LEGISLATIVE COUNCIL

Tuesday 29 November 2011

The PRESIDENT (Hon. R.K. Sneath) took the chair at 10:02 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) (10:03): 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) (10:03): I move:

That standing orders be so far suspended as to enable petitions, 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

In committee.

(Continued from 24 November 2011.)

Schedule 1.

The Hon. M. PARNELL: I have some questions on clause 13 of the schedule but before I do, does the minister have anything remaining from previous clauses that she wants to put on the record? No? Clause 13 is entitled 'The company's water requirements'. I think it is the longest clause in the indenture and it raises a number of matters that have been of some controversy in the community. They include the desalination plant and the extract of water from the Great Artesian Basin.

In relation to the desalination plant, members would be aware that the Environment, Resources and Development Committee, a standing committee of this parliament, inquired into the location of the desalination plant and their number one recommendation was: find a better spot. In relation to the desalination plant, firstly, can she confirm that the indenture itself is not location specific; that the indenture itself refers to any desal plant, not necessarily a desalination plant at Point Lowly?

The Hon. G.E. GAGO: I am advised that is correct.

The Hon. M. PARNELL: When the environmental impact statement was being prepared and out for public consultation, a number of people raised the issue of alternative locations. What level of investigation did the government require of BHP Billiton in relation to alternative sites other than Upper Spencer Gulf?

The Hon. G.E. GAGO: The government required that they consider a number of sites, and I am advised that they did consider 20 different sites.

The Hon. M. PARNELL: I thank the minister for her answer, but my question is: what level of investigation was the company required to undertake? I understand they have nominated sites that they said they investigated, but none of them was investigated to the extent that their preferred location was looked at, that is, Upper Spencer Gulf. Why did not the government require the same level of investigation in relation to ocean currents and dispersion modelling at these other locations, or any of these other locations, and why did the government instead allow BHP to effectively only put one alternative forward?

The Hon. G.E. GAGO: The assumptions the honourable member makes are not true. A number of factors were looked at in relation to some of these alternative sites, such as environmental issues, economic issues, greenhouse gas emissions, costs, etc. I am advised it was the Point Lowly alternative that addressed most of these issues and delivered the best overall outcomes.

The Hon. M. PARNELL: Will the minister agree that the overwhelming advantage of Point Lowly is that it is cheaper than every other location identified?

The Hon. G.E. GAGO: I am advised no, that there were a number of factors that were considered.

The Hon. M. PARNELL: I will not pursue that line of questioning. I think we all know this is the closest bit of sea water to the Olympic Dam mine. We know that—

The Hon. G.E. Gago: Port Augusta actually is.

The Hon. M. PARNELL: Port Augusta might be, but we are talking about a very small distance—but certainly the West Coast, over at Elliston (which is a far preferable environment) would have cost more but it would have delivered better environmental outcomes. I want to ask about the capacity of the plant. Under this indenture the company is limited to producing 750,000 tonnes of copper, yet the approval for the desalination plant is for a plant far in excess of the water that will be needed for that volume of mining. Has the government committed to taking any excess water and, if the government has not yet committed, is the government in negotiations with BHP Billiton to take the excess water?

The Hon. G.E. GAGO: I am advised that it has not committed to buying any, but there is agreement that the government has first option to buy.

The Hon. M. PARNELL: Would the minister enlighten the committee as to how that first right of refusal, if you like, or the first right to buy, might be exercised, any time frames that have been put in place and any thoughts the government has as to when that water might be required?

The Hon. G.E. GAGO: I have been advised that there are no time frames, but it is an option for the future.

The Hon. M. PARNELL: Mining minister Koutsantonis said on ABC radio last week, when he was being asked about the desalination plant:

> We've added real time monitoring. We've also empowered the EPA to shut down the desal plant if at any stage they believe salinity levels are reaching a level that may risk the marine ecology.

I note that development approval condition No. 66 does require a live telemetry observing system to be established to 'allow appropriate management responses to any unexpected salinity events'. Can the minister explain how it is intended that the live telemetry observing system will work and what the consequences will be if there is an observed unexpected increase in salinity levels?

The Hon. G.E. GAGO: I have been advised that that will be up to the EPA licensing arrangements, which have not yet been established.

The Hon. M. PARNELL: I thank the minister for her answer. I understand that the licence has not been finalised. In fact, the company has 12 years to commence construction of the desalination plant, but the reason I want to pursue this a little further is that the government has made quite some point over the last month or two about how the EPA will have the ability to shut down the desalination plant. We are told that the company will have a storage capacity for water and it will have that storage capacity, as I understand it, both at the desalination plant and at the mine site. Can the minister point out where that obligation is to have storage of water in the event that the desalination plant is shut down?

The Hon. G.E. GAGO: I have been advised that there is no obligation for storage of water; it is part of the EPA's risk management strategy.

The Hon. M. PARNELL: I think the minister meant it is part of BHP's risk management strategy.

The Hon. G.E. GAGO: Sorry.

The Hon. M. PARNELL: Is the minister's answer that it will be up to the company to basically punt on the EPA never turning off their desal plant; otherwise they would run out of water if they have not built storage facilities at either end?

The Hon. G.E. GAGO: That is a potential risk; however, they do still have water from the GAB.

The Hon. M. PARNELL: Yes, I understand the minister's answer that this is not the only source of water. We will get onto the Great Artesian Basin shortly. In relation to the powers of the EPA, whilst the licence might not have been written, can the minister confirm that under this indenture the EPA will have the power to order the immediate shutdown of the desalination plant and that they will not be required to go through the mediation process or the arbitration process? Can the minister confirm that power exists and that it is immediate?

The Hon. G.E. GAGO: I have been advised that yes, they can, through the licensing arrangements.

The Hon. M. PARNELL: Just to confirm, the EPA will license the desalination plant. The minister said they will have the power to order the immediate shutdown of that plant. Can the minister confirm that there is nothing in the indenture that would prevent that power from being exercised?

The Hon. G.E. GAGO: I have been advised no, that there is nothing in the indenture.

The Hon. M. PARNELL: The only other desalination plant of even a comparable size is the desalination plant at Port Stanvac. That provides a useful example of how desalination plants are regulated. The question I would like to ask the minister relates to the conditions that might be included in the EPA licence—notwithstanding that it has not been written and that the company still has 12 years to build it—that the conditions of licence may well be expressed in different terms to those that are in the EIS for example, or in this indenture.

I refer to the fact that this indenture and the assessment report refer to the dilution ratio of 1:70, measured at 100 metres from the diffuser point. At the Port Stanvac plant they had a 1:50, similarly measured, but when the EPA licence finally came out the actual unit of currency, if you like, was different. Regarding the unit of currency in relation to Port Stanvac, for example, it says that if the average salinity at any point 100 metres from the diffuser structure exceeds 1.3 parts per 1,000 above ambient salinity for a six-hour period, then the licensee has to notify the EPA within six hours and it has to take appropriate corrective action to manage salinity in the receiving environment.

Whilst the minister is not able to answer now what will be in the EPA licence, can she explain the discrepancy between setting conditions of approval that relate to a mixing ratio or a dilution ratio 1:70 with what ultimately turns up in the EPA licence, which, if it is anything like Port Stanvac, will be expressed in parts per thousand? The reason that that is important is that when you translate those two figures into a common currency you find—and Dr Kaempf of Flinders University found—that the dilution values at Port Stanvac were significantly lower by a factor of 1.7 or even up to 3.8 times that which was originally assured by the proponents and the state government. In a nutshell, using these different currencies—different units of measure, if you like—the water to be discharged could be twice as salty as that which we are led to believe in the EIS and this indenture.

What assurance can the minister give that the one to 70 first of all will be achieved (given that it is based on modelling), and secondly, that it will not be diluted, as it were, through a change of unit of measurement in the EPA licence?

The Hon. G.E. GAGO: I have been advised that, obviously, the conditions for Point Lowly are going to be some of the highest in Australia, but in relation to the dilution rates rather than salinity concentration to set conditions, I have been advised that we have done that because it is more practical and more reliable. I have also been advised that it does not compromise, or produce a lesser standard than, what is expressed in the dilution ratio.

The Hon. D.W. RIDGWAY: I read some of the information arrangements of the EIS and the approvals for the desal plant so long ago that I cannot recall whether there any restriction on the volume of water. We are talking about the licence agreements here now in relation to dilution and salinity but, as part of the approval, does that restrict BHP to a maximum amount of water?

The Hon. G.E. GAGO: I have been advised that the critical aspect to this is the dilution, not the actual volume. This is determined by a dilution of one in 85 at the nearest cuttlefish breeding ground.

The Hon. D.W. RIDGWAY: My understanding, from the briefings the opposition has had, is that BHP themselves are probably unlikely to build the desal plant. A third party might build and construct it for them. Is it possible then that, given there is no cap on the volume, a third party—which would naturally have some contractual obligations to supply BHP Billiton with the amount of water and the time frames and adhere to that—could construct a larger plant and provide some other operator, under another contract out of that same plant, with water for either community use or, in this case, another mine operator?

The Hon. G.E. GAGO: The answer is: potentially, yes; however, the government gets the first dibs on any excess water.

The Hon. D.W. RIDGWAY: I understand it gets first dibs on the excess water but, if another significant mining operation or resource is discovered and needs water, what you are saying is that we could see a 20, 30 or 40 per cent increase in the size of the plant. Because the approval to put in a plant is in place, that operator then would not need to go through the whole approval process, other than to meet the ongoing monitoring requirements in relation to salinity dilution.

The Hon. G.E. GAGO: I am advised that they are required to abide by the conditions of the indenture, and that is capped at 280. So, anything above that, the South Australian government has first dibs on.

Sorry, the maximum that the plant can go to is 280. I have been advised that there is nothing in the indenture to stop the desal from providing water to a third party or selling water to a third party; however, they have to abide by the conditions in their indenture, which means that is capped at 280.

The Hon. D.W. RIDGWAY: So will any capacity beyond 280 require a whole new approval process or just an amendment to the existing provisions?

The Hon. G.E. GAGO: It would require an approval process.

The Hon. M. PARNELL: Still on this issue of the desalination plant, is it the government's expectation that, during the dodge tides, which I understand occur about twice a month, a period during which there is very little water movement, the plant would be expected to shut down?

The Hon. G.E. GAGO: I have been advised that, yes, it is possible if those salinity levels are triggered.

The Hon. M. PARNELL: I would just like to tie some of these answers together, and the minister can respond if she wants. We have a couple of things that do not sit consistently together. First of all, the salinity levels have to be triggered. If the EPA licence is anything like the one at Port Stanvac, you have to have an anomaly for six hours, the company then has a further six hours to report the anomaly, then the EPA has to decide what to do. So, we are already up to 12 hours before we even get into EPA decision-making time. I would have thought that the tide has well and truly shifted by then. That is the first observation.

The second observation is—and the minister has answered before—that the question about whether or not to store water on site is a matter for the company. She has pointed out that it could use Great Artesian Basin water if it is not using desalinated water. Mining minister Tom Koutsantonis has said publicly that one to 14 days—maybe 28 days—worth of water use will be stored on site at Olympic Dam. Can the minister respond to how there can be urgent responses to salinity events given the time frames I have outlined?

The Hon. G.E. GAGO: The timing matters are technical matters for the EPA. It will set down and establish whatever guidelines it believes are a safe and timely response to the level of risk at hand.

The Hon. M. PARNELL: When we think of the discharge from the desalination plant, people mostly think about the hyper-saline brine solution, but there can also be other pollutants, in particular, chemicals that are used, for example, to de-scale the membranes used in the desalination plant. My question of the minister is: will the company be obliged to remove any biocides or anti-scaling agents or any other poisons that are used to clean or clear their water filters before releasing the brine discharge into the gulf? The context for this question is that giant Australian cuttlefish are known to have sensitive skins and that these chemicals could adversely affect these animals.

The Hon. G.E. GAGO: I have been advised that the chemicals that the honourable member refers to are removed and that toxicity testing has taken all those matters into account.

The Hon. M. PARNELL: I thank the minister for her answer; her assurance that all those chemicals will be removed before the discharge goes into the gulf. I was going to ask about the eco-toxicity testing, but there are a number of conditions in the development approval that relate to that, so I do not need to revisit that ground. However, my question is in relation to this additional eco-toxicity testing that BHP is required to undertake. If the results of those tests show that the dilution factors need to be changed, will the EPA have the ability to change them?

The Hon. G.E. GAGO: I have been advised yes.

The Hon. M. PARNELL: Just to clarify, if the figures we are talking about—70:1 at 100 metres and 85:1 at the cuttlefish breeding grounds—turn out to be not strict enough, the EPA will have the ability under this indenture to require a tougher dilution standard?

The Hon. G.E. GAGO: I have been advised yes.

The Hon. R.I. Lucas: Hear, hear! A very good answer.

The Hon. M. PARNELL: The Hon. Rob Lucas agrees—a good answer. I now move on to the Great Artesian Basin, which is the other major water issue. My first question of the minister is: given that they have permission to build a desalination plant that would provide more than enough water for their needs, why did the government not take the opportunity to wean BHP Billiton off the Great Artesian Basin?

The Hon. G.E. GAGO: There are a number of reasons not to choose that pathway. First of all, having more than one water supply provides greater security and better risk management for the future operation of the Olympic Dam expansion facilities. Given the level of capital investment, this is important to BHPB. It is also important to note that BHPB has invested around $100 million in infrastructure associated with the GAB wellfield and is not about to give up that investment.

Secondly, BHP already has been awarded a legal entitlement to extract water from the GAB. The approval and licence awarded by the water minister was provided under a previous project. The extraction of water from the GAB from this wellfield has now been capped at 42 megalitres per day. Thirdly, the water allocation plan for the Far North Prescribed Wells Area issued by the SA Arid Lands NRM Board in February 2009 says that at least 350 megalitres per day of water can be sustainably extracted from the SA section of the GAB. The BHPB allocation is well within that range.

The key is to ensure that the mound springs are protected. This means that not all of the 350 can be extracted from the same region. This would cause a high level of drawdown and potentially impact unfavourably on the mound springs. Therefore the extraction needs to be spread out throughout the GAB in order to ensure that the BHPB wellfield does not draw down unfavourably. The Department for Water has developed a sustainability test. Monitoring and annual reporting by BHP must meet this test, and after 25 years of operation, the GAB wellfield reporting has shown no decline in mound springs fauna and in particular no impact on endemic fauna.

The Hon. M. PARNELL: I thank the minister for her answer, and we will tease a few of those issues out as we go through, but the first thing that the minister said is consistent with what the company has always said: the reason they want to keep taking water out of the Great Artesian Basin is that they have invested significant capital in the plant and equipment required to extract that water.

The minister mentioned the figure of $100 million. Could the minister elaborate on that figure? My understanding is that most of the infrastructure was in fact paid for by Western Mining Corporation many years ago and that there has in fact been very little new additional investment in Great Artesian Basin infrastructure; that effectively it is a legacy issue from the previous operators that BHP Billiton have taken over. Can the minister explain how that additional $100 million has been spent, and over what period?

The Hon. G.E. GAGO: My understanding is that it is maintenance capital. We are not too sure over what period.

VISITORS

The CHAIR: The Legislative Council welcomes the Sturt Street Community School reception students.

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

In committee (resumed).

The Hon. M. PARNELL: Thank you, Mr Chairman; it is always good to have primary school students in the gallery, because it reminds us that the project we are talking about will be going into their adulthood long after the rest of us are long buried in our graves. The minister's answer is that she is uncertain as to whether it was capital expenditure or maintenance. My understanding is that, whilst I have no doubt that there has been maintenance, there has been very little capital expenditure, so that means that the company's number one reason for not getting out of the Great Artesian Basin is other than that of expenditure. The real reason is that it is cheaper water.

However, one of the things that the Western Mining Corporation used to trumpet as part of their obligation to the community, their social licence to operate, was the capping of other free-flowing bores out of the Great Artesian Basin. Can the minister tell us what activities BHP Billiton has undertaken in relation to the capping of free-flowing bores since it took over the operations? We certainly have some record of what Western Mining Corporation might have done, but has BHP Billiton continued that program?

The Hon. G.E. GAGO: I am advised that BHP Billiton (formerly Western Mining Corporation) contributed $1.2 million—$400,000 in 2000-01, 2001-02 and 2002-03—to phase 1 of the Great Artesian Basin Sustainability Initiative which was subsequently matched by the commonwealth government. Prior to continuing to the GABSI phase 1, BHP Billiton (WMC) actively undertook bore drain replacement on Clayton and Muloorina pastoral leases and overlapped the company's wellfield B designated area in the GAB, the main wellfield used for extraction of groundwater by BHP Billiton for the mine. BHP Billiton has also reduced extractions from the GAB through its purchase of the Etadunna pastoral lease and the paddock in which the Jackboot Bore used for the GAB well monitoring role is located in Muloorina. I am told over $2.2 million has been spent.

The Hon. M. PARNELL: Just to clarify: the minister's response is that, since taking over in 2005, BHP Billiton have bought some pastoral leases but they have not actually spent any money (or any significant money) on protecting the Great Artesian Basin through the capping of flowing bores, for example, since that date.

The Hon. G.E. GAGO: I have been advised that, no, that is incorrect. They have spent over $1 million on bores, on capping outlets.

The Hon. M. PARNELL: So the record shows that, given the size of this project, of the 42 million litres per day that they are able to take, they have spent $1 million in the last six years capping bores. I just make the observation that that is an absolute pittance compared to the task that is ahead of us. Really, I think what has come out of the minister's answers so far is that BHP Billiton are continuing to extract from the Great Artesian Basin, firstly, because the government is letting them; secondly, because it is cheaper for them to do so; and really it boils down to just those two things. But if I am wrong, I will let the government correct me. Did the government ask BHP Billiton to undertake any economic analysis, any feasibility, of comparing the cost of desalinated water with the cost of extracting fossil water from the Great Artesian Basin? Does that economic analysis exist?

The Hon. G.E. GAGO: I am advised that, no, the government did not request that information but BHP Billiton did look at a range of options and brought this back to us as the best option to meet their needs.

The Hon. M. PARNELL: Can the minister confirm that this entitlement to take 42 million litres of water a day can, under this indenture, continue up until the year 2082 or potentially even longer?

The Hon. G.E. GAGO: I am advised that, potentially, yes.

The Hon. M. PARNELL: One aspect of this that has received some attention is the fact that the government is proposing to charge BHP Billiton for the water that they extract from the Great Artesian Basin, and this will be the first time that they have had to pay for that water. However, the charging requirement has been capped and the capping, as I understand it, is at about a level of three times the initial price for the water. Firstly, can the minister explain why is that

cap in place? Why won't BHP Billiton be required to pay the prevailing price for water if it exceeds the cap? Secondly, could that cap continue until the year 2082?

The Hon. G.E. GAGO: In terms of the first part of the question, I am advised that has simply been part of negotiations and that is what has been agreed to. For the second part, I have been advised that it will last for 30 years.

The Hon. M. PARNELL: So, the cap is what was agreed to. Is there any other user of water—groundwater, surface water or any water—in South Australia that has the price for water capped for the period of 30 years?

The Hon. G.E. GAGO: Not that we are aware of.

The Hon. M. PARNELL: I thank the minister for her answer, which really just shows how unique and favourable this arrangement is. No-one else—no other user of water, no irrigators, no other mining companies—gets this concession. Members are aware that BHP Billiton had their AGM last week in Melbourne, and one person managed to ask a question of Jacques Nasser, the BHP chairman. The woman, Anne Kennedy asked a question about getting out of the Great Artesian Basin, effectively saying that if BHP Billiton wanted to keep their social licence to operate they should get out of using this ancient fossil water.

Whilst I was not at the meeting, not being a shareholder, Mr Chairman—it might surprise you—apparently she received a round of applause. The chair of BHP gave her a private meeting afterwards and, as I understand it, an undertaking to investigate her assertions around the damage that the extracted water was causing on the environment. My question of the government is: notwithstanding that they have allowed the 42 million litres to continue for decades to come, will the government be working with BHP Billiton to progressively wean them off the basin?

The Hon. G.E. GAGO: I have been advised, no, and that is because the water allocation from the Far North Prescribed Wells Area, issued by the SA Arid Lands Natural Resources Management Board in February 2009, says that at least 350 megalitres per day of water can be sustainably extracted from the SA section of the GAB, and BHP's allocation is capped well within that range.

The Hon. M. PARNELL: The minister said in one of her earlier answers that there was no adverse impact on the mound springs. By mound springs we are talking about those unique environments where the Great Artesian Basin meets the surface, and they are effectively oases in the desert. The minister said that this extraction of groundwater would have no effect. She referred to the fact that they will be spreading the load by having the well fields spaced apart. Can the minister first of all confirm that, over the history of this mine, mound springs have been negatively impacted and continue to be negatively impacted? In fact, my understanding is that it least one or two of those mound springs are only maintained artificially by additional pumping of water.

The Hon. G.E. GAGO: I think I have already put this on record, that after 25 years of operation there are no impacts on sensitive receptors in the environment that are in excess of those considered and approved in the earlier state and federal environmental impact statements of 1982 and 1997. Also, the condition of the mounds springs is reported annually, so that information is on the public record.

The Hon. M. PARNELL: I thank the minister. What I was expecting her to answer was to say, yes, mound springs threatened ecological communities, under commonwealth law, have gone extinct and others are under pressure as a result of this extraction. The minister said that one reason the government is not proposing to force BHP Billiton out of the Great Artesian Basin is because there is a water allocation plan that indicates that 350 million litres per day is appropriate. BHP Billiton is only taking 42, therefore it is within the limits. My question of the minister is: if things were to change and the water allocation plan was to reflect a much lower maximum extractive use from the basin, and if other users of the basin cumulatively have met the maximum take from the Great Artesian Basin, will BHP Billiton be obliged to cut its take or will it be protected by this indenture and all other water users would have to reduce their take but not BHP Billiton?

