The Riverland Sustainable Futures Fund is a $20 million rolling fund available over four years to facilitate the region's recovery by encouraging further investment in existing businesses and also assisting the region to diversify its economic base, attract new business and new investment.

Proponents complete an application form and are required to provide detailed financials, company business plans and project-specific information. All applications are lodged directly to my department for assessment against local strategic priorities, economic impact and also financial viability. My department undertakes comprehensive financial due diligence and assesses projects against prescribed guidelines and assessment criteria.

I understand that the RDA Murraylands and Riverland considers that the hotel is a significant contributor to the local economy. Indeed, the hotel provides a venue for social events, conferences and functions for local service clubs such as Rotary, Lions, the Chamber of Commerce, Apex, Zonta and Probus.

The revitalised conference centre will help the Loxton Community Hotel fill a gap in the region's existing small to medium hospitality and conference market and it is expected that the completion of this approximately $1.7 million project will help attract a wider range of conference customers to the hotel. In addition to the conference facilities, the project will involve the upgrading of motel units. The upgraded units will form part of a combination of high-quality accommodation at varying price levels in a key Riverland town. The upgrade is planned to begin in early 2012 and is set to be completed by mid-2013. I congratulate the proponents on their innovative proposal.

ACCESSIBLE TAXI SERVICES

The Hon. K.L. VINCENT (14:52): I seek leave to make a brief explanation before asking the minister representing the Minister for Transport Services questions regarding accessible taxi services in South Australia.

Leave granted.

The Hon. K.L. VINCENT: The minister will no doubt be aware that there were discussions on Matt and Dave's program on 891 ABC radio today and yesterday regarding access taxis on Christmas Day, or, rather, the lack of. A caller phoned up and explained that he had tried to book a cab for his two family members to attend Christmas dinner on 25 December. He attempted to make this booking more than five weeks out from Christmas.

As both family members are wheelchair users, they needed access cabs. He found that there were no cabs available—they were already booked out. This left the caller pondering as to whether he would need to hire a horse float on Christmas Day to transport the aforementioned family members to this dinner.

This was followed up on Matt and Dave's show this morning when they discussed the issue with Bill Gonis from the transport department and he confirmed that up to 50 people could miss out on this service on Christmas Day. My questions are:

1. Does the minister acknowledge that there are not enough accessible cabs in use to service the disability sector on Christmas Day?

2. What will the minister do to ensure that people with disabilities can get to Christmas functions on 25 December?

3. Does the minister acknowledge that if her public transport bus fleet in Adelaide was 100 per cent accessible—rather than only 82 per cent—there would be less need for the provision of access cabs?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:53): I thank the honourable member for her very important question. I, too, heard the program today, and I must say that it does raise questions. I will refer these on to the Minister for Transport Services and endeavour to get an answer back as soon as possible.

CLEAN ENERGY FUTURE

The Hon. G.A. KANDELAARS (14:54): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about the commonwealth government's Clean Energy Future package.

Leave granted.

The Hon. G.A. KANDELAARS: I understand the commonwealth government's Clean Energy package has a direct impact on local government. However, I also understand that the commonwealth government is providing assistance to the local government sector. My question is: can the minister outline why the state government supports the commonwealth in assisting councils to find better ways to manage their energy use?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:55): As part of its Clean Energy package, the commonwealth government is committed to providing support to local governments to facilitate a smooth transition to a clean energy future. Over the past few months, the Hon. Mr Mark Dreyfus QC, Parliamentary Secretary for Climate Change and Energy Efficiency, has been travelling to a number of states, meeting with council leaders and hosting various local council forums on the opportunities presented by the government's Clean Energy Future package. The commonwealth government has had great feedback from these sessions.

Last week, I had the opportunity to hear from the Hon. Mark Dreyfus QC at the local government ministers' forum in Canberra about the opportunities in terms of abatement and assistance that is available to local government under the Clean Energy Future package. Local governments and other landfill operators may be liable to pay the carbon price for methane emissions from landfill. Landfill facilities with direct emissions of 25,000 tonnes of CO_2-e a year or more will be liable under the carbon price. Nevertheless, there is an opportunity for councils to reduce or, in some cases, remove their liabilities by taking action through reduced emissions. Activities that reduce emissions include capturing landfill gas to generate electricity, flaring methane, waste aversion, recycling and composting.

Many of these activities can generate revenue, and councils may be eligible for commonwealth government incentives through schemes such as the Renewable Energy Target and Carbon Farming Initiative. The Carbon Farming Initiative is the commonwealth's legislated offset scheme, providing an opportunity for landfill facilities to generate credits by reducing emissions from waste deposited before 1 July 2012.

CFI credits can be used to meet obligations under the carbon price. They could be sold to firms with a carbon price liability or used by a council landfill operator to offset its own carbon price obligations. There will be no carbon price liability for landfill facilities with emissions of less than 25,000 tonnes of CO_2-e carbon pollution a year for at least the first three years of the carbon price. Additionally, councils and existing ratepayers will not be asked to pay for emissions from waste deposited over previous decades, known as legacy waste. For this reason, coverage of landfill emissions will be limited to emissions from new waste.

While the debate on how to price carbon has been going on strongly for more than a decade, for many councils this will be the first time they will be reporting on their emissions. That is why, as the Minister for State/Local Government Relations, I welcomed the opportunity to be briefed by the commonwealth government on this matter and, in turn, will be able to engage with councils and ensure that councils are aware of the opportunities and assistance that is available.

The introduction of a carbon price creates a number of opportunities for local governments to reduce their emissions and benefit from the transition to a clean energy future. As we move towards the start date of the Carbon Farming Initiative next month and the carbon price in July next year, it is important that councils take the necessary steps to adapt to this economic reform so they can make the most of the opportunities that it presents.

CLEAN ENERGY FUTURE

The Hon. J.M.A. LENSINK (14:58): I have a supplementary question arising from the answer. Is the minister aware that the Australian Landfill Owners Association recently told the LGA conference that the carbon price will increase landfill prices by up to $30 a tonne; and what is the state government doing to mitigate those impacts on councils?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:59): I am not aware of that particular claim but, if there is such a claim, we will naturally be looking into it. Because this is new, there are a lot of wild assumptions in regard to pricing and so on, so I think we have to temper to some extent what we are hearing. Right through this whole debate, the opposition—federal, in particular—has made some amazing, inaccurate assumptions in regard to carbon pricing. If there is any truth to it, or any science to it, I am sure that we will be involved in discussions with them.

GAMBLING AND RACING MINISTRIES

The Hon. T.J. STEPHENS (14:59): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Premier, questions regarding the omission of the gambling and racing ministries from the cabinet.

Leave granted.

The Hon. T.J. STEPHENS: The Leader of the Government would be aware that the Premier has failed to reappoint a minister for gambling and a minister for racing following his appointment and subsequent cabinet reshuffle. As a former gambling minister, the Leader of the Government will know how important that portfolio is. It requires a chief spokesperson on behalf of the government, as well as the full authority of the minister, in order to coordinate and implement policy.

At his maiden press conference, the Premier confirmed that the gambling ministry would be handled by the several ministers who have responsibility over the many government agencies that now cover gambling. On top of this, the Premier has also culled the racing ministry from the traditional ministerial title of recreation, sport and racing. The racing industry has always been thought of as important enough to warrant its inclusion as a ministerial portfolio by previous governments and currently by this side of the house. The Premier and those opposite obviously feel differently.

After all, this is the fourth-largest industry in the state. It employs 3,250 full-time workers and 21,000 part-time workers, and it is worth $275 million to the state economy. My questions to the Leader of the Government are:

1. Which ministers have responsibility for gambling and racing at COAG and other national conferences and meetings?

2. Does the Premier feel it appropriate sending a minister without specific responsibility to a gambling conference or a COAG meeting?

3. Is it efficient to have several ministers with oversight of gambling policy?

4. Why doesn't the Premier think the racing industry is worthy of a ministerial representative?

5. What has changed in the government's thoughts towards the racing industry, given that there has been a minister for racing in every government since World War II?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:01): I understand that the policy areas of gambling and racing have been integrated throughout a whole-of-government approach, so it is not indicative of a lack of commitment or interest in those areas. We still have the commissioners, who have responsibility for those areas, in those places, and we still have agency members there to support their work and activities.

I think there are a number of ministers who have various responsibilities. For instance, I know, in respect to gambling, there was always a large overlap there and Treasury had responsibility for a significant component of that. As I said, my understanding is that it has been incorporated into a whole-of-government approach and does not reflect in any way a lack of commitment of this government to those very important policy areas.

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

GAMBLING AND RACING MINISTRIES

The Hon. T.J. STEPHENS (15:03): Thank you, Mr President. Who are the commissioners actually responsible to? Which ministers that you spoke of?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:03): I would imagine—

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: Well, I am no the longer minister responsible for this area, but I would imagine that they would be accountable to the appropriate minister, depending on what aspect of the policy area they were dealing with. For instance, in that area of gambling that sits under Treasury, they would be responsible to the Treasurer.

CENTRAL HILLS NATURAL RESOURCES MANAGEMENT GROUP

The Hon. J.A. DARLEY (15:03): I seek leave to make a brief explanation before asking the Minister for Industrial Relations, representing the Minister for Sustainability, Environment and Conservation, a question regarding the Central Hills Natural Resources Management Group.

Leave granted.

The Hon. J.A. DARLEY: On 5 October 2011, the Adelaide Hills *Courier* reported that Mr Jon Delaine, an NRM policy officer, reported to the Adelaide Hills Council that the Central Hills Natural Resources Management Group had undertaken the following activities:

- delivered programs in 372 hectares of remnant vegetation;
- delivered programs in 250 hectares of agricultural land;
- gave face-to-face advice to 1,129 landholders;
- provided over-the-phone advice to 1,450 callers;
- wrote three-year property management plans for 132 landholders;
- revegetated 64 hectares of land;
- fenced off 16 kilometres of watercourses; and
- patrolled 439 kilometres of roadside for noxious weeds.

Whilst I understand that the patrolling of noxious weeds cost $118,000, no costs were provided for any of the other activities. My questions are:

1. What was the total cost of providing the three-year property management plans to the 132 landholders?

2. Were the property management plans provided to owners of hobby farms or viable farming units?

3. Were these property management plans asked for by the landowners?

4. For what reason was 16 kilometres of watercourses fenced off, and what was the cost of this?

5. What was the cost of providing face-to-face advice to landowners, and what was the outcome of that advice?

6. Is it the intention of the Adelaide and Mount Lofty Ranges Natural Resource Management Board to charge for these services, as is required by similar agencies?

7. Over what period of time did these activities take place?

The PRESIDENT: The honourable minister, representing the minister in another place.

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:05): Well, not exactly, sir, but thank you, Mr President. I thank the honourable member for his question and, representing the Minister for Sustainability, Environment and Conservation (Hon. Paul Caica) in another place, I will take his very detailed questions to the minister and seek a response on his behalf.

AFFORDABLE HOUSING

The Hon. J.M. GAZZOLA (15:06): My question is to the Minister for Social Housing. Minister, will you advise the council of the details of the new affordable housing development at Blakeview?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:06): I thank the honourable member for his very important question. Last week, I officially opened 25 newly built community housing properties, which were constructed by Community Housing Limited, at Blakes Crossing in Blakeview.

Community Housing Limited (CHL) is a national and international provider of community housing and assists low to moderate-income earners with access to affordable and sustainable rental housing, in which tenants pay less than 75 per cent of the market rent applicable to the property.

CHL is a not-for-profit organisation and a registered charity where all financial surpluses are reinvested in the company to go back into future quality affordable housing projects. They have a current portfolio of around 3,000 dwellings, including properties in New South Wales, Victoria, Tasmania and now here in South Australia.

CHL develops housing in partnership with communities and governments to assist needy people in both metro and regional Australia. I did have the opportunity to walk through a couple of the completed two-bedroom townhouses which were due for occupation the very next day. They were of an extremely high standard and ideal for either single people or small families seeking affordable accommodation.

There is a shopping centre within walking distance to ensure there is adequate access to a wide variety of services. While I was there, I spoke to one of the new residents who told me how much he loved his current accommodation and how grateful he was for the opportunity to call Blakes Crossing his new home.

In October 2009, the then minister for housing wrote to CHL advising them of the in-principle approval for grant funding of up to $8.1 million from both the Affordable Housing Innovations Fund and the National Partnerships Agreement on Social Housing to construct 50 affordable rental houses across six metropolitan sites, including (of course) Blakeview, but also Elizabeth Park, Salisbury, Salisbury North, Elizabeth East and Park Holme, with a total estimated project cost of $12.128 million.

CHL were also successful in obtaining approval for 50 incentives under round 1 of the NRAS. As part of their ongoing commitment to the future success of these properties, CHL will also provide tenancy and management services for the properties over the long term.

Affordable and sustainable housing for low to middle-income households is an increasing challenge for the future, and partnerships between the government and companies like CHL are vital in maintaining affordable housing options for South Australians. I look forward to their involvement with affordable housing in South Australia into the future.

The PRESIDENT: The Hon. Ms Franks has a supplementary.

AFFORDABLE HOUSING

The Hon. T.A. FRANKS (15:09): Could the minister outline whether the 75 per cent of market rent policy for affordable housing will have any impact in terms of that being either more than 30 per cent (which is a level of income at which a tenant would be under housing stress), or more than 50 per cent (at which they would be under extreme housing stress)?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:09): My understanding is that the tenants who will go into these properties will be low income earners or on some sort of federal government benefit. If they are on a federal government benefit, their rent will be approximately 25 per cent of market rent and scaled up according to their income.

The PRESIDENT: The Hon. Ms Vincent has a further supplementary.

AFFORDABLE HOUSING

The Hon. K.L. VINCENT (15:09): Are any of these new houses accessible for people with disabilities?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:09): Certainly the two I was in were not (they were two-storey townhouses), but there are also units in development by this company which are single storey and made using universal design principles.

CEDUNA QUARANTINE STATION

The Hon. J.S.L. DAWKINS (15:10): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question in relation to the Ceduna quarantine station.

Leave granted.

The Hon. J.S.L. DAWKINS: Ceduna quarantine station, located on the Eyre Highway just west of Ceduna, is a vital roadblock for biosecurity threats to South Australia's agricultural and horticultural sectors. As a result of the advocacy of the members for Flinders and Chaffey in another place, the former minister, after months of community anxiety, finally announced earlier this year that this vital station, along with the Yamba quarantine station, would remain open 24 hours a day, seven days a week.

I understand that in May 2011 the eight staff who operate the Ceduna station, who are employed by Biosecurity SA within the Department of Primary Industries and Regions SA, were shifted from their former office accommodation to a converted container. I am advised this was a temporary solution until a new transportable office arrived. My information is that this office arrived shortly thereafter and was suitable for use by the hardworking staff at Ceduna by late June. However, information provided to the opposition is that in the five months since the new office arrived, quarantine station staff have not been able to gain access to this new accommodation and have been forced to use the unsuitable temporary container instead. My questions are:

1. Can the minister confirm that the new transportable office was available for use by Biosecurity SA staff in June 2011?

2. Is the minister able to explain why the eight staff members have been forced to use a temporary container whilst the more suitable transportable office has remained locked and gathering dust?

3. Is the minister satisfied that the temporary office container is compliant with occupational health and safety standards?

4. Will the minister seek to relocate these staff members into the more appropriate and available accommodation as a matter of urgency, or report back to the chamber why this cannot be done?

5. Will the minister guarantee that the quarantine station will remain in Ceduna operating 24 hours a day, seven days a week, indefinitely?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:12): I thank the honourable member for his important question. I am not aware of the arrangements for the facilitating of staff at the Ceduna quarantine station, so I very much appreciate the honourable member bringing that to my attention. If, in fact, there are issues of concern or problems about those amenities I am happy to look into it and attempt to address those as soon as is reasonably possible. I am happy to give that commitment to the honourable member.

In terms of particular facilities being open or not open, as I said I do not have that information, but I do appreciate being given the information making me aware that there may be an issue there. I will follow that up.

I want to put on the record that PIRSA is very committed to the facilities in relation to these quarantine stations. I recently visited the Yamba quarantine station in the Riverland and saw the new facility that they hope to move into by the end of this year. It is a magnificent building, and it will be a significant improvement on their current arrangement, which is a hut-like facility. It is very spacious, a very attractive environment and offers extremely good visibility from anywhere inside the building in terms of being able to see approaching traffic. They have also used their initiative and worked with the department of transport in building a weigh station. They have combined moneys and functions and, instead of having a weighbridge up the road, it will all be facilitated together in one location. It is a very attractive facility.

We can see that PIRSA is very much concerned and interested in ensuring that staff work in an environment that has suitable amenities and protections. These people have to really face the elements. They have to get outside the building and go to vehicles in all sorts of weather conditions, so it is important that they are afforded some sort of protection there as well. In terms of the operating hours, I am satisfied with the current arrangements and have no intention of making any changes at this point in time.

The PRESIDENT: The Hon. Mr Dawkins has a supplementary question.

CEDUNA QUARANTINE STATION

The Hon. J.S.L. DAWKINS (15:16): Given the high temperatures experienced at Ceduna at this time of the year, will the minister report back to the council before the end of the sittings this year in relation to moving those staff out of the converted container?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:17): As I said, I will look into that matter and assess what is going on. I have given a commitment to take appropriate action as soon as possible. I understand that some negotiations are going on with Western Australia about perhaps moving the facility. I do not know exactly where they are up to, and I am happy to find out that information and bring that detail back to the chamber.

PORT HUGHES MARINA

The Hon. M. PARNELL (15:17): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about the Port Hughes marina.

Leave granted.

The Hon. M. PARNELL: Last week I attended a public meeting at Moonta to hear about plans for a possible new marina or boat harbour at nearby Port Hughes. The meeting was convened not by council but by concerned residents, primarily to air concerns about the impact of boating facilities on nearby beaches. These impacts are already apparent with the existing boat harbour, and the fear is that any new marina, boat harbor or breakwater would exacerbate erosion of nearby beaches, particularly those to the north of the facility.

The reason these areas are of concern is that the coastal dynamics at Port Hughes are similar to other parts of the South Australian coast where there is a long shore drift of sand from south to north. If you put in an obstruction then the sand cannot replenish the beach and erosion can occur. It is just like what has happened at Glenelg and West Beach. The difference with Port Hughes is that the community does not have millions of dollars to spend each year on sand replenishment, as we do in Adelaide.

One of the most contentious issues raised at the meeting was the extent to which the local council, the District Council of Copper Coast, had consulted with its residents before commissioning plans and before seeking funding from the state government, as I understand it, from the Recreational Boating Facilities Fund. I understand the council has described the various plans circulated at the meeting as very early drafts. However, it was unclear how much these had cost the ratepayers of Copper Coast and equally unclear how the project had advanced to this stage without any community consultation. My questions of the minister are:

1. How much money has been spent on this project to date?

2. Does the minister believe it is appropriate for a council to commit ratepayers' funds to a major project that has had no community consultation?

3. Will the minister, either on his own account or in collaboration with ministerial colleagues, ensure that no state controlled funds are allocated to this project until a thorough environmental impact assessment has been undertaken and the local community given a say in whether or not the project should proceed and, if so, in what form?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:20): I thank the member for his very important questions. There are a number of issues here, and I would imagine that this would cut across the portfolios of a number of my ministerial colleagues. I will make it quite clear now that I do take public consultation very seriously. I will take this on notice and get back to the honourable member as soon as possible.

SNAPPER FISHING SUSTAINABILITY

The Hon. CARMEL ZOLLO (15:20): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about snapper fishing.

Leave granted.

The Hon. CARMEL ZOLLO: In South Australia alone, about one-quarter of South Australians (or an estimated 236,000 South Australians) enjoy fishing each year. Apart from the enjoyment, recreational fishing injects millions of dollars into the economy—in the purchase and maintenance of boats, marine engines, tackle and equipment. My question is: can the minister provide the chamber with information on how the South Australian government is working to make snapper fishing a sustainable recreational sport?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:21): I thank the honourable member for her question and for her ongoing interest in this very important area.

I inform members that the Management Options for Snapper in South Australia paper has now been released for public consultation, with an accompanying background paper. Snapper is regarded as one of the glamour fish of saltwater fishing in South Australia. It is an important recreational and also commercial species—and it is quite delicious to eat, I might add—and they are found throughout the southern half of Australia. Juvenile snapper (also known as rugger snapper) are mainly found in inlets, bays, and shallow and sheltered marine waters. Adults are often found near reefs and underwater structures, including limestone ledges, and man-made structures, such as artificial reefs and wrecks.

The purpose of the options paper and background paper is to seek informed consultation with all industry and community stakeholders to get their input into future management arrangements for the snapper fishery. The snapper fishery was valued at around $6.5 million in 2009-10, making it the highest-value marine scalefish stock landed in South Australia. The snapper fishery has been subject to an increasing range of effort-based regulatory controls since the mid-1990s. This has been in response to increased effort across all sectors, combined with new technologies aiding that effort.

Currently, snapper is managed in South Australian waters using a combination of control measures, and this includes the legal minimum size limit of 38 centimetres, recreational daily bag and boat limits specific to snapper (38 to 59 centimetres and 60-plus centimetres), an annual temporal closure to all snapper fishing through the month of November, and also limited entry of commercial fisheries with access to snapper.

Revised management arrangements for snapper are being considered because fishery performance is strongly influenced by the number of juvenile fish that are spawned and reach a

certain size or age where they can enter the fishery, and this is variable from year to year. Fish stocks are obviously a finite resource, and it is only through very careful management, based on sound research, that we can ensure the health of our fish stocks for today and into the future. We want to make sure that our kids, grandchildren and great-grandchildren are able to enjoy fishing. Although I am advised that there is some concern for the future stock status of snapper and the economic return for the snapper fishery at various times of the year, snapper biomass has recently been estimated to be relatively high.

The options paper sets out the principles for management of the snapper fishery and details the possible options for management, advantages and disadvantages of the various options, and a community feedback form for being able to comment on the different options. A key outcome of this review must be management arrangements that effectively control the level of commercial impact on snapper stocks, optimises snapper spawning and supports a sustainable snapper fishery.

It is unlawful to take snapper from South Australian waters from 12 midday 1 November to 12 midday 30 November. During this period, any snapper caught accidentally must be returned to the water immediately. Very heavy fines apply if you do not release snapper back into the water during this time.

FIRST HOME OWNERS GRANT

The Hon. R.I. LUCAS (15:25): I seek leave to make a brief explanation before asking the minister representing the Treasurer a question on the subject of the home savings grant.

Leave granted.

The Hon. R.I. LUCAS: I have been contacted by the father of a young woman who is appealing against a decision to seek to recover a $7,000 home savings grant. In his letter to me, Mr Rogers outlines the background to the matter and that his daughter is appealing that particular decision. There has been correspondence with the Crown Law Office. His daughter is extremely stressed and distressed about it. His daughter advised the Crown Solicitor's Office that he (her father) would be attending the appeal on 16 December of this year in order to protect her health at this important stage of her pregnancy. In his letter to me he states:

> However, the Crown Solicitor's Office deliberately wrote a highly intimidating letter to my daughter suggesting that she would lose the Appeal and would have to repay not only the $7,000 grant but also considerable Crown Solicitor's legal fees. The objective of the letter was clearly to scare her and the Crown requested her, in this letter, to withdraw her Appeal. The Crown's intimidation worked because my daughter is now extremely distressed and is seeking medical attention as a result of this disgraceful and shameful intimidation. She has not however at this stage withdrawn her Appeal.

In evidence to the Budget and Finance Committee in November of last year, the chief executive of the justice department, Jerry Maguire, indicated that the costs of the Crown Law Office's involvement in various court cases were not recovered as part of any costs arrangements. He gave that as an example in relation to the case that involved the former CEO, Kate Lennon. Mr Rogers has also provided me with a copy of a letter he wrote on 20 November to Ms Helen Ward in the Crown Solicitor's Office, which because of its length I will only quote one part, and the government obviously has a copy of the letter. He states:

> Regarding your letter, it is ironic that you are defending a decision of the Treasurer of South Australia to recover an amount of $7,000 from a young first home buyer allegedly breaking a rule associated with the First Home Owners Grant (albeit due to financial hardship), when that same Treasurer recently turned a blind eye, as Speaker of the House of Representatives, to one of his fellow Ministers, Grace Portolesi, refusing to repay a $7,000 business class taxpayer funded airfare for her daughter, after breaching Parliamentary travel rules (see article attached as Appendix 1). I guess this hypocritical Treasurer needs to recover the $7,000 from a financially strapped and pregnant young Teacher in order to pay for the $7,000 travel rort of his wealthy rule breaking fellow Minister.....It's a great society we live in isn't it Ms Ward?