The Hon. G.E. GAGO: I have been advised that, yes, there are powers for the minister to intervene if there is some adverse event that occurs to the GAB, or continued deterioration of some form. Section 13(8)B(c)(ii) provides:

If the Water Minister has reason to believe that the continued abstraction of water by the Company from the designated area shall be detrimental to the water resource or that there is a reasonable possibility of a complete or

partial failure of the water supply from the water resource, he may issue to the Company a notice requiring it to restrict the abstraction of water from the designated area to the limit set out in the notice...

And it goes on.

The Hon. M. PARNELL: I thank the minister for her answer. As I understand it, she is effectively saying that other parts of clause 13 are of no effect. For example, we have subclauses (25) and (29) of clause 13, which basically state that the right of the company to take water takes precedence over water plans set out in the Natural Resources Management Act. Subclause(29) provides:

The Company may take water, pursuant to a Special Water Licence, contrary to the provisions of any water plan that applies in relation to the water taken pursuant to that Special Water Licence.

Subclause (8A) provides that, notwithstanding any other provision in this indenture or requirement of an environmental management program, the company shall be entitled to draw water. So, if the minister could clarify her answer: is she saying that those clauses that basically state that the company's rights prevail over any water allocation plan are not effective if the minister personally intervenes to insist that they take less water?

The Hon. G.E. GAGO: I have been advised that, in fact, the indenture does override the water allocation plans (WAP), but not the minister's powers to issue a notice as read out in my previous answer.

The Hon. M. PARNELL: I have a final question on this point. If the minister was minded to reduce the company's entitlement to use Great Artesian Basin water, would there be any claim on the company's part for compensation?

The Hon. G.E. GAGO: I am advised no.

The Hon. M. PARNELL: Unless other members have questions on clause 13, I might just outline that, when we get to my schedule 2, I do have a number of amendments that relate both to the desalination plant and to the Great Artesian Basin. My amendments require the company to do what the Environment, Resources and Development Committee asked it to do, that is, to find a better spot for its desalination plant that is not in Upper Spencer Gulf.

I have amendments here that impose a 10-year sunset clause on the extraction of groundwater. I have a sunset clause to phase the company out of using water from Borefield A, and Borefield A (the original borefield) is the one that did result in the extinction of Mound Springs and the harm to a number of others; and, in fact, an acknowledgment of that fact is why the company and its predecessor actually reduced their take from that well field and transferred most of it to Borefield B.

There is a number of amendments and we will get to those later. Clearly, this is a pretty significant part of the project, and I thank the minister for her answers. Unless other members have questions, I propose to move on to clauses 14 through to 18, which I am happy to deal with en bloc because my questions are the same for all those.

Clause 14 relates to roads; clause 14A the workers' village infrastructure; clause 15 is airport and related facilities; clause 16 is railway facilities; clause 17, port facilities; and clause 18, power facilities. These are infrastructure. What they all have in common is bargain basement rental, being $1 per year for each piece of infrastructure. Can the government explain why that sum was chosen for what will in effect be many hundreds of square kilometres of South Australia?

The Hon. G.E. GAGO: I want to advise members that the rental for expanded SML will be around $2.5 million per annum, and the desal plant will be paid at full market rates. If all the matters that the honourable member brought to our attention—the road, airport, railway, etc.—were added up and put under a standard lease, the total cost would come to $19,715 per year. So it is a pittance amount and, considering the other leasing arrangements which are clearly going to be far more advantageous, we are unlikely to worry about the $19,715.

The Hon. M. PARNELL: I thank the minister for her answer and I accept that is a very small amount in the overall scheme of things. Is the minister's answer predicated on what the rental for those facilities would be—the railway, easements, port, power easements? Is that the rental the minister believes would have been payable had the Valuer-General determined the rental? In other words, on what basis is that $19,000 determined, given that each of these, it says in the indenture, is $1 per year rental?

The Hon. G.E. GAGO: I have been advised that these are the rates that would stand under any standard mining leasing schedule. This is what would occur if another mine wanted to lease these.

The Hon. M. PARNELL: I understand that the minister is saying it is the going rate, but is that the going rate determined on the basis of the information the Valuer-General would provide, or is it just made up?

The Hon. G.E. GAGO: It is what we offer the mining industry generally.

The Hon. M. PARNELL: The reason that is important, Mr Chairman, is that a part of all of these clauses is an effective right to the exclusive occupation of these areas of land and the infrastructure. Whilst members might be minded to think that if BHP Billiton is going to build a railway or a transmission line or a port, that is theirs and they should be entitled to do with it as they will, members would also appreciate that in Australia we have third-party access arrangements which are designed to make our economy more efficient. It makes absolutely no sense to have two parallel railway lines running alongside each other or two parallel sets of power infrastructure or to have two shipping ports side by side if, in fact, there is capacity in that infrastructure for third parties to have access.

I am sure all members have read it, but I draw to their attention a statement by the new chair of the ACCC Mr Rod Sims in the media last week speaking about this issue and he took the opportunity in one of his first important speeches to basically say how broken the system of third-party access is. He pointed out that what is called the part 3A access provisions effectively do not work and they allow companies, including mining companies, to monopolise the infrastructure and use legal techniques to prevent their rivals getting access to it, even if there is clearly excess capacity.

Mr Sims points out, for example, that probably the two best known access cases are Fortescue's seven-year battle to get its trains onto the Pilbara networks, run separately by Rio Tinto and BHP Billiton and, apparently, the more straightforward attempt by Virgin Blue to get access to services at Sydney airport. Mr Sims is not the only one who has pointed out how difficult it can be, yet in this indenture we find the government writing in provisions which effectively protect, or attempt to protect, BHP Billiton from having to share its infrastructure even if there is capacity and even if these third parties are able to pay commercial rates for access. First, why on earth did the minister agree to that; and, secondly, does the minister believe that these protections will be effective?

The Hon. G.E. GAGO: I have been advised that BHP obviously wanted certainty around its ability to be able to run and manage its own infrastructure. However, it is not immune from federal third-party access regimes and it has demonstrated that it would be prepared to lease on a commercial basis.

The Hon. M. PARNELL: I understand that the minister's answer is that, where third-party access regimes are governed under commonwealth provisions that the company accepts, it will have to comply with those provisions. However, my question of the minister was: does she believe that any of these protections from third-party access will be effective? I guess the context of my question is that it was clear in the debate in the other place that this was a die-in-the-ditch issue for the company; that is, it absolutely insisted that it had to have protection so it did not have to share its infrastructure assets with anyone else. I will ask the minister again: which parts of infrastructure is the company resigned to having to share and which parts does it believe the indenture protects it from having to share?

The Hon. G.E. GAGO: Clearly, this was an issue that was of great concern to BHP. It is investing huge amounts of money in the development and maintenance of its infrastructure, and it clearly wanted to have certainty over the running and management of that. In relation to state access, it involves rail and water and the rest is federal, I have been advised.

The Hon. M. PARNELL: I thank the minister. I guess it is a big disappointment to me that as a nation we have tried to come up with rules and systems for the more efficient operation of our economy and the sharing of infrastructure that is capable of being shared, yet what the government is doing here is deliberately undermining that national policy to provide protection to this company for their expenditure.

So, when it comes to things like railways, whether you are running one train a day or 10 trains a day, if there is a capacity for any other trains and any other mine sets up anywhere in

the area where it would be more efficient for them to connect to the BHP line and pay BHP a fair commercial return for the use of their line, then the effect of this indenture is to say that that will not happen or that the third parties cannot force it to happen, to be more accurate. Of course, BHP could set their own price—they could set an exorbitant price—and they could hold these other companies over a barrel. So, you may end up getting two railway lines built side by side, and that would be a commercial decision that gave BHP the ability to force a rival to do that, and maybe kill off their project, and maybe kill off competition.

I am amazed that the government has gone down this path, but I will not pursue that any further, other than to point out that these clauses are probably some of the most contrary to the public interest in this indenture. The amendments that I am moving (when we get to them) are: first of all, I want the one dollar per year rental for all of the sites for this infrastructure to be set by the Valuer-General. I have also included third party access clauses in relation to the airport, the railway, the port and the power facilities. I have not included things like pipelines. If you have a pipeline that is full of someone's water, well, it is pretty difficult to share that if it is at capacity. The same would apply to any of these pieces of infrastructure which were at capacity and where the company required exclusive 100 per cent use but, clearly, on any analysis, most of these bits of infrastructure will not be used to their full capacity.

So, those amendments are before us when we get to that. They are my questions on clauses 14 to 18. Unless other members have contributions, my next clause is 19, which relates to the special mining lease, and I particularly want to focus on subclause 2(b) which talks about the expected life of the mine. The indenture that we are being asked to approve—this project—is based on a nominal life of 40 years. That was the period that was set out in the EIS, yet many of the public statements by government ministers and by the company itself are talking about a project that will go for twice as long. There is also an expectation in this indenture and elsewhere that the total capacity of the mine could be up to double the 750,000 tonnes that are being approved. My question of the government is, is the government already talking to the government about expanding beyond 750,000 tonnes?

The Hon. G.E. GAGO: There is certainly no secret in BHP making it clear that the indenture contemplates 1.5 million tonnes, however, anything greater than 750,000 tonnes requires a new EIS.

The Hon. M. PARNELL: The logical follow-up question is, if it has been no secret, and the company is talking about it, and the government is talking about it, why did the government not require BHP in relation to some of the environmental impacts—I do not suggest it would be all of them, but some of them where a key factor might be time—why did the government not insist on BHP analysing the cumulative environmental impacts for, say, a 100-year project, rather than simply a 40-year project?

The Hon. G.E. GAGO: We decided to do it in a staged approach. That is a more manageable way to do it.

The Hon. M. PARNELL: I completely understand the staged approach, but the point that I am making is that everyone—the company, the government, in the community, everyone—is talking about a much bigger project and, yet, we are being asked to effectively give endorsement to this project knowing that it is going to expand, or is likely to expand, or has permission to expand, without having a look at those cumulative impacts. I will leave that line of questioning there. I have some amendments modifying clause 19 which members can see when we get to schedule 2. Most of those are consequential and they are issues that I have raised already.

In relation to clause 19A—Pipeline licence, I have some amendments there, including deleting reference to the euphemistically described non-discrimination clause, which basically says that tougher standards should not be imposed on BHP Billiton; in fact, even tougher standards that might universally be applied should not be applicable to BHP Billiton if, in BHP Billiton's opinion, it is going to unfairly affect it.

In relation to clause 21, in relation to infrastructure, the mining minister, Tom Koutsantonis, on radio, has linked a number of developments in the north of the state and suggested that they are, in fact, linked. On regional radio, for example, on 10 October, he said:

> There is so much going on in and around the north of the state that there is a common user facility being proposed at Port Bonython by Flinders Ports. We're hoping that [transcript unclear] $1 million port will get the kick along now with this announcement.

By 'with this announcement' he was talking about the BHP Billiton announcement. So, my question is: what link is there between the proposal for a deep-sea port at Port Bonython and the Olympic Dam expansion?

The Hon. G.E. GAGO: There is no current link.

The Hon. M. PARNELL: Is the minister categorically ruling out that any ore or finished product from Olympic Dam will be exported via a yet to be constructed facility at Port Bonython?

The Hon. G.E. GAGO: That would be a matter that would be looked at by BHP as a commercial consideration.

The Hon. M. PARNELL: So, the answer is that, if BHP Billiton thinks that it is the cheapest way in which to get its product out, it will use the port facilities at Port Bonython? The minister's shrug/nod indicates that that is certainly a possibility.

My next clause is 24 and, if other members have clauses in-between I will sit down, otherwise, in relation to clause 24—Freehold grants, I do not have any questions but I point out that I do have amendments, which effectively will remove this capacity to freehold what is currently publicly owned land.

The next clause is 27—Leases, licences, easements and rights of way. Again, I have an amendment there, which is consequential on the deletion of clause 31, which we will get to. In clause 28, I have an amendment, which basically is in relation to the modification of state law over major projects which, under the current clause 28, gives special concessions to BHP Billiton. I am proposing to delete that clause.

Clause 30 I am proposing be deleted. This is a clause where the state agrees never to resume or compulsorily acquire land that is required by the company, but I note that the very next clause, in fact, obliges the state to resume land if the company does need it. Under clause 31, the compulsory acquisition powers can be used for the benefit of BHP Billiton but they cannot be used against BHP Billiton.

So, again, these are special arrangements that apply to this company and to no other. There are amendments to clauses 30, 30A, 31 and 31A, which brings me to the next substantial clause. I am sure other members will have a contribution on this as well; clause 32 is in relation to royalties.

The CHAIR: I remind the cameramen that they should film only the people on their feet. Did you get the message up there? The fellow up the back in a white shirt: you can film only those people on their feet.

There being a disturbance in the Strangers' Gallery:

The CHAIR: I am talking to the camera guy. You should sit down and be quiet.

There being a disturbance in the Strangers' Gallery:

The CHAIR: Sit down and be quiet. I remind you that you can film only those people on their feet. The Hon. Mr Parnell.

The Hon. M. PARNELL: Clause 32 relates to royalties and, as a constituent wrote to me in an email this week, 'It's our land, it's our resource; we should all benefit, not just BHP shareholders.' So clearly, the royalty rate is of some concern to the community. Why was the royalty rate locked into a period of 45 years? The flipside of that question is: why not insist that BHP Billiton be subject to the royalty rate that prevails from time to time, as all other mining companies in South Australia have to be?

The Hon. G.E. GAGO: I have been advised that 45 years was the time period that was agreed to, and it was agreed to because BHPB needed certainty in terms of both the rate and the time. The 45 years was part of the negotiated agreement. As you would be aware, the same mining rate applies to them as applies to other mining interests of a similar type.

The Hon. M. PARNELL: The Hon. David Ridgway is keen to contribute as well, but I would like to pursue this just a little bit further. I understand they want certainty—every mining company would like certainty, every mining company would love their cost structure to be locked in for as long a period—but why 45 years? The EIS is for 40 years; if you are going to lock it in, why not lock it in for 20 years or 50 years or 100 years? Why was 45 years chosen? It appears to be a

number plucked out of the air that bears no relationship to any of the time periods attached to approvals under the indenture.

The Hon. G.E. GAGO: The time period was agreed to; negotiations took place and certainty was needed. The 45 years was the period that was landed on. BHP believed that this was adequate to provide them with the certainty, both in terms of rate and time, that they needed. In terms of comparisons with other mining investments, there is no comparison; there is no other mine interest agreeing to invest in South Australia somewhere in the vicinity of $30 billion. This is quite an exceptional set of circumstances that required special consideration in relation to their needs, given the extent of that investment.

The Hon. M. PARNELL: To pursue that, certainly the company and other ministers have said that there is a long lead time with this investment; it will take them a long time before they start to make a profit. In fact, we have had three different figures given recently. Deutsche Bank's mining analyst Paul Young, for example, said in the Australian *Financial Review,* 'It will take 15 years before you end up paying back your capital.' Ex-minister Kevin Foley, in the other place, said on 9 November (using not quite the same turn of phrase) 'these buggers ain't going to make a profit for 18 years'. Then we have Treasurer Jack Snelling saying in *The Advertiser* on 26 October, 'It does make the project, on paper at least, marginal when you think it'll take 20 to 25 years before they've recovered their initial capital outlay.'

My question to the minister is which of those three is correct: Deutsche Bank, 15 years; ex-minister Foley, 18 years; or Treasurer Jack Snelling, 20 to 25 years? A supplementary question is: ought not an analysis of the payback of capital have affected the length of time that the royalty freeze was in place?

The Hon. G.E. GAGO: I am advised that those payback times are dependant on a wide range of different variables, so the thing can shift and move. So, it just depends.

The Hon. D.W. RIDGWAY: Questions have been asked around the 45-year time frame for the level of royalties. We have been repeatedly told by former minister Foley, former premier Rann, Premier Weatherill and minister Koutsantonis that this is a very good deal. Could the minister share with the chamber, if this is the negotiated point of 45 years, where did the government start its bargaining from? How much ground have we had to give in order for this deal to be achieved?

The Hon. G.E. GAGO: Negotiations are a confidential set of discussions, so it would be most inappropriate for me to be talking about any detail. Obviously a wide range of different matters were considered until a final position was then landed upon, as I said, on a wide range of different matters.

The Hon. D.W. RIDGWAY: So the community just has to believe those people I mentioned—the former minister and premier, the current minister and Premier—and yourself, minister, that this is the best deal that we could possibly have got; 'Just trust us'?

The Hon. G.E. GAGO: I can assure honourable members that this government believes that this is the very best deal that could have been extracted. One matter that I am able to share is that, for instance, BHP Billiton wanted a period of 70 years and we were able to bring that back to 45 years. As I said, there is a high degree of argy-bargy that goes on, and we believe we have extracted, overall, the very best deal for South Australia.

The Hon. D.W. RIDGWAY: The answer to the previous question was that it was confidential and you could not share any information. You have now just shared with the chamber that BHP's position was 70 years. So, you are quite happy to share their part of the confidential information, but it appears you are not prepared to share the taxpayers' share of the confidential information.

The Hon. M. PARNELL: I don't think the minister is proposing to answer that, so I will jump up, unless you want to pursue it.

The Hon. D.W. RIDGWAY: I will place on the record that maybe we should ask BHP if they would like to share the government's portion of the confidential information so that then at least both sides have an opportunity to put their case.

The Hon. M. PARNELL: I think the Hon. David Ridgway makes some very good points. It is interesting to know that BHP asked for 70 years. The EIS might have been for 40 years, but the economic modelling in the EIS was only for 30 years. So, we have economic modelling for 30—

The Hon. D.W. Ridgway interjecting:

The Hon. M. PARNELL: But they are not cumulative. Members would recall—because I have referred to it before and a number of members have read it—the damning critique that was in *The Australian* a week or so ago. Paul Cleary said:

> 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 article goes on:

> 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.

Why was a profit-based royalty regime not considered?

The Hon. G.E. GAGO: I have been advised that it was considered but if we went to a profit-based royalty system we would not see any royalties for approximately 15 years and it would also have a detrimental effect on our horizontal fiscal equalisation arrangements.

The Hon. M. PARNELL: I guess one of the things to take out of that answer is that in answer to my earlier question, who was right, Deutsche Bank was right—15 years before you start making a profit. In terms of the vertical fiscal equalisation process, whereby all states effectively pool their royalties and they are shared out by proportion of population, that actually was my next question. Whilst we are talking about locking in the royalty rate for 45 years for this one company and this one project, are we not effectively locking in the national royalty for that period of time?

Members might think that is a curious question—we are not legislating for the nation, we are only legislating for South Australia—yet, in the other place, the Hon. Kevin Foley said:

> We will be producing—I do not know—80 per cent of the nation's copper. We will be producing 90 per cent of the nation's uranium. We will be the price-setters of royalties. Western Australia is not going to put a royalty rate higher than us: why would they be that stupid?

Has this government, by this agreement, locking in a 45-year royalty rate, effectively tied the hands of all other state governments when it comes to setting royalty rates for their mining projects?

The Hon. G.E. GAGO: I have been advised no, that they are entitled to set and able to set their rates at whatever they like.

The Hon. M. PARNELL: Of course, that is right; they can do it. Former minister Foley said that they would be stupid to do it. As a follow-up question: has the government done any analysis of the impact of its decision to lock this royalty rate in for 45 years on the potential nationwide collection of royalties as other states find that they are effectively capped at the same rate that BHP Billiton has been capped at?

The Hon. G.E. GAGO: I have been advised no, that our priority has been focused on promoting the interests of South Australia.

The Hon. M. PARNELL: I make the observation that it is a very narrow approach. Here we have a government behind closed doors negotiating effectively on behalf of the entire nation. Another aspect of royalties that has been raised—and I have raised it in this place many times—is the idea of the investment of royalties into a sovereign wealth fund. Whilst I appreciate that there are certainly limitations presently on what the state can do, given the current equalisation arrangements, has the South Australian government been speaking to the federal government about the creation of some type of sovereign wealth fund that would preserve some of the current revenue from this Olympic Dam expansion so that the capital can be invested and future generations will still have access to effectively the benefit of these minerals that can only be dug up once?

The Hon. G.E. GAGO: I have been advised that, to this point, not that we are aware of.

The Hon. M. PARNELL: I would urge the minister to have those discussions, because if this project is as big as the government says, if it is going to be as lucrative as the government says, then we as a nation would have rocks in our head to not invest some of the proceeds for the future. I do not have any further questions on royalties. Does the Hon. David Ridgway have any further questions on royalties?

The Hon. D.W. Ridgway: No.

The Hon. M. PARNELL: I foreshadow that I have a number of amendments on the topic of royalties, basically to end the 45-year capping period to enable the company to pay the

prevailing rate as it is from time to time. I have amended the clause to reduce provisions that allow for the royalty rate to be reduced in certain circumstances and also to bring in some provisions so that South Australia is not obliged to reduce its own royalties following the introduction of a commonwealth royalty or some other new commonwealth levy or tax.

My next question is in relation to clause 33. It is, in fact, not so much a question as an observation that my amendments seek to delete clause 33, which is headed 'No special taxes'. By deleting this clause, we would effectively stop the binding of government or parliament to be able to impose new taxes, rents, charges, tariffs and levies. I think that certainty is not counted in a democracy like Australia by all companies having to comply with rates of tax and laws as they exist from day to day. We do not need the special provisions.

Clause 34, the so-called non-discrimination clause I have referred to, should be deleted. It effectively says that, even if a provision does not name BHP Billiton, if they believe it is discriminatory because it applies to them more than anyone else because they are doing more of something than anyone else, it is not allowed. I think they should comply with the law of the land as it exists at the day.