As I said, the letter is three or four pages in length and I do not intend to quote all of the letter for the purposes of my two questions. My two questions are:

1. Is it correct that the government in this particular case has threatened to recover the considerable crown law costs from the appellant in the event that the decision goes with the government?

2. If so, is that consistent with government policy and has it been applied in all circumstances? In particular, is it consistent with the advice Mr Jerry Maguire gave the Budget and

Finance Committee on 1 November 2010 in relation to crown law costs in the Kate Lennon court case?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:29): I thank the member for his questions and will refer those to the Treasurer in another place and bring back a response. As I have made clear in this place earlier today when I read from the ministerial statement of the Premier Jay Weatherill in relation to minister Grace Portolesi, we know that she had inquired back in 2007 as to whether she was entitled to have her daughter as her nominated travel companion in lieu of her partner. I have put on the record that this was approved and then re-approved following the March 2010 election.

I have already made it quite clear that the approval was provided by officers of the parliament quite independent of the political process and that the process of approval by officers of the parliament was the same process that has been applied to a number of members on both sides of the chamber who have nominated their children as their nominated travel partners. So, to read out inaccurate information after that clarity, I think, is quite disingenuous but, as I said, I will take the question and refer it to the Treasurer in another place and bring back a response.

CITRUS INDUSTRY

The Hon. R.L. BROKENSHIRE (15:30): I seek leave to make a brief explanation before asking the minister for primary industries a question about the citrus industry.

Leave granted.

The Hon. R.L. BROKENSHIRE: Quite a long time ago the former minister initiated what was known as a review of the South Australian citrus industry structure. The intent of this followed on from lobbying by some citrus growers and members of the citrus industry generally. I have had discussions with both the Citrus Growers of South Australia and the South Australian Citrus Industry Development Board, and I understand that Mr Alan Moss was engaged to come up with a report recommending a way forward for an improvement in South Australian citrus industry matters.

This report was with the previous minister for several months. No reflection on this minister as the new minister, because she has a lot to get her head around, however, it is of concern to the industry that there seems to be some stalling. I contacted the former minister's adviser on agriculture, and he advised me that that report had been with the minister back in September, I think. My questions are:

1. Can the minister advise the council on where her deliberations are with respect to this report?

2. When will the minister make a decision regarding the recommendations of the report?

3. Will the minister table the report in the council so that members have an opportunity to see the full detail of it?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:32): The citrus industry is a very important industry here in South Australia, and we know that it has been hit very harshly by drought conditions, floods, storms, and I think even the locusts had a go. It is one of those sectors that has been hit very hard and it has been really struggling in parts, but it is a very important part of our primary industries. We know that there is a need for a strong united organisation to lead South Australia's citrus industry into the future. It is critical that we have that sort of structure in place to provide leadership.

South Australia's citrus industry is currently represented by two organisations: Citrus Growers SA and also the South Australian Citrus Industry Development Board. The duplication of these structures and functions is believed to reduce the effectiveness of the industry to have a common approach to developing their industry, and, as such, the former minister commissioned a review to advise and recommend on the preferred citrus industry structure and also the funding arrangements. The review was conducted by Mr Alan Moss, retired judge, ex-deputy crown solicitor and Presiding Member of the South Australian Independent Gambling Authority, so a fairly well-credentialled chap.

The review commenced in early 2011, and I am advised that a number of written submissions were received and well over 50 stakeholders were consulted during the process. The

final report was submitted to the former minister and I am now considering the recommendations of that review. Being the new minister for PIRSA, I take these responsibilities very seriously and want to look very carefully at this issue and consider all the facts and figures for myself, not just papers that have been handed down to me. I am very keen to look at that in a very thorough way and to think about that carefully.

As the Minister for Agriculture, Food and Fisheries, I am the administrator for both the Citrus Industry Act 2005 and also the Primary Industry Funding Scheme 1998 and associated regulations. The South Australian Citrus Industry Development Board is, obviously, a government-appointed board, funded by payments it receives, and the citrus growers are elected by the citrus growers and funded by payments received from that fund.

I acknowledge that this is quite a contentious issue. It has caused some very strong feelings from supporters of both the different camps, shall we say, and I think it is really important that I take time to sit down and look very carefully at it and consider the facts and the figures, and have time to deliberate and put what I think is the best way to move forward; and I am in the throes of doing that.

To give an example of the sort of commitment that this government has for the citrus industry, yesterday I announced a $2.6 million grant from the Riverland Sustainable Futures Fund to Nippy's to increase their packing facilities at Waikerie and also some other milk packaging facilities. This is a fabulous project. The total project is worth just under $10 million, so Nippy's are really investing in enhancing their production. They see this as a small window of opportunity to enhance production and move into the marketplace where some of the other players have recently fallen away. They are really stepping up to the plate and I congratulate them for doing that.

Not only will this project create new jobs (somewhere between 25 and 30 new jobs in the Riverland area, Nippy's has indicated), but it will also increase reliance on locally grown citrus fruit and, of course, open up markets—not just domestic but interstate markets and, I understand, export markets as well. It is a great project and does indeed reflect this government's commitment to the citrus industry.

ROXBY DOWNS (INDENTURE RATIFICATION) (AMENDMENT OF INDENTURE) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

The Hon. M. PARNELL (15:38): Before the break, I was talking about the myth of sovereign risk. If this parliament decides to amend this indenture, I can guarantee that it will not signal the end of the mining boom in this state nor a massive flight of foreign capital out of South Australia. We all know South Australia is a great place to do business because we have natural resources, an educated workforce, a stable political climate, and the rule of law prevails. The idea that there is a sovereign risk problem is simply laughable.

We also need to note that the debate in this parliament will be the only opportunity we have to ask and, hopefully, receive answers on the record to questions about this massive project. So far, it has been very difficult to get answers. Certainly, the process so far has provided no opportunity for BHP Billiton's scientists and consultants to be asked directly about some of the more contentious aspects of the project. In short, they have never been required to prove their case in an accountable and public way.

The nature of the secrecy provisions in the indenture, the unwillingness of BHP Billiton and, before them, Western Mining, to answer questions, and the overriding of state laws such as the Freedom of Information Act means that what happens on site at Olympic Dam is rarely shared with the South Australian people. I look forward therefore to using the opportunity of this parliamentary debate to getting some essential information about this indenture agreement on the public record.

There is a range of environmental, social and economic impacts that we will need to explore as we work through this bill. There can be no doubt, from both supporters and detractors alike, that this proposed mega-expansion will have a massive range of impacts for our state. This parliament is the appropriate place for a serious discussion about those impacts. I propose to speak in general terms about the project and then focus on specific issues in the bill, but, for my contribution today, I want to go through some of the overall impacts first and then we will move on later to the committee stage and to some questions.

All this debate in parliament is expected to take some time, but I fully expect that we have sufficient time. I note that the other place took over 12 hours of debating time. In the lower house,

members were given a great deal of freedom in their remarks on the report of the select committee and, in the committee stage as well, they were able to go through each and every clause of the indenture, and I fully expect that we will be given similar freedom. I make the point that this is not filibustering; it is not deliberately delaying the debate. It is simply doing our job of scrutinising the legislation to the best of our ability, and I think the people of South Australia, whom we represent, expect nothing less of us.

Let us look at this question of delay. From BHP Billiton's perspective, the project is already delayed before we even get to debate the bill in this place. Members would have seen the headline in *The Australian* last Friday in an article by Matt Chambers. The headline read, 'Further delays to force BHP's hand', and the article states:

> BHP Billiton chief executive Marius Kloppers has warned that further regulatory delays on the $20 billion-plus Olympic Dam copper, gold and uranium expansion could mean the company looks at other options for its huge cashflows.

So, there we go. Again, we have these threats of the world's biggest resources company taking its bat and ball and going home. As I said earlier, they will not be taking our minerals with them if that is their attitude. The article goes on:

> Speaking after the company's annual general meeting in Melbourne yesterday, Mr Kloppers tempered chairman Jac Nasser's enthusiasm for the project by saying things needed to move quickly.

The quote:

> 'In our base-case plan, we've got a preferred date for Olympic Dam...and it's probably fair to say we're a little later than we'd like to be,' Mr Kloppers said.
>
> 'If something gets delayed, then inevitably, probably what the management will do, it will present the board with other options. I think that's important.'

Mr Kloppers here is making a very veiled threat that, if there are delays to the project, there are plenty of other places they can spend their money—they will take their bat and ball and go home.

Interestingly, those comments came after Mr Nasser had said that the $1.2 billion of precommitment spending already approved by the board indicated how keen the board was to go ahead with Olympic Dam. The article, quoting Mr Nasser, says:

> 'It is always difficult when you are thinking of it as some kind of down payment, I think of it like the GDP of Nicaragua or something,' Mr Nasser said.

So, it looks like Jac Nasser, at the AGM last week, was off message. He was giving a little too much away. Basically, what he is saying is they are committed and the proof of their commitment is their expenditure, whereas Marius Kloppers was keen to perpetuate the myth that there is a risk that it might all fall over if they do not get all the approvals they need straightaway.

Of course, what we all know is that, once BHP Billiton have their approvals in place and have their indenture, they will take their own time to make a final decision about when and how to proceed. That decision is likely to be many months after this parliament has passed the bill. It could even be as late as the middle of next year.

Another assertion that I would like to challenge is that this project has undergone extensive public consultation. This is what we are told if we complain about the quantity and quality of community engagement. We are always reminded how long it has taken to get to this point, how many trees were chopped down to produce the biggest document ever printed in South Australia. Certainly, we have had an enormous stream of company spin contained in a series of publications that have collectively chewed up far too many trees, but two things have been missing.

First, there have been the extraordinary gaps in the amount of relevant scientific and economic data provided on critical elements of the project. To briefly touch on just one example which I will expand on later, the fundamental economic question of whether BHP Billiton could export the ore to China for processing, or process it here in South Australia, was brushed off in less than one half of an A4 page in a 15,000-page document. That is the key question about jobs in South Australia—half a page out of 15,000.

Secondly, there has been a complete absence of opportunities for the South Australian public to ask direct questions of BHP Billiton, or their scientists, and to receive an answer. Instead of holding public meetings and involving accountable question-and-answer sessions as part of the public engagement process for the original EIS, the public were forced to participate in a sham

process that involved individuals having one-on-one chats with various representatives from the company. The problem with that is twofold.

The first is the complete absence of a public conversation, which is a shared audience collectively discussing an issue, and the complete absence of any accountability. Those BHP Billiton officials could make all manner of claims and assurances to an individual member of the public with no accountability, no witnesses, and no recording. In addition, BHP Billiton simply does not engage with the media to respond to issues and questions. I have lost count of the number of times I have been asked to give interviews of the last four years where the interviewer has been forced to explain that they asked for a representative of the company but nobody was made available.

Of course, the reason for that is obvious: it is not in the company's interest for questions to be asked and answered; they know that they do not need to be accountable, and there will be no consequences for them if they say nothing. The last thing that BHP Billiton wants is a debate, with university oceanographers challenging their version of reality in relation to the Upper Spencer Gulf and the prawn fishery or the giant cuttlefish. Why would BHP want to engage if they do not have to? There is nothing in it for them. The loser in relation to this cone of silence debate is the South Australian public.

I would like to touch on some other aspects of the process that has got us to where we are considering this bill in parliament and the presentation to parliament of a final, binding, long-term contract, as the government would have it. This project has followed the basic steps set out in the Development Act for a major development, and that is the logical pathway for a project of this type to take. The major projects stream is the only trigger for an environmental impact statement in South Australia; certainly, this project is far too complex for the Development Assessment Commission to consider on its own.

However, the EIS process in South Australia is a fundamentally flawed process. Ultimately, the process will lead to approval of project that the government likes, and only those that the government does not like will fail. The merits of the project always play second fiddle to the political imperative. The EIS, however large, is ultimately the proponent's document, and its purpose is to downplay the significance of environmental concerns and to placate the reader, and decision-makers in particular, with assurances that they know what they doing and that the project is as good as it can be.

Whilst the public can make submissions, there is no capacity to seriously challenge the science behind the various assumptions. Public submissions fall on deaf ears and rarely result in the proponent making any changes at all to the project's configuration, which just goes to show you that they must have got it right in the first place or that they never had any intention of changing anything, and the government nearly always never makes them.

To make sure that nothing can go wrong with this cosy process, the Development Act has been set up to make sure that absolutely nothing can be challenged, regardless of its merits or even its procedural correctness. Of course, this is the notorious section 48E of the Development Act which means that, whether the proponent tells the truth, a tissue of lies, or simply makes stuff up and hopes for the best, there is nothing that anyone can do about it.

None of the 157 conditions of approval under the Development Act are publicly enforceable and certainly none of the advisory notes published alongside the conditions are in the *Government Gazette* of 10 October are enforceable. Similarly, none of the conditions, promises, and assurances in the indenture that we are debating today are enforceable by the owners of the resource, namely the South Australian public. What is more, much of the information about how the project is being conducted and the impact it will have on the environment will be kept secret from the owners of the resource. I will have more to say about that when we get into committee.

One small victory that the Greens managed to achieve was to extend the amount of time for public consultation in the original EIS. That was a very minor concession, but it at least enabled members of the public to come to grips with the massive document. It certainly did not remedy the problem with the process. I might just add, as most members know, that that assurance of a longer public consultation period was actually provided by the former premier on Twitter, which was his preferred method of communication for these things.

The bill before us today is a hybrid bill, and it was declared as such by the honourable Speaker of the House of Assembly. As a result, the bill was subjected to a select committee of the other place. That process was an opportunity to redress, albeit slightly, the inadequacies of the

process up to that point. However, the honourable members of that other place chose not to take their job seriously and the resulting exercise was a sham of an inquiry. Rather than take the opportunity as legislators to rigorously scrutinise the biggest industrial project in South Australia's history, they chose a very quick and tokenistic process that they believed would satisfy the standing orders but had no intention of asking hard questions or demanding answers.

I would like to put the following facts on the table in relation to that process. First, the committee did not advertise its inquiry or call for submissions. In fact, the only way I found out that the committee was conducting hearings was to personally approach the committee's secretary and also to scrutinise the room booking system on the parliamentary intranet. That is how I found out about the meeting and the first set of witnesses. Secondly, the committee did not agree to allow members of the public to attend until the day of the hearing, when members of the media were hanging around outside the room—and I can say that those members of the media certainly were not there because the government invited them.

Thirdly, once the meeting was underway, it became clear that the only people invited to give evidence were the cheer squad; namely, the proponent, the government and the mining lobby group, the Chamber of Mines and Energy. They did not want to hear from anyone who might criticise the project or raise difficult issues. Ultimately, it was only after the intervention of the Greens that the committee agreed to hear from the Conservation Council of South Australia, which had three days' notice to make a submission. None of the other people who wrote to the committee were given an opportunity to present their views. I remind members of that fact when they get impatient with the Greens for putting a lot of material on *Hansard*, asking a lot of questions and moving amendments. Most of this is being done on behalf of constituents who have been otherwise disenfranchised from the process.

The record should also show that the report of the select committee does not reflect the interest in the project in the South Australian community. At face value it looks as if only a handful of people had anything they wanted to say to their elected representatives about this bill and this project. The committee's report records 19 submissions, and I do want to put those names on the record. Mostly, these are people who answered a last minute call from the Greens to put in urgent submissions and hopefully shame the government and the opposition into at least considering an alternative point of view. We suspected a sham process, and that was exactly what we got.

The people who, without being notified officially by the government, found out about the committee's hearings and put in submissions were as follows: Mr David Noonan; Doctors for the Environment Australia; the Medical Association for the Prevention of War; Mr Sid Wilson; Mr Richard Quilty; the City of Whyalla; the Conservation Council of South Australia; Mr Kevin Buzzacott; Friends of the Earth Adelaide; Ms Laraine Lerc; Mr Al Lad; Associate Professor Jochen Kaempf; Ms Paula Horbelt; the Women's International League for Peace and Freedom; Mr Andrew Scott; the Environmental Defenders Office (SA) Inc.; People for Nuclear Disarmament (WA); Ms Michele Madigan; and the final submission, from three people, Mr M. Fechner, Mr D. Pumpa and Mr R. Tscharke.

What is interesting is that the only groups that the committee actually invited to make written submissions were the City of Whyalla, the City of Port Augusta and the Arid Lands Natural Resources Management Board—incidentally, a group whose role is completely undermined by the act and the indenture. They were the only three bodies that were invited, apart from the cheer squad I mentioned before—the company, the government and the Chamber of Mines and Energy. In fact, the Chamber of Mines and Energy did not even put in a submission, yet they were invited to give evidence. The Conservation Council had to make their plea to present their case to the committee through the media.

The formal record of that select committee shows very little interest in this legislation, which is why I wanted the record of the Legislative Council to show what really happened. I also remind members that I have had on the *Notice Paper* for some weeks a contingent notice of motion for a select committee of this chamber to consider this hybrid bill. I note there is nothing in the standing orders that prevents this house from trying to fix up the poor job that was done in another place.

If the motion is successful, I propose that the committee meet as a matter of urgency and that we invite to give evidence a selection of those other groups that made submissions and were denied a hearing by the House of Assembly. We should also invite back BHP Billiton to ask some of the important economic and environmental questions that our colleagues in the other place did not get to. This is a task that could be done fairly quickly, and it could be over before the end of the optional sitting week.

But, for now, I am glad that we managed to at least provide a tiny amount of balance in relation to the select committee of the House of Assembly. Sadly, it was not enough to take that inquiry out of the sham category and give it more credibility, but it was something. In relation to briefings, I acknowledge that I have appreciated the two briefings we had with Paul Heithersay and other members of the Olympic Dam Task Force, including Mr Peter Dolan of the EPA.

Following the second of those briefings, we supplied a list of over 60 technical questions to the task force in order to speed up the debate. The answers came back just after the close of business on Friday. My staff and I have been working through them since to determine which issues need to be further explored in the committee stage of this bill. Of course, the one thing we have not had the chance to do is get answers on the public record from BHP Billiton.

Certainly I attended, as other members have done, the briefing for MPs held some years ago. I understand other members have had more recent briefings, but these are not meetings of record, as the one-day show at the Convention Centre was not a meeting of record. Part of my genetic make-up as a lawyer is that I like things on the record; I think it is a great way of extracting the truth. One of the most disappointing aspects of this whole process is that the final sign-off was artificially dragged forward by the government to facilitate a media opportunity for the departing premier.

Nominating a 20 October deadline to conclude the Roxby expansion negotiations left our state in a terrible negotiating position. The question must be: how could it be otherwise? It gave all the power in the world to the richest mining company. They knew that all they had to do was hold out on the things they wanted and watch the clock tick down, knowing that the premier needed their signature on a deal before a certain date. BHP Billiton had South Australia well and truly over a barrel, and our government put us there.

The analogy, I think, is like the person who goes into the second-hand car yard and announces up-front that they have to buy a car by 4 o'clock that afternoon and, what is more, it has to be the red Ford over in the corner. It does not put you in a great bargaining position when the other side knows that all it has to do is hold out. I believe that South Australia deserved much better than the government gave us in tying what was effectively a leadership stoush to the most important development decision in our state for a generation.

Another frustration I have is that we as a parliament are being asked to sign off on this proposed project before the BHP Billiton board meets to decide whether it is going to proceed. Certainly, they have decided a certain level of precommitment, but it does raise that issue of why the final arbiter of the fate of our resources will not in fact be the parliament but the board of a foreign company. I think that is another example of the imbalance of power, or at least the perceived imbalance of power, that is at play here. Another piece of evidence, which other members have referred to, is the fact that our premier had to fly interstate to sign the contract; we could not even get the executives to come over here to South Australia.

If we knew definitely that BHP Billiton was going to invest in this project and was committed to this project, we would not have this race-to-the-bottom argument that somehow we have to lower our standards in order to attract investment because South Australia is competing for BHP Billiton's attention with numerous projects in other parts of the world. That is an argument that works only to the company's advantage.

One critical issue that has also been frustrating throughout this process is the disparity in the variety of time frames and project sizes that have been mentioned at various times by the company and by the government. The project approval is for 750,000 tonnes of copper concentrate per year, yet BHP Billiton is reporting to its shareholders that its desired capacity is potentially double that. Then, the overall commentary is about a 100-year project, yet the EIS was for 40 years and the indenture agreement is for 50 to 70 years, with options to extend. The economic modelling was for 30 years, yet the royalty rate is locked in for 45 years.

Whilst the Greens did manage to secure a commitment from former minister Holloway that another EIS would be required if the project increased in size, the biggest risk with this approach is that the approval processes do not account for the cumulative effects of the project. For example, there is potential for the desalination plant discharge to build up over time on the ocean floor. There is a big difference between the build-up from a plant that operates for 30 years and a plant that operates for 100 years. It also makes the consideration of rehabilitation issues extremely difficult; there is no obligation for progressive rehabilitation for a project that lasts a century or more.

I would now like to reflect on the use of indentures as a tool for regulating projects. The first thing to say is that the idea that a state needs special laws to regulate projects when, in fact, every single aspect of that project is already covered by existing statutes is a clear indication that the government has no confidence in the normal regulatory regime and the various offices, departments and statutory bodies charged with overseeing economic, environment and social issues.

The history of indentures in South Australia is a pretty sad one. Whilst political historians love to point to the Tom Playford era and the way in which he used special deals to attract industry to this state, there is very little hard analysis of the quality of those agreements and the legacy they left behind and the impact they caused. Most of these indentures are embarrassing in the extreme when viewed through our eyes, especially in relation to the environmental performance they accepted as appropriate.

The two that stick in my mind relate to the Whyalla steelworks and the pulp and paper mill at Lake Bonney in the South-East. Both authorised unlimited pollution provided it was 'necessary'. The fact that it was avoidable or harmful was beside the point. The Whyalla situation was rectified only when the BHP steelworks were spun off into OneSteel and BlueScope and they could renegotiate the deal, but even then, the new operators harked back to the good old days of no pollution regulation. As soon as the EPA named and shamed their poor environmental performance, they went crying to the government and, ultimately, to this parliament, in 2005 to get the EPA off their back. It was as close as they could get to the good old days. They eventually got their special laws to allow increased pollution. The Kimberly-Clark arrangement in the South-East still has three more years to run until its 50-year free right to pollute expires.

The point to note here is that locking in standards for half a century is usually seen as irresponsible long before the 50 years is up, but that is exactly what we are doing in this bill and in this indenture. In 50 years, all of us, bar perhaps our colleague the Hon. Kelly Vincent, are likely to be dead or, at best, very, very old and long out of public life. Does that mean that it is not our problem? Absolutely not; I think it is our responsibility to get this right.

I want to talk now a little bit about the Greens' approach to this project, because there has been a deal of misinformation spread by the mining minister and others. The Hon. Tom Koutsantonis, the mining minister in another place, expressed the view that if you are opposed to uranium mining then it is dishonest to try to amend this project to make it better. That is absolute rubbish. The Greens have never made any secret of the fact that we do not support uranium mining, but the uranium component of this project is, effectively, an optional extra.

We make no secret of the fact that we are opposed to uranium, so we commissioned a report to see if a non-uranium Olympic Dam expansion was possible, and I will talk about that a little bit more in my contribution. The report came back basically saying that not only was a no uranium expansion technically feasible, it would also use less water and less energy and create more jobs. We know that it is possible to leave the uranium behind in the tailings. It is possible to do it and we should do it. That leaves us with copper, gold, silver, a little bit of iron ore and rare earths, and the Greens are not opposed to mining those substances.

This project is overwhelmingly a copper mine. The uranium component is small. It has been shrinking over time and it is planned to shrink even further. Again, I refer to *The Australian* of last Friday 18 November and Mr Kloppers speaking after the company's annual general meeting in Melbourne. *The Australian* reported it as follows:

> Mr Kloppers strengthened previous indications BHP was not looking at producing more uranium from Olympic Dam until well into the expansion's production life. "The first two phases of Olympic Dam are really copper only and gold only type of things," he said. "In due course we need to think about whether we extract more uranium, but I see that as a separate decision, separate kit, separate capital decision, separate returns."

Why? The obvious answer is that there is a dim future for nuclear, especially after the Fukushima nuclear reactor accident, and I will come back to that later. What the Greens have tried to do is to be as strong advocates as possible and seek to ensure that we get the best possible deal for South Australia by maximising the economic benefits while minimising the considerable environmental and social costs. We have also tried to ensure that more information on the expansion was made publicly available, with a better debate involving a wider range of scientific and economic experts and the affected communities concerned.