Clause 35 relates to confidentiality. I will not go into a lot of detail, because we have touched on it before in relation to clause 7, where the statute book of South Australia in its entirety is to be read down to give effect to this indenture. One of the things that we have found in relation to freedom of information applications, for example, is that it is very difficult to obtain those documents because of the confidentiality provisions of the indenture.

I have an amendment which proposes to change the confidentiality regime. In fact, I will ask the minister a question about this, because the change that I have proposed is actually a change that was proposed to government some time ago and it is a change that the government has adopted in other pieces of legislation. If you look, for example, to the Bachmann review, which was conducted in August 2002, entitled 'Report of independent review of reporting procedures for the SA uranium mining industry'—and it is a report for the SA minister for mineral resources and development—there are a number of recommendations in that report. Recommendation No. 2 says:

> In order to allow the release of information about incidents which may cause, or threaten to cause, serious or material environmental harm or risks to the public or employees, the Government should revise and appropriately amend the secrecy/confidentiality clauses in the legislation referred to in Appendix B. Information on individual persons should not be disclosed.

This is the Bachmann review. It said change the confidentiality and secrecy provisions. It referred to a list in appendix B. What do we find in appendix B—Roxby Downs (Indenture Ratification) Act 1982, clause 35—Confidentiality. This was a recommendation some nine years ago to delete this clause and replace it with something better. My understanding is that former mining minister Holloway did in fact repeal section 14 of the Mining Act to give effect to this recommendation.

I understand also that section 9 of the Mining and Works Inspection Act was amended to give effect to this recommendation and the substituted provision is based on section 121 of the Environment Protection Act. The amendment that I will be putting forward basically seeks to do just that; that is, remove the secrecy provision, the confidentiality clause, and replace it with the equivalent of that section in the Environment Protection Act. If it was good enough for the Mining Act, and good enough for the Mines and Works Inspection Act, why was it not good enough to modernise the confidentiality provisions in this indenture?

The Hon. G.E. GAGO: As the Hon. Mark Parnell has outlined, his proposed amendment is nearly identical to that of section 121 of the Environment Protection Act 1993 and appears to have been modelled on that section. The indenture is a legal and commercial agreement between the parties to the indenture (being the company and the state). It largely operates to confer rights and place obligations on those parties; unlike the Environment Protection Act, it is not general legislation designed to apply across the board to be entire community.

The wording of clause 35 in the bill has been agreed between the parties. The government is of the view that the wording of clause 35 in the bill is sufficient to cover all the necessary circumstances, including those contemplated in parts (a) to (d) of the proposed amendment, and I do not think I need to go through those. The government considers that such an amendment is neither appropriate nor necessary.

The Hon. M. PARNELL: I just make the observation that it is appropriate, it is necessary, and it was done in other legislation; I think this is just yet another sop to BHP Billiton. When any

members find that they have difficulty extracting information about this project, they can perhaps remember today, when they had the opportunity to support more appropriate confidentiality provisions.

The next clause I refer to is clause 36—Assignment. I just make the observation that I have an amendment on file which seeks to modify this clause. We are hearing so much about BHP as good corporate citizens, yet under this indenture they would be able to assign their rights to other corporations who may not have, at least what the government believes, is the same reputation as BHP Billiton. My amendment proposes that any assignment of interests under this indenture triggers a review of the indenture itself.

My next issues are with clause 40—Commonwealth licences and consents. Clause 40(2) places obligations on the state to represent company interests to the commonwealth in relation to the grant of licences, consents, or in relation to any agreement. I think the minister has already answered a question vaguely relating to this earlier, when she said there had been at least one conversation between the relevant federal minister and the state minister, but I would just like to ask her specifically: have any representations been made so far, consistent with clause 40, by the state government on behalf of BHP Billiton to the commonwealth?

The Hon. G.E. GAGO: I have been advised not that we are aware of.

The Hon. M. PARNELL: The minister might not want to do this, but I will invite her to speculate. As we have covered before in the debate on these proceedings, currently exporting uranium-infused copper to China is not consistent with any international treaty obligations. Does the minister expect South Australia to be lobbying, if you like, the federal government to change those arrangements so that BHP Billiton is allowed to export that ore?

The Hon. G.E. GAGO: We spent quite a bit of time on this last Thursday. I have comprehensively put the government's response to that on the record, and I have nothing further to add to that.

The Hon. M. PARNELL: I am proposing to delete clause 40. The next clause is clause 42A—Rehabilitation obligations. Earlier in this debate, minister, in response to my question about the life of tailings protection, you said that you had been advised that, under the rehabilitation obligations, the standard of rehabilitation is such that the protections are extremely long term and, in effect, indefinite. I would like the minister to follow up what she said then with an assurance—in fact, I ask her, how can she make an assurance that the protections will be indefinite when the mine closure plan has not yet been finalised?

The Hon. G.E. GAGO: Again, we spent a great deal of time on and I believe I showed a great deal of latitude in relation to this last Thursday. I believe I have comprehensively addressed these issues with the best information that I had to hand, and I have nothing further to add to this.

The Hon. M. PARNELL: I will invite the minister to go a little bit further. I received an email just today from someone who has diligently been reading the *Hansard*—good on them. I am sure they are not alone; this is such an important project. This person says that they were looking at similar mines overseas—not necessarily similar in terms of this scale, but other large mines overseas—and looking at what rehabilitation had been undertaken. This person—an environmental consultant—has said to me:

> To my knowledge, not one mining company in South Africa has closed a mine and walked away leaving the site to nature and the vagaries of time.

In other words, they have not been able to walk away. They talked about mines being abandoned in the early days in the United States and that none of those early mines has ever been closed in a formal sense and then left to nature. This persons says that in Canada:

> ...there are all too many terrible examples of mines, once productive [or] profitable, that are now in...perpetual care of the federal or affected provincial government. None of these mines, I venture, will ever be closed in a way that it will be possible to walk away and leave them to nature and the vagaries of time.
>
> I once sat for three days in a luxury conference centre on the edge of the Grand Canyon as we deliberated how to walk away from the uranium mill tailings impoundments on which we eventually spent upwards of a billion dollars on closure works. We concluded that we could not walk away, ever...

He goes on:

> Some of the writings coming out of Australia on mine closure are predicated on the idea that once the miners have closed the mine in accordance with set standards, the government will take responsibility for the site. This is realistic, even if unfortunate.

He concludes:

> The point is...there is no such thing as walk-away closure of a mine site. Somebody, somewhere, for time eternal (at least in human terms) will have to be around to take a look and to act when things change or fail to go as hoped or predicted.

I just point out to members the Brukunga mine, which has cost far more in rehabilitation than we ever extracted from that mine in relation to ore. Whilst the minister might believe that she has done this issue to death, can she clarify that there will be public input into this mine closure plan and that the government can force BHP Billiton to remain responsible for as long as is necessary?

The Hon. G.E. GAGO: I can only reiterate that we believe we have provided the best solution for the particular circumstances before us—and I have put that on the record before—using the best science available to us. We have some of the best mining regulation in the world. It is, therefore, extremely difficult to be comparing what we do here in Australia with some other countries that do not have the same strong regulatory basis.

In relation to the inputs, I have been advised that the indenture minister is required to approve the rehab plan, so that will need to be ticked off. Again, I reiterate that we have some of the most highly developed regulation in the world around mining standards.

The Hon. M. PARNELL: I appreciate that the minister said that the relevant indenture minister will need to sign off, but just to tie this right down, will the government require this rehabilitation plan to be developed effectively now, in other words, before the mine has even been constructed, or is it something that it is proposing could take some time; and will there be an opportunity for the public to have input into that plan?

The Hon. G.E. GAGO: I am absolutely confident that the indenture minister, when making his or her decision, will elicit whatever expertise and input he or she believes is required to make the best decision possible. I have been advised that BHPB is required to have its first rehabilitation plan within two years of ratification.

The Hon. M. PARNELL: All I can take from that is that the minister has an expectation that some people whom the minister believes are worth consulting will be consulted, but she has given no commitment that members of the public will have any say over what will effectively and potentially be a toxic legacy for centuries. A specific question is in relation to clause 42A, subclause (14), which provides: 'The minister may, notwithstanding clause 35, make public the base value at any time', the base value referring to the base value of the rehabilitation security. Can the minister confirm that the minister will in fact make that available rather than leave it as optional, as it is currently worded?

The Hon. G.E. GAGO: I can reassure the honourable member that the minister may make it available.

The Hon. M. PARNELL: The question obviously then is: we are not going to be told how much money is set aside; we are not going to have any input into what is going to be required to rehabilitate the biggest hole in the ground on the face of the planet, the biggest industrial project in our state's history? I, for one, do not accept that answer, and I would urge honourable members to think likewise. I think we deserve much better than what we are seeing in this indenture, where the minister has a discretion to disclose one of the most important pieces of information in this document.

I will ask one final question, or series of questions, in relation to this. Can the minister assure us that, however long it takes and however much it costs, ultimately the company will be responsible for all of the costs in relation to closure and that it will not be allowed to walk away and hand responsibility over to the state?

The Hon. G.E. GAGO: I have been advised, yes.

The Hon. M. PARNELL: That is clause 42A. Clause 43 again provides special tax relief for the company, this time in relation to stamp duty. My proposed amendment is to delete that clause. The next clause I am interested in, unless other members have intervening questions, is clause 47—Enforcement. Under state law, under the Development Act, any person has the ability to go to the umpire and enforce obligations under that act. Under the Environment Protection Act, there is also the ability for third parties to actually go to the umpire—the Environment, Resources and Development Court—and seek orders and seek redress in relation to alleged breaches of the act.

My question of the minister is: why in relation to this project is there no provision for third-party enforcement? I have just reminded myself that it is also included in the Natural Resources Management Act as well. These major public environmental statutes all have the ability for members of the public to enforce the act; why not in this case?

The Hon. G.E. GAGO: This is in relation to your proposal to replace—

The Hon. M. Parnell: Clause 47.

The Hon. G.E. GAGO: Yes. The amendment appears to be based on a misunderstanding of what existing clause 47 aims to achieve. The indenture is a legal and commercial agreement between two parties—the state and the company. The purpose of clause 47 is to specify that enforcement of compliance with the provisions of the indenture lies with those parties and with no-one else.

This amounts to where there is a view by either party that the other party has not complied with the provisions of the indenture. It is up to the parties to resolve that under the terms contained within the indenture and bring that matter into compliance. This does not and, indeed, cannot prevent the appropriate courts having jurisdiction; nor does it seek to prevent the appropriate state and federal authorities taking actions to enforce those matters over which they have enforcement rights and responsibilities.

Enforcement matters under the indenture are spread across many areas within the indenture. For example, clause 11 deals with compliance and enforcement of the environmental management arrangements. Clause 7A, along with parts of clause 11, serves to ensure that the EPA can act with independence on matters over which it has jurisdiction under the EP Act, and the EPA has a whole enforcement regime available to it under the act.

Clause 19A contemplates a pipeline licence pursuant to the Petroleum and Geothermal Energy Act 2000, and enforcement of the provisions of the licence would fall to the regulators within the energy resources division of the department for manufacturing and innovation. Many other matters that are dealt with in the indenture are matters for which it would be entirely inappropriate to attempt to impose the sort of enforcement regime proposed in this amendment. The government's view is that enforcement is dealt with in an appropriate manner in the indenture as it is drafted in the government's bill.

The Hon. M. PARNELL: I thank the minister for her answer and I just make the point that my amendment is not based on a misunderstanding of what clause 47 is designed to achieve. I understand exactly what it is designed to achieve. It is designed to try to protect the privity of contract, if you like, between two parties—the company on the one hand and the state on the other.

If we were talking about normal contract law where you have two independent people who are negotiating to buy a car, or whatever it is, yes, you might want to make a provision that no-one else is allowed to interfere or no-one else is allowed to try to enforce that contract, but this is a contract on behalf of the people of South Australia that the parliament is now legislating to give effect to. In relation to any of these provisions, especially the ones that do seek to give some protection to the environment, if either of the parties fail to comply with their part of the agreement, then under this indenture, under the minister's proposal, it is just a matter for them. There is nothing anyone else can do about it.

The point that I am making is that the implications of things not being done in accordance with the indenture—all of these assurances that we have now had many hours of—if any of these things are not done, there is nothing anybody in South Australia can do about it unless you are the minister or unless you are BHP Billiton, and that is just wrong.

For example, the minister referred to the powers that the EPA has. We know that often government agencies need a bit of a kick along. Often they need communities behind them, agitating, pushing. I think we need to go further. I think we need to give the community the right to enforce at least those parts of this indenture that are designed to protect the public interest and protect the public environment.

My amendment here is effectively a rewriting of section 104 of the Environment Protection Act provisions which, as I have said, are mirrored in our water laws, in the Natural Resources Management Act and in the Development Act as well, so that third parties can enforce this law that we are passing today.

Clause 48—State assistance and support: I just note that I have a number of amendments to delete clauses, in particular clauses such as those requiring the state to support and sponsor the company's interests. I do not think that is appropriate. I think they can be deleted.

For example, there are consequential provisions around the exclusive use of infrastructure and the ability for BHP Billiton to be able to prevent third party access. I think they can be removed as well. Also, an important provision in relation to infrastructure is where, under this clause, the government has no ability to tell BHP to build a piece of infrastructure bigger than they need, even if the government is prepared to pay the difference in cost. I think it is similar to the infrastructure sharing that the government should be able to impose that requirement—yes, pay a proportion of the cost necessitated by any public component of that infrastructure. So, removing subclause (4) from clause 48 would at least keep the door open for the state to be able to insist that infrastructure be planned to meet not just the company's requirements but the community's requirements as well.

As to clause 49, I will make some observations. I have two main concerns with this clause. I have touched on them before. The indenture proposes that there be an arbitration provision rather than allowing the umpire to make the decision. Part of the problem of that, of course, is that the arbitrator need not be a judicial officer, need not be bound by the same principles of law that our judicial officers are bound by in South Australia.

Secondly, the arbitrator is effectively required to take into account a range of private interests that will supersede public interests. For example, if an environmental matter was to go for decision to the Environment, Resources and Development Court, then that court would be required first and foremost to have regard to the objects of the act, to have regard to the principles of environment protection set out in the act, but under this arbitration clause the prime consideration is the indenture, the commercial considerations and the rights of the company.

The amendment that I have put forward basically establishes the ERD Court as the sole arbiter, and members might think that is too heavy-handed but I point out that under the ERD Court Act all disputes have to go to a roundtable discussion first, the section 16 conference. So, it is not as if that court is simply an all or nothing fistfight; there is the ability for conciliation and negotiation to come up with an outcome. I think that court should be the arbiter. Of course, that court will be open to the public. The arbitration will be private. I think they are a number of very good reasons why we should reject clause 49 as it is and support my amendment which puts the environment court in charge.

Secondly, my amendment requires that with the court as the arbitrator that the court will have regard to the objects and other decision-making criteria of the various acts that would normally cover the dispute in question as well as the objectives of the project. It is not ignoring the fact that the project has objectives but I want to make sure that the statutes of South Australia, the purposes behind all those acts, the objects of those acts, will be taken into account when the court makes its binding determinations. In relation to matters concerning the environment, I have added the additional requirement that, as well as taking into account the objects of the act, they should also take into account any relevant environment protection policies. I simply make that point. That is the reason behind my clause 49.

As to clause 52, this is a clause that allows for extensions of time, and I will ask the minister a question in relation to this clause, and that is: how much faith can we have in the various time limits that are set out in this indenture if every single one of them is subject to variation under clause 53?

The Hon. G.E. GAGO: The clause provides for the minister, at BHPB's request, to extend any period or postpone any date referred to it in the indenture as the minister thinks fit. The minister's decision is not arbitrable. This right was provided in the 1982 indenture, and as part of the indenture arrangements negotiated in 2011 it was agreed that the clause be retained.

The Hon. M. PARNELL: I thank the minister for her answer. It just clarifies what was inherent in my question, which is that there are no timelines that we can be confident of because the minister has the ability to change them and the changing of timelines is not subject to arbitration, so, I think that stands as it is.

The only other amendments that I have to the indenture are some consequential amendments in relation to the schedules to the indenture. The schedule is to the indenture itself. The other final component of my amendment No. 27, which is this omnibus amendment, is the insertion of a new schedule 3, which is an amendment of the Radiation Protection and Control Act, which was an issue that we canvassed in some detail on Thursday. It is basically a mistake, as I

see it, in this legislation. I am seeking to correct the mistake, and then I am seeking to throw the whole thing out, because we do have these special provisions in the Radiation Protection and Control Act, which are currently expressed to apply to the joint venturers.

Joint venturers do not exist anymore, that has been deleted from the bill, but I think that, regardless of the schedule, the exemptions need to be deleted as well. With that, that is my contribution to my amendment No. 27, which is most of the things that the Greens believe are wrong and how we would be fixing the indenture to be in the best interests of the people of South Australia.

The Hon. G.E. GAGO: At this point I would like to clarify the record in relation to a desal question about chemicals in the brine. My previous comments about chemicals in the desal plant discharge should have made it clear that not all chemicals will be removed prior to discharge, but that the EPA licence conditions to prevent serious environmental harm will take into account any residual chemicals and will base its licence conditions on ecotoxicity testing that includes the assessment of those chemicals. This approach is consistent with the regulation of other desalination plants.

The committee divided on the schedule:

There being a disturbance in the Strangers' Gallery:

The CHAIR: Sit down and be quiet. Order! The cameraman shouldn't be filming that. Security!

AYES (18)

Bressington, A.	Brokenshire, R.L.	Darley, J.A.
Dawkins, J.S.L.	Finnigan, B.V.	Gago, G.E. (teller)
Gazzola, J.M.	Hood, D.G.E.	Hunter, I.K.
Kandelaars, G.A.	Lee, J.S.	Lensink, J.M.A.
Lucas, R.I.	Ridgway, D.W.	Stephens, T.J.
Wade, S.G.	Wortley, R.P.	Zollo, C.

NOES (3)

Franks, T.A.	Parnell, M. (teller)	Vincent, K.L.

Majority of 15 for the ayes.

Schedule thus passed.

The CHAIR: That cameraman who ran after that young lady, you can leave the chamber, please. Escort him out, security. I want to find out which television station he comes from as well.

New schedule 2.

The Hon. M. PARNELL: I move:

Page 176, after line 28—Insert:

Schedule 2—Modification of Indenture

1—Modification of Clause 7A

(1) Clause 7A(2)(b) of the Indenture—the passage ', and in such a case the EPA shall disclose its reasons for such conditions' is deleted

(2) Clause 7A(5) and (6) of the Indenture—subclauses (5) and (6) are deleted and the following subclauses are substituted:

(5) The Company may appeal to the Environment, Resources and Development Court against—

(a) a decision of the EPA imposing a condition mentioned in Clause 7A(2)(b); or

(b) a decision of the EPA refusing an application under Clause 7A(2)(c); or

(c) a failure on the part of the EPA to give notice to the applicant of its decision within the time specified in Clause 7A(3),

and the appeal will proceed in accordance with the *Environment Protection Act 1993*.

(6) An appeal under Clause 7A(5) must be instituted within two months of the notice mentioned in Clause 7A(3) or (as applicable) of the expiration of the time specified in that Clause.

(3) Clause 7A(7)(b) of the Indenture—paragraph (b) is deleted and the following paragraph is substituted:

(b) the EPA shall, in all relevant respects, have regard to, and seek to further, the objects of the *Environment Protection Act 1993* and any environment protection policy made under that Act.

2—Modification of Clause 9

Clause 9 of the Indenture—the following subclause is inserted after subclause (2):

(3) However, the State must not proceed to provide any infrastructure, facilities or services in the circumstances set out in Clause 9(1) or (2) unless—

(a) all saleable copper produced above the amount referred to in Clause 9(2) is to be processed in South Australia; and

(b) all electricity required for the expanded project is to be generated from renewable energy sources; and

(c) the Company has agreed that all uranium that is capable of being extracted from any Product is to be directed to the tailings stockpile and that all tailings are eventually to be returned to the mine pit.

3—Modification of Clause 10

Clause 10(4) of the Indenture—subclause (4) is deleted

4—Modification of Clause 11

(1) Clause 11(1) of the Indenture—the word 'Minister' is deleted wherever it occurs and the following item is substituted in each case:

EPA

(2) Clause 11(4) of the Indenture—the passage 'him pursuant to Clause 11(1), the Minister' is deleted and the following passage is substituted:

the EPA pursuant to Clause 11(1), the EPA

(3) Clause 11 of the Indenture—the following subclause is inserted after subclause (4):

(4A) If an EMP includes any conditions or requirements that relate to a Project Approval under Clause 7, the EPA must consult with the Minister before it makes a decision under Clause 11(4).

(4) Clause 11(5), (6) and (7) of the Indenture—subclauses (5), (6) and (7) are deleted and the following subclauses are substituted:

(5) The EPA shall, within four months, or such longer period agreed by the Company, of receipt of an EMP submitted pursuant to Clause 11(1), give notice to the Company of its decision in terms of Clause 11(4)(a), 11(4)(b) or 11(4)(c). If the decision of the EPA is as mentioned in Clause 11(4)(b) or 11(4)(c), the EPA shall disclose to the Company its reasons for its decision.

(5A) The Company may appeal to the Environment, Resources and Development Court against a decision of the EPA in the terms of Clause 11(4)(b) or 11(4)(c) and the appeal will be determined as if it had been made under section 106(1) of the *Environment Protection Act 1993*.

(6) An appeal under Clause 11(5A) must be instituted within two months of the notice mentioned in Clause 11(5).

(7) Subject to the outcome of any appeal, the Company shall implement an EMP when approved by the EPA.