Now that we have reached the final parliamentary debate, we are moving a number of amendments in an attempt to ensure that the state gets a better deal than the one we have before

us. I know, Mr President, that you and other members will be disappointed, having seen the tabled amendments, that they only number 28, when the expectation was 100, but I point out that one of the amendments has 100 subparts to it and they are the components that relate to our suggested changes to the indenture. I imagine that it will not take as long as members might have feared to go through all of those amendments, however, we do need to work through them all very carefully.

I now want to go on to some of the promises that have been made by the state government and the federal government. Over the years, the Rann government has made all sorts of promises about this expansion, particularly in terms of jobs and environment protection. Most of these promises have not eventuated; their short lives have been consigned to media releases. I would make the point that those media releases are in an unmarked grave now that the former premier's releases are no longer available on the government's website. They had a short life and they are now buried.

Although there have been many promises made, I would like to remind the council of two of them. Both of these have been the subject of Greens motions over the last 12 months, and I will certainly not be repeating what I said back then. The first issue is that the government promised that we would not become China's quarry. The second issue is that the expansion would employ world's best practice environmental management.

Let us start with China's quarry. I remind this chamber that the premier's media statement from 2007 entitled, 'BHP Billiton's "China Option" is not South Australia's option'. I will quote from some of that media statement. It states:

> Premier Mike Rann has told BHP Billiton that the South Australian Government will strongly oppose any moves by the company to do most of the processing of minerals from the expanded Olympic Dam mine overseas. The giant mining company has today publicly revealed that it is exploring a second option to ship uranium bearing copper ore from Olympic Dam directly to China, with correspondingly lower levels of processing in South Australia.

The premier went on to say:

> South Australians own the resource. South Australians own the minerals. And the South Australian taxpayer is being asked to invest massively in infrastructure to support this project. We have a right to expect a decent return on that investment in the form of jobs and economic development for the long term.

I could have written that, but they were not my words. That was former premier Mike Rann back in 2007. He went on to say:

> We have a good relationship with BHP Billiton and will continue to work to add value to the resource. We do not want this world-class resource to be unfairly viewed as some kind of giant quarry from which both jobs and minerals are exported. I am aware that offshore processing is not the only option BHP Billiton is now considering.

It is very clear now that, from as far back as 2007, our role, as the then premier so eloquently described as China's quarry, was already being locked in. It is to this government's great shame that it did not insist on a more rigorous assessment of the domestic processing option. For more details on this issue, I urge members to go to the speeches I made on this topic in June and July of this year.

More recently, there has been another attempt to spin the idea of domestic processing. Current Premier Weatherill, I think, was misleading in claiming in *The Advertiser* recently that 'the mine will see a doubling of processing on the Olympic Dam site'. This doubling of on-site copper processing is entirely voluntary in the Development Act approval, and it is basically left to a call by the company to be made in its own self interests via the auspices of an indenture that gives primacy to commercial considerations in project configuration and infrastructure. In other words, it is up to them whether or not they do it. The Premier's claim is simply unsupported by the evidence.

The final environmental impact statement, Chapter 2, Consolidated List of Commitments, does not include a commitment by BHP Billiton to double on-site copper production to 350,000 tonnes per year. The Development Act approval, at condition 22, Mining and Processing, General conditions, which applies within the special mining lease, does not require a minimum level of on-site copper processing; rather, it provides that the production limit of 750,000 tonnes of copper per annum can be made of either refined copper product produced on-site or of an equivalent copper rich concentrate.

Condition 22 does not require a doubling of processing on the Olympic Dam site. It does provide an authority to produce up to 750,000 tonnes of refined copper produced on-site if the company chooses to do it but, equally, it could be used to only produce a concentrate and potentially for the level of on-site copper production to actually fall in the future. Of course, the

government would dearly love to claim some type of expansion of domestic process, but it has not insisted upon it. There is absolutely no guarantee that it will happen despite the government's spin.

The second promise that the government has spectacularly failed to deliver on is that this expansion would employ world's best practice environmental management. BHP Billiton stated that it was willing to be subject to the world's best practice standard. For example, in a forward to the supplementary EIS released in May, Dean Della Valle, the President of the Uranium Customer Section Group of BHP Billiton wrote:

> BHP Billiton, as the world's largest mining company, is well placed to develop a project of this importance and magnitude while ensuring best practice in health, safety, environmental management and community engagement.

The federal Australian Labor Party made commitments in the federal elections of 2007 and 2010 in the ALP policy, in their national platform, August 2009 and March 2007, that 'Labor will accordingly only allow the mining of uranium under the most stringent conditions'. They also say that they will:

> ...ensure that Australian uranium mining, milling and rehabilitation is based on world's best practice standards.

Most notably, in 2009, when the original EIS was released, former premier Rann said the following about the expansion project:

> It has got massive benefits for South Australia, but I will insist that world's best practice in terms of the environment is complied with.

But, again, we find that, now that we are considering this indenture, this promise turned out to be just words and had no substance. In my motion that was debated a little while ago (which the Labor government opposed, despite its mirroring their federal policy platform), I outlined why this proposed expansion will fall far short of world's best practice. In fact, it is not even up to Australian best practice, nor even South Australian best practice, and I would urge members to go back to that debate and remind themselves why that is, in fact, the case.

None of this has stopped federal environment minister Tony Burke from continuing to perpetuate the lie about world's best practice. In announcing the federal approval for the expansion, he said:

> My decision is based on a thorough and rigorous assessment of the proposed Olympic Dam mine expansion, including independent expert reviews and consideration of public comments received on the project's environmental impact statement. These reviews made recommendations to ensure that the proposal meets world's best practice environmental standards for uranium mining and ensures management of native species and groundwater resources.

The minister goes on:

> With these conditions, I am confident the Olympic Dam mine can progress in accordance with world's best practice in environmental protection and management.

Yet, these so-called stringent conditions are nothing more than a rehashing of all the weak commitments that BHP Billiton has already promised for years. The assessment report made it abundantly clear that this project will be worlds away from world's best environmental practice. The spin that is coming from both the state and federal governments needs to stop. It does no credit to either government, and it simply confounds the public, who deserve better. I think the government should be honest and say, 'We want this project too much, and we are prepared to let BHP Billiton dictate whatever terms it likes in order to get it.'

This bill also represents an attack on proper democratic principles and the rule of law in a democracy. First, we have the overriding of not just a small number of identified public statutes: we have a wholesale subjugation of state law to the interests of the company. Whilst there are 20 acts that get special mention, the whole of the South Australian statute book has to be read down and take second position to the commercial interests of the company as expressed in the indenture.

Another attack on democracy relates to some curious provisions that have been incorporated into the bill that appear to be designed to dissuade protest. I refer particularly to proposed new sections 14 and 15 of the act, and these sections create penalties for interference with the desalination plant infrastructure. Of course, the question must be asked: what is so special about that infrastructure? What is wrong with existing criminal laws that prohibit and punish conduct around theft, damage and interference? What is wrong with those laws? Why do we not have special provision for every separate industrial facility? We do not get a special act of parliament making special laws for interfering with ice-cream factories or shoe factories.

When you look at new section 15, you find that anyone who boats or swims over the inlet or outlet pipes of the desalination plant—perhaps on their way to see the giant cuttlefish—face a $2,500 fine unless they get BHP Billiton's permission first.

Another issue that is problematic in relation to the existing indenture, and which will be equally problematic under this new one, is the veil of secrecy that the company and the government can throw over the project. As well as the secrecy provisions of the Freedom of Information Act and the Radiation Protection and Control Act, we have additional secrecy provisions built into the indenture, which will make it very difficult for anyone to get any information about this project unless the company wants it disclosed.

I now want to move on to some of the economic issues around this project. The dollar figures that are thrown around about this project are really quite extraordinary and difficult to comprehend. The latest estimate is that this project involves something in the range of a $1 trillion to $1.4 trillion resource. This is an enormous asset that the people of South Australia own, and we are indeed fortunate to be living with such wealth. The simple question the Greens are asking is: are we getting a fair return on that enormous amount of capital?

Since the deal has been struck, the government has, surprisingly, been talking down how much we will be getting and emphasising all the difficulties and the costs for the company in their quite feeble explanation, I think, of why our return, especially in relation to royalties, will be relatively low. For example, an article in *The Advertiser* on 26 October quoted Treasurer Jack Snelling as saying that the Olympic Dam expansion project's economics were 'marginal'.

Our return will be surprisingly low. According to the assessment report, South Australian government revenues are projected to increase by between $2.4 billion and $3.4 billion over the 30-year modelling period. In very crude terms, that is around a quarter of 1 per cent of the value of the trillion-dollar resource that we own, and that is before we consider all the costs for monitoring, rehabilitation, maintenance and the many millions of dollars committed for state spending on Roxby Downs infrastructure.

Yet a week earlier, on 20 October, at the BHP Billiton AGM in London, Chief Executive Marius Kloppers was excitedly announcing how good a deal Olympic Dam was for the company. He said Olympic Dam was a tier 1 asset because it was 'large scale, long life and low cost'. It was an asset from which they would be able to 'extract decades worth of organic growth that is both highly profitable and relatively low risk'.

When working out whether or not this is a good deal for us in South Australia, we have to consider both the revenue in as well as the costs out. The big problem for South Australia is that the reason that the project is low-cost, as BHP says, is that they have been able to avoid many of the basic environmental protections and these costs will now be borne by the state. I want to talk about royalties briefly. One of the most controversial aspects of the indenture is the agreement to lock in a low royalty rate for 45 years.

In discussions at the select committee, in one of the few interesting bits of evidence to come out of that process, the task force acknowledged that there was no particular reason for choosing the 45 years, especially when the economic modelling was for just 30 years. There is simply no advantage in locking in a low royalty rate for such an incredibly long time. The government has effectively dealt us out of the bonanza, and this is a particularly economically irresponsible component of this indenture. The agreement also fails to capture the true value of our share of the revenue.

Another interesting article, which members might have seen, was again in *The Australian* on 21 October, with the headline, 'A case of Olympian incompetence by South Australia'. This article was scathing in relation to the deal that was struck. The article said:

> The royalty agreement negotiated by South Australia for BHP Billiton's Olympic Dam expansion has robbed the state's citizens and all Australians of the opportunity to share in the profits of what will become the world's biggest mine.
>
> This deal is a monumental example of state government incompetence when it comes to acting as custodian of the nation's mineral wealth.
>
> South Australia has agreed to a regime based solely on percentages and even cents per tonne of the mine's production. Mike Rann, who stands down today as Premier, has done South Australians a disservice that will cost them dearly for almost half a century.

I just remind you, Mr Acting President, that these are not my words. This is economic commentary in the pages of *The Australian* newspaper—that dear friend of the Greens. The article goes on:

> Rann and his administration should know full well that these royalties fail to capture a fair share of mining profits. This has been in the economic literature since the 1970s and was made more prominent by the Henry review. Yet the deal does not contain a single element of profits-based taxation.
>
> The case for such measures is all the more compelling given that the mineral resources rent tax will not tax the millions of tonnes of copper, uranium, silver and gold the mine will be [producing] under the 45-year agreement, because the MRRT only applies to coal and iron ore.
>
> Given that this is an agreement negotiated in the 21st century, it beggars belief the state could have agreed to a regime based exclusively on production-based royalties that hark back to medieval times.
>
> But none of these ideas penetrated the thinking of the South Australian government when it negotiated its 45-year agreement for BHP's $30 billion expansion.
>
> The three-tier regime involves 3.5 per cent for refined mineral products, meaning copper and gold, and 5 per cent for uranium oxide and uranium-bearing copper concentrates.
>
> There's also 35¢ per tonne on extractive minerals sold to a third party, but this is not even indexed for inflation, so its value will diminish over the life of the agreement.
>
> When asked to explain how the government could have agreed to a non-indexed royalty, a spokesman said it was a trade-off in negotiations because BHP had asked for the expansion to gain concessional royalty rates for new mines. Well, that issue should not have even been on the table, because Olympic Dam is an existing mine.
>
> The spokesman declined to say why a profits-based regime had not been considered.
>
> This agreement will unfortunately stand as a sad and enduring indictment of the weakness of our state governments when it comes to negotiating with powerful mining multinationals.

That is the analysis, that is the business case, as produced in *The Australian* newspaper—an absolute damning indictment of incompetent negotiation that future generations will bear the cost of.

I am looking forward to the debate when we get to the royalty section of the indenture. As a basic principle, the Greens believe that BHP Billiton should be subject to future changes (up or down) in the royalty rate, in the same way that every other mining company is subject to those changes.

Another issue that I have raised in parliament before is that of a sovereign wealth fund. Essentially, these types of funds are a way for us to live off the interest of our capital, rather than spending the capital itself. Notwithstanding the complexities of the horizontal fiscal equalisation arrangements that affect commonwealth/state financial arrangements, this indenture bill completely fails any test for consideration of this issue. Again, the article in *The Australian* on 21 October states:

> Given the environmental legacy of this mine, including above-ground storage of radioactive tailings and risks to water resources, a profits-based royalty could have been paid directly into a sovereign wealth fund. This fund could be used to compensate future generations who will most certainly have to live with greatly depleted mineral resources, and the environmental consequences of this mammoth venture.

The article concluded:

> For a project of this nature and magnitude, with inherent risks for future generations, taking out insurance in the form of a future fund is clearly warranted.
>
> But this won't happen with the royalties agreed to by the myopic state government.

There are commentators who agree with the Greens that we could and should have done much better.

A further issue that I have raised in parliament this year is the way that we can value-add structural benefits to South Australian manufacturing industries from this expansion. I was very impressed with what Thinker in Residence Göran Roos was saying about extending the benefit of the mining boom beyond just that industry sector and into manufacturing.

One of the key points that Professor Roos has been making is that our manufacturing sector is at significant risk from the emergence of what is often called 'Dutch disease'. Dutch disease is the phenomenon where a significant decline in the manufacturing sector follows a resources boom. An economy becomes so inflated by revenues from the resources industry, which leads to a sharp increase in foreign currency that throws the exchange rate out of kilter, making exports from other industries prohibitively expensive.

Professor Roos argued strongly that South Australia needed to look to Ontario, Canada, and Norway to see how they have responded to major resources booms through government-led industry intervention. In particular, Professor Roos said that Ontario has actually used the resources boom there to create new local manufacturing. Professor Roos talked up the potential of the Roxby expansion to assist rather than harm, if the right rules were in place.

The indenture makes mention of an industry and workforce participation plan; however, there are no specific commitments or requirements in that plan. The only thing the company is required to do is prepare a plan, and that is simply not good enough. My very great fear is that the government has again missed an incredible opportunity. The question is: what if the plan is no good? When that question was posed to Paul Heithersay of the Olympic Dam task force during the briefing, his only response was that the indenture minister would talk to the company and that public pressure would force BHP Billiton to do the right thing. That approach strikes me as incredibly naive or, at best, hopeful.

A number of special deals are provided to the company under this bill and this indenture. The indenture is populated by a significant number of special deals, most of which are unnecessary. What strikes me is that it is particularly illogical that the larger and wealthier a corporation is the more discounts and more special deals it attracts. My office has been contacted by a number of small business operators expressing their anger and dismay at how unfair the deal is compared with the deal that they receive from the state government.

One thing that is missing from the economic analysis of the economic benefits of this project is how much, in total, taxpayers are actually going to be giving to BHP Billiton. For example, let us look at the amount of the diesel fuel rebate that the company will receive from the commonwealth. BHP Billiton, the world's largest and richest mining company, is set to make an absolute killing and to rip the public purse through diesel fuel subsidies of 18.5¢ per litre less than you or I, or any other non-mining company, would pay.

The Olympic Dam expansion will increase diesel use from 25 million litres a year in the current underground mine operations to something like 480 million litres of diesel a year at full open pit production levels. Diesel usage will average some 400 million litres a year throughout the five or so year period of the construction of the open pit, and diesel subsidies will pass $70 million a year and total $350 million over that period of the five or so years it will take to dig the hole. These subsidies will pass the $60 million a year that the company will be paying in state mining royalties, so they will be making a profit when you look at these two measures, when you trade off the royalties and the diesel rebate—and that will be the situation for much of the rest of this decade.

This intended massive public subsidy to promote greenhouse-intensive fuel use in this BHP operation contrasts with the very limited commitment that the company has given in its BHP Climate Change Position paper, which is from June 2007 and which was referred to in the draft environmental impact statement. That statement requires them to invest an equivalent figure of $350 million over a similar five-year period—that was 2008 to 2012—to support low emission technology developments and greenhouse abatement across all the company's operations.

So, diesel use will rise further, and it will continue through decades of mining operations as they continue to dig and widen the pit and to haul ore from a deepening pit of up to a kilometre down, with diesel subsidies to reach nearly $90 million a year at full open pit production levels. Using information from the company's EIS documentation, the Australian Conservation Foundation calculated that if this travesty of a subsidy were to continue from the start of open pit construction through the now approved mining operations, up to the year 2051, the subsidy would total over $3.2 billion and entail diesel usage of up about 17,900 million litres of diesel in the Roxby operation.

Another unacceptable special deal that the company has is the granting of $1 rent for a large amount of public land with the option, at the company's request, of turning some of those leasing arrangements into freehold title. In effect, we are giving away many hundreds of square kilometres of public land to the world's richest resource company for nothing.

In relation to employment, all sorts of figures have been bandied about regarding how many jobs will be created at Olympic Dam. One of the early popular figures was 20,000, although since the government has rolled over on the China option the figure is down to about 13,000. However, I would strongly recommend a cautious approach before we believe how many long-term jobs will really be created. The mining industry is very good at promoting a myth of being big job

creators. I recommend that members look at a recent report from the Australia Institute entitled 'Mining the Truth' that debunked this and many other myths.

I also remind members that it was BHP Billiton who devastated the town of Ravensthorpe in Western Australia and sacked with no notice hundreds of workers when they closed down the nearby nickel mine overnight. This is an industry that has been shedding workers for decades in response to new technology and it will not be afraid to do it again. It is also clear that BHP Billiton will aggressively use cheaper foreign workers on a fly-in/fly-out basis from overseas through the new airport that we are being asked to approve through this indenture process.

The big question about jobs is: how many more South Australian jobs would have been created if the government had insisted on domestic processing rather than exporting our ore to China for processing? That most fundamental question has received no answer in any of the documents provided by the company, and I will be interested to see what sort of answer we get when we ask that question in committee.

I now refer to the environmental management provisions of this bill and indenture. Much of the detail about how the environmental impacts of the project will be managed are to be contained in the environmental management program under clause 11 of the indenture. The first thing to say about this arrangement is that the sign-off and supervision of compliance with that program is to be conducted by the indenture minister, who is almost certainly to be the mining minister and not the environment minister or the Environment Protection Authority.

The government has made a huge song and dance about how the independent EPA will have a primary role, yet when you look a bit closer you will see that it still has its hands tied and in fact will not be the key decision-maker for most environmental decisions. I will have more to say about the alleged role and independence of the EPA in committee, but for now I just remind members that, even under existing South Australian law, the EPA does not have the power to say no to licensing a declared major project such as this. To suggest somehow that the EPA will be able to put a stop to bad practices, or even shut down operations if it is not happy with the company's environmental performance, is just not true.

At first sign of a dispute with the EPA the company will, first, try to bog down the agency in negotiations. Then, when push comes to shove, it will be off to arbitration, where the decision-maker is obliged to have regard to the objectives of the project but not the objectives of our environmental legislation. After all, where the two conflict the indenture and the commercial needs of the project will prevail in all things.

I turn now to the nuclear implications of this project. What is completely lacking in all this debate is any discussion around the appropriateness of South Australia's participation in the global nuclear cycle and how South Australian uranium is implicated in these global problems, including nuclear weapons, nuclear waste and, most recently, the nuclear disaster at Fukushima. The Fukushima disaster was an enormous wake-up call for an industry that loves to trumpet its safety. It is an enormous evolving catastrophe that has meant that a large swathe of the Japanese countryside is now essentially a sacrifice zone. As members would know, areas within 20 kilometres of the reactors are now uninhabitable and off limits, and that is what radioactive substances do—they are frighteningly toxic.

At the time of the Fukushima disaster, the federal government declined to confirm or deny whether any South Australian uranium was involved. The company itself cited commercial in confidence, saying that it does not disclose its contracts as to where (that is, which utilities and reactors) its uranium goes. However, the website of Tokyo Electric Power Company (TEPCO) confirms that it bought uranium, under long-term contracts, from Olympic Dam. Earlier, Western Mining (WMC Resources) reports confirmed the sale of uranium from Roxby to TEPCO.

What we now know is that it is now highly likely that Australian uranium fuelling the Fukushima nuclear disaster included uranium from the Olympic Dam mine and that this may have been in five of the six reactors that had been part of that disaster. But I do not expect people to take my word for it. I refer members to the evidence given before the Joint Standing Committee on Treaties in Canberra on 31 October. I will share with members a brief exchange from that committee hearing. The acting chair of that committee, Senator Ludlam from Western Australia, asked the following question of Dr Robert Floyd, Director General, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade:

Senator LUDLAM: In the wake of the disaster in Japan, it has been impossible for the public to discover whether Australian uranium was in the plants at Fukushima Daiichi. The Japanese government knows, the utility

knows and we know that Australian uranium is obviously sold to Japan in quite high volumes, but not where it goes. We are told that these matters are commercial in confidence. As regulators, how often do you bump into commercial-in-confidence considerations in trying to do your job?

I will not read the whole of Dr Robert Floyd's response, but he did say the following:

> We can confirm that Australian obligated nuclear material was at the Fukushima Daiichi site and in each of the reactors—maybe five out of six, or it could have been all of them; almost all of them. As a percentage, we have the details of that amount that came through our reconciliation visit with Japan.

So, there you have it: the uranium that we mine in South Australia is now contaminating—and will do so for some time—the countryside of Japan. In fact, on speaking to a journalist earlier today, I have not seen it yet but apparently there is a report out today that shows that some 10 per cent of Japan is now affected by radiation from the Fukushima disaster.

To put the danger of uranium into some sort of context, look at it like this: the total value of uranium sales from Australia since the Olympic Dam mine began in the 1980s is something in the order of $25 billion to $35 billion. So far, the cost to Japan, in the wake of the Fukushima disaster, is reported to be over $70 billion—in other words, three times as much—and every time fresh reports come out, the scale and cost of the disaster rise.

The next issue I want to look at is this idea of China as the primary market for South Australian uranium. BHP Billiton has effectively proposed only one country, China, for direct sale of uranium-infused concentrates. Precedent sale of uranium in concentrates is not, in fact, sanctioned under any of Australia's nuclear treaties and bilateral uranium sales agreements, and BHP Billiton's plans to export this material to China requires a new or amended nuclear treaty with China. The Greens believe that such a treaty would further undermine our so-called nuclear safeguards.

Federal minister Burke has signed off on the company's plans and granted Environment Protection and Biodiversity Conservation Act approvals to the infrastructure, processing and transport for this uranium-infused bulk copper concentrate, but he has done that ahead of and pre-empting the negotiation and signing of a nuclear treaty before it has been presented to federal parliament and before the required inquiry has been conducted and certainly before any treaty has been signed and ratified.

The very great fear of the Greens is that commercial vested interests in uranium mining companies are in fact now writing the script for Australia's uranium sales deals, and this is the case under both Liberal and Labor federal governments. Now it seems that the Prime Minister wants to write off Australia's commitments to the non-proliferation treaty to sell uranium to India, no doubt in large part for BHP Billiton's interests to provide a second market for the uranium-infused bulk copper concentrate from the new open pit mine, and also to allow them to lay off some of the increased uranium yellowcake production from the pit onto India, which is one of the very few new potential nuclear markets.

The illusion of protection in uranium sales will further unravel as the Australian safeguards and non-proliferation office bookkeeping exercise fail to track uranium that exists in concentrates in non-transparent China, as the developing world struggles with nuclear risks that Japan was unable to contain and as Australia's uranium fuels nuclear insecurity in one of the most volatile regions of the world. Therefore, the Greens strongly argue that a full nuclear events risk analysis is required, that includes the potential economic consequences for this proposed project and the potential for loss of BHP Billiton's social licence to operate in the sale of uranium.

The sort of risk analysis that we believe should take place would include things such as the following: nuclear accidents, including the lessons that we have learned from Fukushima; the continued unresolved nuclear waste management problem and the consequences that will flow from the use of BHP Billiton's Olympic Dam uranium; the failure of state transparency or accountability on nuclear issues—no-one ever hears of whistleblowers in China; if we think it is difficult to get information here, just imagine what it is like in countries like China—nuclear proliferation, the threat of use or the actual use of nuclear weapons; and many other things need to be taken into account.

The impact on the willingness of countries to invest in nuclear has been considerable following the Fukushima disaster, with Germany and Japan seeking an early phase-out of their domestic nuclear power industry. This will have a sustained impact (no doubt) on uranium prices, and not even the Prime Minister's current push for expanding those sales to India is likely to affect that result. This is a good opportunity for us in South Australia to reconsider whether we want to be

such a pivotal part of the global nuclear cycle. We need to ask ourselves whether this is our gift to the world, our gift to the people of Japan, a gift that keeps on giving for many thousands of years.

I want to talk now about water use in relation to this mine. I will start with the desalination plant, because much of the public concern about this project is focused on the location of the desalination plant at Point Lowly. The sudden recent drop off in cuttlefish numbers has emphasised how important it is to protect this area from the encroachment of industrial activity, of which this mammoth desalination plant is just one part.

I acknowledge that there has been a tightening of discharge dilution thresholds; in fact, this is, I think, the only extra condition in the whole of the assessment report, beyond what BHP Billiton had already promised to do in its EIS, but the pollution load is still unabated and ecological conditions applied may only be recognised and attempted to be addressed after the event of the impact. It may well be that irrecoverable impacts occur, such as a change in cuttlefish breeding behaviour and a decline in the abundance of the species. At the end of the day, the plant is simply located in the wrong location; no amount of retrofitting and buying in of scientific expertise can get past that fact.

It is not just the cuttlefish. In the Upper Spencer Gulf there is an incredibly important nursery for a number of significant commercial fisheries and aquaculture species. In July, in response to the release of the supplementary EIS, the Keep the Gulf Clean campaign, which was launched by the Spencer Gulf and West Coast Prawn Fishermen's Association in 2009, in response to BHP's plans to build the desalination plant, released a media statement as follows:

> Over the last two months, we've had a team of eminent Australian marine scientists reviewing in detail BHP's supplementary EIS as it relates to the Point Lowly desalination plant and the very real conclusion is that the risks to the marine environment, and in particular prawn species, not only remains, but in BHP's own assessment, has increased.
>
> The scientific team led by marine environmental consultant and former Wildcatch Fisheries SA Chairman, Dr Gary Morgan, has called into question the science and the interpretation of the data.

The release and the accompanying report then details the many flaws in the eco-toxilogical data presented by BHP, and equally concerning is the analysis of BHP's own updated hydrodynamic modelling that identifies the added risk of toxic deoxygenated layers of hypersaline water pooling near the seabed. The release concludes by Dr Morgan saying:

> Given the inadequacy of BHP's analysis, an independent scientific panel must be appointed to determine and conduct the appropriate test and analysis because what has been done to date is far from convincing.
>
> The supplementary EIS suggests that marine communities near the discharge point could resemble those 10 to 20 kilometres north of Point Lowly. Ominously, that's an area where prawns and giant cuttlefish do not occur in abundance. I cannot stress enough the critical need for robust monitoring. We are asking that this fragile marine environment is respected.

I should point out that, since its launch, the Keep the Gulf Clean campaign has been supported by a range of high-profile ambassadors from the fishing and aquaculture industries, including Tuna King, Hagen Stehr, as well as food industry ambassadors, Maggie Beer, Simon Bryant and Michael Angelakis.

I applaud the stand of the Spencer Gulf and the West Coast Prawn Fisherman's Association and the many other individuals and organisations who have been campaigning on this issue for years, including Andrew Melville Smith, Greg Curnow, the members of the Cuttlefish Coalition and scientific experts, such as Bronwyn Gillanders, Dan and Emma Monceaux, and many others. I would like to especially acknowledge two people in particular, and I would like to do so because they were denied the ability to speak to the select committee. They are Sid Wilson from the Alternative Ports Working Group and Associate Professor Jochen Kaempf, who has arguably done more than anyone else to push BHP Billiton to justify the science behind its misguided proposal. Sid Wilson wrote:

> Dear member of Parliament. Community groups and individuals in the Whyalla region [and throughout the world] have grave concerns re the impact and risks that the installation of a BHP Billiton desalination plant will place on the Lowly Peninsula and Spencer Gulf marine environment.
>
> In the near future, you will make a decision on the indenture act associated with the new mine development at Olympic Dam by BHP Billiton.
>
> A critical issue in the indenture is the proposal to develop and operate a large desalination plant on the Point Lowly Peninsula and discharge huge volumes of saline wastewater into the Upper Spencer Gulf. The indenture allows for future extensions to the proposed plant.

Concerns have been expressed regarding the desalination plant site over the last three years in many forums; community, industry and government via submissions, media, personal and group letters, emails and representation. Modelling and research has been carried out by scientists.

Currently, the government draft indenture for the new mine supports the desalination plant on the Lowly Peninsula. As this indenture goes to parliament, the following concerns must be addressed:

There is still a wide variance on the views held by reputable scientists regarding the risks that the huge saline wastewater discharge presents to the gulf.

Much of the support for the proposal to be sited on the Lowly Peninsula is based on modelling and it appears that little or no proof of the modelling outcomes have been demonstrated in practical real terms in situ.

The risk during dodge tides in the Upper Spencer Gulf appear, to people with local knowledge, to be underestimated.

There are alternative sites for the desalination plant which appear to be better options and have not been subjected to detailed investigation.

The current and potential value of the Lowly Peninsula and the Upper Spencer Gulf marine areas to the liveability—social, recreational, tourist, environmental and economic diversity, sustainability and prosperity of the region and the state appear to be misunderstood, undervalued or ignored.

The desalination plant project impact and risk on the Lowly Peninsula appear to have been considered in isolation as a single project, with no-one looking at the big picture, combined of existing and other proposed industries on the Lowly Peninsula ie. the existing Santos plant, approved diesel storage and refinery, proposed commodity port, concept of an ammonium nitrate plant and the proposed desalination plant.

The consequence resulting from an excursion in the plant in a large, high flow of saline waste return water to the gulf could be extreme and it appears that it relies on instrumentation and human control to manage it.

Therefore the question that needs to be asked and debated is 'Are the risks of operating a large desalination plant on the Lowly Peninsula and Upper Spencer Gulf too high and, therefore, the precautionary principle should be applied? In short: don't do it.

The other person who I think the select committee was short-sighted in not hearing from was Professor Jochen Kaempf, and this is what he had to say:

This is a message for members of the South Australian Parliament and a final call to protect the iconic Giant Australian Cuttlefish of the Upper Spencer Gulf from industrial pollution.

This is an important moment in South Australia's history. At this point in time, the South Australian Parliament is in the process of finalising amendments of legislation that will allow BHP Billiton to install a large seawater desalination plant at Point Lowly in the Upper Spencer Gulf.

Approval of this Indenture Bill will grant BHP Billiton the exclusive rights to continuously pollute the Upper Spencer Gulf for many years to come. The pollution zone will be located within a short distance of 1 km from Australia's most precious marine breeding habitat of the Giant Australian Cuttlefish. This species is a true Australian icon and endemic to the Point Lowly region.

The appearance of tens of thousands of cuttlefish in the Point Lowly region in June/July every year is a spectacular natural wonder, not occurring anywhere else in the world. Cuttlefish have a short life span of only 1-2 years and are therefore particularly vulnerable to marine pollution. Adult cuttlefish are bottom feeders. Their exposure to the pollution zone cannot be avoided and consequences are uncertain. Nevertheless, it is not far-fetched to predict that large-scale industrialisation will cause the extinction of the cuttlefish and other marine species in the Upper Spencer Gulf.

From the scientific point of view, it is important to point out that BHP Billiton's choice of Point Lowly for the desal plant has been based on severely flawed science that did not compare the relative ecological importance of alternative regions. This choice contradicts first principles of conservation and risk management and cannot be classified as world-best practice. Instead, this choice implies a high risk of destruction of important natural heritage.

As [a] marine expert, I hereby urge members of the South Australian Parliament to vote against the indenture bill. I ask every decision-maker involved to step back for a minute and to listen to their heart, to think about their children and their children's children, and to ignore their political alliance before making a decision in this important matter.

What really matters at the end of the day is that we can tell our children that we did the best we could to conserve and protect Australia's precious environment. Indeed, economic growth is important in a competitive world, but only if this does not pose a severe threat to the environment. The most efficient control mechanism for the protection of the cuttlefish is risk prevention. Don't allow BHP Billiton to pollute this precious marine ecosystem. Make a wise decision. The world is watching.

Professor Jochen Kaempf, whilst that might seem to be emotive language, has showed many members of this place, in various committee hearings, his PowerPoint presentation and his detailed oceanographic modelling showing how the water flow in the Upper Spencer Gulf makes it one of the worst possible locations for a desalination plant.

Of course, the desalination plant is not the only water concern in relation to this project. With the expansion, BHP Billiton intends to increase, not decrease, its take of publicly-owned fossil water from the Great Artesian Basin. The review of this indenture by this parliament provides a unique opportunity for us to return 42 megalitres of water each day to the Great Artesian Basin without impacting adversely on any aspect of the mine expansion.

To explain, the company's licence to extract water from the Great Artesian Basin, issued in 1986, will expire in 2036. The licence grants to the company an open-ended right to renewal such that the company will be entitled to take water from the Great Artesian Basin for the life of the mine. Certainly, the indenture we have before us envisions the right to continue up until at least 2051. The company is currently complying with the terms of its GAB licence and the licence is so drawn that, so long as the company complies with the licence conditions and the GAB extraction remains sustainable, this parliament will never be able to terminate the licence. That is why we need to deal with it now in this indenture.

Experts and other commentators have asserted that there is nothing in any part of the EIS documents that indicates that the GAB resource is integral to or even significant for the expanded Olympic Dam mine. Nowhere, in any public document pertaining to the expansion of the Olympic Dam mine, has the company asserted that it needs the GAB water. Instead, the language is one of entitlement to that water and this is not a reasonable basis to allow this extraction to continue, when we have the opportunity to end it.

One person who has been active in this debate, Mr Richard Quilty, BHP shareholder and regular commentator in the media, has suggested that the debate here in the South Australian parliament exposes a very dangerous precedent. If we, during this approval of the indenture, decline to seek the company's surrender of its GAB licence, we will establish a new and very significant environmental, planning and perhaps even legal precedent. He says that those who, in the future, seek a right of access to GAB water, will be able to rely on the BHP Billiton approval to establish that need for GAB water is not a prerequisite to the establishment of a right to access that resource. This is certainly a precedent with substantial environmental and social consequences for the whole of the Great Artesian Basin.

Not only that, the only justification which BHP has mounted in its environmental impact statement for the continued extraction of water from the GAB, once the desalination plant is constructed, is the significant capital invested in the development of the GAB well field and associated pumping stations and pipelines. Those words are from the EIS, yet the bore fields infrastructure was actually constructed by the mine's previous owner, Western Mining Corporation, prior to 1986, and again, before 1999.

In fact, there has been no substantial investment by BHP Billiton in bore fields infrastructure since the mine was acquired in 2005. Furthermore, against the argument that the acquisition price for WMC of $9 billion included any substantial investment in bore fields infrastructure, the following points, I think, show the lie to that assertion.

Firstly, the proportion of the capital applicable to the bore fields infrastructure would have been minuscule against the total value of the other mine infrastructure acquisitions. In other words, it was never a substantial investment. The current value of the Olympic Dam deposit was recently asserted by former premier Rann, in the presence of BHP Billiton CEO Marius Kloppers, to be in excess of $1.4 trillion—in other words, more than 150 times the 2005 acquisition price—and that figure shows that that price, in 2005, and the small part of that that might relate to bore fields infrastructure, is entirely insignificant.

The bore fields infrastructure is, in some cases, 25 years old and, in any case, I do not think any of it is less than 12 years old. Any capital investment in that infrastructure would have been amortised or depreciated, if not totally written off, by now.

At last week's AGM in Melbourne, the issue was raised from the floor. Not only did all shareholders applaud the woman who raised the issue at the end of her presentation, but Jac Nasser, BHP chairman, responded to the meeting by asserting that she was making a very good point. He invited her to meet personally with Nasser and the board, after the AGM.

It is remarkable and, in fact, deeply disappointing that the state government, in all the months of negotiations over the indenture, did not manage to achieve what one person speaking for five minutes on the floor of the BHP Billiton AGM managed to achieve. Premier Weatherill claimed in *The Advertiser* recently that 'this GAB water will have no foreseeable impact on the

basin'. I think that is a misleading statement. The extraction of significant amounts of water has a material impact on the Mound Springs community—it has in the past, and it will in the future.

The unique Mound Springs community is listed as an endangered ecological community. It is protected under section 18 of the commonwealth EPBC Act and, as a result of our allowing the extraction to continue, it will ensure further risk and pressure on that listed ecological community. So, now is the time; it is possible to do it, especially given that the desalination plant (albeit in the wrong spot) will provide more than enough water for the mine's needs. This is an opportunity to wean them off the Great Artesian Basin, and we should take that opportunity.

In relation to energy and greenhouse, we know that in the next decade the expanded Olympic Dam mine will increase South Australia's energy demands by at least 40 per cent, and it will increase our emissions by up to 14 per cent. The latest state estimate for Olympic Dam greenhouse pollution is for an increase of 4½ million tonnes of CO_2 equivalent per annum. This will undo much of South Australia's efforts to use renewable energy, to put urgent action to reverse climate change and to prevent South Australia contributing to science-based targets for the reduction of greenhouse gas emissions by 2020.

The South Australian government approval conditions effectively limit the required contribution of renewable energy to only some 10 per cent of the total electricity demand by 2020, and that is after allowing for heat recovery through co-generation. That is far short of both the state renewable energy target of 33 per cent and the commonwealth mandatory renewable energy target of 20 per cent.

It is quite remarkable that the best the company is required to do is prepare a plan. There are simply no requirements to reduce their emissions until 2050. The Conservation Council of South Australia, amongst others, has argued that clause 11A of the indenture fails to require any tangible requirement for BHP Billiton to achieve the stated EIS goal of a 60 per cent reduction in greenhouse emissions by 2050.

Furthermore, there are no requirements in clause 11A for BHP Billiton to commit to medium-term targets, or a greenhouse gas reductions pathway, commensurate with the scale of emissions that will be caused by the mine. Also, there are no requirements to report energy and greenhouse emissions from the expanded mine. There are no requirements for energy use and greenhouse gas reporting to be provided to South Australian stakeholders, disaggregated into the key components of the expansion and the expanded mine.

I note that national greenhouse and energy reporting standards do not provide disaggregation of emissions and do not include scope 3 emissions. This issue of scope 3 emissions is, in fact, quite critical; for example, just the purchase of trucks to haul the overburden 24 hours a day, seven days a week for six years, may result in emissions of half a million tonnes of CO_2 equivalent before any diesel is even added to the fuel tank of the truck.

There needs to be much greater accountability in the reporting of energy use and greenhouse gas production, and there must actually be some real mechanism in place to reduce this enormous greenhouse burden. A focus on fossil fuels, rather than long-term investment in renewable energy, is not responsible and it misses an opportunity. It is one of those areas where we have completely missed the incredible leverage that we have to require BHP Billiton to provide for their energy needs through renewable energy.

In 2006, I had an opinion piece published in *The Advertiser*, and in it I argued that there were two possible solutions for the government to resolve the clash between the massive energy demands from the Olympic Dam expansion and the need for urgent action on climate change. I said:

> Either the expansion must take place without a significant increase in emissions, or the rest of the state must cut much deeper and faster to compensate. The good news is that either response has the potential to transform our state's economy for the better.

Back then I noted that there was a record $14 billion corporate profit, that BHP Billiton was in a wonderful position to invest, and invest heavily, in renewable energy in order to cut its own emissions and that such an investment would be a massive boost for an important growth industry.

The second response is also potentially exciting. To achieve deep cuts across the rest of the state will require most of our immediate climate change-related problems to be tackled immediately—such as air conditioners which skew our electricity market at peak times—and would require us to resolve the urban transport problem and force us to create an affordable public

transport solution that provides for most trips for most people in urban areas. Once we find solutions to these problems we can then export them to the rest of the world, and that guarantees smart jobs into the future and helps prevent further climate change in other places.

What is depressing is that the government has chosen a third path from the two I suggested five years ago: the third path, apathy and avoidance. Yet the potential for transformational investment in next generation technology—such as solar thermal and geothermal—is very real. However, these things are not going to happen unless the government insists on it, and until then BHP Billiton has made it abundantly clear that they will only invest in renewable energy when it is at the same cost or cheaper than dirty fossil fuels. So where is the incentive? Where is the pressure that we should be putting on BHP Billiton to do better?

The last area of environmental concern that I want to talk about is that of issues in relation to the actual mine site. Essentially, it is being turned into a giant radioactive sacrifice zone, and it will be one of the largest on the planet. Again, I have already spoken extensively in this chamber about what is planned for the management of tailings, the waste rock pile and the open pit, and I do not want to go back over that, but my argument was, and still is, about the need to return the tailings to the pit. That is world's best practice, that is what is required at the Ranger mine in the Northern Territory. If members want more information about that, they can look at my contribution of 6 July.

I do want to touch on just two aspects of the proposed tailings management: the lack of adequate lining of the tailings facility, and an issue that we do not hear much about, and that is the risk to birdlife. In relation to the lining of the tailings pit, in response to my recent question in *The Advertiser,* 'How can the government claim that they have met their public commitment for the expansion to meet world's best practice when only 4 per cent of the tailings dams are to be lined and the dams are designed to leak?', the Premier made a substantial public admission that natural sediments are being used instead of a plastic liner.

What the Premier did was expose himself in claiming that this use of natural sediments is considered to be more reliable than a plastic liner. That is simply not true, given that leakage through the natural sediment is estimated to be in the order of eight million litres per day over the first 10 years, and that a plastic liner would greatly reduce that amount of leakage. Essentially, the government is allowing the company to avoid basic environment protection costs based on the assumption that the natural limestone layer will be able to absorb the radioactive acid leachate. Yet this is pure speculation and does not take into account pooling and the subsequent deep cutting of hot spots in the limestone layer.

Again, I make the point that the only reason BHP Billiton can claim that this is a low cost project is because they have been able to avoid basic costs of environmental protection, such as 100 per cent lining of the tailings facility. The plastic lining apparently costs some $180 to $200 per square metre, and this would be some $30 million per tailings storage cell to line the central 4 per cent of those facilities. BHP Billiton is being allowed to avoid the additional environmental costs of some hundreds of millions of dollars by fully lining all the cells.

It may reduce its short-term costs, but it will massively increase the long-term cost for rehabilitation that ultimately the state will have to wear. Once again, I remind members that world's best practice for uranium tailings is in-pit management, that is, putting the tailings back below the ground in the form of an open pit mine and thereby ensuring the greatest possible physical and radiological safety in the long term; by long term, we are talking about 10,000 years.

In relation to bird life, Birds SA has identified that the tailings storage facility is a major threat to birds. According to BHP Billiton's annual environmental and monitoring reports, the existing tailings storage facility, they admit, is responsible for about 50 bird deaths per annum in the first 10 years or so, 895 birds in 2006, 311 in 2007, and 282 in 2008. These are gross underestimates of the true mortality that was acknowledged in the draft EIS. The present facility and the evaporation pond has about 400 hectares of tailings storage facility, plus a further approximately 130 hectares of evaporation pond.

The proposed expansion would increase the size of this facility to 3,400 to 3,800 hectares, and this greatly increases the threat to local bird life. BHP Billiton's solution to the threat was to partially cover the area with netting and to introduce design changes, which it hoped would reduce the risk. The Birds SA submission to the original EIS questioned the ability of the netting to survive in the acidic environment, the likelihood that it would be maintained adequately, the lack of suitable

back-up should the netting fail, and the lack of a firm commitment by the company to actually do anything.

Apart from clarifying some questions, the supplementary EIS provided no change to the existing design of the expanded tailings storage facility and contained no further commitments by the company. Again, much more needs to be done, and these requirements should be included in the indenture agreement. Things that should be included are: the erection and maintenance of netting over the central decant ponds and the new balance ponds; a more reliable system of monitoring and reporting of losses in the annual environmental report in sufficient detail to allow the effectiveness of control measures to be assessed; and, finally, we need much greater investment to research methods to protect this area from negative bird interactions.

I want to move on to native title and the rights of Indigenous people. South Australia has a sad history of engagement of Indigenous peoples in mining projects and in negotiations for access to land. Over decades, mining companies have picked who they want to deal with and ignored those who disagree. Back in the days of Western Mining Corporation, this was particularly divisive. It led to violence and even a death in the local Aboriginal community in Marree.

If members want to know more about the tactics that were used back then to divide the local Aboriginal community in the 1980s and 1990s, go back to the ABC Radio National *Background Briefing* story of Sunday 5 March 1995. The transcript of that story is still on the internet, and the reporting by Helen Thomas and Matt Peacock was very comprehensive. That is where you will find the sorry story of how mining companies interact with traditional owners.

I understand that a number of Aboriginal groups have since signed agreements with BHP Billiton not to talk publicly about the expansion, so it is difficult to assess the diversity of opinion amongst Aboriginal people on this matter. There are other groups, however, who have not reached agreement, and they are more able to speak out. The only submission to the select committee was from Kevin Buzzacott, an Arabunna elder from Lake Eyre. He wrote to the committee to request a moratorium on the Olympic Dam expansion. He said:

> I am worried about the ongoing health issues related to uranium mining, seen now especially at Fukushima and ongoing at Chernobyl. The most serious issue I have is the destruction to our ancient sites and the misuse of old underground water. There has been irreversible damage done already, and in the Aboriginal way the old country is sacred. It is prohibited to destroy ancient country.

Mr President, a matter that I know is close to your heart and to many members here is the issue of worker safety. This is another issue the Greens have tried to bring to public attention over the last few years. We have serious concerns about worker exposure to radiation at Olympic Dam, and we have particular concerns about exposure to airborne polonium-210, the notorious substance that killed Russian Alexander Litvinenko in London five years ago; members might recall that incident. It is a substance that is so toxic that the tiniest amount is absolutely fatal.

We believe that BHP Billiton is risking the lives of its staff and its employees at Olympic Dam by exposing them to unsafe levels of radiation. In my submission to the original EIS, I explained how, based on documents I obtained under freedom of information, BHP Billiton uses manipulated averages and distorted sampling to ensure its official figures slip under the maximum exposure levels set by government. The EIS for the expansion simply failed to demonstrate that worker exposure to radiation in the smelter operations will be below international standards, and it underestimates the worker exposure likely to result from the expansion.

The response from the company is not satisfactory as far as I am concerned. BHP Billiton has speculated that increasing smelter throughput by 60 per cent will result in a reduced maximum exposure of nine millisieverts, but this claim has no credibility. The most exposed workers, the furnace tappers and the technicians, will actually spend a greater portion of their work time in the most exposed areas as furnace tapping will take the greater part of the 24-hour operating cycle. BHP Billiton has engineering knowledge and capability to fix the problems in the existing smelter but appears to lack the commitment.

In June last year, Hendrik Gout from the *Independent Weekly* did a damning expose of the problems of radiation exposure at Olympic Dam, based on the detailed information provided by a whistleblower who was concerned about what was going on. Mr Gout described in his article why concerns remain despite BHP Billiton's assertions that there is no problem. He said:

> Say you go down to Glenelg for a swim. The government says it's safe because the yearly average for e. coli (bacteria found in human faeces) is below danger levels. But taking a yearly average is the wrong

methodology. You want to know if the water's safe on the afternoon you go swimming. If you're up over your head in...[biosolids] it makes no sense saying the water's safe over a 365 day-a-year average.

Yet that is the very system that is used at Olympic Dam: air samples are taken over long periods and then averaged out. Polonium-210 is released in bursts and any single burst could be deadly, even if the average meets the standard.

In the Olympic Dam smelter there are high emissions during furnace tapping when workers are present, and this occurs around 30 per cent of the 24-hour cycle. Monitoring is done for a few shifts per month and not correlated to the tapping times or process events. This is analogous to measuring the noise from equipment which runs part time, then measuring it when it is stopped and claiming the average noise exposure is less than the regulations. BHP Billiton uses as a defence that technicians are provided with respirators, although these are compulsory only during the tapping process itself. Another quote from the *Independent Weekly* report explains why that is simply not adequate. It states:

'You have to understand the smelter,' said one staffer. 'It's hot, almost always over 100 (38 degrees C) and often more. The masks are uncomfortable. They make it hard to see. They're heavy, awkward. People sometimes slip them off except when they're not actually tapping, but the...Polonium-210 is everywhere in the smelter.'