(5) Clause 11(8) of the Indenture—the word 'Minister' is deleted wherever it occurs and the following item is substituted in each case:

EPA

(6) Clause 11 of the Indenture—the following subclause is inserted after subclause (8):

(8A) The Company must also furnish the Minister with a copy of any report submitted to the EPA under Clause 11(8).

(7) Clause 11(9) of the Indenture—subclause (9) is deleted and the following subclauses are substituted:

(9) The Company shall, if requested by the EPA, review an EMP and submit to the EPA a revised EMP for approval within three months (or any longer period reasonably required or otherwise agreed by the EPA) after the date of the EPA's request. The provisions of Clauses 11(4) to 11(6), inclusive, apply, with any necessary modifications, in relation to the revised EMP (except that the EPA shall give notice of its decision within two months, or such longer period agreed by the Company, of receipt of the revised EMP).

(9A) The EPA must make a request under Clause 11(9) if asked to do so by the Minister.

(8) Clause 11(10) of the Indenture—the word 'Minister' is deleted wherever it occurs and the following item is substituted in each case:

EPA

(9) Clause 11(11)(a)(ii) of the Indenture—the passage 'an unexpected material detriment to the environment' is deleted and the following passage is substituted:

any environmental harm or environmental nuisance (within the meaning of the *Environment Protection Act 1993*)

(10) Clause 11(11)(a) of the Indenture—the word 'Minister' is deleted and the following item is substituted:

EPA

(11) Clause 11(11)(b) of the Indenture—the word 'Minister' is deleted wherever it occurs and the following item is substituted:

EPA

(12) Clause 11(11)(c) of the Indenture—the word 'Minister' is deleted wherever it occurs and the following item is substituted:

EPA

(13) Clause 11(11) of the Indenture—the following paragraph is inserted after paragraph (c):

(ca) The EPA must consult with the Minister before it imposes a requirement under Clause 11(11)(c).

(14) Clause 11(11)(e) of the Indenture—paragraph (e) is deleted and the following paragraph is substituted:

(e) If any action required under a Mitigation Plan which has been approved by the EPA (Approved Mitigation Plan) is not taken within the applicable timeframe or otherwise in accordance with the Approved Mitigation Plan, the EPA may direct the Company, by written notice, to take the action in accordance with the Approved Mitigation Plan, and if the Company does not comply with the EPA's direction within two months (or any period reasonably required or otherwise agreed by the EPA), the EPA (or a person authorised by the EPA for the purpose) may take the action required by the direction, and the Company shall pay to the EPA its reasonable actual costs incurred in taking the action.

(15) Clause 11(11)(f) of the Indenture—the word 'Minister's' is deleted and the following item is substituted:

EPA's

(16) Clause 11(11)(g) of the Indenture—the word 'Minister' is deleted wherever it occurs and the following item is substituted:

EPA

(17) Clause 11(11)(h) of the Indenture—paragraph (h) is deleted

(18) Clause 11(12) of the Indenture—the word 'Minister' is deleted wherever it occurs and the following item is substituted:

EPA

(19) Clause 11(12) of the Indenture—the word 'Minister's' is deleted and the following item is substituted:

EPA's

(20) Clause 11(13) of the Indenture—the passage 'Minister may' is deleted and the following passage is substituted:

EPA shall

(21) Clause 11(13)(e) of the Indenture—the word 'Minister' is deleted and the following item is substituted:

EPA

(22) Clause 11(15) of the Indenture—subclause (15) is deleted and the following subclause is substituted:

(15) If the rights of the Company under this Indenture to construct, operate or maintain an Outsourced Element are assigned (in accordance with this Indenture) to a person, the Company will remain jointly responsible with that person for the obligations under this Clause 11.

(23) Clause 11(18) of the Indenture—subclause (18) is deleted

5—Modification of Clause 11A

Clause 11A of the Indenture—redesignate the contents of this Clause as subclause (1) and insert the following subclause thereafter:

(2) In addition, the Company must adopt strategies that will achieve, by 31 December 2020—

(a) a reduction in the greenhouse gas emissions that are attributable to the operations conducted under this Indenture that is at least equal to 20 per cent of 1990 levels attributable to operations under this Indenture; and

(b) without limiting Clause 9(3)(b), at least 20 per cent of all stationary energy needs associated with operations conducted under this Indenture being met from renewable energy sources.

6—Modification of Clause 12

(1) Clause 12(4) of the Indenture—subclause (4) is deleted

(2) Clause 12(7) of the Indenture—subclause (7) is deleted and the following subclause is substituted:

(7) The Minister shall, within one month of receipt of the Industry and Workforce Participation Plan or an annual report, make the plan or report (as the case may be) publicly available.

(3) Clause 12(8) of the Indenture—subclause (8) is deleted

7—Modification of Clause 12A

Clause 12A of the Indenture—the following subclauses are inserted after subclause (2):

(3) If the Minister notifies the Company that it appears to the Minister that the supply of diesel fuel within the State may be (or is likely to become) inadequate for the demands of both the Company and other users of diesel fuel within the State, the Company shall, within one month of receipt of the notification, submit to the Minister a diesel fuel sharing plan that will ensure that the other users of diesel fuel within the State are not unreasonably disadvantaged by the operations of the Company under this Indenture.

(4) Without limiting Clause 11A(2)(a), the Company must offset the greenhouse gas emissions attributable to its use of diesel fuel in its operations under this Indenture by using recognised carbon offset practices.

8—Modification of Clause 13

(1) Clause 13(8) of the Indenture—the passage 'free of charge (except as provided in Clause 13(12))' is deleted

(2) Clause 13(8)(c)(i) of the Indenture—the passage 'may be referred to arbitration pursuant to Clause 49' is deleted and the following passage is substituted:

will be determined according to the final decision of the Water Minister

(3) Clause 13(8)(c)(iii) of the Indenture—subparagraph (iii) is deleted and the following subparagraph is substituted:

(iii) The Company shall comply with the terms of the notice as issued by the Water Minister.

(4) Clause 13 of the Indenture—the following subclause is inserted after subclause (9):

(9A) Notwithstanding any other provision in this Indenture—

(a) the Company is not entitled under this Indenture to draw underground water from wellfields located in the Great Artesian Basin after the tenth anniversary of the Variation Date; and

(b) the Company shall, within one year after the Variation Date, submit to the Water Minister a Water Supply Plan that—

(i) provides for the phasing out of the extraction of underground water from wellfields located in the Great Artesian Basin in order to achieve compliance with Clause 13(9A)(a); and

(ii) aims to bring the extraction of underground water from wells located in the area known as Borefield A to an end within five years after the Variation Date; and

(iii) identifies sites for a seawater desalination plant that will not be located in the Upper Spencer Gulf region; and

(iv) addresses any other matters specified by the Water Minister for the purposes of this Clause 13(9A).

(5) Clause 13(12)(c) of the Indenture—paragraph (c) is deleted and the following paragraph is substituted:

(c) The Water Minister may from time to time fix a maximum rate of any charge payable by the Company pursuant to Clause 13(12)(b) (and, in so doing, the Water Minister must ensure that the Company does not, as a result of the cap, pay an amount that is less than a fair and reasonable price for the water taking into account the value of the resource, its limited availability and the impact of the extraction of the water on the natural environment).

(6) Clause 13(12) of the Indenture—the following paragraphs are inserted after paragraph (g):

(h) Insofar as any water draw from underground water sources for the purposes of the Company's operations under this Indenture are not subject to a charge under Clause 13(12)(b), the Company shall, on and from the Variation Date, pay to the Water Minister a charge in respect of that water.

(i) A charge payable by the Company pursuant to Clause 12(12)(h)—

(i) will be at a rate determined by the Water Minister, or be set on some other basis determined by the Water Minister, after consultation with the Company (and may be varied from time to time by the Water Minister after consultation with the Company); and

(ii) must be set so as to recover (according to the determination of the Water Minister) an amount that is fair and reasonable for the water taking into account the value of the resource, its limited availability and the impact of the extraction of the water on the natural environment; and

(iii) shall be paid to the Water Minister according to a scheme established by the Water Minister for the purposes of this Clause 13 and may be applied by the Water Minister for such purposes as the Water Minister thinks fit.

(7) Clause 13(17A)(c)(iii) of the Indenture—subparagraph (iii) is deleted

(8) Clause 13(17A) of the Indenture—the following paragraph is inserted after paragraph (c):

(d) the State may, if the Minister considers that it is reasonable to do so, at the request of the Company, grant to the Company or to an associated company, as the Company may nominate to the Minister, (or procure the grant of), over the relevant approved site or location, exclusive rights by lease or licence for the construction, operation and maintenance of coastal inlet and outlet pipes (and related infrastructure) for the purposes of the Desal Plant, including without limitation, the right to exclude, or restrict or prohibit activities of, any person from the site or location (including without limitation the waters above the site or location) as required for the Company to conduct its operations and necessary activities associated with, or for the security and protection of, the coastal inlet and outlet pipes and related infrastructure and on reasonable terms consistent with this Indenture.

(9) Clause 13(17B)(c) of the Indenture—the passage 'exclusive rights referred to in Clauses 13(17A)(c)(iii)' is deleted and the following passage is substituted:

any exclusive rights granted under Clause 13(17A)(d)

(10) Clause 13(25) of the Indenture—the passage 'Except where expressly necessary for the purposes of implementing this Clause 13, the' is deleted and the following word is substituted:

The

(11) Clause 13(28) and (29) of the Indenture—subclauses (28) and (29) are deleted

9—Modification of Clause 14

Clause 14(1B)(c)(ii) of the Indenture—the amount '$1.00' is deleted and the following passage is substituted:

an amount determined by the Valuer-General from time to time so as to reflect a fair payment for the relevant lease

10—Modification of Clause 14A

Clause 14A(2)(b) of the Indenture—the amount '$1.00' is deleted and the following passage is substituted:

an amount determined by the Valuer-General from time to time so as to reflect a fair payment for the relevant lease

11—Modification of Clause 15

(1) Clause 15(2) of the Indenture—the passage ', at no cost to the Company other than as provided in Clause 31,' is deleted

(2) Clause 15(2B)(b) of the Indenture—the amount '$1.00' is deleted and the following passage is substituted:

an amount determined by the Valuer-General from time to time so as to reflect a fair payment for the relevant lease

(3) Clause 15(2C) of the Indenture—the passage 'To avoid doubt, the Company is not required to pay any amount under Clause 31(2) in relation to the grant.' is deleted

(4) Clause 15 of the Indenture—the following subclauses are inserted after subclause (3):

(4) The Company shall provide reasonable access to the airstrip and related facilities—

(a) in cases of emergency; and

(b) to eligible third parties in accordance with an access regime established under Clause 15(5).

(5) The Minister shall, within one year after the Variation Date, establish a third party access regime with respect to the airstrip and related facilities.

(6) An access regime established under Clause 15(5) may include—

(a) the procedures that must be followed by a party seeking access and procedures for the resolution of disputes; and

(b) access pricing principles; and

(c) the procedures to be followed to ensure that the facilities may be accessed safely; and

(d) the terms and conditions on which access may be granted; and

(e) other matters considered by the Minister as being appropriate in the circumstances.

(7) The Minister must consult with the Company before establishing, or varying, an access regime under this Clause.

12—Modification of Clause 16

(1) Clause 16(2) of the Indenture—the passage 'or resumed pursuant to Clause 31' is deleted

(2) Clause 16(2) of the Indenture—the passage ', at no cost to the Company other than as provided in Clause 31,' is deleted

(3) Clause 16(2C)(a)(ii) of the Indenture—the amount '$1.00' is deleted and the following passage is substituted:

an amount determined by the Valuer-General from time to time so as to reflect a fair payment for the relevant lease

(4) Clause 16(4) and (5) of the Indenture—subclauses (4) and (5) are deleted and the following subclause is substituted:

(4) In connection with the operation of this Clause 16—

(a) Part 2 of the *Railways (Operations and Access) Act 1997* shall apply in relation to the railway constructed or to be constructed under Clause 16(2A), and the State agrees that it shall not exclude that railway from the operation of Part 2; and

(b) Parts 3 to 8 (inclusive) of the *Railways (Operations and Access) Act 1997* shall apply to the railway constructed or to be constructed under this Clause 16.

13—Modification of Clause 17

(1) Clause 17(5) of the Indenture—the passage 'or resumed pursuant to Clause 31' is deleted

(2) Clause 17(5) of the Indenture—the passage ', at no cost to the Company other than as provided by Clause 31,' is deleted

(3) Clause 17(8)(b)—the amount '$1.00' is deleted and the following passage is substituted:

an amount determined by the Valuer-General from time to time so as to reflect a fair payment for the relevant lease

(4) Clause 17(13)(d)—paragraph (d) is deleted

(5) Clause 17(16)—subclause (16) is deleted and the following subclause is substituted:

(16) The access regime prescribed by the *Maritime Services (Access) Act 2000* shall apply to the Port.

14—Modification of Clause 18

(1) Clause 18(11) of the Indenture—the passage 'or resumed pursuant to Clause 31' is deleted

(2) Clause 18(11) of the Indenture—the passage ', at no cost to the Company, other than as provided in Clause 31,' is deleted

(3) Clause 18(11B)(a)(ii) of the Indenture—the amount '$1.00' is deleted and the following passage is substituted:

an amount determined by the Valuer-General from time to time so as to reflect a fair payment for the relevant lease

(4) Clause 18 of the Indenture—the following subclauses are inserted after subclause (18):

(19) The Company shall provide reasonable access to its electricity infrastructure in accordance with an access regime established under Clause 18(20).

(20) The Minister shall, within one year after the Variation Date, establish a third party access regime with respect to the electricity infrastructure of the Company.

(21) An access regime established under Clause 18(20) may include:

(a) the procedures that must be followed by a party seeking access and procedures for the resolution of disputes; and

(b) access pricing principles; and

(c) the procedures to be followed to ensure that the infrastructure may be accessed safely; and

(d) the terms and conditions on which access may be granted; and

(e) the exclusion of special infrastructure, or classes of infrastructure, from the requirements of the scheme; and

(f) other matters considered by the Minister as being appropriate in the circumstances.

(22) The Minister must consult with the Company before establishing, or varying, an access regime under this Clause.

15—Modification of Clause 19

(1) Clause 19(1B)(d) of the Indenture—the passage ', but the State must co-operate with the Company and use best endeavours to facilitate the expeditious completion of any such processes' is deleted

(2) Clause 19(2)(b) of the Indenture—paragraph (b) is deleted

(3) Clause 19(2)(c) of the Indenture—the passage ', subject to Clause 34,' is deleted

(4) Clause 19(2)(c) of the Indenture—the following passage is inserted after the word 'safety' in paragraph (c):

or to preventing or reducing adverse effects upon the environment

(5) Clause 19(3)(g) of the Indenture—the passage ', but the State must co-operate with the Company to facilitate the expeditious completion of any such processes'

(6) Clause 19(6) of the Indenture—the passage ', subject always to the provisions of Clause 34 as to non-discrimination' is deleted

(7) Clause 19(10) of the Indenture—the passage ', without charge,' is deleted

(8) Clause 19 of the Indenture—the following subclause is inserted after subclause (10):

(10A) However, the Company must not dewater or drain an adjoining strata without an authorisation issued by the EPA for the purposes of this Clause 19(10A).

(9) Clause 19 of the Indenture—the following subclause is inserted after subclause (12):

(12A) Clause 19(12) does not apply if the Later Tenement is a licence under the *Petroleum and Geothermal Energy Act 2000* that relates to a source of geothermal energy and, in such a case, the Later Tenement may be granted over land subject to a Special Mining Lease after consultation with the Company.

16—Modification of Clause 19A

(1) Clause 19A(6) of the Indenture—the passage ', subject always to the provisions of Clause 34 of the Indenture' is deleted

(2) Clause 19A(8) of the Indenture—the passage ', subject to Clause 34 as to non-discrimination,' is deleted

(3) Clause 19A(9) of the Indenture—the passage ', subject to the provisions of Clause 34 as to non-discrimination,' is deleted

17—Modification of Clause 24

(1) Clause 24(6), (7), (8) and (8A) of the Indenture—subclauses (6), (7), (8) and (8A) are deleted

(2) Claus 24(10) of the Indenture—the passage 'and any freehold land granted in accordance with Clause 24(8A)' is deleted

18—Modification of Clause 27

Clause 27(1) of the Indenture—the passage 'or resumed pursuant to Clause 31' is deleted

19—Deletion of Clause 28

Clause 28 of the Indenture—this clause is deleted

20—Deletion of Clause 30

Clause 30 of the Indenture—this clause is deleted

21—Modification of Clause 30A

Clause 30A(11) of the Indenture—the passage 'Clauses 27 or 31' is deleted and the following passage is substituted:

Clause 27

22—Deletion of Clause 31

Clause 31 of the Indenture—this clause is deleted

23—Modification of Clause 31A

(1) Clause 31A(1) of the Indenture—the passage ', 19A(18)(c) or 24(8A)' is deleted and the following passage is substituted:

or 19A(18)(c)

(2) Clause 31A(1) of the Indenture—the passage ', 19A(18)(b) and 24(8A)' is deleted and the following passage is substituted:

and 19A(18)(b)

(3) Clause 31A(2)(a) of the Indenture—the passage 'other than in respect of Requested Land or Rights requested under Clause 24(8A),' is deleted

(4) Clause 31A(2)(b) of the Indenture—the passage 'other than in respect of Requested Land or Rights requested under Clause 24(8A),' is deleted

(5) Clause 31A(4) of the Indenture—subclause (4) is deleted

24—Modification of Clause 32

(1) Clause 32(1A) to (3) (inclusive) of the Indenture—subclauses (1A), (2), (2A), (2B) and (3) of the Indenture are deleted and the following subclause is substituted:

(1A) Royalty on Product shall be calculated and payable on the basis which is equivalent to that specified from time to time to be payable in respect of the mining of the relevant mineral as provided in the Mining Act.

(2) Clause 32(7) of the Indenture—subclause (7) is deleted

(3) Clause 32(17) of the Indenture—subclause (17) is deleted

(4) Clause 32(18) of the Indenture—subclause (18) is deleted

(5) Clause 32(19) of the Indenture—subclause (19) is deleted

25—Deletion of Clause 33

Clause 33 of the Indenture—this clause is deleted

26—Deleted of Clause 34

Clause 34 of the Indenture—this clause is deleted

27—Substitution of Clause 35

Clause 35 of the Indenture—this clause is deleted and the following clause is substituted

35. CONFIDENTIALITY

A person involved in the administration of the ratifying Act must not divulge information relating to trade processes or financial information obtained (whether by that person or some other person) in the administration of that Act or on account of the operation of this Indenture except—

(a) as authorised or required by or under that Act or this Indenture; or

(b) with the consent of the person from whom the information was obtained or to whom the information relates, or with the consent of the Company; or

(c) to the Minister, or to an officer or employee of the Crown in connection with the administration or enforcement of that Act or the operation of this Indenture; or

(d) for the purpose of any legal proceedings arising out of the administration or enforcement of that Act or the operation of this Indenture.

28—Modification of Clause 36

Clause 36 of the Indenture—the following subclauses are inserted after subclause (5):

(6) If the Minister receives advice about an assignment or other disposition of an interest under Clause 36(1)(b) or (c), the Minister shall, within two months of the receipt of the advice, cause a report on the matter to be prepared.

(7) The Minister must, within six sitting days after receiving the report under Clause 36(6), cause a copy of the report to be laid before both Houses of Parliament.

(8) The report under Clause 36(6)—

(a) shall include an assessment of the affect that the assignment may have on the operation of this Indenture, or on any activities conducted under this Indenture; and

(b) may address any other matter considered appropriate by the Minister.

29—Deletion of Clause 40

Clause 40 of the Indenture—this clause is deleted

30—Modification of Clause 42A

(1) Clause 42A(10) of the Indenture—the passage 'Any information provided by the Company under this Clause 42A(10) shall be treated by the Minister and the Department of Primary Industries and Resources on a strictly confidential basis.' is deleted

(2) Clause 42A(14) of the Indenture—subclause (14) is deleted and the following subclause is substituted:

(14) The Minister may, notwithstanding Clause 35, make public any information about the requirements or costs associated with rehabilitation works that are required to be undertaken on account of any operations under this Indenture.

31—Deletion of Clause 43

Clause 43 of the Indenture—this clause is deleted

32—Substitution of Clause 47

Clause 47 of the Indenture—this clause is deleted and the following clause is substituted:

47. ENFORCEMENT

(1) Applications may be made to the Environment, Resources and Development Court for one or more of the following orders:

(a) if the Company has engaged, is engaging or is proposing to engage in contravention of a provision of this Indenture or the conditions of any Special Tenement—an order restraining the Company from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the Company to take any specified action;

(b) if the Company has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by a provision of this Indenture or the conditions of any Special Tenement—an order requiring the Company to take that action;

(c) if the Court considers it appropriate to do so, an order against the Company for payment (for the credit of the Consolidated Account) of an amount in the nature of exemplary damages determined by the Court to be appropriate on account of any breach of a requirement or obligation under this Indenture or the conditions of any Special Tenement.

(2) The power of the Court to make an order restraining the Company from engaging in conduct of a particular kind may be exercised—

(a) if the Court is satisfied that the Company has engaged in conduct of that kind—whether or not it appears to the Court that the Company intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the Court that, in the event that an order is not made, it is likely that the Company will engage in conduct of that kind—whether or not the Company has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial harm or damage if the Company engages in conduct of that kind.

(3) The power of the Court to make an order requiring the Company to take specified action may be exercised—

(a) if the Court is satisfied that the Company has refused or failed to take that action—whether or not it appears to the Court that the Company intends to refuse or fail again, or to continue to refuse or fail, to take that action; or

(b) if it appears to the Court that, in the event that an order is not made, it is likely that the Company will refuse or fail to take that action—whether or not the Company has previously refused or failed to take that action and whether or not there is an imminent danger of substantial harm or damage if the Company refuses or fails to take that action.