The real answer is to remove the danger and not disguise it with a respirator.

BHP Billiton does not undertake continuous personal monitoring of exposed workers; there are no blood tests or urine sampling for radiation poisoning. Therefore, BHP Billiton cannot guarantee that workers have not been exposed. Independent site supervision of radiation monitoring and personnel medical examinations, including urine testing of workers, is required to validate that workers are not exposed to levels that increase the risk of cancer. The government must commit to a longitudinal health study of Roxby workers to ensure that they are not at risk.

In relation to health impacts other than through radiation, there were two submissions made to the select committee, which decided it did not need to hear anymore information about. The first submission is from Doctors for the Environment and the second one is from the Medical Association for the Prevention of War. I will read a few brief extracts from those submissions. Doctors for the Environment, as members might know, is a voluntary organisation of medical doctors in all Australian states and territories. They work to address diseases (local, national and global) caused by damage to the earth's environment. They are, effectively, an independent public health organisation. Doctors for the Environment note recital No. X in relation to the indenture, which provides:

Health, Safety, Environment and Community...issues are of high importance to the Company. The Company's aspiration is that its operations under this Indenture will cause zero harm to members of the public, its workforce and the communities in which it operates, and that any environmental impact of those operations is minimised. The Company, in conjunction with the State, intends to continue to take adequate measures to safeguard the public, the workforce and the environment in relation to operations under this Indenture.

Doctors for the Environment point that out. That is a statement of intention but it is not backed up with any hard and fast requirements. The doctors point out that there are many examples of mining enterprises that have harmed human health because due diligence was not observed. They point out the legacy from asbestos mining and they point out other examples, such as the people who live around coal mines who suffer increased morbidity and mortality from cardio, respiratory and other diseases. The doctors also point out the dangerous implications of particulate matter of a very small size, PM2.5, those materials that go deepest into the lungs. In relation to Olympic Dam specifically, they state:

The potential health impacts arising from the unprecedented surface area of tailing dams as a potential source of air particulate pollution have not been answered. These particulates may contain toxic metals some of which may be radioactive. There can be little confidence that the measures to protect the tailings from storm and wind erosion over many decades and perhaps centuries are adequate. In this respect security over many decades is necessary and this must be planned and costed. Expectation has to take into account the fact that past storms have dispersed fine particulates over hundreds of kilometres in prevailing air streams and climate change is expected to bring an increased number and severity of storms.

Potential public health impacts should lead to preventative methods. The preventative method for the mine is to put the toxic radioactive waste into the pit. Presumably this is not proposed because it is more expensive.

I think Doctors for the Environment have put their finger right on it. Their submission, which I should acknowledge is authored by Professor David Shearman, concludes with the following:

Decisions which have unresolved potential health impacts are being taken under inappropriate time lines which do not allow for independent public health assessment and Doctors for the Environment Australia asks that consideration of the Act be delayed to allow prudent assessment.

In making these observations we are not hopeful of further action but it is our duty as doctors to document our concerns.

I am happy to have put their concerns on the public record. The Medical Association for the Prevention of War also highlighted the problem of tailings management. Their submission was authored by Dr Margaret Beavis, who is the vice president of the association. What she said is:

The tailings management proposed by BHP is far from acceptable practice. These fine particle tailings are effectively low level radioactive waste, and as such should not be left exposed to the elements. The Ranger uranium mine in the Northern Territory has been required to store similar radioactive waste below ground, where exposure to the elements is greatly reduced. Open tailings will increase radiation exposure for workers at the site. Inhaled radioactive particles cause significantly greater health damage at much lower levels than external radiation. Dust storms and strong winds have the potential to spread particulate matter over long distances.

It is estimated that potentially 9 billion tonnes of radioactive tailings over 44 square kilometres will be left on the surface in perpetuity. Similar arid sites, such as Radium Hill in SA or Witwatersrand Basin in South Africa, have had significant erosion even after being covered, exposing tailings again to dispersion in the environment.

The proposal for 'real-time dust and weather measuring systems'—

as set out in the EIS—

will not prevent the dispersion of dust into the environment.

They are two groups that I think the parliament should have heard from in more detail. If the Legislative Council agrees to establish a select committee to look at this bill, I would hope that those two groups would be called on.

What is the alternative? The Greens certainly have many concerns. We have set those out not just today but previously, so what is our alternative? The Greens have chosen to be proactive and to be solution-focused participants in this debate. Last year, we commissioned a report from well-respected Monash University academic, Dr Gavin Mudd. In our instructions to Dr Mudd, we posed two questions: can the Olympic Dam expansion be developed without uranium recovery, and will this scenario lead to net lower environmental impacts?

The report that came back on both questions was a resounding yes. The report stated that a Roxby expansion without the recovery of uranium was a technically viable process. Based on the no uranium recovery scenario, all copper concentrate smelting would need to occur on site at Olympic Dam, ideally alongside complete copper refining. In addition to the other benefits, this would also deliver more jobs and more downstream economic benefits.

The report found that potential water savings would be significant, with this scenario leading to 18.9 million litres of water savings per day. These water savings could possibly lead to a major reduction in groundwater extraction from the Great Artesian Basin, such as closing down Borefield A and reducing the take from Borefield B. Alternatively, both could be closed, and the desalination plant, provided it was put in a more appropriate location, could provide all the mine's water needs.

The report also found that potential electricity savings were significant, with this scenario leading to 293 gigawatt hours of electricity savings annually. The potential electricity savings, based on South Australia's 2009 greenhouse emissions intensity for electricity, which is 850 tonnes of CO_2 per gigawatt hour, could save about quarter of a million tonnes of CO_2 annually, or some 25 per cent of current annual greenhouse gas emissions of the existing Olympic Dam operation. To put it another way, the electricity savings from the no-uranium scenario would be equivalent to supplying electricity to nearly 60,000 South Australian households annually.

The report also pointed out that the tailings from the Olympic Dam mine—as I have said before—will remain low-level radioactive waste, regardless of whether or not the uranium is recovered. So, it makes no real difference in that regard. What this report does is explode the myth that somehow the only way the Olympic Dam expansion can occur is the way that BHP Billiton has proposed.

Every step involves a choice, and one of those choices could involve leaving the uranium behind in the same way that the company is choosing to leave behind the huge amounts of rare earths and iron ore that are in the ore body.

Traditionally, BHP has always argued that it has to extract the uranium on economic grounds, but that is a false argument, and I will explain why. The 2010 reported mineral resource for Olympic Dam was 9,075 million tonnes of ore, with copper at 0.86 per cent; uranium oxide, 0.027 per cent; gold at 0.32 grams per tonne; and silver at 1.5 grams per tonne.

Using those figures and the metal prices as of 2 June 2011, this gives values of $670.9 billion worth of copper, $287.1 billion worth of uranium, $133.6 billion worth of gold and $15.3 billion worth of silver. The proportions are: copper, 60 per cent; uranium, 25 per cent; gold, 12 per cent; and silver, just over 1 per cent. Based on reporting by Geoscience Australia, as well as other geological experts, the average rare earths grade at Olympic Dam are: 0.3 per cent cerium, 0.2 per cent lanthanum and 0.084 per cent other various rare earths.

Again, if we use the current metal prices, this gives an average value of $2,110.5 billion worth of cerium, $1,377 billion worth of lanthanum and $707.9 billion of other rare earths. That gives the rare earths in Olympic Dam a total value of $4.2 trillion, yet the company is not proposing to extract any of that wealth from this ore body.

Compare that $4.2 trillion with the $287.1 billion for uranium, and it proves that the economic argument about having to extract the uranium is simply not valid. Even if the price of rare earths collapses by tenfold, which is extraordinarily unlikely, given the use of those minerals in high-tech electronics and that such a rapid fall has never happened before, I think this shows that those rare earths will almost always be more valuable than the uranium.

Of course, leaving the uranium behind only answers some of our concerns. In essence, we believe that this project needs to be a much better deal for South Australia, with greatly reduced environmental costs, greater respect for our laws and the rights of traditional landowners, and a much greater share of the economic benefit for exploiting our resources.

To achieve these objectives, we have proposed a number of amendments. I do not propose to outline them all now. They have been tabled. As I have said, there are 28 amendments, although one of those relates to a job lot of all the changes that we believe should be made to the indenture itself.

In conclusion, I would like to thank the very many passionate and proud community activists, environmentalists, business people, academics, mining insiders, Indigenous leaders and ordinary South Australians who have personally helped me and assisted the Greens to come to terms with this truly enormous project. In particular, I acknowledge the work of David Noonan, who, many members will know, was the face of the Australian Conservation Foundation's antinuclear campaign for many years. In fact, David took over from me at ACF in 1996 when I went to the Environmental Defenders Office. I also thank the many scientists who have given their time.

I would like to close by echoing the statement that was made by Associate Professor Jochen Kaempf. What he said in his call to parliament—a call that went unheeded—was:

> I ask every decision-maker involved to step back for a minute and to listen to their heart, to think about their children and their children's children and to ignore their political alliance before making a decision on this important matter.

In your heart of hearts, you will need to ask yourself three questions: is this the best deal for South Australia, am I comfortable with the low rate of return and the high rate of public subsidy on the one-off opportunity to use these non-renewable resources and, most importantly, am I prepared to leave a significant toxic mess for future generations to deal with? If you cannot answer yes to each of these three questions, you must be prepared to change the poor deal that has been struck.

I completely reject the premise that this parliament is a rubber stamp. I think, as I said at the outset, we are duty bound to get the best deal possible for South Australia. I do agree that this project will set the course of our state for many years to come. I want that course to be in the right direction. I believe we have to get this right, and I believe that now is the time to get this right.

The Hon. S.G. WADE (17:40): I rise to support the bill, and I speak briefly in doing so. The Roxby Downs mine expansion will be an open pit mine, three kilometres wide and one kilometre deep. Over the next 30 years, it is expected that the project will contribute $45.7 billion in net present value terms to the state gross product; 6,000 new jobs are expected in the construction phase, and there are estimates of 4,000 jobs at the mine and 15,000 indirect jobs. I understand that BHP Billiton will spend between $20 billion and $30 billion between now and 2020, when the project becomes cash positive. The company is expected to lodge the largest order of trucks undertaken by any company anywhere in the world.

This clearly is a project of world-class proportions which offers opportunity and security to thousands of South Australians for years to come. The bill before us ratifies a variation to an indenture. The indenture is a contractual agreement between the government and BHP Billiton. It confers particular rights on that public company which are not enjoyed by other citizens and organisations in the state. The processes that are imposed by the indenture and its development are no less onerous than those on other mining proponents.

The indenture does not lower the bar or fast track the process, but what it does do is give the proponent a lower level of risk. BHP Billiton needs more surety in this project than in other projects. Because it is a world-class project, the size, time, complexity and cost of the project require a higher level of surety. As the Deputy Leader of the Opposition put it in the other place:

> ...there is very little that BHP [Billiton] gets under this indenture that it would not get under the normal laws of South Australia, but what it does get is the surety that, on the day it starts, on the day it bounces the ball, so to speak, it knows where the goalposts are and it knows that it is going to stay there for an extended time.

In that context, I indicate that I do not agree with the Hon. Mark Parnell in his assertion that this bill undermines the rule of law; after all, this bill will become a law of the state. It serves to clarify and provide certainty in relation to other laws for BHP Billiton in relation to such an important project. Certainty is not inimical to the rule of law; in fact, certainty is a key value of the rule of law. The opposition took advice from independent experts on indentures in the mining area, and we are advised that the indenture is not unusual—not in terms of what is included nor what is excluded.

I would remind the council that this bill relates to a variation to the existing 1982 indenture and the scope of the indenture has had to expand to allow for the expanded project. The expansion of the project is a multibillion-dollar reaffirmation of the vision and courage of the Liberal government of David Tonkin. It was the political leadership of David Tonkin, ably supported by mines minister Roger Goldsworthy, that ensured the original mine started at Roxby Downs. It was not an insignificant achievement.

The uranium industry was certainly out of favour right around the world in the 1970s. The then opposition, the Labor Party, was implacably opposed. It took three months to get the legislation through the parliament. The Liberal Party stood firm and did what was right for South Australia. Mike Rann, the member for Ramsay and the recently retired premier, has been working overtime to associate himself with the expansion of this project and with this indenture, but where was he while David Tonkin and Roger Goldsworthy were building the future? He was working as a staffer for the Labor Party and chairperson of the Nuclear Hazards Committee of the ALP in the South Australian branch of the Labor Party. He was an adviser to the South Australian Labor leader John Bannon and was previously press secretary to premiers Don Dunstan and Des Corcoran.

Labor had flogged the uranium issue nationally. 'Uranium: Play it Safe' was a large federal ALP issue-based campaign. National television advertisements showed how long it would take for nuclear waste to become safe. In that context, former premier Rann wrote a booklet called *Uranium: Play it Safe.* The former premier who is now such an enthusiast for mining predicted this project would be a non-boom. He said:

> No serious commentators are now likely to join the Premier in trumpeting the economic impact of Roxby Downs. Even Western Mining, a partner with BP in Roxby exploration, will not publicly commit itself to actually mining the ore body, despite its insistence that the government pass an indenture bill for the project.

Later, he said, 'It smacked of a political stunt.' I would indicate to South Australians that, from the master of political stunts, it is rather ironic that 30 years later, the former premier is trying to so closely identify with a project that at that time he called a mirage in the desert.

When the member for Ramsay and the Labor Party seek to express their political legacy in terms of Roxby Downs, just ask yourself where Roxby Downs would be if they had had their way. The reality is there would be no Roxby Downs; it would not have got off first base.

Over the next few days, I expect that this council will demonstrate its overwhelming commitment to this project, but it has not always been so. On 18 June 1982 this house experienced some of the most dramatic scenes in its history, when the original indenture bill passed by merely one vote. There were 11 ayes and 10 noes; one of the ayes was Mr Norm Foster, a Labor member of this place.

What sort of man was Norm Foster? He was a Labor man. He left school at the age of 13 and worked in labouring jobs before enlisting in the AIF's 2nd/10th Battalion at the outbreak of World War II in 1939. After the war, he worked on the wharves at Port Adelaide, became involved in the

Waterside Workers Federation, and eventually moved through the union ranks to become the Trades And Labour Council president in 1964.

Having served a term in the commonwealth parliament, he was elected to this place as No. 1 on the Labor Party ticket at the 1975 election. In June 1982, as debate on the original indenture bill reached a crucial stage, it was clear to Norm Foster that, without his vote, it would fail. Norm was a Labor man. In fact, amongst one of his passionate causes, he was an early conservationist in South Australia. He knew that to vote against his party would mean automatic expulsion, but Norm Foster also knew that this project was vital to the future of our state.

Norm Foster resigned from the Labor Party on the morning of the vote, and later that day, crossed the floor. He was vilified by the party that he had served so faithfully, but he later said, 'I have no regrets because I considered it was the right thing to do by the state.' Mr Foster unsuccessfully contested the Legislative Council election as an Independent candidate in 1982.

On the condolence motion for Mr Foster in 2006, the Hon. Iain Evans, then leader of the opposition, said:

> Norm Foster was a man who could hold his head high. Mr Foster's legacy is essentially the South Australia as it is today. He directly contributed to its prosperity through his undying support of the development of the Roxby Downs mine...
>
> Mr Foster's legacy will stay with this state forever. If he had not stood up for what he believed in so nobly, this state would not have had the thriving mining industry that it benefits so greatly from today. Mr Foster reinvigorated the principle of choice: one's right to choose their path in life. He made people realise that conformity is not always the answer and that one must stand up for what they believe in.

Indeed, I agree with Mr Evans. The Hon. Norm Foster did this state a great service, and we are in his debt.

In 1999-2000, this council again had to rely on two Labor members to cross the floor to pass bills that were essential to the future of this state. In that case, it was for bills to allow for the leasing of ETSA. The ALP maintains the most extreme level of parliamentary discipline of a modern democratic political party. Of course the Liberal Party does maintain discipline, but always respects the right of every member to vote against the party.

I urge the Labor Party to modernise its understanding of the rights of members of parliament. This state's future should not have to rely on the extraordinary courage of individual ALP members to secure its future. From time to time the Labor Party is possessed by ideology and sectional interests rather than the best interests of the state. We need to have a contemporary understanding of the rights of members of parliament.

In conclusion, I look forward to the consideration of the project by the BHP Billiton board and the ratification of the variation of the indenture. As a member of a party with more than 30 years of consistent support for this project, I thank the company for its contribution to the wealth of the state over many years. For our part, we will do all we can to position our state to maximise the benefit to our state, particularly in terms of equipping our workforce to be of service in the project. I reiterate my support for the Roxby Downs project and for this bill.

The Hon. R.I. LUCAS (17:54): I rise to support the second reading of this bill and pay tribute to those members who have spoken before me; some have closely reflected my views and some perhaps have slightly different views, in the latter category being the Hon. Mr Parnell. However, I congratulate him on the views he has put; undoubtedly there is a constituency out there that I am sure agrees with many of the things he has put. I think he summarised this bill as, essentially, being supported by both the government and the alternative government through both houses of parliament, and it is only through the Greens, and other minor party or Independent members who share that view, that those views will be represented in the parliament.

I enjoyed listening to the Hon. Mr Parnell's contribution, although as I said there are elements he would understand I disagree with, and I will address one or two of those but obviously not all of them in my contribution this evening. I also enjoyed reading the majority of the contributions in another place. I think some added value to the debate, others perhaps did not, but certainly from the viewpoint of the debate and discussion, the speeches that were given by those who have been actively involved on behalf of the Liberal Party in the debate and those actively involved on behalf of the government in the debate I thought gave a fairly accurate and reasonable representation of what the bill is about and the reasons why both the government and the opposition were supporting the legislation.

The Hon. Mr Parnell issued a challenge towards the end of his speech—I do not remember the exact questions—but I happily stand in the chamber and indicate that I and other members of the Liberal Party have thought through those questions and others and believe that it is in the public interest and in the interest of South Australia's future that this legislation be supported, and it is for those reasons that we are supporting its passage through both houses of parliament.

The Liberal Party has been consistent on this particular issue over 30-plus years and, whilst I am not aware of the evolution of the Hon. Mr Parnell's views over 30 years, I suspect that he has probably—

The Hon. M. Parnell: Constant.

The Hon. R.I. LUCAS: I was going to say that I suspect that he has probably been constant or consistent in his views over that period of time as well. I do not have a problem debating people who, as matters of principle, strongly hold a particular viewpoint that is different from my own and remain consistent to their views and principles and argue their case publicly and privately.

In the case of the Liberal Party, we come to this with exactly that approach as well. We are not a party that has been quixotic, schizophrenic or opportunistic in relation to our attitude and views on mining and, in particular, uranium mining. The Liberal Party's views, as a number of members particularly in another place have highlighted in relation to Roxby Downs, go back to the period of 1979 to 1982 under the former Liberal government led by David Tonkin, with the deputy leader and mines and energy minister Roger Goldsworthy, and the debates in relation to the original Roxby Downs legislation at that time.

I know that some members of the government have obviously workshopped a phrase—a game changer—and we hear ministers and premiers, both past and present, referring to this development of the project and the legislation as being a game changer. I do not think that there is any doubt that the real game changer was the decision which was taken back in 1982 by this parliament and, in particular, which was driven by the former Liberal government and supported by a lone Labor member, the Hon. Stormy Normie Foster, in this chamber. That was a game-changing decision because, without that decision, there potentially would not have been a Roxby Downs project or a Roxby Downs mine here in South Australia. I seek leave to conclude my remarks.

Leave granted; debate adjourned.

AFFORDABLE HOUSING

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (18:01): I seek leave to make a personal explanation regarding an answer I gave to a question today.

Leave granted.

The Hon. I.K. HUNTER: Today, in response to a supplementary question from the Hon. Tammy Franks, I used the phrase '25 per cent of market rent' when, of course, I should have said '25 per cent of income'.

[Sitting suspended from 18:02 to 19:47]

ROXBY DOWNS (INDENTURE RATIFICATION) (AMENDMENT OF INDENTURE) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

The Hon. R.I. LUCAS (19:48): Mr President, I commenced my contribution just before the dinner break, indicating that if we are talking about a game-changing decision in relation to South Australia's future, that description was more aptly used, I believe, for the decision that was taken back in 1982, rather than the decision that is being made today. As I indicated, it was to the credit of the then Liberal government, led by David Tonkin, and the mines minister, Roger Goldsworthy, and supported in this chamber by the Hon. Norm Foster, who crossed the floor and supported the then Liberal government.

It was a difficult decision, at that particular time, for the government because there was a lot of controversy. It was a difficult climate at that stage for uranium mining, and the nuclear industry in particular. It was a controversial time. At that stage, I was working for the Liberal Party

organisation, and I was involved in the various discussions with the then premier and other ministers in relation to the various options that confronted both that government and the state of South Australia.

I was a mere bit player, I might say, not a major player, but nevertheless, an observer of what was going on. The bill was introduced and was unsuccessful as there were not the numbers for it to pass, and a number of months later a lot of work went on to try and convince other members in the Legislative Council to support the bill; in particular, the Hon. Norm Foster from the Labor Party. It was a momentous decision for him because, if he was to support the legislation, he would be expelled from the Australian Labor Party. He had been a significant figure within the Australian Labor Party; he had been a federal member, and had a significant history within the Australian Labor Party. It was obviously an important decision for him, as well as being an important decision for the state, and I think it was some three months later that the bill was brought to a vote for the second time and passed.

I know that during that period, within that government, views were being put to the government that it should take the issue to an early election. Of course, this was before fixed-term elections. We had a history of short-term governments through the seventies—an election in '73, an election in '75, an election in '77 and an election in '79—so an election in late 1981 or early 1982 would have kept that sequence of early elections, every two to 2½ years, during that particular period.

Having lost the first vote, the view was put to the then premier, and certainly to the government, that, as this was such an important issue for the people of South Australia, what ought to occur was that it should be put to an election. It was a divided view at the time. There were some who said that because it was a controversial issue the Liberal government might not win out of going to an election on an issue as controversial as uranium mining, but the alternative view was that this was such a game-changing decision, such a big project, such a big development for the future of the state, that the people of South Australia might support the Liberal Party and the then Liberal government in going to an early election.

It was the strong view of David Tonkin, in particular, having listened to those sorts of arguments, that it was in the state's best interests to get the project through, that if there were any prospect of getting it through then the Liberal government should do that, should try to get the extra support from Norm Foster to have the bill pass. If they were to go to an early election and were defeated at that election then clearly, under the Labor Party and Labor government at that time, which was implacably opposed to uranium mining and the Roxby project, that project would never have gone ahead.

So it came down, really, to a decision of the then premier. Having listened to the arguments on both sides for going to an early election, he took the view, 'No, let's see if we can get this project through by continuing to work on Norm Foster.' Ultimately, Norm Foster crossed the floor, the legislation passed, and he was booted out of the Labor Party. He was either booted out or resigned; I cannot remember the exact formalities. Sometimes they resign before they are booted out in the Labor Party. There are certainly recent examples of that, as we know. Nevertheless, he was out of the Labor Party as a result of having taken that decision.

At that particular time—and I know a number of colleagues in the lower house have referred to it, and I think the Hon. Mr Ridgway referred to it briefly in his contribution earlier today—Mike Rann was the leading opponent in the Labor Party and in South Australia opposed to uranium mining and opposed to the Roxby Downs project. I have a copy of a pamphlet of some 30-odd pages. It was a special supplement to the Labor Forum, which was the record for the Labor Party at that stage (in March 1982) entitled, *Uranium: Play It Safe*, by Mike Rann for the ALP (SA) nuclear hazard committee.

It is interesting, as we go back on the history of this particular project, it describes Mike Rann as the chairman of the nuclear hazard committee of the Labor Party, adviser to John Bannon, etc., and a 'leading activist in the campaign against French nuclear testing in the Pacific'. He was a member of the Dunstan fact-finding mission on uranium in January 1979 and in 1981, and used an overseas holiday to investigate developments since that time.

The nuclear hazard committee members included: Norm Foster, Bob Gregory, Colin McKee, Chris Schacht, John Scott, Don MacLeod, Sharon Mosler, John O'Neill, Carolyn Pickles, Jenny Russell, Mike Rann and David Ruff. Mike Rann thanked Wendy Jaffer, Margo Carmichael, Julie Vaughan and Kay Turner for their assistance in the production of the supplement. Those in

the Labor Party and those who follow the Labor Party will know that a number of those members of that committee had long careers within the Labor Party and continue to have long careers within the Labor Party as well.