(4) In assessing an amount to be ordered in the nature of exemplary damages, the Court must have regard to—

(a) any environmental harm or detriment to the public interest resulting from the contravention; and

(b) any financial saving or other benefit that the Company stood to gain by committing the contravention; and

(c) any other matter it considers relevant.

(5) An application under this section may be made by any person.

(6) If an application is made by a person other than the Minister—

(a) the applicant must serve a copy of the application on the Minister within three days after filing the application with the Court; and

(b) the Court must, on application by the Minister, join the Minister as a party to the proceedings.

(7) An application under this section may be made in a representative capacity (but, if so, the consent of all persons on whose behalf the application is made must be obtained).

(8) An application may be made without notice to any person and, if the Court is satisfied on the application that the Company has a case to answer, it may grant permission to the applicant to serve a summons requiring the Company to appear before the Court to show cause why an order should not be made under this section.

(9) An application under this section must, in the first instance, be referred to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the application).

(10) If, on an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.

(11) An interim order—

(a) may be made on an application without notice to any person; and

(b) may be made whether or not the proceedings have been referred to a conference; and

(c) will be made subject to such conditions as the Court thinks fit; and

(d) will not operate after the proceedings in which it is made are finally determined.

(12) The Court may order an applicant in proceedings under this section to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently discussed.

(13) The Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under this section.

(14) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

(15) Without limiting the generality of subsection (14), in determining whether to make any order in relation to costs the Court may have regard to the following matters (so far as they are relevant):

(a) whether the applicant is pursuing a personal interest only in bringing the proceedings or is furthering a wider group interest or the public interest;

(b) whether or not the proceedings raise significant issues relating to the operation or effect of this Indenture.

33—Modification of Clause 48

Clause 48(1) to (5) (inclusive) of the Indenture—subclauses (1), (2), (3), (4) and (5) are deleted

34—Modification of Clause 49

(1) Clause 49(3) and (4) of the Indenture—subclauses (3) and (4) are deleted and the following subclauses are substituted:

(3) References to arbitration in this Clause 49 shall be to the Environment, Resources and Development Court constituted for the purposes of the particular proceedings by a member of the Court nominated by the Senior Judge of the Court (and the member of the Court so nominated is in this Clause 49 referred to as the 'arbitrator').

(4) An arbitration shall be conducted in accordance with the rules of the Court and the following principles will apply in connection with the arbitration:

(a) the arbitrator must take into account the objects of any Act that may be relevant to the matter to which the arbitration relates, and to any relevant statutory policies applying under any such Act; and

(b) subject to the operation of paragraph (a), the arbitrator will make such decision as appears to be fair and just in the circumstances after having regard to the integration into the relevant Project as a whole of the question, difference or dispute the subject of the arbitration.

(2) Clause 49(5) of the Indenture—the word 'arbitrators' is deleted and the following word is substituted:

arbitrator

(3) Clause 49(7) of the Indenture—the word 'arbitrators' is deleted wherever it occurs and the following word is substituted:

arbitrator

(4) Clause 49(8) of the Indenture—subclause (8) is deleted

(5) Clause 49(10) of the Indenture—subclause (10) is deleted

(6) Clause 49(12) of the Indenture—the item '7A,' is deleted

(7) Clause 49(12) of the Indenture—the item '31,' is deleted

35—Deletion of Clause 53

Clause 53 of the Indenture—this clause is deleted

36—Modification of Second Schedule

Second Schedule, Clause 1 of the Indenture—the passage 'Subject to Clause 34 of the Indenture the' is deleted and the following word is substituted:

The

37—Modification of Fourth Schedule

Fourth Schedule, Clause 1(i)—the passage 'subject to Clause 34 of the Indenture,' is deleted

New schedule negatived.

New Schedule 3.

The Hon. M. PARNELL: I move:

Page 176, after line 28—Insert:

Schedule 3—Amendment of *Radiation Protection and Control Act 1982*

1—Amendment of section 5—Interpretation

(1) Section 5, definition of *the Indenture*—delete the definition

(2) Section 5, definition of *the Joint Venturers*—delete the definition

2—Repeal of Schedule

Schedule—delete the Schedule

This amendment seeks the insertion of a new schedule 3. I have spoken to it already.

New schedule negatived.

Long title.

The Hon. M. PARNELL: I move:

Long title—After '*1982*' insert:

and to make a related amendment to the *Radiation Protection and Control Act 1982*

This is a consequential amendment, which proposes to amend the long title to include the reference to the Radiation Protection and Control Act, which should have been amended as part of this indenture bill.

Amendment negatived; long title passed.

Bill reported without amendment.

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) (12:16): I move:

That this bill be now read a third time.

The Hon. M. PARNELL (12:16): I will make a brief contribution on the third reading because, whilst this bill and debate over this bill have taken some time, it has served to put on the record the vast gulf that exists between the spin and the reality. The hype around this project has been absolutely extraordinary, yet when we scratch just a little below the surface we find that in almost every respect the hype and the spin are not matched by reality.

We are promised extra jobs in mineral processing, yet in reality there is nothing to stop the company sending all the ore to China and along with it most of the jobs. We were promised a carbon neutral project, yet we know that this single mine will blow all our greenhouse targets out of the water. It will undo all the good work that has been done so far on reducing our carbon footprint.

We were promised the world's best environmental practice under the watchful eye of an independent EPA, yet we know that that agency has no real power to dictate terms or to enforce compliance in the same way that it can with other polluting industries in South Australia; and if as a community we dare to try to raise the bar on these standards at any time over the next four decades to improve environmental performance, we will have to pay the world's richest mining company for the privilege of doing so.

We will have to compensate it if we make any of these environmental conditions any tougher than they are now, and that is an outrageous position to put this state in given the length of time this project will go for—many, many decades. A number of credible scientists, engineers, business people and community leaders have raised serious concerns about this project, yet the government has been blinded by dollars into dismissing these concerns or, even worse, refusing to even listen to them.

The spectacle, the sham, of a 1½ day select committee in the other house is testament to the desperation that this government had to avoid genuine security. But perhaps the greatest insult of all to the people of South Australia is that all the laws of our state are made subservient to the interests of the company and to the deal that it has struck with our government—all of the legislation of past parliaments overridden by this indenture.

I am very disappointed that the government did not use the opportunity, the leverage, if you like, of this expansion—the biggest industrial project in our state's history—to actually reclaim some sovereignty over our minerals, our environment and our economy. This was a golden opportunity to

end the unfair concessions and the special treatment which are now locked in to continue for decades to come.

These are our minerals, they can only be dug up once and we have the authority to determine how, when, by whom and for what return. Instead, the government has taken us down the path that the former premier promised not to take, that is, to allow South Australia to become the world's quarry.

I would like to thank the enormous number of scientists, business people, environmental campaigners, Indigenous leaders and even BHP contractors and other ordinary South Australians who have helped me and helped the Greens to better understand this project and the enormous implications it has for South Australia, and I have tried to give voice to their concerns in this debate.

However, at the end of the day, we have this bill before us. It is a bad bill. It enshrines a bad deal for the people of South Australia and for our environment, and the Greens believe it could have been so much better. So, at the end of the day, at the end of this debate, I find that the assessment that I made many months ago has now come to pass. BHP Billiton, the world's richest resource company, said, 'Jump,' and all the government could do was ask, 'How high?' The Greens will be voting against the third reading of this bill.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (12:20): I rise to make some brief comments as well in relation to the third reading of the bill. As members would be well aware, the opposition has supported this project—the expansion and the indenture. However, I think, while it is one of the most important bills to pass parliament in relation to the state's economic future, it was interesting to remind the BHP executives who were in the gallery last week that it was, indeed, the Liberal Party that started this whole process under the stewardship and premiership of David Tonkin.

We would not be here today if it had not been for his courage and strength, and that of other members of his team (including the Hon. Roger Goldsworthy) who, if you like, shepherded the legislation through the House of Assembly many years ago. It is interesting to note that the former treasurer and former minister for the Roxby Downs expansion, who was here with all his gusto last week, the opposition has been advised, is presently holidaying in Bali. If it was a bill of such significance, I would have thought he may have stayed here for this week at least; because, of course, this was a piece of legislation that we had to have passed through parliament before former premier Rann and former minister Foley retired.

We could see this morning from the minister's comments in relation to the simple negotiation about the royalties and the time frame of 45 years, that they were not able, not willing and, probably just simply, they did not know the answer. The government does not know the answer as to what their starting point was from the simple point of view of royalties. I think that is where the opposition, whilst supporting this legislation and indenture, will always be worried and concerned that the best deal has not been delivered to South Australia, that it was a time frame spelt out because we had the retirement of two senior members of government. It had to be done and dusted before they left the parliament.

Of course, when you make a decision, for example, to buy a car, that it is going to be on Wednesday 30 November, and that is the day you are going to buy the car and you have made the decision to buy the car, the price and the quality of the deal that you get goes out the window. I suspect that is what has happened with the final negotiations of this indenture bill. Some compromises have been reached that have not been in the best interests of South Australia. Sadly, today, the minister, on the simple issue of royalties, was not able to tell us the government's starting point; and I suspect there is a whole range of negotiations where former minister Foley and former premier Rann caved in in order to meet their time line.

Having said that, we wish BHP and their associated companies the greatest success because we know in the end that, the more successful their operation is, the greater will be the tremendous economic benefits that we hope will flow to our state.

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) (12:23): I rise to make a small contribution to the third reading. The Olympic Dam expansion is a transformational project for South Australia. This legislation is the most significant step in the project since the indenture was first ratified by parliament through the Roxby Downs (Indenture Ratification) Act 1982.

The indenture provides the basis of the benefits which are expected to accrue to the South Australian economy and community, including royalty payments, increased workforce participation and development, local supplier participation, Aboriginal economic development and regional development. Such an expansion does not happen overnight, and the government will still look to the BHP Billiton board to make a timely decision on the necessary approval.

There has been a very long process of negotiation to reach this point. I therefore take this opportunity to thank many of the key players and those who provided tireless support to the government and members of this place during the long hours of consideration of this bill.

Firstly I wish to acknowledge the former premier Mike Rann and the former minister assisting the premier with the Olympic Dam Expansion Project, Kevin Foley, for the many hours that they have spent working to deliver this indenture for the people of South Australia. They embraced this project at an early stage and then fought hard to see it realised, culminating in the signing of the revised indenture in Melbourne last month.

This work has been supported and continued by the current Premier Jay Weatherill. They were more than ably assisted through a six-year process by Mr Bruce Carter and the conscientious team of the Olympic Dam task force, led by Dr Paul Heithersay and his predecessor Paul Case. That task force has, over time, comprised specialist public servants seconded from other agencies.

I would like to highlight the work of Gaby Jaksa and Tom Finlay (from the Crown Solicitor's Office) in providing legal advice to the negotiating team; Sally Smith (from the former department of planning and local government) who played a key role in coordinating the assessment report on the final EIS; and the support provided to her by Robert Kleeman. Acknowledgements should also be extended to Rob Thomas (the chief scientific adviser to the task force), Peter Bradshaw, Sam Walker, Helen Thomas, Lachlan Kinnear, Margot Gall, Nicki Crawford, Stacy Dix and Raelene Darwin.

It takes two to negotiate, so I would like to acknowledge the efforts and goodwill provided by the team at BHP Billiton: Chief Executive Marius Kloppers, Group Executive and Chief Executive Non-Ferrous, Andrew Mackenzie; Dean Dalla Valle, the president of the Uranium Group; and his predecessor, Graeme Hunt.

I would also like to thank parliamentary counsel, and particularly Richard Dennis, for the extraordinary number of hours, the support and advice that they have offered; and the many departmental and ministerial advisers who have supported me through the second reading and committee stages of this bill including Peter Dolan, Phil Hazell and Andrew Solomon of the Environmental Protection Authority; and Ben Bruce and Neil Power of the Department for Water. I am very grateful to you all for your ongoing assistance and support.

As you are aware, they provided me with a great deal of assistance. Clearly, the indenture covers a wide range of highly technical elements and their assistance in expediting responses to all of the honourable members' questions was just fantastic and did make a major contribution in helping to smooth the ongoing progress of this legislation.

I want to take this opportunity to thank the opposition, the minor parties and the Independents for their contributions: in particular, the Leader of the Opposition and the member for Heysen, Isobel Redmond, and her team that were given early access to the indenture. They have worked in an extremely cooperative and collaborative way with the government, and have provided the bipartisan support a major project such as this warrants.

I am advised that this has taken a total of 21½ hours of debate in this chamber alone, including the second reading contributions and the committee stage, so 21½ hours of debate in this place and about 11 or 12 hours of debate in the other place as well. Every honourable member in this and the other place was given every opportunity to say their piece and to put forward whatever improvements or amendments they deemed fit. Every opportunity was given and I do congratulate honourable members for their efforts, their contributions and their willingness to work in such a cooperative way.

I would like to extend my thanks to anyone else that I may have inadvertently overlooked. I extend my thanks to all parties and individuals involved in contributing to the success of this bill.

The council divided on the third reading:

AYES (19)

Bressington, A.	Brokenshire, R.L.	Darley, J.A.
Dawkins, J.S.L.	Finnigan, B.V.	Gago, G.E. (teller)
Gazzola, J.M.	Hood, D.G.E.	Hunter, I.K.
Kandelaars, G.A.	Lee, J.S.	Lensink, J.M.A.
Lucas, R.I.	Ridgway, D.W.	Stephens, T.J.
Vincent, K.L.	Wade, S.G.	Wortley, R.P.
Zollo, C.		

NOES (2)

Franks, T.A.	Parnell, M. (teller)

Majority of 17 for the ayes.

Third reading thus carried; bill passed.

WORKERS REHABILITATION AND COMPENSATION (EMPLOYER PAYMENTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 November 2011.)

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) (12:35): There being no further second reading contributions, I seek to make a few concluding remarks and also to put on the record some answers to questions posed during the second reading debate. I thank the Hon. Ann Bressington, the Hon. Tammy Franks and the Hon. Rob Lucas for their contribution to the second reading debate.

The only outstanding matters relate to the legislative structure rather than the substantive intent of the proposal. I am advised that there is broad support from employers and unions for this new approach to employer payments in the South Australian workers compensation scheme. The new approach responds to an individual employer's risk, experience and size. It is the most effective lever WorkCover can use to influence employer behaviour and improve outcomes for injured workers, employers and the South Australian community.

The Hon. Rob Lucas asked a number of questions about the Liberal Party not objecting to the general principle but commented on the bonus penalty scheme existing without it being specifically provided in legislation. I have been advised that legislative change is necessary for the new approach to premium calculation and for the associated changes aimed at achieving cultural change.

The existing provisions of part 5, divisions 4 to 7 of the Workers Rehabilitation and Compensation Act 1986 are being recast to establish the new approach to premium calculation. The amendments will also achieve a greater degree of openness and transparency than was the case with the bonus penalty scheme, which was governed by board and organisational policy. The act needs to be changed to enable the establishment of separate premium systems for different categories of employers.

The bill articulates the new principles under which premiums are to be calculated. The formulae and operational aspects of the new approach will be detailed in the regulations and gazetted documents, both of which will be consulted on with stakeholders following the successful passage of the bill.

The Hon. Rob Lucas also asked why the government and the WorkCover board got rid of the bonus penalty scheme. I am advised that the bonus penalty system was ceased by the WorkCover SA board, effective 30 June, 2010 due to flaws specific to its design that meant that it had minimal impact on influencing employer behaviour. Further, the system cost $45 million per year because it paid out more bonuses than penalties and this had a negative impact on the average levy rate.

The government acknowledged that many employers have expressed dissatisfaction with the removal of the bonus penalty scheme because the current system has minimal association with their actual performance and claims experience. The new approach to employer payments will address this. It specifically targets medium and large employers who account for around 75 per cent of the total number of claims costs and have greater capacity to manage their own claims experience.

The Hon. Rob Lucas requested that a response be provided to the number of requests for assurances made by the Ai Group. Before doing so, I would like to read into the record an extract from the letter of support for the bill by the Ai Group, sent to the Hon. Jack Snelling. It states:

> ...in regards to legislative reform 'doing nothing is not an option'. Although the proposed experience rating scheme is expected to impact only 9% of registered employers, we see it as an important means by which medium to large employers can begin to have some impact on determining the amount of premium that they will pay.

I understand that the Ai Group, like many employer associations, has been closely involved in the consultation on this new approach. It has been an advocate and supporter of the introduction of an experience rating system in the South Australian workers compensation scheme. The Ai Group has sought from the government, directly and via the Hon. Rob Lucas, a number of assurances and clarifications regarding the bill and the implementation of the provisions therein.

The Ai Group seeks assurances relating to both the quantum and the transitional gap and the period of time over which it will operate. While support for the new experience rating system has been overwhelming, the government acknowledges that some of the employers will see an increase in the amount of premium they pay. Similarly, some employers will see a decrease.

I confirm that transitional provisions, including the level of capping and the period over which the cap will apply, will be properly consulted on following the passage of the bill through parliament. I can also confirm that, consistent with the position paper released by WorkCover in July 2011, it is envisaged that the transition arrangements will apply for the first four years of the new approach and that any increase or decrease in the employer's premium rate will be capped at 125 per cent of the previous year's rate in the period 1 July 2012 to 30 June 2016, subject to any changes agreed to during the consultation process,

The Ai Group seeks formal clarification relating to penalties within the Workers Rehabilitation and Compensation Act being levied by a court rather than WorkCover Corporation. I can clarify that such penalties are not to be levied by the corporation and that justice and equity will be afforded as part of the formal court process.

The Ai Group has sought clarification regarding the use of the new provision at clause 67(4) of the bill, and that this be read into the record. The new provision at clause 67(4) of the bill will allow the corporation to impose a fine on an employer who is in default of the requirement to be registered under the act of up to three times the amount of premium that would have been payable under the act had the employer been registered. I confirm the intention that this provision will only be used by WorkCover in a way that is reasonable and proper, having regard to the interests of employers and workers, and would therefore only be exercised where warranted and not on an arbitrary basis.

The Hon. Rob Lucas asked several questions in relation to the premium adjustment provisions within clause 72. The first of these (to which I now respond) was: what assurances has the corporation given groups like Ai in relation to clause 72? I am advised that WorkCover assured the Ai Group that its intention is that any adjustment of the employer's premium pursuant to clause 72 will be made for reasons that are reasonable and proper. This assurance is consistent with the government's understanding of the intent of this provision.

A further question was: does the government agree that this is a new power that is being provided to the corporation, and what is the corporation's justification? I have been advised that the ability to adjust an employer's premium is absolutely necessary to account for instances where the employer's circumstances change part way through the year and they inform WorkCover of these changes. Examples of where this provision may be used include purchase of an additional location, change in business activity, or reduction in the number of workers employed. Any adjustment will be made in accordance with the relevant premium order, the detail of which is subject to consultation following passage of the bill.

The final question in regard to this provision was: if an amendment were to be moved along the lines that the Ai Group has suggested, what would be the government's response to such an amendment being moved to the legislation? In response to this I draw the honourable member's

attention to the obligations already placed on WorkCover in regard to exercise of its discretionary powers. WorkCover is required to exercise any discretionary powers afforded in accordance with the primary objects of both the WorkCover Corporation Act and the Workers Rehabilitation and Compensation Act. This places an obligation on WorkCover to exercise discretionary powers in a way that is reasonable and proper, having regard to the interests of employers and workers.

Further, WorkCover is governed by a board, appointed by the Governor, and includes associations representing the interests of employers and workers. It is also subject to control and direction by the minister. Such an amendment is not necessary for the reasons outlined above. Having said that, the government would not oppose such an amendment.

The Ai Group has sought clarification in relation to grouping provisions. I confirm that it is the intention that WorkCover will only determine that two or more employers constitute a group if they are capable of being treated as a member of a group under the Payroll Tax Act 2009. The provision for determining whether two or more employers should be grouped is the same in the bill as it is in the act. Clause 72A(1) of the bill is the same as the current section 65(3) of the act.

Further, I confirm that WorkCover will group employers for the purpose of the experience rating system pursuant to clause 72A(1)(a); that is, if 'they are capable of being treated as members of the group under the Payroll Tax Act 2009'. The honourable member has also asked why the government has moved from the position outlined in the July 2011 position paper to now propose joint and several liability. In response it is correct that the July 2011 position paper did not specifically refer to joint and several liability. It was proposed that:

> ...the cost of claims and remuneration of a group member who closes or does not renew their policy may be proportionally allocated among remaining group members, in order to avoid premium avoidance.

During drafting of the bill, consideration was given to the most appropriate mechanism for minimising premium avoidance by employers. Consideration was also given to how this matter is dealt with by other jurisdictions. Both Victoria and New South Wales provide for joint and several liability. Given that grouped employers will tend to be larger employers, which often work in multiple jurisdictions, it was considered appropriate to incorporate the joint and several liability provision for the recovery of premium.

Further, an exhaustive amount of time has been spent grappling with this matter. It is the view of government that this provision, as it stands in the bill, is the most effective way forward if we are to be as fair as possible to all employers. For these reasons, the government would oppose any amendment.

The Ai Group has sought clarification regarding the use of the new statutory declaration provisions in new sections 72E and 72F. These new sections deal with the requirement for employers to provide information for the purposes of calculation or determination of a statutory payment. Both sections provide for WorkCover to require that information provided by the employer be verified by statutory declaration.

The Hon. Rob Lucas has asked whether an assurance can be given or an amendment made to require that statutory declarations only be required by the corporation for a proper reason. In response to this, I can confirm that the intention is that this requirement will only be made for a proper reason.