In this 30-page, in essence, attack on the uranium industry, let me refer to a couple of sections. Under the heading 'South Australia's Non-Boom' Mike Rann states:

> In South Australia the Liberal Government has got itself into a tangle over the proposed Roxby Downs copper and uranium mine.
>
> Since the September 1979 election, Premier Tonkin has pinned his Government's political hopes on the development he has described as eventually being as big as Mt Isa.
>
> Faced with record unemployment, the South Australia Liberal Government has painted itself into a corner over Roxby Downs. No serious commentators are now likely to join the Premier in trumpeting the economic impact of Roxby.

Let me repeat that—this is Mike Rann:

> No serious commentators are now likely to join the Premier in trumpeting the economic impact of Roxby. Even Western Mining, a partner with BP in Roxby exploration, will not publicly commit itself to actually mining the ore body despite its insistence that the Government pass an indenture bill for the project.
>
> Negotiations over the Indenture have not gone well for the South Australian Government. The Indenture Bill was supposed to be presented in November 1981. It didn't appear. Then it was due to be presented to Parliament in December of that year. But negotiators failed to agree over electricity prices and royalties.
>
> The Bill was finally introduced in March 1982. It was a disappointment even to the strongest supporters of Roxby. Instead of the 10 per cent royalties predicted by *The Advertiser,* the real figure was 2.5 per cent, eventually rising to 3.5 per cent. And there was no guarantee in the indenture that mining would proceed beyond the feasibility stage.
>
> The companies knew that the government's political strategy hinged on a Roxby go ahead. With depressed uranium sales likely to continue throughout the 1980s and probably beyond, the government was in a weakened bargaining position. To put it crudely, the Roxby partners had premier Tonkin over a barrel, and the indenture publicity hype, full of ifs rather than whens, smacked of a political stunt.

That was Mike Rann, the former premier, but at that stage one of the leading anti-nuclear, anti-Roxby advocates in South Australia.

It has become urban folk law that Mike Rann said that Roxby was a 'mirage in the desert'. It is certainly my understanding that he probably wrote the phrase but did not actually use the phrase. The phrase was used by John Bannon. Nevertheless, I think it accurately describes the position Mike Rann was adopting at that particular time to the Roxby Downs project. As I quoted, his view was that no serious commentator at all believed in the claims about the economic impact of Roxby.

Attached to this ‘Play it Safe’ leaflet from Mike Rann was an interview that Mike Rann did with Walter Patterson, an America nuclear physicist based in Britain, who claimed to be an expert on the nuclear industry. He was interviewed by Mike Rann in London in April 1981. There are four or five-pages of the interview and I will not go through all of them, but to give a flavour of some of the hard-hitting questions as an indication of where Mike Rann was going, he states:

> Will there be a market for South Australian enriched uranium then?

Patterson said:

> Personally I very much doubt it.

Mike Rann further on, in relation to Roxby Downs, said:

> Do you think that South Australia could be landed with a white elephant or is that going too far?

Patterson:

> Not at all, I think there's likely to be a very large white elephant which once in place will be a white elephant that will be very difficult to get rid of.

Further on Mike Rann says:

> Some critics of nuclear power in Australia are now arguing that, whilst there are still problems with international safeguards and with the ultimate disposal of nuclear waste, the actual uranium mining process doesn't pose any hazards: would you go along with this view?

Patterson:

No I would not. Any large mining operation poses immediate occupational hazards and environmental hazards, and the record of the uranium mining industry worldwide is nothing to be proud of. The problem, which is the most serious, which was so recognised in the royal commission report in Canada, is the problem of the eventual disposal of the uranium mine tailings. I'm referring to the fine sand that is left over when the uranium is dissolved out of the ground-up rock. This fine sand which remains contains radium and a number of the other very poisonous radiotoxic elements, and they are now in a finely divided state above the surface of the ground in very, very large volumes, literally millions of tonnes.

Uranium mine tailings, which now have accumulated in places like the south-western United States and in Ontario, have proved to be very difficult indeed to stabilise and manage in such a way as to prevent the eventual departure of these radioactive materials into local waterways and into the air.

Mike Rann's question:

What sort of problems would this pose?

Patterson:

Well the materials in question like radium are radiotoxic.

Then there is a long description of the problems they pose. As I said, it is a long and lengthy interview. The questions, all from Mike Rann, support the notion or are indicative of the notion that the uranium mining industry was a dangerous industry and that there was nothing much to be gained from the Roxby Downs project.

Finally, in terms of this leaflet, 'Implications for Action', Mike Rann and his committee recommended a variety of initiatives, but one which was very popular at that particular time, for those of us who can remember it, and which Mike Rann recommended, stated:

Concerned citizens should also press their local councillors to attempt to have their local area declared a nuclear free zone.

We will remember that activists like Mike Rann were encouraging councils to declare local council areas as nuclear free zones all through that period of the early 1980s. Mike Rann was a leading advocate and proponent of the nuclear free zone movement at that time. His anti-uranium and anti-nuclear activism extended into other areas as well. I have a copy of another story in the Labor Party *Herald* at the time, in the early 1980s, under the heading 'Campaign says boycott BP':

South Australia's Campaign Against Nuclear Energy is trying to persuade British Petroleum to pull out of the Roxby Downs venture. BHP has a 49 per cent stake in this uranium associated venture. It is also involved in planning for a uranium conversion plant. CANE has asked those opposed to uranium mining to show their feelings by buying their petrol from service stations other than those selling BP petrol. There are more than 70 BP petrol outlets in the Adelaide metropolitan area. CANE has issued thousands of boycott stickers, posters and leaflets.

Signed, Mike Rann. The contents of that clipping in the Labor *Herald* did not stop Mike Rann saying in the House of Assembly on 16 February 1988, 'I have never been a member of the Campaign Against Nuclear Energy.' If anyone wants to take Mike Rann at his word—and I certainly would not—if he was not a member of the Campaign Against Nuclear Energy he was certainly promoting their causes within the Labor Party *Herald* in that particular article, and a number of other articles as well.

The point of raising these issues is that Roxby Downs as a project is a neat bookend for the political career of Mike Rann and indeed the Australian Labor Party, particularly for Mike Rann. It is my strong view that Mike Rann, not only on this issue but on many other issues as well, is what I would refer to as a political chameleon. In the late 1970s and the 1980s it was popular to be opposed to uranium mining, the Roxby Downs project and the nuclear industry, and so at that time Mike Rann was a firm opponent of uranium mining and Roxby Downs.

As we have arrived to where we are now, when over the last 10 years or so it has become much more popular to support major economic development projects such as Roxby Downs, Mike Rann's views have changed to mirror the views of the community. In the late 1970s and the early 1980s, he was strongly opposed to uranium mining and opposed to Roxby Downs, but as a matter of convenience Mike Rann, because he sees votes in it, or because he saw votes in it, because he saw it was a popular position, has changed the views that he had to try to pick up political support.

That is why I said before the dinner break that, whilst I disagree with the views of the Hon. Mark Parnell and the Greens, I at least acknowledge that he remains true to his views and true to his principles. Thirty years ago Mark Parnell would have been an opponent of uranium mining and the nuclear industry and today his views have not changed at all, whereas it suited a populist, an opportunist, a political schizophrenic like Mike Rann to be an opponent of Roxby Downs in 1982. He led the charge against Roxby Downs in 1982, he was a leader of the opposing

movement of Roxby Downs in 1982, but now, because it is opportunistic for him in a political sense, all of a sudden he has become the supposedly leading supporter and supposedly the reason why we have the indenture bill before us this evening.

As I said, the true leadership on these issues was shown by former Liberal premier David Tonkin, mines minister Roger Goldsworthy and the Liberal Party because, like the Greens, albeit with different views, we were and remain strongly supportive of the mining industry, uranium mining and the Roxby Downs project. It is not a matter of political convenience or political opportunism that we support the bill that is before us this evening. That is why, frankly, it is a little galling for those who know the history of Mike Rann and the Australian Labor Party to see them endeavouring to claim all of the credit for the most recent developments in relation to the Roxby Downs project.

You do not have to go back to the 1980s. It was only in the elections of 2002 and 2006 that Mike Rann and South Australia led the charge against a low-level nuclear waste dump in South Australia, somewhere in the north of the state; that is, that radioactive gloves and equipment which are stored in the basements of the Royal Adelaide Hospital, The Queen Elizabeth Hospital, the Lyell McEwin and in the suburbs of Adelaide—

The Hon. J.S.L. Dawkins: Roseworthy College.

The Hon. R.I. LUCAS: —Roseworthy College, the Hon. Mr Dawkins reminds me—that the collection of radioactive equipment and materials stored in hospitals and other locations in the suburbs of Adelaide and taking them away from those locations and putting them in a stable facility in the north of South Australia somewhere was something Mike Rann saw political or partisan advantage in leading the charge against during the early part of the last decade and during those particular elections.

In supporting the bill this evening, I do not give credit at all to Mike Rann, the former premier, on this issue because his political opportunism and hypocrisy, as I and others who have spoken in this debate have indicated, is only too self-evident. We welcome, nevertheless, their change in approach, but it is certainly not something that we are going to agree to; that is, that it is only as a result of decisions they have taken that we see this bill before us this evening.

In terms of the passage of this debate, I also want to commend the current leader of the Liberal Party, Isobel Redmond. Certainly, she could have played politics in relation to this issue if she had wanted to. She could have followed the lead that Mike Rann adopted back in 1982 and adopted that sort of spoiler approach to a project of major development for the state, but that was not the approach she adopted. Isobel Redmond, through the debate, did raise questions about important issues that were raised by the community, in particular, the desal plant, in the early days. She raised the questions that had been raised with her. She listened to the advice that was provided by both BHP Billiton and the government, and others, and came to the judgement, ultimately, as we all did in the Liberal Party, that it was in the state's best interests for us to support this project.

Mitch Williams in another place put the view on behalf of the party officially that, certainly from our viewpoint, there are aspects to the bill and to the indenture, in particular, that he indicated that he believed that, if we had been negotiating, we might have handled in a different fashion and a different way. Certainly, we believe it might have been handled in a way which would have seen even greater benefit for the people of South Australia and the public benefit from the project.

However, having been involved in these things, I accept that they are a matter of negotiation. It is always easier, either in opposition or from the observer's seat, in relation to negotiations, but I think that the propositions as outlined by Mitch Williams in his contribution in the House of Assembly were reasonable propositions and issues, and if we had been in the position of being able to negotiate we may well have achieved slightly different outcomes for the people of South Australia, but that is in the what-ifs and no-one will ever know.

What we have is what is before us at the moment. The options that confronted the Liberal Party were seeking to amend either the bill or seeking to put propositions to amend the indenture in areas where we believed that perhaps there should have been changes. I guess the issues of critical debate have been the royalty arrangements (which I will address some comments to later) and also the job benefits that accrue to the state from the project.

I accept that these issues would have been extraordinarily difficult in terms of the negotiations between the proponents and the government negotiators. The issue now for the Liberal Party and for the parliament is: what is it that we are prepared to do? We have indicated

that we are going to support the bill but the other option was to seek amendment. The dilemma for the Liberal Party and, frankly, for the parliament, is that, whilst it is within our right to seek to do that—and I think the government and BHP Billiton have acknowledged that—ultimately, if we were to seek to go down that particular process, it becomes a question of calling each other's bluff. That is, BHP and the government have argued that if this is delayed, for example, to February/March, that it might miss the opportunity for being considered by the BHP Billiton board and might be overtaken by some other worldwide project in the flow of projects within BHP Billiton worldwide.

That would be the dilemma for the opposition and the parliament. Ultimately, the issue would be, if because of the problems in Europe or worldwide, the BHP Billiton board took a decision to not proceed with the project then, of course, the political dilemma for the opposition and also for those in the parliament who delayed the consideration would potentially be a significant issue. I am sure the government would seek to blame the opposition for potentially a delay in the project or perhaps the project not proceeding.

So it would have been a question of calling the bluff and the issue then is: is that in the public interest; is there a public benefit in that; would the parliament be able to force a negotiated better deal or, frankly, would BHP Billiton just sit on its hands and say, 'Well, we'll come back in 12 months' time or whatever and talk to you at that particular stage, but we're not going to change either the royalty payments or the job benefits from the project'?

Ultimately, that is where the reality of the position for the parliament and for the opposition comes home most starkly, I suppose; that is, whilst technically there is the power to seek to force change and amendment, in reality that is extraordinarily difficult and it would be fraught with potential public controversy if that was to be the course that parliament sought to go down.

For those reasons and for the others (as well as being, as I said, for 30 years or more, a strong supporter of the Roxby Downs project), Isobel Redmond and Mitch Williams have outlined that the Liberal Party is supportive and will continue to be supportive of the project and will support the bill that is before the parliament at the moment.

In terms of this issue of whether you play bluff with BHP or not and what is the true position of BHP, I was interested in the reported comments that came from BHP's recent annual general meeting, reported in the national media. I was interested to see the reported comments of Marius Kloppers, who essentially followed the script that we have heard from the government here and from Mr Kloppers and other representatives of BHP Billiton in South Australia, but it was interesting to see the reported comments of his chairman, Jac Nasser, because he clearly was not working from the same script.

He was off the leash, perhaps. Sometimes chairmen do those sorts of things, not just in this company but in others as well. It was interesting to see the piece written by Matt Chambers in *The Australian*, which stated:

> Speaking after the company's annual general meeting in Melbourne yesterday, Mr Kloppers tempered chairman Jac Nasser's enthusiasm for the project, saying things needed to move quickly. 'In our base-case plan we've got a preferred date for Olympic Dam...and it's probably fair to say we're a little later than we'd like to be...If something gets delayed, then inevitably, probably what the management will do, it will present the board with other options. I think that's important.'
>
> The comments were made after Mr Nasser said $US1.2bn of pre-commitment spending already approved by the board indicated how keen the board was to go ahead with Olympic Dam.

This is a direct quote from Jac Nasser, the chairman.

> 'It is always difficult when you are thinking of it as some kind of down payment, I think of it like the GDP of Nicaragua or something,' Mr Nasser said.

By that, what he's saying is, 'Look, we're spending $1.2 billion of precommitment. That's a fair indication that we, the board, are serious and this is going to get the nod.' People dismiss $1.2 billion as being some sort of down payment. He points out what a significant lump of money that is, and what a big precommitment it is from the company.

So, Jac Nasser's view is obviously publicly more bullish than the position that Mr Kloppers has adopted and the state government has adopted. I can understand that it is a political game that is being played in relation to this, and it does not suit the purpose to have both the state government and Mr Kloppers saying, 'Hey, this is going to go ahead anyway.' It obviously serves the purpose to continue to raise doubts about the project.

Certainly, in the discussions that I have had over the last four to six weeks with people from outside South Australia, people with experience both in the mining industry and in big national and multinational companies and people who have served on boards and in management positions in relation to this project—and they could all be wrong; that's business—can I say that universally, all those people to whom I have spoken believe that this project will go ahead, that there is no doubt about the project going ahead, not just the $1.2 billion precommitment but their view about the profitability in the long term of this particular project and the processes that have been adopted by the company and the government.

As I said, the universal view of that small number of people that I have spoken to, from outside South Australia, both with management experience at major companies and on boards of major national and multinational companies, is that they believe that this project is a goer, that it will go ahead and that much of what we are seeing at the moment is posturing.

As I said, they might be wrong. We might all be proved wrong in relation to that. Time will tell. However, from what I have read, heard and seen in relation to this—and I do not profess to be an expert—this project will go ahead. I cannot see that the circumstances that currently exist and are likely to exist over the coming six months, even with the instability and turmoil that we see in Europe, will prevent this project from going ahead. This is a long-term investment and a no-brainer, in my view, in terms of a company as big as BHP Billiton being able to manage this over the long term.

I must admit, I was interested in one of the statements that the Hon. Mark Parnell put on the public record from I think Mr Kloppers in London a little time ago. I had not seen that before, I must admit. However, again, I think that is further evidence that, when these discussions are occurring elsewhere—confidential briefings of investors and other companies—it is a more bullish view coming out of BHP Billiton management than we have seen publicly here.

As I said, I make no particular criticism of BHP Billiton over that. Having been involved with the electricity privatisation projects of the late nineties and early noughties here in South Australia, I know that big companies position themselves publicly, and in that case it was a tendering arrangement. These are the games that businesses play to get their projects up, and that is the way of the world. As I said, from my viewpoint, I make no particular criticism of the game that is being played to try to get this project up.

Another issue that I want to raise is that, in the public debate on this, some have sought to portray BHP as some sort of business ogre in relation to the development. If there was an option of thinking good things or bad things of the company, the bad things are automatically thought of the company and its motives. Improper motives on a range of things are generally attributed to them.

I am sure that BHP Billiton, as with most major businesses in Australia these days, knows that it is in their own corporate interest and in the interest of their shareholders, to the extent that it is possible in terms of making a buck, that they are seen as being as good a corporate citizen as they can be. It is not in their interest, as we have seen with other companies, to find themselves embroiled in major environmental problems, being dragged before parliamentary committees because of leakages or whatever else, or being dragged through regulatory regimes as a result of not having complied with some regulatory regime or authority.

That is not a good look for a big business these days. It is not a good result for their shareholders. It is not a good look for the management because sometimes, if these things get out of hand, managers and management do not end up seeing out the rest of the financial year. There have been many examples where, because of environmental problems, boards have made decisions in relation to the careers of senior managers within their company if it becomes a public issue for the company.

I think that the Hon. Mark Parnell rightly identified circumstances in South Australia, but I think also nationally and around the world, in the fifties and sixties where we tried to get projects up and indentures signed, such as the Lake Bonney indenture in my neck of the woods in the South-East. The Hon. Mark Parnell is right: as we look back now, how did we ever come to write, sign and approve those sorts of agreements? They were a product of their times. Times have certainly changed markedly since then.

As I said, it is not only governments and parliaments that are interested in a range of things other than just the budget bottom line, but companies themselves are increasingly aware of the problems it will cause for their brand, for their company and for their shareholders' interests if they

are not cognisant of the sorts of problems that could ensue if they do not do as much as they can in relation to some of these environmental issues.

I do not accept the view that is often touted that this is a so many trillion-dollar project or whatever it is, or BHP Billiton has made so much money over the last 12 months, or a range of other phrases which are used by opponents of big businesses in general and BHP Billiton in particular. They are there on behalf of their shareholders—people, superannuation funds and individuals—who have invested in these companies. They want a return on their investment and it is in their interests, within reason, to get their projects up and going and to do the best possible deal on behalf of their shareholders.

From our viewpoint, we rely ultimately, as we have here, not on the parliament to do the best deal for South Australia but on the government and its negotiators to do the best deal possible on behalf of the people of South Australia. Some of the claims the government has made about the project over recent times have clearly over-hyped the project. I know the question has been asked, but in tracing the history of the claimed number of total jobs to come from this I went back and looked at the various claims from former premier Mike Rann in relation to the Roxby Downs project.

In February of 2006, just before the 2006 state election, Mr Rann released a press statement which said, 'And the Olympic Dam mine is poised to more than double in size, creating 23,000 jobs.' Then, in February 2010, there was another press release saying that there were benefits for all and 23,000 jobs from the Roxby Downs project. The history is that just prior to each election it was announced that there would be up to 23,000 jobs. I notice the number now is certainly not 23,000 jobs.

There seem to be various claims about jobs, and one of the members in this debate has asked for clarification of what, specifically, the government and the proponents are claiming. What that demonstrates is that there has certainly been over-hyping from the government on the project. The Hon. Mr Parnell referred to the press release on 12 July 2007 from the former premier, under the heading 'BHP Billiton's "China option" is not South Australia's option,' which stated:

> Premier Mike Rann has told BHP Billiton that the South Australian Government will strongly oppose any moves by the company to do most of the processing of minerals from the expanded Olympic Dam Mine overseas.

Mike Rann is quoted as saying:

> South Australians own the resource. South Australians own the minerals. And the South Australian taxpayer is being asked to invest massively in infrastructure to support this project...We have a right to expect a decent return on that investment in the form of jobs and economic development for the long term...We do not want this world-class resource to be unfairly viewed as some kind of giant quarry from which both jobs and minerals are exported. I'm aware that off-shore processing is not the only option BHP Billiton is now considering. I met with BHP Billiton executives earlier this week, and I have made my views perfectly clear to the South Australian Government, through our indenture agreement negotiations will maximise the benefit of this mine for all South Australians. I will insist that jobs and value-adding are the foundation of any indenture legislation. BHP Billiton is expecting the South Australian Government to invest hundreds of millions of dollars into this mine through the provision of infrastructure and services. It will require more roads, schools, health services, policing and so on. We want and expect a decent return on our investment.

They were the strong words former premier Rann was putting around on 12 July 2007. He was going to tell BHP Billiton executives that the China option was not an option from his viewpoint.

The sad reality is that he came whimpering back, tail between his legs, because the bill that we had before us makes no restriction at all on BHP Billiton in relation to the claims that premier Rann made. I think that the former treasurer Mr Foley has indicated that the government had to back off that particular position in terms of its negotiations, but it served a purpose from the government's viewpoint that, as I said, it was out overhyping the deal and that was the position that was publicly put until we saw the final detail of the indenture.

The current minister for mines and energy in terms of this project reminds me of a little puppy dog who has been taken off the leash by his owner and he is running around wagging his tail looking at everything and saying, 'How good is this? I am going to take all the credit for what has occurred.' I am sure he would have been a fearsome negotiator on behalf of the state of South Australia. The BHP Billiton executives would have been quivering with fear every time they fronted up to 'Turbo Tom' Koutsantonis. Here he is in a contribution in another place:

> This signals to the entire mining industry that we are about to take our rightful place amongst the titans of mining: a safe regime to invest, the best regulatory system in the world, the fastest approval process in the world, and the highest environmental standards in the world.

And from earlier in his speech:

We are about to have the largest ever endeavour in human history.

Kevin Foley interjected, 'Any history!' The Hon. Mr Koutsantonis, which I am sure would be of interest to some other mining interests in the state, said that there are no sovereign risk issues in this state.

The Hon. J.M.A. Lensink: Just ask Marathon.

The Hon. R.I. LUCAS: Yes, well, I think there might be some other companies that would be interested. Marathon and the people who are involved with the negotiation of the PPP for prisons might have a different view as well. That is the ever-understated position of the current minister for mines, the Hon. Mr Koutsantonis, in relation to it. Just looking at some of those claims, clearly they are absurd, and I guess it does him no credit and the government no credit and, frankly, the state of South Australia no credit when major international companies like BHP Billiton executives see that sort of nonsense being trotted out by the minister on behalf of the state in the parliament.

'The highest environmental standards in the world.' With the greatest respect, I am no expert in the environmental area. I would bow, I think, to the Hon. Mr Parnell who knows slightly more than I do about the level of environmental standards. Now, whether or not you agree with them (and I think that there has to have been a balance in relation to the negotiation of environmental standards), the Hon. Mr Parnell indicated the sort of environmental standards that are used with other mining developments around the world, and certainly there are some which are much higher and tighter than the environmental standards in particular in relation to the management of tailings.

The processes that we have agreed are appropriate for this particular project, and we are supporting them, etc., in terms of managing it, but to actually say that the environmental standards that BHP Billiton is being asked to use in relation, for example, to the management of tailings are the highest environmental standards in the world is just palpable nonsense. Possibly the only person who believes that is Turbo Tom, and I am not even sure that he believes it, but he certainly says it in terms of trying to overhype his contribution and the government's contribution to the project.

As I said, I am not making criticism of the environmental negotiations that went on in relation to this particular project. Ultimately it was a process of negotiation, and the government has accepted various standards in relation to the management of tailings. We, the Liberal Party, are prepared to accept those as well, but do not try to dress them up as being the tightest, the toughest, the strongest and the bestest in the whole wide world, or the 'largest ever endeavour in human history'. Give me a break! Let us at least—

The Hon. A. Bressington interjecting:

The Hon. R.I. LUCAS: Yes. Let us at least try to keep our feet on the ground and make mature, rational and possibly sensible judgments about this project. Yes, it is an enormous project for the state of South Australia, and we are supporting it, but it is going to be a long-term project for the company, and we hope that, over the long term, we will see benefit for the state of South Australia from it as well.

Hopefully, someone might get the minister to pull his head in and, as I said, at least be marginally more realistic and rational in terms of this project and the government's contribution to the project as well. There are a number of areas that are seeking some response by way of answers to questions for the committee stage of the debate, or in reply to the second reading. The first one is that, in that press release of 2007, the government indicated that the taxpayers will be investing hundreds of millions of dollars into this mine through the provision of infrastructure and services.

I raised a series of questions when I met with the task force on some of these issues, and the position I put was, 'Look, if you can provide these answers to those of us who are interested at the time of these briefings' (two and three weeks ago), 'it would mean we would not have to put these on the record and wait for the answers before the passage of the bill in the parliament.'

We have not received those particular answers, and so I am going to pursue a number of these issues now. We know that we will be sitting next week. The deadline is 20 December, so we have this sitting week and next sitting week to get answers from the government and the proponents in relation to these issues.

This first one, as I said, is that the former premier has indicated that the state is going to invest hundreds of millions of dollars into the mine through the provision of infrastructure and services. There might be a change of government in 2014, and if there was it will be our side of the political fence that will have to manage this investment of hundreds of millions of dollars that the former premier has clearly negotiated or indicated with BHP Billiton.

What I am seeking is that Treasury would have done some estimate of the indicative costs over the forward estimates period. I am assuming that some of these hundreds of millions of dollars will be beyond the next forward estimates period for the next parliament; that is, 2014 to 2018, but the key thing is how much money in terms of these public infrastructure facilities. Public infrastructure and services will be required in that period from 2014 to 2018.

What does the government believe will need to be put into the forward estimates in this period from now until 2014? I suspect that might be relatively minor, if I am reading all of the information correctly. From the period 2014 to 2018, what does Treasury believe will be required in terms of public investment? For the period 2018 onwards, what is the particular horizon for the new schools, the childcare facilities, the roads, the health facilities and the hospital services? What is the time line in terms of Treasury outlay of the hundreds of millions of dollars that are going to have to be provided by taxpayers for these particular services?

The second area that I am seeking some information on is that four of five members of the Liberal Party who, on a confidential basis, were involved in looking at the indenture prior to the official release, were also privy to some other information in relation to the work the government had done and the reasoning for why it believed that the project should be supported.

My understanding is that the government, having been told by BHP Billiton that this was, in their terms, a marginal project; that is, there was an argument that it could go ahead or an argument (possibly) that it might not, that the government in terms of its own due diligence commissioned a UK-based consultancy—and I may or may not have the acronym correctly, CRU or CRA, something along those lines—to do some modelling on, in essence, the business case and to look at, I suppose from the government's viewpoint, second-guessing the decision-making process of BHP Billiton on the financial viability of the Roxby Downs project.

I think the government might have spent $400,000 or so. It was not a minor consultancy, it was a significant consultancy and taxpayers' money has been spent on it. I think that those members who are interested, prior to the passage of the bill, should be able to see the work that has been commissioned which evidently convinced the government to say that this was a marginal project, as I understand it; that is, it was not a no-brainer in terms of going ahead and that we would have to work hard to ensure that this project was going to be taken up by BHP Billiton.

As I said, I have not seen this particular consultancy report. My understanding is that opposition members have not seen the full report either; they may have seen an executive summary of the report. I think it is important for those members who have an interest in the information that is available to the government, and I requested this of Mr Carter and the people who briefed the opposition at one of the briefings and, as I said, I have not seen any response at all from the government in relation to this. We have two weeks to debate this bill and I think it is imperative that those who are interested be able to see the work that was done in terms of the modelling that convinced the government in relation to the importance of this legislation, the way it is being constructed and the current deal that has been negotiated in relation to royalties and other things as part of the bill.

The third area that I am seeking information from the government on relates to the royalties issue. I am not sure who is handling the bill on behalf of Family First, but either the Hon. Mr Hood or the Hon. Mr Brokenshire is moving amendments relating to royalty payments, as I understand it. Again, I ask the question. I am sure Treasury would have to have done some analysis on the budget benefit of royalty payments, not just the calculation of royalty payments, which I think we have seen that, at its peak, is going to be $350 million or so. I am not sure whether that is the exact figure, but it has been quoted in various documents.

The question that I put again is: what is the budget impact of the projected increases of royalty payments? When that number of $350 million was used, the former treasurer indicated that we in South Australia, because of horizontal fiscal equalisation, only get our population share of that, which is just under 7 per cent. I think he then said that, in essence, we end up with only $20 million out of $350 million. So, what he is saying is that, at its peak, we might get $350 million,

but we only get 7 per cent of that because we lose grants over the Grants Commission process that take it away.

So, when we come to the royalties debate, one of the issues regarding the amendments from Family First is that, if we are only getting $20 million out of the $350 million, this issue of spending the $350 million becomes a very interesting debating point. If you are getting only $20 million out of the $350 million, then you do not have as much money to—

The Hon. R.L. Brokenshire interjecting:

The Hon. R.I. LUCAS: We may well do that as well, but we are entitled to talk about it during the second reading as well. I am asking the minister some questions in relation to the government's calculations because, before we get to spend the money, we need to know not just what is collected but ultimately what the net benefit to the budget is. If we are getting a lot of money in royalties but losing a lot of money in offsetting grants from the commonwealth, we cannot spend the money twice in terms of where we are heading.

What I want to see from the government is its estimates over the coming six-year period, which will obviously be much less and, for the early part, will be nothing, I would imagine, because the project will not be up and running. The government must have had some estimate done by Treasury of the net benefit.

My understanding of the impact of horizontal fiscal equalisation is that, certainly under the current arrangements, it sometimes takes about three years for the winkles in the system to be worked out; that is, it is not an automatic offset straight away: it is an averaging over a three-year period or so. So, as a state, if you have increased royalties, you might benefit for a period, but then you lose that benefit over a three-year period or cycle. So, it may well be that, in the early stages, we have a more significant benefit from the royalties and it is only with the current arrangements that the grants commission catches up with us and we then lose it and come back to this $20 million (or 7 per cent) figure that the former Treasurer has used.

I am seeking from the government some detail on what work Treasury has done in terms of the net benefit of the project to the budget. We know that there is going to be a benefit to the state economy. Hopefully there are going to be lots of jobs, and hopefully the state's gross domestic product, or gross state product, will grow as a result of increased activity, etc. All of those state-based economic aggregates might be positives as a result of the project but, from a government and an alternative government viewpoint, we need to see what the impact is on the budget's bottom line. So on the one side, what are our expenditure commitments in terms of schools, hospitals and build, and, in net terms, what is the impact on the state budget, taking into account royalties and any offsetting grants that might come into it?

I think they are reasonable questions for an opposition to ask, because you do not make judgements on big projects like this just on the basis of how it impacts the state budget, but they are issues which should be taken into account when you look at the project and the parliament should be made aware of what the impact will be. If there is a change of government in 2014, clearly, we would then be in a position, as a new government, to get the sort of advice which is currently available to Treasury and the government; but, if we are being asked to vote on something as significant as this, that sort of information which is available to the government should also be made available to the opposition. I seek from the minister handling the bill in this chamber information in relation to that.

The fourth area in which I seek to have the government put answers on the public record as we debate this bill is in relation to the total cost to taxpayers of negotiating the package and the bill. The last major business engagement, I suppose, of this sort of size was, as I said previously, the privatisation of our electricity assets, and the former government was transparent and accountable and indicated the total cost of doing the deal—the total cost of consultants, the total cost of lawyers and the total cost of in-house public servants who worked on the project. That is conveniently summarised by the current government as being $100 million spent on high-priced consultants from overseas—I might say, to bring $5.2 billion in revenue through asset sales or privatisation to the state.

Nevertheless, I think in terms of doing the transaction and the deal, as we debate this today, we should be privy to the total transaction costs over this five or six year period—the government says this has been going on for six years—in terms of the public servants' costs of working on the deal; the employment of consultants such as Mr Carter, and others; this particular consultancy that I referred to earlier, from the UK, as I understand it; and have we had to employ

private legal counsel in relation to seeking legal advice to negotiate the indenture? There are clearly crown law costs involved. There is a range of transaction costs and, as I said, I think it is imperative that the government puts on the record what the costs are.

Ultimately, there is a billion dollar-plus benefit to the state of South Australia in terms of this project going ahead but, again, in terms of the impact on the budget, we should be made aware of what the total costs are. The Budget and Finance Committee, in its own way, with various departments has sought to get some of this information but has not been able to get all the information and I think, as we debate the bill, the government should put that on the public record.

I want to conclude by repeating the fact that the Liberal Party has been a strong supporter and will, through its support of this bill, continue to support the project. Certainly, it is our view that, had the last election result gone according to the majority of the two-party preferred vote and there was a Liberal government, we would be seeing this project proceed during this four-year term as well. It is not a fact of the Labor government and the Labor ministers having got this project up. As I said, it was the Liberal government in 1982 that got the project up. It is a private sector decision that is going to get this project up and to spend the money; and the government of the day, whichever government it was, was going to be party to the negotiations.

Whilst we obviously support the fact that the current government has changed its mind in relation to the project—and, in particular, the former premier—if it had been a Liberal government, we would still be seeing this particular project. As I said, and as Mitch Williams indicated, the bill and the indenture might have been in a slightly different form, but nevertheless we would be asking the parliament to proceed with the project hand in hand with BHP Billiton. We have been supporters, we continue to be supporters and we hope, in the public interest, that this particular project is a success.

The Hon. R.L. BROKENSHIRE (21:00): I will be brief in my remarks, but there are a few things that I want to put on the public record. The Hon. Rob Lucas has put a lot of what I was about to say on the public record, so I will not go over that again for another hour, in the interests of being fair to my colleagues.

The lead speaker for Family First, my colleague, the Hon. Dennis Hood, has already put our party position and that is that Family First does support the Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Bill 2011. We do so because we believe that it is in the state's best interest that we see this significant expansion of the Roxby Downs mining venture, but there are a few things that I just want to personally say.

First and foremost, I was disappointed that members of BHP Billiton who are responsible for government relations and, I would think, parliamentary relations, did not actually contact the crossbenchers until this morning to see if they wanted a briefing. In fact, we did not even receive one letter from them.

Of course, they were tactically clever. They got the government totally stitched up—and I will talk a little more about that in a while—and then, of course, they went to have a special party room meeting with the Liberal Party and stitched the Liberal Party up. We know that at times on the crossbenches we are very relevant and at times on the crossbenches we are totally irrelevant; however—

The Hon. R.I. Lucas: Which one are you on this occasion?

The Hon. R.L. BROKENSHIRE: On this occasion, clearly, we have got big BHP Billiton and we have got big Liberal and big Labor. When they get together, we are totally irrelevant. However, it may well be that, down the track, not too long from now, as this expansion rolls out, there may be some legislation and there may be a change of government even. I am not sure about that, based on the last poll; however, there may be, and we could see a totally different structure of both Liberal and Labor and perhaps BHP Billiton might actually need the crossbenchers.

I would have thought that it would have been prudent practice of them to actually be inclusive of the whole parliament a lot earlier than they were. So, I just put that there. I have got it off my chest now, but I find it interesting that we generally get lobbied like you would not believe on the crossbenches, far more than when I was with the Liberal Party in any of my privileged working capacity there, except on the occasion of this particular bill.

I also just want to say that I find it interesting the way the former premier, the Hon. Mike Rann pushed and pushed this and was so capable that he managed to actually bring all this to a

head within a couple of weeks of him, not retiring, but being forced from being the premier of South Australia, mainly by the left, but also some of the right, of the Labor Party. Well done to them for that; however, on ideology, if you have a conservative form of politics or you have a socialist form of politics, I can understand that.

If you support GM modification, I can understand that or if you do not support GM modification you do not support it but, on this occasion, as the Hon. Rob Lucas has already said, Mike Rann, in quite a lot of roles, went out of his way to work against the opportunity for this mine to be developed in the first place. When it comes to honourable, I will put David Tonkin way ahead of Mike Rann any day. The Hon. David Tonkin and others did a sterling job.

The Hon. J.S.L. Dawkins: And Roger Goldsworthy.

The Hon. R.L. BROKENSHIRE: Yes, the Hon. Roger Goldsworthy—another very good honourable gentleman. I will credit them first and foremost, and the Liberal Party at that time, for being consistent in supporting this. Of course, it is only in recent times that we have seen the mining policy change by federal Labor, and it was only last week that we saw a complete backflip from the Prime Minister with respect to her proposal for uranium sales to India.

I will not go into that any more—I have a motion on the former premier tomorrow, and in private business I will talk more about his strengths and weaknesses, and the true record of former premier Mike Rann. However, I did want to confirm what the Hon. Rob Lucas in particular had said; I totally agree with his comments.

There are some things that Family First have some concerns about. I find this whole process interesting because we, as a parliament, have to come in here and support an amendment of the indenture agreement flying blind, because we are not even privy to commercial-in-confidence briefings on a lot of the arrangements.

We do not really know, as the Hon. Rob Lucas and others have said, whether or not this is the very best arrangement that could have been provided for South Australia. It really does concern me immensely that the former premier just happened to get this over the line before—did he actually do the best that he could for South Australia? We will never know.

I find it interesting that, when you get around to communities in either city or country electorates, people are saying, 'Why did all those ministers fly over to Melbourne to the headquarters of BHP Billiton? Why didn't they come to the State Administration Centre? Who actually had the trump card here; was it BHP Billiton, or was it the government?'

I think that the new Premier could have facilitated this negotiation just as well as the former premier. I do not believe that the former premier and former deputy premier were the only people who could negotiate such a complex arrangements, particularly when the former deputy premier spent a week or so overseas during the so-called detailed and complex final negotiations.

There are just a few things that I would hope the government has covered: Okay, it is going to be 100 years or more before we ever see a situation where rehabilitation of some sort will have to occur—when this mine finally exhausts itself. As large as it is, it will run out of its mining life, and I wonder what our great-grandchildren or our great-great-grandchildren will be saying about us as a parliament if they are left with a huge bill, or if they have to go through litigation, like we have seen with the Maralinga situation. Have we done enough to ensure that those things way down the track are covered? We are signing off here in the next few days to approve this, and we are actually putting a lot of faith in the government for generations to come.

With respect to water, I found it surprising that the water being pulled from the Great Artesian Basin—I think it is around 42 million litres a day—as I understand it, is only going to cost BHP Billiton $1,200 a day, when it is argued that the true value of that water is more like $88,000 a day. That is just one example of the arrangements that, as I understand, have been put in place, which you have to question. You have to question the impact this will have on our pastoral industry long-term.

People say, 'Robert, just relax; it's all fine, it's all been covered. We have been pulling water out of the Great Artesian Basin for the last 30 years for the current Roxby Downs project.' Of course the sales men and women are going to say that, but there is no science on what is going to happen in the next hundred years. We have already seen some issues of concern raised by pastoralists, and, whilst the pastoralists may not be as big as BHP Billiton, the fact is that they are very important to the South Australian economy, and they also do a lot to manage our pastoral and outback biodiversity.

I hope the government has had a look at that, because I for one—and you can call me naive—actually thought that the desal plant was going to start taking some pressure off the Great Artesian Basin, but I am surprised to find out that the desal plant will be cranked up, and I understand that, at the very least, the same amount of water that is being pulled out will continue to be pulled out, year in, year out.

There is the issue of where the desalination plant is going to go. I know they have done a lot of EIS work on it and they have spent money on it as a company, and I respect that, by and large, they are pretty good corporate citizens, but I wonder whether or not the financial bottom line came into the overall decision about putting the desal plant right where the cuttlefish are. I trust that checks and balances will be put in there to ensure that we can still look after that part of our ecology, because, whilst I am no extreme greenie by any stretch of the imagination, that particular cuttlefish breeding ground is very important not only for our state but also internationally.

As has already been acknowledged by the Hon. Rob Lucas, we are moving one amendment. That amendment does not oppose what BHP Billiton is putting forward for South Australia, but it does have a positive impact on regional South Australia. I watched with interest the debate that former member the Hon. Karlene Maywald got involved in before the last election, where she flew to Western Australia to work over there with Royalties for Regions. She proposed Royalties for Regions here. I actually believe that it should be more about equity for regions, not royalties for regions, but Royalties for Regions has worked well in Western Australia.

In fact, I had a discussion with a very senior government minister only a few weeks ago regarding my amendment. I knew he would be resisting my amendment, and he said 'Oh, Brokie, they have so much money from Royalties for Regions in Western Australia now they don't know how to spend it.' Well if that is the case then good on rural and regional Western Australia, but, as I said to the senior government minister, that will not be the case in South Australia. You could give us $200 million, $300 million or $400 million a year in the rural and regional areas and it would be spent, and spent wisely, but it still would not make a dent in what is needed to be spent on infrastructure and other services and facilities.

The Hon. J.S.L. Dawkins interjecting:

The PRESIDENT: Order!

The Hon. R.L. BROKENSHIRE: Thank you, Mr President. Members are entitled to their view, but the bottom line is that rural and regional South Australia is crying out for infrastructure, for economic opportunities similar to the city, the point being that this money is all coming from the regions. It is not coming from Adelaide; they are not mining Adelaide, they are actually mining part of South Australia's rural and regional geographic areas. We have seen this happening day in, day out, where there is more and more expansion for exploration, at least, in mining in rural and regional South Australia. There is very little money actually being kept in the regions, particularly with fly in/fly out and things like that.

I know that the government is a master at managing marginal seat campaigns. Hopefully, so we see some better competition at the next election, the Liberal Party might actually master the game of marginal seats as well, so that we have a real serious and pointy election, with at least a cliffhanger to see whether this government is re-elected, which would be 16 years, or whether we get a new government. Just because they are going to play the seven seat game again and pork-barrel the marginal seats, does not mean that rural and regional South Australia have to miss out again.

I will say more about that when I move my amendment tomorrow or the next day. Hopefully we will get the bill passed this week, but I will be pushing hard for the one amendment that Family First has put up, which is about Royalties for Regions. With those remarks I think I have covered the key points I wanted to highlight over and above what my colleague the Hon. Dennis Hood has said. I wish this bill good passage and trust that the Roxby Downs indenture ratification bill, and indeed BHP Billiton's Olympic Dam Corporation, will be a huge success for generations to come in South Australia.

However, it is concerning that we do not have commitments—as I understand it anyway—that, wherever possible, BHP Billiton will spend its money in South Australia with respect to the development of this mine. We have not seen enough value-adding out of BHP Billiton. They are mining very well in Australia, but it is all going out in bulk ore shipping, and that is not in the best interests of Australia and South Australia as far as I am concerned.

It would have been good to have seen more commitment from BHP on the value-added job opportunities for South Australia and Australia. That said, we are in a tight situation at the moment. We have certainly got at least a three-speed economy, but the one aspect of the economy that has been going well, and I trust will continue to, is mining. I would like to see better commodity prices in agriculture because agriculture certainly is up there year in and year out with mining; however, we do have at least a three-speed economy.

We are seeing some serious investment from BHP. Whilst I know they have the capability and expertise on their board and the executive of their organisation to deliver well for shareholders, I trust that they will also be able to deliver well for South Australian and Australian jobs in the future.

The Hon. J.M.A. LENSINK (21:16): I rise to make some remarks in relation to this particular bill, coming from it, as I do, with a particular interest in environmental issues. I would like to say that I will avoid as much as possible engaging in hubris or hyperbole, as other people, particularly in the House of Assembly on the government benches, have done in relation to this particular project.

It has been quite a fast and intense project and bill to be involved in for those of us on this side of the house. I note from some comments from my crossbench colleagues that they did not have the advantage of some of the briefings that we had with BHP and with some of the senior people from the Olympic Dam expansion task force, which is probably regrettable because I think that anybody who is part of the governance in any way, shape or form, also being through the parliamentary process, ought to have had the benefit of that information. It has certainly been very useful for me personally on a couple of particular issues, most notably the desalination plant, but on other ones as well. I will talk about that in a little more detail.

It has been a pretty intense process. We do like to do our due diligence on this side of the house—a very, very important part of the process. We never like to let anything slip through to the keeper without having spoken to all the relevant stakeholders and heard all the different points of view. BHP has done a good job keeping in touch with the Liberal shadow cabinet and joint party probably over a year or so.

We then had the issue of this indenture amending agreement dropped on us fairly late in the piece. I think it is fair to say that the former premier and former treasurer had something to do with that timing. Notwithstanding that, we do respect the fact that BHP desire to have this bill passed by 20 December, and that is a critical date.

I was a member of the shadow cabinet subcommittee that had access to information early on a confidential basis. I think the first briefing we had was on about 4 October, which was with former minister Foley and some of his senior officers. At that time, we made the point that if the government was so keen to get the bill through then they certainly needed to at least consider sitting for the optional sitting week because we were not going to be a rubber stamp.

I reject any comments by any of our crossbench colleagues that there has been some sort of cosy deal done with the Liberal Party and that we are in any way a rubber stamp. I also reject the Hon. Mark Parnell's comments that he is the genuine opposition in this debate, and I will make some remarks in that regard as well.

On 7 October, that same subcommittee met with BHP. On 12 October, we had briefings with the Olympic Dam task force, crown law and others. These briefings were then extended to our full joint party on 24 and 25 October, so it has been an exceedingly short time frame, particularly given this is, in financial terms, the largest project South Australia has ever seen. I think key to the debate in many senses is the question of risk. BHP has a huge amount of risk on its side of the balance sheet. A lot of it is up-front, it is a very high capital risk and it is on the scale of tens of billions of dollars—more than most people can contribute. Certainly in my personal sense it is more money than I can possibly think of, and it will be many years before the company is cash positive and before it turns into positive profit territory.

That is a very important part of this debate, because I hear from the Greens and others suggestions that BHP has endlessly deep pockets to do all sorts of things and fix all sorts of ills that may be about to occur. I think in some ways that is a pretty unfair proposition for anybody to make because it is other people's money we are talking about. It is the company's decision ultimately and will be a decision of the company board next year. It is shareholders' funds, and a lot of those people are mum and dad investors or superannuation funds and the like, and they deserve to have

their funds treated fairly in the market and not to be impeded just because they are seen as the big player in South Australia, which in a wealth sense is shrinking, at a national level at least.

This project is not like anything we have ever seen: it will be a great big hole in the ground. It is proposed that ultimately it will become a tourist destination once the mine is closed. I appreciate that BHP has sought, through the deal and through the terms of the indenture, to mitigate some of that risk, and that explains some of the conditions it has. As stated by the Hon. Rob Lucas and Mitch Williams, who was the lead speaker in the House of Assembly on this issue, there may well have been negotiations that could have been done better on the government's part, but we will not know until the fullness of time because that is part of the nature of the deal. We may have done things differently, but that is hypothetical, so we will not really know.

Some of the assumptions about the royalties have been a bit fanciful, and I was surprised to see that an organisation of the calibre of BankSA would delve into the issue of a potential future fund, assuming that there would be rivers of gold flowing to South Australian coffers from these funds and that therefore we ought to preserve them, whereas in reality, as the Hon. Rob Lucas has also spoken about, the funds may at their peak be in the order of something liked $25 million per annum.

There is a lot of stuff that is a bit of urban mythology in the ether about this project that relates to the amount of wealth involved, but certainly there will be a huge benefit from the indirect benefits to the South Australian economy which will not necessarily flow through South Australian coffers but which will be benefits that a lot of South Australian businesses will enjoy because of the huge amount of infrastructure required through the building of a new landing strip, the huge trucks that will have to be purchased, and so on and so forth. I will not go through the long list of infrastructure because it is easily available to anyone who wants to look at it on the website.

The environmental risk is also potentially huge, and for this reason there has been an extensive environmental impact process, which has culminated in the assessment report provided quite recently. It is something I have been quite keen to get my hands on. I will refer to Mr Parnell describing himself as the real opposition, because on his part that was a bit of a Freudian slip. I believe he opposes this project, no matter how many hoops BHP jumps through. This for him is a cause célèbre and, as one of my house of assembly colleagues said, 'He was born to oppose this particular project.'

It is an area that I know a lot of people have environmental concerns about. A lot of those people have contacted me as well, and I have shared a lot of concerns about that too. However, I do think that the environmental impact process has been thorough, I think the assessment process has been thorough, and I think that those issues have been explored.

There are still environmental risks, but I believe the assessment report process seeks to mitigate those by placing conditions on approval. Some 600 licences still need to be approved, even though overall the environmental processes have been ticked off, and so those will be ongoing.

The assessment report is a document which was coordinated by the Department of Planning and Local Government and saw input from a lot of government scientific agencies across the board, particularly SARDI, the EPA and, to a degree, PIRSA.

This project includes a raft of new infrastructure: airport, roads, rail, etc.; the desalination plant, pipelines and corridors; the landing facility; the Hiltaba village; expansion of the Roxby township and conversion of the underground mine operation to an open pit; operation of the smelter; the new tailings storage facility and rock storage facility; and there are various chapters which deal with all of those in detail.