I am advised that the Motor Trade Association has also requested clarification regarding a provision in clause 72E(10), and I will take the opportunity to provide this. The current section 69(4)(a) provides for WorkCover, by notice to a particular employer or by notice in the *Gazette*, to specify an estimate of remuneration. This provision is replicated in the bill at clause 72E(3)(a).

The MTA has sought clarification regarding the type of notice that would be published in the *Gazette*. I can confirm that it is not the intention that estimates pertaining to individual employers be published. I am advised that, in the interest of transparency, it is WorkCover's intention to publish in the *Gazette* the approach used to estimate remuneration. Notices will be issued to individual employers if an estimate is specified for them. Therefore, given these assurances and the obligations already placed on WorkCover with regard to the exercise of its discretionary powers, the government does not believe an amendment, as referred to by the honourable member, is necessary.

I am advised that the Ai Group has received clarification from WorkCover about the continuation of existing avenues for review, like the current Levy Review Panel, for review of

premiums on the application of an employer. I confirm that employers will continue to be able to request a review of their premium calculations as provided by clause 72M of the bill. The WorkCover Board currently delegates its power of review to the Levy Review Panel and no substantive change to this arrangement is proposed.

The Hon. Rob Lucas seeks a response to questions raised by the Housing Industry Association, to which I now respond. The first question relates to the amendment to section 3(13) of the act. The honourable member asks:

> Can the minister outline to the house the reasons why the government has agreed to this particular issue and whether there is any concern of too much power being given to the corporation in this particular section?

In response to this, the proposed amendment provides for WorkCover, rather than the minister, to designate relevant forms in the government *Gazette* when it designates the manner of lodgement or provision of specific information required by WorkCover. This amendment has been made to streamline the form publication process.

Currently, WorkCover determines the manner of lodgement of the employer registration form and designs the actual form, but the minister has to designate the actual form in the *Gazette*, resulting in two parallel gazettal processes and unnecessary administrative processes. WorkCover briefs the minister on everything it publishes in the government *Gazette* prior to publication. WorkCover is also subject to the direction of the Minister for Workers Rehabilitation. Therefore, even with this change, there is ministerial oversight of the process.

The Hon. Rob Lucas has asked for a response to concerns raised by the HIA in relation to section 71. He states that:

> Their comment to me appears to give very wide powers to the corporation to set premiums for classes of the industry with no independent review...

I have been advised that the process for setting the industry premium rates will continue in much the same manner as the industry level rates are currently set. There is no intention to use any provisions to discriminate against individual employers and, furthermore, premium-related decisions will continue to be reviewable under the new section 72M which replicates the current section 72 of the act.

Section 71 of the bill actually authorises the creation of WorkCover Premium Orders to be published in the *Government Gazette* after consultation with the minister. These *Gazette* documents will specify the detail of the experience rating and retro-paid loss schemes. Premium Orders will detail various caps and formulas and will be reviewed by actuaries each year.

The honourable member has sought a response in regard to whether the South Australian Mine Industry Association Incorporated is correct in its understanding that in section 72K(1):

> ...the penalty of $10,000 associated with a breach of this section was to be removed. This does not appear to be the case in the Revised Bill.

I respond to confirm that provision 72K(1), including the penalty of $10,000, replicates that in the current section 71; further, there has not been a proposal from the government to remove this penalty.

The honourable member has asked for a response to a further point raised by the South Australian Mine Industry Association Incorporated relating to section 76(3) of the bill, about the penalty of $1,000 associated with a breach. In response I confirm that the penalty of $1,000 replicates the existing penalty of $1,000 in section 76(3); further, there has not been a proposal from the government to remove this penalty.

The Hon. Rob Lucas asked for a response concerning concerns expressed by the Wine Industry Association regarding the removal of the guiding principle for setting premium rates. Currently, section 66(8) of the act specifies matters which the corporation must take into account when setting industry premium rates. These include the risk of the industry and financial state of the compensation fund. These provisions were removed in the drafting process in line with the objective of simplifying the provisions in the act and specifying relevant detail in supporting regulations and *Gazette* documents. I am advised that the corporation will recommend that the government replicate the provisions in section 66(8) of the act within the regulations so that the governing principles will remain in force.

The honourable member has asked for a response to the concerns expressed by the Wine Industry Association in terms of 'leviable' being removed. The term 'leviable' was removed because

of the change in the terminology from levies to premium and because no references to 'leviable remuneration' are made anywhere else in the act. I am advised that WorkCover generally treats any reference to remuneration as 'leviable' remuneration. In response to the honourable member's question, the government does not consider the omission of this word to be a significant change and certainly rejects the premise of the South Australian Wine Industry Association that it will change the threshold test in practice.

The Hon. Rob Lucas has asked several questions in relation to a matter raised by the MTA and notes that the MTA is supportive of the new approach to employer payments. The first of these matters relates to WorkCover's ability to impose fines. There are a number of fines and penalties within the bill, most of which are existing provisions. As I have already stated, penalties are administered through the court system whereas fines are imposed by WorkCover.

The new fines and penalties—that is those that do not currently appear in the Workers Rehabilitation and Compensation Act 1986—are as follows: section 67 of the bill includes a new provision which will allow the corporation to impose a fine on the employer who is in default of the requirement to be registered under the act, of up to three times the amount of the premium that would have been payable had the employer been registered; and in section 72A(6)(b) of the bill there is power for WorkCover to impose a fine where two or more employers should have been grouped but were not because they provided false, misleading or insufficient or defective information.

During consultation, the employers strongly supported an approach that minimised gaming by individual employers aimed at avoiding premiums. Grouping is one area within the system that is open to such gaming. Although a specific fine was not subject to consultation, the need to include effective measures to minimise gaming was. A provision was included in the bill for such a purpose in section 72A. It enables a fine to be applied but not exceeding an amount set by regulations. Because the fine will be capped by regulation it will be subject to further stakeholder consultation, in keeping with the consultative approach of this process. Sections 76(5) and 76(6) of the bill provide for harsher penalties for employers who fail to register or who provide a false statement to a principal contractor. During the consultation process there was strong support from employers for harsher fines or penalties in these circumstances.

The second matter raised by the MTA in relation to grouping provisions was highlighted by the Hon. Rob Lucas giving the example of Orica. In response to this I provide the following explanation to clarify that employers, regardless of whether they are grouped, will continue to have their premium calculated in accordance with the industry classifications that apply to their own unique business activities.

I am advised that there are essentially two parts of the experience rating premium calculation. One part of the premium is based on an employer's individual remuneration and individual industry rate. The second part is based on an individual employer's claim experience. The weight given to each of these respective parts is determined by a sizing factor. The sizing factor essentially gives increasing weight to an employer's claim experience as their base premium increases.

To be clear, the base premium of the group is the aggregate for all the base premiums of the group members, which allows for each employer in a group to have their premium calculated in accordance with the industry classification rate or rates that reflect the industry in which the individual employer operates.

I am advised that the MTA has also sought clarification from WorkCover regarding the provision of section 72A(2)(b), which enables WorkCover to apply claims experience across grouped employers. This enabling provision relates only to the optional retro-paid loss arrangements, the detail of which will be contained in a WorkCover premium order.

The third matter raised by the MTA relates to joint and several liability provisions for grouped employers. I have already provided an explanation. The fourth matter raised by the MTA relates to the ability of the corporation to fix premiums at any time during a period. I can confirm that a premium will only be adjusted if an employer's circumstances have changed, for example, the business significantly increases or decreases in size or there is a change in business activity. In these situations WorkCover will rely on being informed of the change by the employer. It will, however, require the appropriate legislative power to amend the premium.

If WorkCover did not have the power to adjust the premium based on information provided by the employer during the year, the premium would only be adjusted at the end of the year as part

of a hindsight calculation. This could mean an employer could be subject to a significant increase in premium payable in a very short time period.

The final matter raised by the MTA is in relation to cost recoveries on business transfers. In response, with respect to the honourable member who raised the issue, I am unclear as to how the concern relates to the proposed bill. If the honourable member can either link the concern to a specific section or provide further details, I would be happy to provide a response. Unfortunately, however, I am unable to answer the question in its current form.

I can confirm the following with regard to transfer of businesses. Transfer of business is provided for within the bill at 72P. This is a new section governing the transfer of claims experience with the transfer of businesses. This is an important element of experience rating. Without this transfer, the opportunity to 'game' the system by selling or closing and establishing a new business would be increased. Claims experience remuneration would follow where a transfer of business will be taken to occur when there is a connection between the two employers within the meaning of section 311 of the Fair Work Act 2009.

I am advised by WorkCover that the MTA has also requested assurance regarding section 72G of the bill, which rewords section 69C of the act. In particular, MTA seeks assurance that WorkCover will only take into account matters of direct relevance when exercising powers to review. I am advised estimates or determinations confirm that this is the intention of the provision.

The Hon. Rob Lucas made reference to the amendment proposed by the Hon. Mr Hood. This amendment applies to proposed section 72K of the bill, which closely replicates current section 71. I will speak to the amendment when it is considered at the committee stage, but the government indicates that it is prepared to support the amendment.

The government appreciates the intent behind this proposal, and although legislative change is not necessarily the most appropriate or effective avenue with which to deal with such administrative matters, it is not an amendment which will negatively impact on the implementation or functioning of the new approach to employer payments.

In summary, the bill underpins a major effort to turn around the South Australian workers compensation scheme. Time is of the essence; if this legislation is not passed during this session, it will not be possible to commence the new approach in the 2012-13 financial year.

There is currently no financial incentive for employers to focus on preventing workplace injuries and supporting injured workers to remain at work or, if time off is required, to return to work as soon as possible. The experience rating system will provide a direct financial benefit to employers for preventing injuries and reducing the cost of claims. It will also penalise those employers who perform poorly in comparison to the industry in which they operate.

Sustained improvements in injury prevention and the cost of claims are essential to achieving a reduction in the average rate and the scheme's unfunded liability. A considerable amount of work will need to be undertaken following passage of the bill to commence on the new approach on 1 July 2012. This includes consultation on the detailed aspects of the new approach, which will be regulated and gazetted.

Successful passage of the bill is essential, otherwise it will delay implementation. The finalisation of an employer payments approach has been an iterative process, focused on improving outcomes for employers. All major concerns raised by stakeholders have been resolved. There is no disagreement about implementing this new approach; there are some differing views about how to frame legislation.

I urge members, when considering this bill, to support it in its entirety. It is obviously important to consider those amendments, as I have already outlined. Again, I thank honourable members for their contribution.

Bill read a second time.

[Sitting suspended from 13:02 to 14:17]

SELECT COMMITTEE ON MATTERS RELATED TO THE GENERAL ELECTION OF 20 MARCH 2010

The Hon. S.G. WADE (14:17): I bring up the final report of the select committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

PRINTING COMMITTEE

The Hon. J.M. GAZZOLA (14:18): I bring up the second report of the committee.

Report received.

ALCOHOL AND DRUG STRATEGY

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:18): I table a ministerial statement from the Hon. John Hill from another place, titled the South Australian Alcohol and Drug Strategy 2011-16.

QUESTION TIME

URBAN DEVELOPMENT AND PLANNING

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:19): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, as Leader of the Government, a question about use of scarce taxpayers' dollars.

Leave granted.

The Hon. D.W. RIDGWAY: In May and June this year, the Urban Development Institute of Australia organised a tour of internationally acclaimed urban developments. It was the second such tour. The Hons Pat Conlon and Paul Holloway—ministers for infrastructure and urban development, respectively—attended the first in 2009, as did the head of the Department of Planning and Local Government, Mr Ian Nightingale.

The second tour was this year and it was equally successful. We inspected sites and discussed planning and development with developers in London, Manchester, Stockholm, Copenhagen, Amsterdam and Rotterdam. I say 'we' because I was privileged to be invited. My report on the trip is on the parliamentary record and has been lodged with your office, Mr President. We went to places relevant to potential projects in Adelaide, inspected urban regeneration on transport-oriented developments, talked to people about what makes these developments profitable and user-friendly, and shared ideas with other delegates on issues pertinent to similar projects to be undertaken in Adelaide.

One of those delegates was, of course, the CEO of the Department of Planning and Local Government, Mr Ian Nightingale. It was a busy itinerary. It was an expensive trip. The department has just tabled its annual report, which shows that one of its employees travelled to the United Kingdom, the Netherlands, Sweden, Denmark and Singapore. He went to the same places we did, and I assume that this employee was Mr Nightingale. The cost to taxpayers was $33,632.71.

The instant, Mr President, that your longtime friend the Hon. Jay Weatherill became Premier, Mr Nightingale was moved sideways to primary industries. My question to the minister for food and fisheries is: what sort of a return on investment have taxpayers received after sending a senior CEO overseas at great cost to study urban development only to have him moved within months to administer food and fisheries?

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) (14:21): It is rather refreshing to actually hear a member of the opposition acknowledge the really important contribution that this government has made to urban development and planning and to acknowledge how valuable the work that we do has been, which includes conducting certain visitations and delegations overseas. It is not just overseas: we also do them intrastate and interstate as well, and they are all important. It helps us to see what is being done elsewhere, to make valuable comparisons and to gain new insights. Also, very importantly, it helps us create networks and relationships which are extremely valuable.

We are very fortunate to have Mr Ian Nightingale as the head of our new PIRSA agency. I cannot tell you how thrilled I was to have a person of that experience and calibre appointed as chief

executive for the new agency, and what an important agency it is. For the first time in I do not know how long, what we have done is put regional development and primary industries, food, forestry, and wine all into the one agency, all under the one chief executive, all under the one minister, creating incredible potential for efficiencies, helping to reduce duplications, and also building on synergies between those different portfolios that will enable us to put a much greater focus on these critical policy areas.

I could not think of anyone better qualified than Mr Ian Nightingale. We know that he originally came from PIRSA. He worked for many years in PIRSA and then moved across into planning and development, and now he is moving back into PIRSA, but into an agency that clearly has much broader implications. We know that all of the experience, wealth of knowledge and understanding that he gained, the establishment of networks and relationships—not just previously within his PIRSA portfolio but also within planning and development—none of that is wasted. What that does is go together to build and create a body of knowledge that has great depth and breadth of understanding right across those portfolios and, more importantly, connections with other portfolios, and we know that that has been one of the government's greatest challenges.

We know that government is particularly good at working up and down within its departments and agencies. We know, however, that a challenge for us is working across government to ensure that we have put in place leadership (our chief executive) that has a greater depth and understanding across portfolios.

I am very pleased that the honourable member acknowledges and values the incredibly valuable work that this government has put into helping build up our knowledge, our skills, our relationships, our networks. I can absolutely assure him and everyone else in this place that not one dollar of that, not one skerrick of that wisdom, will be lost. It is harnessed within Mr Ian Nightingale and he will use all of that as part of his overwhelming, infinite wisdom, skill and expertise to not only help develop this portfolio but, as I said, make those really important connections across a range of other portfolios as well.

MARINE PARKS

The Hon. J.M.A. LENSINK (14:26): I seek leave to make an explanation before directing a question to the Minister for Agriculture, Food and Fisheries about a SARDI assessment.

Leave granted.

The Hon. J.M.A. LENSINK: SARDI has undertaken a project entitled 'Estimating historical fishery catches from preliminary sanctuary zone scenarios in South Australia's marine parks' which was published in July 2011 and which states:

> There is a high level of uncertainty in the estimates of historical catches of abalone, rock lobster and pipi from sanctuary zones because of the limited quality and quantity of spatial catch data.

Under the heading 'Other fisheries', it states:

> [The quality of spatial data]...for other SA fisheries are poorer than those available for the abalone and rock lobster fisheries. In these cases [for example blue crab, marine scale, Lakes and Coorong] it will be necessary to...define the fished area for each species—

and so forth, and it goes on to say:

> ...this area-based approach has considerable potential to produce erroneous results.

My question for the minister is: given the level of uncertainty expressed in this report, what confidence does she have that PIRSA's assessment of displaced effort will be accurate?

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) (14:28): Displaced effort relating to the marine parks?

The Hon. J.M.A. Lensink: Yes.

The Hon. G.E. GAGO: I thank the honourable member for her most important question. Indeed, a great deal of work and consideration has gone into the development of the marine parks planning—the setting of the boundaries, the work that has gone into zoning proposals, no-take zones. It has indeed been an extremely comprehensive policy development that has taken many, many years. I have said in this place before that I was very pleased, as one of the former ministers for environment, to have played a very key part in that.

My understanding is that, in relation to the displaced effort, that is the responsibility of the minister for environment. He has taken charge of that process. However, clearly PIRSA and fisheries are working extremely closely with and inputting into and providing advice in relation to the development of those plans. First of all, my understanding in relation to the no-take zones is that those areas have yet to be finalised, so consultation is still occurring.

In relation to us having a final understanding of the overall effect of displaced fishing, that has still not been completely finalised. Work is still being completed on that. My understanding is that we have indicated that, wherever possible, to produce a minimal impact on commercial and recreational fishing where we possibly can, and that is qualified within the parameters of the objectives of the marine park, which is about protecting and preserving important ecosystems, identifying those systems, and protecting and preserving them within our marine environment.

We have certainly worked very hard to minimise the impact on particularly commercial fishers but also recreational fishers, and that is why minister Caica has gone to great pains and provided extensive community consultation, key stakeholder consultation, to ensure that we get that right. My officers in relation to PIRSA, as I said, continue to input into and provide advice into these developments. Members can be assured that we are working to get the best balance that we possibly can with maximum benefits for the environment but minimum impacts on our commercial fishers and recreational fishers.

APY LANDS, COMMUNITY CONSTABLES

The Hon. S.G. WADE (14:32): I seek leave to make a brief explanation before asking the Leader of the Government questions about Anangu Pitjantjatjara Yankunytjatjara lands.

Leave granted.

The Hon. S.G. WADE: The Leader of the Government has persistently asserted in this house that the Labor government has enhanced policing of the Anangu Pitjantjatjara Yankunytjatjara lands. In 2002, when this Labor government took power, there were 12 community constable positions on the APY lands and all of them were filled. This fact was noted in the findings of the 2002 coronial inquest into three petrol sniffing deaths. UnitingCare Wesley has highlighted the fact that today, after 10 years of Labor, only three of the 12 community constable positions on the APY and Yalata lands are filled.

In April 2011, Steven Marshall, the member for Norwood, did a freedom of information request seeking any review or assessment of the community constable scheme. No documents were released, but the reply did confirm that evaluations of the APY—

Members interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: —and Yalata community constable and police Aboriginal liaison officer programs were undertaken in December 2010 and March 2011. My questions to the minister are:

1. Is the government committed to the community constable program on the APY lands?

2. What was the outcome of the evaluation of the community constable program?

3. When will the remaining community constable positions be filled?

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) (14:33): I thank the honourable member for his most important question. Clearly, they are the responsibility of the Minister for Police, and I am happy to refer them—

The Hon. S.G. Wade: Well, you spruik it when it suits you.

The Hon. G.E. GAGO: Don't worry. I will get around to spruiking. Don't worry; I haven't finished yet. I will refer the details of those to the Minister for Police in another place, and I am happy to bring back a response.

I have been advised that, indeed, this government's track record in relation to policing, not only overall but in relation to the APY lands, far outdoes and exceeds anything that the former Liberal government ever performed. It far exceeds overall. We will stand by our track record, and I will put our track record up against the former Liberal government any day of the week. In fact, I do

not know how the honourable members can stand up straight in their places and talk about policing in this place. When we look at policing overall, we see that SAPOL and our ABS statistics show that the crime rate in South Australia has fallen by 35 per cent, including a 3.5 per cent in reduction in victim reported crime.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: Statistics show that in 2009-10 the biggest fall in crime occurred in offences against persons—things like murders, attempted murders, serious assaults and assaults on police. The number of violent offences in South Australia has dropped from 293.3 per 100,000 persons under the former Liberal government down to just 189.6 in 2009-10—in terms of policing numbers, as I said, any day of the week.

There are 4,400 full-time equivalent police officers in SA, which is 700 more than when Labor took office in 2002—700 more police. The government plans to recruit additional police over the next 3½ years. We have a commitment to do that, so our commitment is continuing. Our government's commitment to boosting police resources has resulted in hundreds of extra front-line police being delivered.

Our latest report from the Productivity Commission shows that SA continues to have the highest number of police per capita of any state. South Australia has 312 operational police staff for every 100,000 persons. The next closest is Queensland, with 293, and Western Australia has 281, and Victoria and New South Wales fall far behind with just 236 and 234 respectively.

This government has delivered South Australia's largest ever police station construction program. Since 2002, new police stations have been opened at Roxby, Golden Grove, Aldinga, Gawler, Mount Barker, Victor Harbor, Berri, Port Lincoln, Newton, Blakeview, Hallett Cove, Pooraka, Amata, Mimili, and Ernabella. There is a further $115 million worth of new building works currently under construction, including a brand-new state-of-the-art police academy headquarters in the city and new police facilities at Yalata and Murray Bridge.

Funding for our SAPOL operations has been boosted to $693 million in 2010-11, a massive increase of 88 per cent more than the last Liberal budget in 2001-02. I will stack our police records up against the former Liberal government's pathetic, atrocious, disgraceful and irresponsible track record any day of any week. Our track record stands for itself.

APY LANDS, COMMUNITY CONSTABLES

The Hon. S.G. WADE (14:38): I have a supplementary question. Given—

Members interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: Given that the minister thinks that her record is as good as ours, how can she explain the 70 per cent fall in community constables on the lands since this government came to power?

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) (14:38): I have just talked about our overall policing commitment. It is not just—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: —about police constables: it is about police officers, it is about police stations, and it is about the police support that they can get from other nearby regions. We have a broad, cross-government approach to this. As I said, our track record stands up against the disgraceful, irresponsible record of the former Liberal government. Any day of any week I will compare our figures up against theirs. They should be ashamed of themselves, they should be hanging their heads in shame—absolute shame.

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

APY LANDS, COMMUNITY CONSTABLES

The Hon. T.A. FRANKS (14:39): Can the minister also pass on to the police minister a request for clarification of why the Commissioner of Police informed the Budget and Finance Committee of this council in February that there was no such review of community constables underway?

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) (14:39): I am happy to pass on any detailed questions to the appropriate minister, but, as I said, our track record has been rock solid over almost 10 years. We have got the numbers, we have spent the budget, we have got the police out there on the ground, and we have built police stations. As I said, our track record stands and speaks for itself, and we have got a falling of crime rates, particularly in those very serious crime areas.

APY LANDS, COMMUNITY CONSTABLES

The Hon. R.L. BROKENSHIRE (14:40): I have a supplementary question. Based on the minister's answer, can she advise the house, during question time tomorrow, when police initiated the review into community constables on the APY lands and when they expect to have the review completed?

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 cannot believe that the former Liberal police minister, in particular, could stand up in this place and talk about policing. I cannot believe that he lacks any sense of shame and has the audacity to stand up in this place and talk about policing. He was personally responsible for the absolute neglect of the APY lands and South Australians. He failed in his responsibilities time in, time out. He is an absolute disgrace and I cannot believe that he lacks the shame to stand up in this place and ask a question pertaining to policing.

APY LANDS, COMMUNITY CONSTABLES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:41): I have a further supplementary question. Can the minister please explain why we have the highest percentage of sworn officers behind desks and not out doing operational work?

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) (14:41): My advice is that we have a high number of police out policing as well. We have a complex arrangement of responsibilities. The police commissioner takes responsibility in terms of operational matters and in terms of deciding who performs what responsibilities. It is an operational matter, so it is a matter for the police commissioner, but we are delivering the proof on the ground.

ABS statistics show that the crime rate in South Australia has fallen by over 35 per cent, so we must be doing something right, including a 3.5 per cent reduction in victim-reported crime. In 2009-10, the biggest falls in crime occurred, as I said, in crimes against people: murders down 23.1 per cent, attempted murders down 19.4 per cent, serious assaults down 10.8 per cent and assaults on police down 6.7 per cent. The crime rate has fallen to a point where in 2009-10 there were 134,144 offences committed, compared to 206,474 in 2001-02, so almost half of that when the Liberals were in power.

In terms of the sorts of decisions that the commissioner might be making about where he places his officers, the bottom line is that people are safer on our streets and crime rates are coming around in a number of serious areas. The proof is in the pudding. We are delivering on the ground.

Members interjecting:

The PRESIDENT: Order!

APY LANDS, COMMUNITY CONSTABLES

The Hon. T.A. FRANKS (14:43): Can the minister also clarify with the Minister for Police how many of those sworn police officers on the APY lands can actually speak in language and communicate with the people of the APY lands in their first tongue?

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) (14:44): I can absolutely assure the honourable member that there are more than under the former Liberal government.

STATE ABORIGINAL WOMEN'S GATHERING

The Hon. CARMEL ZOLLO (14:44): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about the State Aboriginal Women's Gathering.

Leave granted.

The Hon. CARMEL ZOLLO: Every year the Office for Women coordinates a State Aboriginal Women's Gathering. Can the minister tell the chamber about some of the speakers taking part in this year's gathering?

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) (14:44): I thank the honourable member for her most important question and her ongoing interest in these very important policy areas. This year's Aboriginal Women's Gathering features a range of very impressive speakers, as well as once again affording the opportunity for Aboriginal women to come together to discuss key issues.

As members may recall, the State Aboriginal Women's Gathering (SAWG) is held each year over three days. This year's event is being held from today (29 November) to 1 December, and the theme of this year's event is 'Strong Cultures Inspire Strong Futures'. The gathering celebrates the diversity and strength of Aboriginal women and importantly allows Aboriginal women voices to be heard. The gathering is a great space in which Aboriginal and Torres Strait Islander women can talk about issues that affect them, their lives and their families.

Participants at the gathering include delegates from communities in remote, regional and metropolitan areas of South Australia. The keynote speaker at this year's gathering is Deputy Sex Discrimination Commissioner, Andrea Durbach, who will highlight the inspirational story of a group of Kimberley women who successfully tackled alcohol abuse in their community, and she will talk about the innovative alcohol management strategies the women used to rebuild the remote Western Australian community of Fitzroy Valley.

As members might appreciate, having the commission involved in this year's gathering is a wonderful signal that South Australia's women's gathering is considered to be quite a significant event and holds a great deal of status. Ms Durbach has been involved in conciliation issues and facilitating assistance with the stolen generation, and I believe that she will bring a wealth of knowledge and experience to SAWG 2011.

Another notable speaker at this year's gathering will be the well-known Aboriginal rights advocate and anthropologist Professor Marcia Langton. I understand that Professor Langton will discuss the implications of the recognition of Aboriginal people in the Australian constitution. As members may be aware, Professor Langton is on the panel of Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, and she has held the foundation chair of Australian Indigenous Studies at the University of Melbourne since February 2000.

This year's theme builds on the focus of previous years, that is, developing leadership and governance in Aboriginal communities, with delegates getting an update from the National Aboriginal and Torres Islander Women's Alliance and also the National Congress of Australia's First People. Promoting the leadership of Aboriginal women is also a focus nationally with the recent Select Council on Women's Issues listing it as a priority issue.

Developing strong leadership capabilities in Aboriginal and Torres Strait Islander women and encouraging organisational change to facilitate more Indigenous women in leadership positions are obviously vital steps in closing the gap on Indigenous disadvantage. Through the select council, ministers will explore a variety of ways to promote the leadership of Aboriginal women and will consult with Aboriginal women on successful leadership initiatives. I am sure that delegates will find this year's gathering an interesting and rewarding one, and I certainly wish them all the best.

HOUSING SA ANNUAL REPORT

The Hon. R.L. BROKENSHIRE (14:48): I seek leave to make a brief explanation before asking the Minister for Social Housing a question regarding the annual report.

Leave granted.

The Hon. R.L. BROKENSHIRE: Minister, looking at your annual report (which was tabled last week) some of the highlights for concern include the fact that customer debt is $19.726 million and receipt of 6,996 disruptive tenancy complaints, as well as issues in the report about no commitment to the introduction of water meters and charges, as the former minister and now Premier (Hon. Jay Weatherill) promised several years ago would be fixed. I ask the minister:

1. Is the minister concerned about the enormous amount of customer debt and the number of disruptive tenancy complaints?

2. What initiatives is the minister putting in place to address these matters?

3. When does the minister intend to have water meters for all individual properties within Housing SA property stock?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:50): I thank the honourable member for his important questions in relation to the annual report and the three topics relating to customer debt, disruptive tenants and individualised water meters. I will take the last issue first, that is, individual water meters in Housing Trust properties with multiple tenants.

This relates mainly to the issue that some tenants would like to have individualised meters. They feel that they may be paying an average cost which is higher than their actual use. Housing SA takes that into account by paying the first 30 per cent of the water bill. That is to cover costs of, for example, watering common areas and common gardens, but it also takes into account the issue of subsidising tenants who feel they are paying more than they should because they use less water than their neighbour who may have children.

In that instance, it is highly likely that, if tenants did go to individualised water meters, they would pay more than they currently do now. Of course, they currently do not pay a connection fee for an individual meter, nor do they pay sewerage and water rates on top of that. Whilst there is a concern amongst some Housing SA tenants, they actually will be paying less now because of the 30 per cent deduction off their bill than they probably would if they had an individual water meter.

In relation to disruptive tenants, Housing SA takes the issue very seriously and has a dedicated unit that deals with these issues and works very carefully with the local community, neighbours and Housing Trust tenants to minimise the disruption to local life. Most disruptive tenancy complaints deal with noise, and usually that is to do with loud music, and these issues are managed on a case-by-case basis, face to face, and usually with a positive outcome.

In terms of customer debt, we are aware that we have a rising customer debt, but in recent times Housing SA has put in place a policy of carefully managing customer debt, as opposed to tenant debt. They are two different things. Customer debt applies to Housing Trust tenants who may once have been Housing Trust tenants but have moved on; and it also applies to current tenants. In recent times, the rise in customer debt has slowed quite a lot and we are rolling out across the whole Housing Trust system a rigorous program of debt recovery.

HOUSING SA ANNUAL REPORT

The Hon. R.L. BROKENSHIRE (14:52): I have a supplementary question based on the last part of the minister's answer. Can the minister advise the house how much of the customer debt combination of former and existing tenants of $19.726 million is for property damage?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:53): I will take that final question on notice and bring back an answer.

MINISTER'S STATE/LOCAL GOVERNMENT FORUM

The Hon. G.A. KANDELAARS (14:53): My question is to the Minister for State/Local Government Relations. As members would be aware, there are many issues that are matters of priority for both state and local government and require the cooperation of both sectors to achieve positive outcomes. Can the minister update the chamber about the outcomes of the most recent meeting of the Minister's State/Local Government Forum?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:54): Honourable members may recall that back in 2002 the then Minister for State/Local Government Relations (Hon. Jay Weatherill, in another place) implemented

an election promise to improve state/local government relations. The formation of the Minister's State/Local Government Forum was designed to progress key policy priorities that require support from both sectors of government.

As outlined in the terms of reference, the purpose of the forum is to advise the Minister for Local Government, the Premier, the government and the Local Government Association on matters of significance to the state government and the local government sector that require a high level of cooperation between state and local government for their objectives to be achieved.

The forum is chaired by myself as the Minister for State/Local Government Relations, and members include the Minister for Planning, the Minister for Regional Development and the Minister for Housing and Urban Development. Additionally, the forum membership is made up of senior representatives from the respective departments and two union nominees. Local government representation includes the president of the LGA, nominees from the LGA state executive, and senior officials from local government bodies.

The activities undertaken by the forum have significantly strengthened working relations between state and local government and have driven major work in addressing some longstanding problems. The first meeting was chaired by the Hon. Jay Weatherill MP in August 2002, and a further 20 meetings have been held since that date. Specific issues that the forum has been instrumental in progressing over the years include the State-Local Government Relations Agreement, community wastewater management systems, stormwater management and flood mitigation, South Australia's Strategic Plan, climate change, and women in local government.

More recently, the forum has met to discuss the state government's planning reforms, specifically the 30-Year Plan for Greater Adelaide. I am pleased to inform the chamber that earlier this month I chaired my first Minister's State/Local Government Forum. I am also pleased to advise that the Premier addressed the forum, recognising that it has always been important to building a good working relationship between state and local government in the interests of our shared constituencies.

The forum has served as a mechanism to talk about priorities for both state and local government sectors, including the Independent Commission Against Corruption and the Office for Public Integrity. The forum has also addressed other important issues such as the newly formed Urban Development Authority, discussion around the constitutional recognition for local government and the Disaster Fund.

I trust that our work together will continue to focus on the issues that are important to South Australians, and their future. I look forward to continuing with the local government sector on the very significant reform and development opportunities in front of us as we plan for growth and the revitalisation of our city, suburbs and regional areas.

AIRCRAFT CONTRAILS

The Hon. A. BRESSINGTON (14:57): I seek leave to make a brief explanation before asking questions of the minister representing the Minister for Sustainability, Environment and Conservation.

Leave granted.

The Hon. A. BRESSINGTON: Over a period of many months I have received over 1,300 communications from constituents, as well as photographs and video recordings, of aircraft flying over SA and spraying out plumes of a gaseous substance. I always believed they were merely jet streams until it was pointed out that jet streams dissipate quickly while these streams remain lingering in the air for hours and then do not disappear but form what looks like light cloud cover.

I have also noticed these streams over my area of Elizabeth. We were at Mallala on the weekend and that was being sprayed also. Some of these complaints have come from Willunga, Aldinga and surrounding areas. There is a video documentary called *What on Earth Are They Spraying?* In that video physicists, scientists, biologists and environmental biologists who have done studies on this show that these chemicals being sprayed contain barium, chromium and aluminium, just to mention a few. My questions are:

1. Did he give approval or has he been briefed on what is being sprayed from these aircraft?

2. What is being sprayed exactly; what is the chemical breakdown?

3. Why are these planes spraying this substance?

4. Is the minister aware of any environmental monitoring that is occurring wherever these activities are taking 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) (14:59): I thank the honourable member for her very important question about, possibly, contrails—I am not sure. I will take these questions on notice to the minister in the other place for an answer. As a point of issue, it may well be that this is a federal matter given that it does relate to aircraft and airports. I am pretty sure, despite the explanation given by the honourable member, that it has nothing to do with the fluoridation of aircraft exhausts.

FREEDOM OF INFORMATION

The Hon. R.I. LUCAS (14:59): I seek leave to make an explanation prior to directing a question to the minister representing the minister for manufacturing on the subject of freedom of information.

Leave granted.

The Hon. R.I. LUCAS: Mr President, as you would know, and members would know, minister Koutsantonis is well known as being the only MP who doesn't pay up his gambling debts to other members of parliament after a particular gambling exchange. At the end of last year, on 23 December I issued a freedom of information request looking for a ministerial credit card expense as attributed to or expended by minister Koutsantonis.

In early February this year—in fact, on 6 February this year—I received a determination, amongst which was a receipt of a document of a payment, paid by taxpayers on minister Koutsantonis's behalf, of $70 on 21 July 2010 to an account called the 'Michael Atkinson farewell account'. A subsequent freedom of information request in relation to that found that almost seven months after that expenditure in July 2010, minister Koutsantonis on 2 February, just four days prior to my receiving a freedom of information application response from his department, repaid or reimbursed the amount of $70 that taxpayers had expended on his behalf into the 'Michael Atkinson farewell account'.

Information provided to me indicates that the proposed response to me, which I received on 6 February this year, was provided to the minister just prior to 2 February of this year and, as a result of that proposed FOI response, the minister then decided to reimburse the taxpayers for his tickets to the 'galah' event at the 'Michael Atkinson farewell account'. My questions are:

1. Is it correct that details of the proposed FOI response to me, which I received on 6 February this year, were provided to the minister just prior to 2 February and just prior to the release of the departmental response to me?

2. Did the minister feel guilty that he had used taxpayer funds to pay for tickets to a farewell function for Michael Atkinson, and was that the reason why, almost seven months after using taxpayer funds and just before the public release of that fact through the freedom of information request, that he hurriedly repaid the amount to taxpayers? If that is not the reason, what was the reason for the minister, almost seven months after expending that money, repaying the account to the department?

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 thank the honourable member for his questions and will refer them to the minister for manufacturing in another place and bring back a response. As all honourable members know in this place, the management of FOI information, and the content that is released to applicants, is independent of ministers and their officers. It is a system that is completely independent. The decisions about what constitutes material that is relevant to an application is assessed by independent FOI officers and is independent of ministers.

Ministers are not in a position to be able to interfere with or have a say in, for that matter, the content of materials released under FOI applications. Honourable members know that. They know that we conduct this process at arm's distance to government, that it is an independent process, and that is to ensure that the integrity of the system is upheld. But, as I said, in relation to the specific questions asked by the Hon. Rob Lucas, I am happy to refer those to the minister for manufacturing and bring back a response.

HOUSING SA SOLAR CREDITS SCHEME

The Hon. J.M. GAZZOLA (15:05): My questions is to the Minister for Social Housing. Minister, will you explain how Housing SA is helping tenants to address climate change through recent changes to policy?

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): I thank the honourable member for his question, and I congratulate him for his incessant agitation on these issues to deal with climate change.

The Hon. D.G.E. Hood interjecting:

The Hon. I.K. HUNTER: Well, longstanding, of course. The South Australian Housing Institute awards are held biennially, and Housing SA enjoyed great success, based on its dedication, innovation and a good deal of hard work. Housing SA staff won individual awards in the areas of outstanding achievement and the inspirational colleague, as well as awards for leading housing solutions and leading practice, but probably, in relation to the honourable member's question, its most significant award was one for leading innovation. The award was made to Housing SA's quality and technical services project team for its work on putting protective arrangements in place to support tenants who wanted to place solar panels on their roof.

In the past six months, Housing SA has come under increasing pressure from some tenants who want to protect themselves from future rising energy costs, just like those South Australians who own their own home. The opportunity to reduce energy bills by placing solar panels on their roof was, for a long time, in the too hard basket until Housing SA staff were able to formulate an innovative deed. This deed ensures that the state, the tenants and installation companies are all fully aware of their rights and responsibilities in relation to the installation and that the ongoing operation of solar systems is fully spelt out in the deed they all sign.

At present, no other state has the same process in place to allow solar panels to be placed on public housing properties and, as such, Housing SA is leading the way in providing innovative solutions for the future of social housing tenants. Housing SA has reported that, since May 2011, when the then minister for housing signed the approval for the deed, there have been 25 applications approved for Housing SA tenants to install solar panels at their property.

One of the first tenants to install the solar panels on his roof was Mr Bierczynski of Morphett Vale, who had his 1.65 kilowatt system installed on 1 September 2011. Mr Bierczynski has expressed his gratitude for the chance to reduce his energy bills through the installation of these solar panels. He and his wife have lived at the property for more than 25 years, and they say that they treat their home 'like it is their own', as indeed it is. They love the area and get on well with their neighbours and have no intentions of moving anywhere in the future.

Whilst they are yet to receive their first electricity bill since the solar panel installation, this couple, who are pensioners, are expecting that they are already making savings through the provision of energy from the sun. Additionally, they have signed up to the government's Solar Credits Scheme, and they are expecting that this will deliver them further savings well into the future. They are just one case in a small but increasing number of Housing SA tenants who will have the opportunity to reduce their energy bills and their carbon footprint through Housing SA's innovations.

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

HOUSING SA SOLAR CREDITS SCHEME

The Hon. M. PARNELL (15:08): Two supplementaries, in fact, arising from the answer. First of all, under this deed, do tenants retain ownership of the panels, and can they take them with them if they move? Secondly, and perhaps more importantly, why on earth didn't you do this when there was an opportunity for tenants to take advantage of the solar feed-in rebate? Why have you left it until the scheme has ended?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:08): The first answer is yes. The second answer is: because it was a horrendously difficult task to construct this deed in the interests of the tenants, Housing SA holding the property and, indeed, the solar installation firms. The deed was struck, as I said, earlier this year to the satisfaction of all involved, including the SA tenants.

ONE AND ALL

The Hon. T.A. FRANKS (15:09): I seek leave to make a brief explanation before asking the Minister for Youth a question about the *One and All*.

Leave granted.

The Hon. T.A. FRANKS: The minister would be aware that the *One and All* tall ship is an iconic part of South Australia's history and an iconic part of youth development in this state, and it has given hope and opportunity to hundreds, if not thousands, of young South Australians from all walks of life. Back in the 1980s, when the *One and All* was brought to this state, the funds raised by the South Australian people to bring it here were raised in the belief that it would be a youth development program for this state for some time to come.

As the minister is probably aware, the *One and All* has not been operational since July this year. A proposal tender went out, which I understand closed by August this year. We were assured previously by the government that the tender would be awarded by no later than October this year, yet here we are in November and we still have no future declared for the *One and All*. Can the minister please outline:

1. What is the future for the *One and All*?

2. Will that future include youth development?

3. How many youth programs that were scheduled to be run between July and the current date have not been run as a result of the lack of certainty in relation to the future of the *One and All*?

4. What undertaking will the minister personally take as Minister for Youth to ensure that the future of the *One and All* is preserved for young people and for young people at risk in particular?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:10): I thank the honourable member for her very important question. At the outset I should say that this issue—indeed, the ship the *One and All*—is owned by the Minister for Transport and Infrastructure, the Hon. Patrick Conlon in another place, on behalf of the people of this state. The responsibility for this issue lies with him and his department.

As we all know, the *One and All* is a tall ship. Until recently it had been operating under tender by SA Tall Ships Incorporated, and was primarily used to provide adventure-style personal development voyages for young South Australians between the ages of 14 and 23. In recent years SA Tall Ships Inc. has focused on delivering programs targeted at disadvantaged young people, although there is also a range of public and private schools that schedule regular camps on the *One and All*.

On 11 July 2011 it was reported in the media that SA Tall Ships had gone into liquidation, and a new call for tender to operate the *One and All* was already underway when SA Tall Ships went into that liquidation. The Department of Planning, Transport and Infrastructure publicly advertised a request for proposals to operate the *One and All* on 5 July 2011, and the call closed on 4 August 2011.

The Department of Planning, Transport and Infrastructure is currently in negotiations to finalise a charter party agreement, and its focus during this stage and in the entire RFP process has been to select an organisation that not only has the ability to operate and administer the *One and All* in a sustainable manner, but also to ensure an ongoing community benefit for all South Australians through social and youth development initiatives.

During this process DPTI officers have engaged with other agencies across the South Australian government to ensure that they are aware of the opportunities this asset affords to youth development programs. As Minister for Youth I am not aware that my department has made any contribution to the ship and its program in recent years. I reiterate that this issue is one that falls under the primary responsibility of the Hon. Patrick Conlon in another place.

SOUTH AUSTRALIAN FOOD INDUSTRY

The Hon. J.S. LEE (15:12): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about government funding to South Australia's food industry.

Leave granted.

The Hon. J.S. LEE: Last Friday night, 25 November 2011, the Premier's Food Industry Awards were held at the Adelaide Convention Centre. The CEO of Bickford's, Mr Angelo Kotses, used the opportunity to speak out on a lack of government support for South Australia's food industry. Reported in *InDaily* on Monday 28 November, the CEO said 'doing business in South Australia is more difficult than in any other Australian state'. He continued:

> I caution the government not to neglect the food industry and increase the amount of investment in food marketing which has actually declined in the last 10 years.