All the recommendations of the assessment report will become conditions or requirements of approval, and the indenture minister is to consult with the relevant agency as these arise. The conclusion of the assessment report was that the environmental impact is negligible, and ongoing monitoring will take place through those licences.

The specific question was put to the team that if they had had outstanding concerns would they have recommended approval of the project to the government, and the answer to that was no. So the assessment report has discussed all outstanding issues arising from the draft EIS, the supplementary EIS and the final EIS. For anyone who wants to read that document, it does refer back to each of those EISs where relevant.

At the end of the relevant chapter it states whether BHP's proposed methods are acceptable or not acceptable, and in each case it has agreed that they are acceptable. All the components of the project have been subject to EIS processes because it is a declared major development. A number of issues were raised in various chapters which relate to various parts of the process.

Chapter 4 relates to mine operations and processing, so it covers native vegetation, impacts on the arid lands recovery project, the tailings storage facility and impacts of drawdown on the local springs, and site contamination. There is an extensive consideration of groundwater issues; solid waste; the impact of dust, plant emissions, noise, light, and radionuclides on fauna; and greenhouse gases.

Chapter 5 is the desalination plant, which is probably the area of most interest to a lot of people. Chapter 5 covers some 19 different topics, and that chapter was coordinated by the EPA with expert advice from various agencies, including SARDI. I would just like to say for the record that I was the bunny who referred the issue of desalination to the Environment, Resources and Development Committee of the parliament, and we looked at both the Stanvac issue and Point Lowly.

The ERD Committee came out with a recommendation against the location, and I note since that a lot more work has been done by the government and BHP on that particular proposal. There are additional conditions, which I believe is a significant achievement. The assessment report's conclusion is that there is no threat to marine life from the desalination plant.

I think that this issue of the desalination plant does deserve further note because it is a very large concern, particularly to the communities that live in and around Spencer Gulf. It is described that the seawater north of Point Lowly is where that exchange is quite limited; however, there is a lot of exchange with the southern ocean throughout winter months. There is a condition known as dodge tides, which occur every six months, in late May and November.

Background salinity is an important point because concerns have been raised about increasing salinity over time in that area and the impact that will have on marine species living in the area. The background salinity is 35 to 36 grams a litre. The Point Lowly range is 40 to 43 grams a litre, which peaks in late autumn, before the winter rains arrive. Local fisheries there include snapper, King George whiting, blue swimmer crab, western king prawn and southern calamari, and we have aquaculture there through yellow tail kingfisher pens and Pacific oyster growing beds.

The choice of location of the Point Lowly plant, which is pages 148 and 149 of the assessment report, states the criteria on which that particular site was chosen, and it is a combination of cost and environmental concerns. I note, through the supplementary EIS, that the government required more detail on 20 potential other sites, which included the West Coast.

I would like to spend a bit of time talking about this issue. I have been critical personally and as part of the ERD Committee of that particular location, so it was pleasing that the other sites have been looked at in greater detail. The argument has always been that Point Lowly is the closest spot for BHP to locate the desalination plant, and the assessment report outlines the criteria for how it chose the site, those three criteria being length of water supply pipeline, distance to a water depth of greater than 20 metres, and suitable available land and infrastructure. The assessment report goes on to say:

> The SEIS analysed a substantially expanded range of alternative sites in Spencer Gulf, lower Eyre Peninsula and the West Coast against an expanded list of criteria. The analysis confirmed Point Lowly as the preferred site because:
>
> - Dispersion of return water would be greater there than at any of the other alternative sites due to the high average current speed;
> - Costs would be lower and there were fewer logistical issues than at most of the alternative sites;
> - Alternative sites provided limited net environmental benefit.
>
> ...BHP Billiton also determined that discharging return (waste) water into the gulf was the best option, compared with land-based discharge to evaporation ponds or an inland salt lake, or injection into underground aquifers.
>
> The reasons for not discharging return water onto the land involved cost and adverse environmental impacts, including having to clear 12,000ha [I assume, of native vegetation] to create evaporation ponds and the need for lining to prevent leakage into the groundwater.

I think those are important points.

It is not the final, final proposal, because the desalination plant is probably up to five or more years from being construction, but the outlet has been extended by an additional 200 metres so that the outlet pipe is now three kilometres from Whyalla and 10 kilometres from Backy Point, which are the two cuttlefish breeding grounds. The return water does, in fact, disperse rapidly from Point Lowly due to a local rip. The impact of the desalination plant, we are told, is equivalent to the evaporation of one day per year. Strong sea floor currents remove one year's salt over winter. A very important concession is that BHP is committed to real-time monitoring of salinity levels which will be overseen by the EPA.

The assessment report also talks about the reviews of the marine species that live in that area. The two species that people are most concerned about are the cuttlefish and the western king prawn. Ecotoxicity studies have been done of a number of marine species. The greatest concern of the substance that could cause toxicity was salinity or salt. A dilution factor of 1:70 was modelled to protect 99 per cent of the species.

Chlorine is not an issue because that is to be disposed of on land. Testing was done on 16 species to detect what is called, in scientific terms and according to the Australian standard, EC10 or effect concentration on 10 of the species. I point out that is not mortality but what are described as sublethal effects such as failure to thrive or sluggishness and so forth. This research—many studies, I would assume, have been done given that it was 16 species—was reviewed by Dr Michael Warne of the CSIRO. As a result of his reviews, Dr Warne proposed a dilution factor of 1:85 which was to increase the margin of safety. The cuttlefish deserve particular note, and 1:55 is regarded as a safe and conservative consideration for their safety. On page 168 the assessment report states:

> ...considers there should be no impact of return-water discharge on the Australian Giant Cuttlefish. However, it recommends that BHP Billiton implement an annual BACI-designed monitoring program to assess the biomass and abundance of cuttlefish throughout the Point Lowly region, including Backy Point.

It then goes on to nominate several conditions. Dissolved oxygen is also an issue that was looked at and is a concern for short periods when chlorine dosing occurs in the plant. There have been references to the Kwinana plant which operates in Western Australia's Cockburn Sound; however, I point out that these periods occur due to naturally occurring reasons. Modelling of this area suggests that the levels will cause a negligible difference, but the assessment report still recommends that BHP needs to do more work to establish a baseline prior to construction of the plant.

The hydrodynamics have also been examined and that has been done for various fields: the near field, which is within 100 to 150 metres of the diffuser was reviewed by the University of Adelaide; mid-field, which is from that 150 metres to four kilometres, was reviewed by SARDI; and the far field, which is effectively the gulf, which relates to potential accumulation in the gulf. I would like to read a quote in relation to that particular issue because that is one of the key concerns that has been raised many times, that the salinity will be increased over time in the gulf and will, therefore, present a threat to marine species. The assessment report states:

> The supplementary EIS made the assumption that the annual seasonal cycle of the salt-ejection mechanism and the salt balances over the same time scales implied that Spencer Gulf flushed annually.

Further, in the next paragraph, it states:

> Accordingly, the Assessment Report considers it unlikely that there would be any long-term increases in salinity in the northern Spencer Gulf as a result of a desalination plant. To provide ongoing data to demonstrate this finding, long-term accurate in situ monitoring of facility temperature would be required.

There are recommendations that more monitoring take place. In any case, there is time for this to take place because the plant will not be operating for some time and there will be, in the meantime, technological improvements. The EPA will be involved in licensing, so there will be least 12 months' more monitoring prior to commissioning of the plant.

I would just like to say for the record—because we in opposition get letters from people asking us what our policies are on these issues—we are quite dependent on the information that we are provided by independent sources. One of my jokes is that, in opposition, we do not have a marine science division sitting in the corner of my office or sitting in the leader's office anywhere, so we have sought to verify information as much as possible. However, I would like to say that I do have a great degree of confidence in those people who have managed this process and I trust their integrity.

Prawns came up as an issue later in the exercise, and obviously we would all be worried—particularly my leader (Hon. David Ridgway) I think would be quite concerned—if there were to be any impact on the wonderful prawns in the Spencer Gulf. Page 164 of the report states:

> Modelling showed that the Western King Prawn was unlikely to be adversely impacted by return water discharge, as larval prawns were known to occur in areas of significantly higher salinity of up to 55 ppt.

I think the argument there was that the juvenile prawns are actually more tolerant to higher salinity levels than adult prawns, but in any case they do occur north of Point Lowly, which is high salinity.

For the sake of the member for Flinders, I would just like to read some of the replies that we received to specific questions which were put to the Olympic Dam expansion task force team. These responses have been prepared by that group in consultation with the EPA. These were specific questions that the prawn industry sought and we have sought replies, and I would just like to put them on the record:

- How are you recommending that the EPA undertake real time monitoring? Have you been specific about location of data loggers and specific data that requires collection?

  It's condition of the approval that real-time monitoring is carried out by BHP Billiton. The details of the monitoring will be developed as part of the licence conditions set by EPA. It's at least five years before the desalination plant will be constructed, so there's adequate time to get the monitoring design right. We have deliberately not specified the location and type of monitoring stations as technology is rapidly changing and we want to give the EPA and BHP the flexibility to negotiate the best technology closer to the time that it's needed.

- The Assessment Report recommends the further analysis of 5 species from 4 taxonomic groups. Have you made any recommendations to the EPA which five species should be monitored as part of the conditions for monitoring impacts of the desalination plant?

  The Assessment Report accepted the primary data set provided from the ecotoxicity testing, but has required that further testing be carried out in order to optimise the final design of the diffuser and to inform the EPA licence conditions. The species to be tested will be determined by an independent panel to be appointed by EPA but funded by BHP. While we cannot pre-empt the independent panel, a condition of the Assessment Report is the further testing must include Australian Giant Cuttlefish and is likely to include Western King Prawns as these are important species given the proposed location of the desalination plant.

- Do you believe the 2000 ANZECC/ARMCANZ guidelines used for the ecotoxicology assessment are adequate for calculating potential risks to species through all of their life stages?

  Dr Michael Warne is a nationally and internationally recognised expert on ecotoxicity testing and the derivation of water quality guidelines. He has conducted testing for a range of species and number of desalination plants in Australia, including the proposed BHP desalination plant. For that reason he was invited to answer questions at the recent Liberal Party briefing. At that briefing, Michael stated that the ANZECC and ARMCANZ guidelines have been adopted for use nationally and the testing procedures recommended therein have been used for desalination plants and other large infrastructure projects all over Australia.

  For evaluation of toxicity risk, we would ideally conduct toxicity testing on every life stage of each organism tested however this is not practical. Rather, the approach recommended by the ANZECC and ARMCANZ guidelines is to use sensitive life-stages and organisms that are representative of the organisms that will be exposed to the toxicant. This approach is deemed satisfactory by the Australian and New Zealand whole of governments and a similar approach is used in other developed nations.

- Understanding that SARDI has only been asked to assess the Supplementary EIS, as SA's leading marine research agency, where would you recommend building a desalination plant of this size, and what factors would you consider?

  SARDI did not assess the Supplementary EIS, nor did it make an assessment of the alternative sites, as this was carried out by DPLG, with the EPA providing advice to assist in the Assessment Report outcomes. The conclusions are outlined on pages 154 to 156 of the Assessment Report.

- If BHP started their operations with only one 5-port rosette, will the dispersion rates still be appropriate?

  Regardless of the throughput of the desalination plant at commencement, an Assessment Report condition is BHP Billiton will be required through its EPA licence to achieve the design dilution factor of 1:70 at 100m from the diffuser and 1:85 at the nearest cuttlefish area at all times. BHP Billiton has proposed a 4 rosette diffuser for the plant outfall. Diffuser optimisation studies in the EIS documents indicate that the required dilutions can be achieved in a number of ways and discharge velocity and port diameter are the most important factors affecting dilution. Another condition requires BHP to undertake additional modelling at a range of discharge rates and the final design of the diffuser must be approved by the indenture Minister in concurrence with the EPA prior to operation. Additionally, a further condition requires that the plant be constructed to enable the diffuser to be modified to achieve these factors.

- BHPB has committed to monitor and identify significant changes to marine flora and fauna communities in the USG. The concern is around the implementation of the term 'significant' as in lay man's terms could be

interpreted to mean large irreversible change. 1. What confidence level will the Govt be seeking to determine when a significant change has occurred? 2. What are the processes or how are any changes going to be proportioned to the desalination plant or environmental or other factors? i.e. where will the burden of proof lie in determining whether any impacts are a result of the desalination plant?

The EPA has required that BHP Billiton undertake what is known as BACI designed monitoring. This essentially provides before (construction) and after (construction) monitoring which through advanced statistical techniques, enables more sensitive detection of ecosystem change. If any changes are detected and are clearly attributable to the desalination plant then it will be up to the EPA to determine whether the changes are significant. Some level of scientific judgement will be required but changes that are irreversible will not be acceptable.

- Given adult prawns were identified as the most susceptible through the ecotoxicology testing, and it has been highlighted through an independent review there is still a gap in the testing of the reproductive cycle, there hasn't been a recommendation to monitor juvenile prawns in the vicinity?

  Ecotoxicity testing results show that adult prawns were more sensitive than juvenile prawns, but they were not the most sensitive species. Juvenile prawns are known to live in the upper reaches of Spencer Gulf where salinities are significantly greater than what is expected in the immediate vicinity of the desalination outfall. This was supported by the ecotoxicity testing results which found Juvenile prawns to be one of the most tolerant species tested.

- A final question...Given the work you have undertaken through this assessment, what areas still cause you for concern?

  The Development Assessment and Conditions adequately addresses the environmental impacts for elements of the proposed expansion project. There are no further areas of concern.

Bear with me; there is more. Questions for the EPA:

- How is the EPA going to ensure that the community is comfortable with the monitoring process? What steps are going to be taken to ensure monitoring is transparent and data/reports are distributed (to the community including business with vested interest in the gulf's health) within a reasonable amount of time i.e. less than 3 months post data collection?

  BHP Billiton has committed to (and EPA will require) that its monitoring data be available through a web site. The EPA expects that this monitoring and reporting will be in real time however the precise nature of these arrangements will be determined at the time of setting of licence conditions.

- Given the establishment of Marine Innovation South Australia (MISA), SARDI, industries (seafood and tourism) we have either strong vested interests or skills relating to the marine environment in the upper Spencer Gulf, what steps is the EPA taking to ensure a level of independence to oversee the monitoring and reporting of BHP and its licence condition?

  Under current legislation (and the proposed indenture), the EPA is independent of government for development assessment, licensing and compliance and enforcement. As with all licensees, the EPA will require a licence for operation of the desalination plant. The licence will include monitoring and reporting conditions. Where necessary the EPA will consult other experts (such as SARDI) in determining the licence conditions.

- Have the EPA considered the establishment of an independent board to provide oversight of ensuring licence conditions are being implemented?

  The EPA is already governed by a Board established by the Environment Protection Act. The EPA is specifically independent for Part 6 of the Act (licensing) as well as compliance and enforcement.

- Given desalination plants of this magnitude are relatively rare in Australia, how will the EPA ensure it will have the skills necessary to ensure it drafts a robust licensing arrangement right with BHP?

  We disagree with the statement. There are now six major desalination plants around Australia.

It mentions the Gold Coast, Perth, Kurnell, Southern Seawater and Port Stanvac:

> Given that all of these plants are licensed under State laws...there is plenty of opportunity for the SA EPA to exchange information with other EPAs around Australia and gain the best practice knowledge and processes on licensing and monitoring for the BHP Billiton desalination plant.

The last question on this list is in regard to BHP:

- Through this meeting we would appreciate the support and encouragement for future collaboration between BHP and the Association for ongoing monitoring of the upper Spencer Gulf.

  This is something you would need to ask BHP however our observations would suggest that they are keen to work with the prawn fisherman association to develop and improve future monitoring and management practices that ensure the long term sustainability of the prawn industry.

I asked some questions directly of BHP, and I would like to read those and their responses to save us time later, in the committee stage. The first question is:

- Is it envisaged that the Environmental Management Plan, its Annual compliance plan, Approved Mitigation Plans, audits etc will be public documents?

  The Environmental Management Plan and annual compliance report will be public documents. Whether the mitigation plans and audits will be made public is for the Minister to decide.

My second question was in relation to part 13 of the indenture—Water, subparagraph (d). Payment of equal money to the ALNRM will go to an 'Approved Offset Project', which is not necessarily the board, so that suggested BHP's own projects:

- Is this likely to be the Arid Lands Recovery project or are there other projects in the pipeline?

  Not at the moment. Any project must be approved by the Minister before it can be accepted as an offset. It then must be demonstrated by the company that the money has been appropriately spent. A likely project may be further GAB bore capping, but we have no current plans.

- There will be extensive monitoring of native species and other environmental programs. Does BHP intend to employ staff in-house to undertake this work or will it contract the work out?

  Both, as we currently do. We have a significant number of environmental staff at Olympic Dam and in the Adelaide office as well as employing experts when work is highly specialised or short-term.

I have some more questions which I have already put to the ODX task force, but they have not had the opportunity to reply so I will put these on the record. One of those questions I have already asked BHP, which I ask anyway. The Environmental Management Program (EMP) is clause 11 of the deed. Is the annual compliance plan to be made available to the public?

In relation to the indenture, clause 8, new section 9(5)(a) of the indenture, implies that Aboriginal heritage sites must be identified up-front. What audits have been done and what sites, as far as we are able to be advised, have been identified? In clause 16, which refers to 19(3) of the indenture, the holder of the licence is not entitled to access any part of the SML unless a 'statement of environmental objectives is in place'. What does that actually mean? Part 5, clauses 19 to 21, powers of authorised officers: are these officers already authorised officers under another act or are they exclusively appointed for the purposes of this indenture and for monitoring and enforcement of the EMP and mitigation plans? Do NRM native veg authorised officers' powers still apply to BHP?

My final question is in relation to geothermal energy and whether opportunities for applying that to this project have been fully explored. Given the hour, I am not going to go into all the other issues about mulga, native vegetation and the Pernatty knob-tailed gecko or the plains rat, but people can read those. They are discussed in detail in the assessment report and environmental impact statement process. I am pleased that the detail of each of these species has been examined and that they will all be under management plans of some type. With those comments, I endorse the bill.

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

EDUCATION AND EARLY CHILDHOOD SERVICES (REGISTRATION AND STANDARDS) BILL

In committee.

(Continued from 10 November 2011.)

Clause 1.

The Hon. I.K. HUNTER: Given the hour, I propose to put on the record some answers to questions asked by the Hon. Ms Lensink in the second reading. To her first question, I can advise that it is understood that the Flinders University offers a Bachelor of Education (Early Childhood)/Bachelor of Arts, which is a double degree. This prepares graduates to become teachers of children from birth to eight years of age in a range of community settings. I am also advised that UniSA offers a Bachelor of Early Childhood Education which prepares graduates to become childcare professionals, preschool/kindergarten teachers and junior primary teachers and for work within related agencies, children's services or schools.

In relation to her second question, I am advised that Flinders commenced offering this qualification in 2007 and had their first graduates last year in 2010. UniSA has been running a four-year degree training people in birth to eight since 1995. UniSA also has another pre-service degree course which has been running since 2000. This is for those with a degree in another discipline who wish to move to working in education and care services.

In response to her third question, I am advised that last year Flinders University had 37 graduates, comprising 25 graduates from the Bachelor of Education (Early Childhood)/Bachelor of Arts courses and 12 graduates from the Masters of Teaching program which is a two-year intensive course of study for people with an existing qualification wanting to move into teaching in the early years. I am also advised that last year, UniSA had 125 graduates comprising approximately 100 graduates from the Early Childhood Bachelor degree and approximately 25 for those with an existing qualification in another discipline.

UniSA is also participating in a scholarship program to assist people working in child care to achieve a higher qualification. I am further advised that the Teachers Registration Board in 2010-11 issued provisional registration to 1,109 new teachers, the majority of whom we suppose would be new graduates. However, this figure is a total of all teachers, not just those with an early childhood qualification.

In response to her fourth question, I am advised that the 2010 childcare census return rate indicates that there are 220 teachers already working in the childcare sector out of a total 2,732 staff. This is an increase on the 2009 census, which indicated 182 teachers. The national modelling work undertaken to inform the National Regulatory Impact Statement concerning the National Quality Framework indicated that South Australia would have an oversupply of early childhood teachers by 2020. I am advised that this indicated that South Australia would require approximately 1,026 teachers and would have 1,395 available.

The Universal Access Scheme is about to provide 80 scholarships in 2012 to support the childcare sector to upskill teachers. Anecdotal evidence is that many centres are already supporting their diploma qualified staff to upskill. For example, UniSA reports an increasing number of diploma qualified experienced individuals enrolling in their degree course. We are advised that diploma qualified staff enrolling in a degree course can apply to the universities for credit. The National Quality Framework includes a workforce development strategy.

In response to her fifth and final question, I can advise that the government provides support for all sector training, and that includes the Health and Community Services Skills Board, which has been funded by the Department of Further Education, Employment, Science and Technology, to conduct a 12-month workforce development project to support the state's achievement of new qualification requirements for staff of childcare services to meet the National Quality Standards for Early Childhood Education.

Nationally, the Workforce Development Fund (Building Australia's Future Workforce) provides $3 billion over six years and includes measures that target areas where workforce shortages exist. While not focusing specifically on the early childhood sector, it is anticipated that it should benefit the sector substantially.

In recognition that much of our ECEC workforce is skilled and experienced but without formal qualifications, I am advised that the commonwealth government has provided $9.2 million for a recognition of a Prior Learning Package to make it easier for early childhood workers to obtain or upgrade their qualifications. This includes the development of new national assessment tools for the certificate III diploma and advanced diploma, upskilling of assessors and grants to support workers in rural and remote areas to help with their expenses in undertaking recognition for prior learning processes. Additionally, there are existing commonwealth government initiatives, including:

- Removal of TAFE fees from diplomas and advanced diplomas in children's services;
- 1,500 additional university places nationally for students wanting to undertake early childhood qualifications. As a result, South Australian universities have been allocated a total 110 places, comprising 25 masters degree places and 85 bachelor degree places; and
- Reduction in the HECS/HELP debt for early childhood teachers who work in regional and remote areas or Indigenous communities and areas of high socioeconomic disadvantage.

Also, I am advised that the state government's User Choice policy has been changed to enable existing early childhood workers to access traineeships, which means that existing workers and their employers can access funding to subsidise the upskilling costs to certificate III and diploma levels.

Finally, I am advised that in South Australia the Skills For All reform is making the single greatest investment in the history of vocational education and training in South Australia. The South Australian government is investing $194 million to support an extra 100,000 training places over the next six years to ensure that SA can meet its skilled labour needs into the future. One component of this reform is a new Skills in the Workplace program designed to raise the skill levels of existing workers and address skill demands in key industry sectors.

That completes my answers to questions on notice given to us in the second reading. I propose that we report progress and come back to this bill tomorrow.

Progress reported; committee to sit again.

LOCAL GOVERNMENT (MODEL BY-LAWS) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

WORK HEALTH AND SAFETY BILL

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

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (22:05): I move:

That this bill be now read a second time.

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

Leave granted.

The *Model Work Health and Safety Bill 2011* provides the foundation for South Australia's participation in the nationally harmonised system of occupational health and safety.

The Bill enacts the nationally agreed Model Work Health and Safety Act in this jurisdiction. It will be supplemented by Model Regulations and Model Codes of Practice which are currently the subject of public consultation.

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.

Key South Australian stakeholders have been involved at every step in the process 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 consistent regulation 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 a mature and 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. This Bill enacts the Model Act in South Australia to meet this agreed timeline.

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 District Court, 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 is 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 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 Safe Work 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 Workplace Harmonisation Implementation Group (WHIG) 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.

I am proud to introduce this Bill. It 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 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 (eg, 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 (eg, 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 (eg, 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 (eg, domestic chores etc);
- individual householders who engage persons other than employees for home maintenance and repairs in that capacity (eg, 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 (eg, employed by one or more of the volunteers) carrying out work for the association (clause 5(8)). Hiring a

contractor (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, high-risk work); or
- for work to be carried out at a particular place (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, treating one job applicant less favourably than another (clause 105(1)(b)); and
- certain actions relating to commercial arrangements (eg, 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 (eg, 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 (eg, 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 (ie, the conduct referred to in clauses112(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, ie, 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 (eg, 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 (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 (eg, 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 (eg, 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 (ie, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, 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 (eg, lawyer), or a person assisting the inspector (eg, 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 (ie, 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 (eg, 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 (eg, 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 (eg, 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 (ie, 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 (eg, 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 (eg, 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 (eg, 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 (ie, 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 Hon. D.W. Ridgway.

At 22:06 the council adjourned until Wednesday 23 November 2011 at 11:00.