He also urged the state to embrace its local brands. The agricultural, food and fisheries sectors are important industries to our state, yet the agriculture, food and fisheries portfolio has had three ministerial representatives in the last 12 months. My questions to the minister are:

1. With the constant change of minister representing the agriculture, food and fisheries portfolio over the last 12 months, what type of assurance can the government guarantee to the food industry that it is committed to supporting South Australian food companies and embracing the state's local brands and produce?

2. With leading businesses in South Australia condemning government for not investing enough into South Australia's food marketing, can the minister outline what the government proposes to do to address this issue?

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) (15:14): I thank the honourable member for her important question. Indeed, as she points out, there have been three ministers of late responsible for food, but I have to say that they have been three extremely high calibre ministers, really committed and hardworking, diligent people. You could not get better quality, I don't think. You should feel assured that you have the cream of the crop.

The Hon. D.W. Ridgway: The former ministers were high calibre and you're not?

The Hon. G.E. GAGO: I'm including myself in that, of course. It speaks for itself: dedicated, hardworking and extremely committed. I think the honourable member is being slightly mischievous here. There are criticisms from time to time about how the South Australian government, of any government persuasion, could or should be doing better. However, to suggest that leading industries are, overall, criticising this government for its work is quite misleading. That is not so and we are generally held in high regard. That is not to say that there are not issues that the industry does bring to us. Of course, we listen, we engage and we work with them to try to ensure the best way forward.

The five-year South Australian Food Strategy is a plan that we have in place to boost the food industry's competitiveness and growth in both domestic and international markets. The strategy embraces the entire food industry, from producers to processors. It was developed collaboratively with the industry and was endorsed by the Premier's Food Council prior to its release back in February 2010.

Through a deed of grant, PIRSA works with Food SA to provide foundation funding for the South Australian Food Industry Development Project that will support the continued growth of a strong, innovative and resilient food sector in South Australia. It will also deliver a program of activities focusing on industry engagement, education and awareness, positioning the industry competitively interstate and internationally, improving the capabilities of food companies and increasing jobs and sustainability.

Food SA has developed operational plans for both 2010-11 and 2011-12, which have been approved by the former minister—a very capable minister. The 2011-12 annual operational plan includes both statewide activities and pilot regional projects aimed at building upon key regional attributes. PIRSA and Food SA have worked with other key industry bodies to develop an enhanced industry development program focused on expanding, as I said, domestic and international markets.

Key activities of the operational plan—I won't go through it all, but just very briefly—include things like business capability development to embed management, consumer focus and product innovation capabilities into food businesses; participation in national and international trade shows, creating awareness; bringing buyers from domestic and international markets to South Australia to

promote our goods; and development of an online food industry portal that will help provide a one-stop shop for food businesses.

Some of the key activities for PIRSA's contribution—again, I won't go into it all—include things like two food technologists assisting industry in areas such as new product development and improving production efficiencies, etc.; the establishment of a graduate access program designed to assist small to medium-sized food companies accessing skills and expertise, particularly related to the current university and TAFE graduates, providing an opportunity to add technical, marketing or commercial expertise at an affordable cost; and an industry analysis unit, which analyses SA's food industry chains and develops projects to enhance industry performance.

Current projects include work with the lamb and orange industries. You can see that there is a framework in place. That framework has been put together in collaboration with the industry and it is a working blueprint for us to move forward and make sure our food industry remains successful.

ARKAROOLA PROTECTION BILL

Second reading.

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:20): 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 Arkaroola area is a significant place for the Adnyamathanha People, whose connections with this place remain strong and vibrant.

It is a region defined by towering granite peaks, razor back ridges, and deep gorges. Arkaroola also encompasses ancient sea beds which hold fossils that are up to 650 million years old. Geologists have stated that the ancient Arkaroola Reef is of tremendous scientific importance and includes a reef framework containing calcified organisms that may represent the remains of the oldest animals on Earth. Arkaroola is also home to over 160 species of birds, and the rare Yellow-footed Rock-wallaby . It is a unique combination of superlative natural phenomena.

The purpose of this legislation is to protect the cultural, natural and landscape values of Arkaroola in perpetuity. This legislation will establish the Arkaroola Protection Area, and provide for the proper management and care of that area. The legislation also specifically prohibits all forms of mining activities within the Arkaroola Protection Area.

This unprecedented legislation, in conjunction with other measures initiated by the Government, will result in Arkaroola being protected for all time.

In 2009 a draft policy document, *Seeking a Balance*, generated considerable interest across the community, with nearly 500 submissions being received, the vast majority of which were overwhelmingly in favour of protecting Arkaroola from mining.

Having been delivered this unequivocal message from the people of South Australia (and further afield), on 22 February 2011, the Government undertook a consultation process on identifying the best conservation management framework for Arkaroola. In doing so, we considered all of the available options to preserve the iconic Arkaroola area, including a definitive ban on mining at Arkaroola.

The Minister for Mineral Resources Development and I personally undertook consultation with directly affected parties. This included the Adnyamathanha People, the Arkaroola and Mount Freeling Pastoral Lease Holders and all exploration and mining companies with an interest in the area. Following this process and Cabinet consideration of the consultation outcomes, the conclusion was that exploration and mining access should be excluded from a defined area of Arkaroola as a first step in protecting its landscape and conservation values, and to meet community expectations.

Accordingly, on 22 July 2011, the Government announced a series of measures that will permanently protect Arkaroola. The first step, as an interim measure, has been to reserve the land from the operation of the *Mining Act 1971* and the *Opal Mining Act 1995*. His Excellency, the Governor in Executive Council, made these proclamations on 29 July 2011.

The Premier has also recently written to the Prime Minister, the Hon Julia Gillard MP, signalling the South Australian Government’s intention to pursue the listing of Arkaroola on Australia’s National Heritage List and to seek to have the area inscribed on the World Heritage List. As a precursor to these National and World Heritage nominations, the Premier also recently nominated Arkaroola to be assessed for its State heritage significance and the South Australian Heritage Council has since resolved to enter Arkaroola in the South Australian Heritage Register.

The most powerful protection, however, comes from this special purpose legislation. The *Arkaroola Protection Bill 2011* will protect the cultural, natural and landscape values of a defined area to be known as the Arkaroola Protection Area, and will exclude exploration and mining within the area.

These measures in combination will give Arkaroola the highest level of protection that can be afforded by the Parliament of South Australia.

An important element in considering this Bill is that the Arkaroola Protection Area will meet international and national standards for what is considered a protected area. The International Union for the Conservation of Nature has devised a series of protected area management categories, which are recognised by the Convention on Biological Diversity as a way of categorising the incredible variety of protected area management types in the world.

Indeed, not only will it meet the IUCN definition of a protected area, but the Arkaroola Protection Area will specifically meet the definition of a 'category II National Park' under the IUCN framework. This Bill is therefore unique in enabling us to establish the Arkaroola Protection Area so as to have the same legal status in South Australia as a National Park under the *National Parks and Wildlife Act 1972*, as well as being internationally recognised as a protected area.

The Bill spatially defines the Arkaroola Protection Area, via a deposited plan that will only be capable of amendment by further Act of Parliament.

Through its objects the Bill provides for the conservation of features of cultural and natural significance, including the conservation of habitat, ecosystems, biological diversity, geological features and landscapes.

The native title rights of the Adnyamathanha People will be fully respected by this legislation, and Aboriginal heritage will continue to be protected. Accordingly, the Bill has a specific provision to support the conservation of objects, places or features of cultural value to the Adnyamathanha People. Rather than affecting the determined native title rights of the Adnyamathanha, this legislation supports the continued existence, enjoyment and exercise of those rights.

The Bill contains objects to support scientific research and environmental monitoring that is in keeping with the other objects of the Bill. It also contains an object to foster public appreciation, understanding and enjoyment of the cultural and natural features of the Arkaroola Protection Area.

To ensure the proper management and care of the area, the Bill requires that the Minister for Environment and Conservation must develop a management plan for the Arkaroola Protection Area. The management plan must be consistent with, and seek to further, the objects of the proposed *Arkaroola Protection Act 2011*.

The management plan will be an expression of policy and does not in itself affect rights or liabilities. It will, however, be a powerful tool in establishing the rules relating to matters such as grazing and incompatible development within the area. Significantly, the Bill requires any person or body involved in the administration of any other Act to exercise their powers and functions in relation to the Arkaroola Protection Area in a manner that is consistent with and seeks to further the Arkaroola management plan.

The role of the management plan is further strengthened by the requirement for the Minister responsible for the administration of the *Development Act 1993* to review any Development Plan relating to the Arkaroola Protection Area to ensure its consistency with the management plan.

Preparation of the management plan will commence once this legislation has passed. In order that the native title rights of the Adnyamathanha people remain unaffected, the management plan must be developed in a manner which is not inconsistent with the continued exercise and enjoyment by the Adnyamathanha People of their determined native title rights and interests. The Bill, therefore, requires that the Adnyamathanha People (and all other persons or bodies holding an interest in the area) be consulted about, and be involved in, developing the management plan.

The Bill specifically provides that no mining rights or operations or regulated activities under the *Mining Act 1971*, the *Opal Mining Act 1995* or the *Petroleum and Geothermal Energy Act 2000* can be acquired or exercised in relation to land within the Arkaroola Protection Area. The definition of this land is the same as that contained in the *Acts Interpretation Act 1915* and will include the subsurface land within the area. This includes both existing and future operations and activities related to exploration or production.

The unique nature of the region justifies the decision to end mining access at Arkaroola but suggestions that this decision will increase South Australia's sovereign risk are clearly refutable. This Government remains unashamedly pro-mining.

The decision to ban mining in a small, clearly defined area of the State does not change the overall ground rules for mining access in the South Australia, nor does it have any implications beyond Arkaroola—hence the need for special purpose legislation relating only to Arkaroola.

The intent of the proposed legislation is only to prohibit exploration and mining within the Arkaroola Protection Area—if a tenement boundary crosses into the Arkaroola Protection Area, only that part of the licence within the Arkaroola Protection Area will not be available for exploration and mining. Mining operations or regulated activities under a mining Act will remain permissible in the part of the licence not within the Arkaroola Protection Area.

The Bill also includes the provision to allow the Governor to make such regulations as are contemplated by, or necessary or expedient for the purposes of, the proposed legislation.

The Bill also makes related amendments to:

- the *Development Act 1993*, so that the Planning Strategy will be taken to include the objects of the proposed *Arkaroola Protection Act 2011*, and to establish arrangements for the amendment of the development plan to ensure consistency with the proposed *Arkaroola Protection Act 2011;*
- the *Natural Resources Management Act 2004* so that the Regional NRM plan, when adopted (or amended), is to be consistent with the management plan for the Arkaroola Protection Area; and
- the *Pastoral Land Management and Conservation Act 1989* so that pastoral leases relating to land in the Arkaroola Protection Area will include conditions requiring the lessee to use that land in accordance with the management plan.

The *Arkaroola Protection Bill 2011* and the related initiatives provide the framework by which we will protect an iconic part of South Australia for future generations to enjoy and appreciate.

Explanation of Clauses

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines certain terms used in the measure.

4—Objects

This clause sets out the objects of the measure.

5—Administration of Act

The administration of the measure is to be committed to the Minister administering the *National Parks and Wildlife Act 1972*.

6—Interaction with other Acts

Except where the contrary intention is expressed, the measure is in addition to and does not derogate from other Acts.

7—Native title

This clause confirms that the measure is not intended to affect native title rights existing over the Arkaroola Protection Area.

8—Management plan

This clause provides for the development of a management plan for the Arkaroola Protection Area. Whilst the management plan is an expression of policy and does not, of itself, affect rights or liabilities, the provision requires persons and bodies involved in the administration of Acts to act consistently with, and to seek to further, the management plan in exercising powers and functions in relation to the Arkaroola Protection Area.

9—Review of Development Plans

This clause requires that the Minister responsible for the administration of the *Development Act 1993* ensure that any Development Plan under that Act that relates to the Arkaroola Protection Area, or a part of the Area, is reviewed within 6 months after publication of the management plan for the purpose of determining whether any amendments should be made to the Development Plans to promote consistency with the management plan.

10—Prohibition of mining operations and regulated activities

This clause provides that after the commencement of this section, rights to undertake mining operations or regulated activities cannot be acquired or exercised pursuant to a mining Act in respect of the Arkaroola Protection Area (despite any other law). The clause also makes express provision to the effect that nothing in the Act affects the rights of an adjacent tenement holder in respect of any land comprised in the tenement that is outside the Arkaroola Protection Area.

11—Regulations

This clause provides for the making of regulations for the purposes of the measure.

Schedule 1—Related amendments

Part 1—Preliminary

1—Amendment provisions

This Part is formal.

Part 2—Amendment of *Development Act 1993*

These related amendments would ensure that the objects of the measure are incorporated in the Planning Strategy and make provision in relation to amendment of Development Plans to promote consistency with the management plan.

Part 3—Amendment of *Natural Resources Management Act 2004*

This related amendment requires a regional NRM plan to be consistent (as far as practicable) with the management plan under the measure.

Part 4—Amendment of *Pastoral Land Management and Conservation Act 1989*

This related amendment provides for the inclusion, in relevant pastoral leases, of land management conditions providing for the lessee's obligation to use the land in accordance with the management plan. Under the existing section 22(1a) of the Act, this condition will be taken to be a condition of the existing pastoral leases, but may be varied by the Board if the variation of condition is accepted by the lessee (see section 26 of the Act).

Debate adjourned on motion of Hon. J.M.A. Lensink.

WORKERS REHABILITATION AND COMPENSATION (EMPLOYER PAYMENTS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. R.I. LUCAS: The minister responded at the second reading to a significant number of questions that I and I think other members put on the record during the second reading debate in relation to the bill. In particular, the minister has now put on the record assurances that were given to one industry group—the Ai Group—that had been previously given privately and are now on the public record as assurances from the minister and obviously WorkCover, as well. Certainly my advice from the Ai Group is that, having received those assurances, it is comfortable now with the bill before the house.

I have also been contacted by a brief email message from the Motor Trade Association. It had raised a number of questions and I referred to some of them in the second reading. I am advised that the association had a further discussion yesterday with WorkCover representatives, and the email message to me indicates that it is satisfied with the assurances. It stated:

...and believe our concerns will be addressed adequately in the responses during the second reading and committee stages.

So the Motor Trade Association has indicated that, by and large, it has been satisfied by the assurances that it has been given.

I also indicate that I met yesterday afternoon with representatives from the Master Builders Association and they raised a further specific question with me which I will place on the record now if the minister is prepared to take it on notice and bring back to the committee WorkCover's considered response to the Master Builders Association's question.

I also indicate that, for the benefit of the committee, given the responses that have been outlined by the minister on behalf of WorkCover, at this stage the Liberal Party does not propose to move ahead with any amendments. In the second reading we did flag that, subject to the minister's responses, we may well look at drafting possible amendments. This morning we were in discussion with parliamentary counsel about one possible amendment that had been raised with us by one industry association but, on advice from parliamentary counsel, we are satisfied that the issue is appropriately handled in the current government draft of the bill.

The opposition's understanding is that the only amendment the committee will face tomorrow or Thursday when we conclude debate on the bill (which is within the time frame the government wishes) is the amendment being proposed by the Hon. Mr Hood. For the benefit of members and the minister, I indicate that it is the Liberal Party's position at this stage that when we get to that amendment we will support it, or some version thereof. If the government believes it could be drafted in a better fashion whilst achieving the same purpose, we would be prepared to consider that, but at this stage we are indicating our willingness to support the principle behind it when we come to that amendment.

The issue that was raised with us only yesterday afternoon by the Master Builders Association is one that arose between that association and WorkCover as a result of the presentation to the master builders by WorkCover on Wednesday 23 November. I have a copy of an email from a Master Builders Association officer to a WorkCover officer on Thursday 24 November (last Thursday afternoon), which says:

Thank you very much to Gael for coming in to present to our Commercial Contractors Meeting yesterday.

Gael said that we would be able to have a copy of the presentation.

Also, a question was raised, and Gael needed to take it on notice. The question asked was:

Was there a cap on premium discounts, and if so, what would be the cap?

If not, how low could premiums be discounted?

Another question raised was on the experience based percentage to be used in the calculation of premiums. Gael suggested that this would be a sliding scale based on the amount of premiums and remuneration that a company paid. One figure quoted was 10% for a company paying $20,000 premium, and $300,000 remuneration, up to 40% for the largest company.

If this is correct, committee members in discussion afterward could not see benefits for those that had premiums in the low end of the bracket, as it appears that they would only be able to gain discount for good performance based on a 10% experience factor. Their understanding of this is that the calculation would only take into account $2000, of an annual $20,000 premium payable, which would provide minimal incentive discounts.

Could we please receive further advice and guidance on the exact percentages and sliding scales, as well as the maximum discount that would apply for a business? This may help to clear matters up for our members. Currently, their advise is that potential increases seem to create a larger cost impost for construction businesses, with minor discounts available. I have looked up the FAQ's—

which is obviously a facility provided on the WorkCover website—

and the position paper on the WorkCover website and must admit I cannot find answers to the above questions.

Once again, many thanks to Gael for giving up her time to address the committee.

The WorkCover response to that email to the MBA executive officer was as follows:

As you are no doubt already aware, the Legislation around the proposed approach to Employer Payments is currently before Parliament. It has now been agreed to take up the optional sitting week next week, which in turn will extend our team's involvement. I'm sure you'll appreciate that this whole process requires significant resources from our business group and is therefore taking top priority for all involved.

However, I have referred your email and questions to the appropriate people in our team, and they have undertaken to get a response to you within a week after Parliament rises for the year, ie by COB Friday 9th December.

I look forward to providing you with further information on this matter in due course.

Please do not hesitate to contact me should you require further clarification.

That is obviously wholly unsatisfactory to that industry group, the Master Builders Association. They are not a Johnny-come-lately organisation; they do represent significant construction-based businesses in South Australia. It is an entirely reasonable question that has been put, and I do not think it is satisfactory to say, 'Look, we will give you the answer after the bill has gone through parliament.' On their behalf, I ask the question this afternoon and seek the minister's response before we have to conclude debate on the bill, obviously before Thursday of this week.

The Hon. I.K. HUNTER: Mr Chairman, I thank the Hon. Mr Lucas for putting that further question on the record, and we will endeavour to get a response for him.

Progress reported; committee to sit again.

PARLIAMENTARY REMUNERATION (BASIC SALARY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 November 2011.)

The Hon. R.I. LUCAS (15:31): I rise on behalf of the Liberal members to support the second reading of the Parliamentary Remuneration (Basic Salary) Amendment Bill this afternoon. I am sure members will be aware—as, I am sure, would the media, after recent publicity—that South Australian state members of parliament have a base salary which is automatically linked to the base salary of federal parliamentarians and which is $2,000 less than federal parliamentarians. Our other entitlements, such as allowances, are determined by the Independent Remuneration Tribunal of South Australia.

The reason we have this bill before us today is that the government has determined that, evidently, based on advice from Canberra, it is possible that what has been discussed for some time in relation to possible changes in remuneration for federal members—and I note the Hon. Mr Parnell will obviously have a near and dear interest in this with his connections in the federal parliament—there may well be proposed changes which lead to a significant increase in the basic salary of federal members of parliament, but in part paid for by the removal of certain entitlements or benefits (sometimes colloquially referred to as perks).

Some of the benefits and entitlements that have been discussed as part of this trade-off in the federal arena have included overseas travel entitlements and also some element of electoral allowance entitlements. My understanding is that, given that all members federally and statewide have varying electorate allowance entitlements depending on the size of their electorate, perhaps what is being contemplated federally is that some base or threshold level of electorate allowance (perhaps, say, at the level of the metropolitan members' electorate allowance) will be rolled into salary and that country members, for example, who receive a much bigger electorate allowance entitlement, may well still receive the difference between the threshold level and their individual electorate allowance as a further allowance or entitlement.

That has been the nature of the discussion at the federal level. Some others have talked about perhaps rolling in other entitlements, such as entitlement to motor vehicles. At the federal level, as I understand it, a fully operational motor vehicle is received for an annual payment of about $700 or $750. I am sure those state members in this chamber who participate in the state scheme will be quick to remind members of the media or, indeed, others that the equivalent scheme in South Australia is, as I understand it, that members pay for the base entitlement approximately $7,000 for a fully operational vehicle.

There was an issue for the state government if this change was to occur at the federal level prior to Christmas, when the state parliament was not sitting. The current arrangements, I should say, at the federal level are that they have now handed over absolute independence to the Remuneration Tribunal to determine this particular issue. It does not have to, as it had previously, go back for any vote or for some disallowance motion, for example, in the parliament; that is, once the decision is taken, the arrangements in the federal arena ostensibly are the independent tribunal makes a decision and then it goes through and the parliament has no further say in it.

The state government's view here was, if that was to occur, then, under our current arrangements, the salaries of state members of parliament would go up significantly to just $2,000 less than the proposed federal salary entitlement, but at that stage there would not be any offsetting reduction in benefits or entitlements for state members, in part or in whole, to fund the increased salary cost. Whereas the federal members may have received a significant increase funded in part or in whole by a loss of benefits or entitlements, state members would have got the same increase but it would not have been offset in part or in whole by a reduction in benefits or entitlements at the state level.

For those reasons, the state government has taken the position that it wanted to sort its way through that over a period of time leading up to 30 June. Some of us might observe, given that this has been known at the federal level for almost all of this year, why that could not have been worked out before now. I think that is probably a fair observation, but the reality is the government has advised us it has not done that. We are where we are and we are confronted with a situation of needing to address the issue along the lines the state government has proposed.

There are two other broad issues I want to raise. This issue of parliamentary salaries is always a vexed one. There will always be elements within the community—either members of the media, members of the community or, indeed, members of parliament on occasions—who delight in, I guess, making an issue of parliamentary salaries and entitlements.

There have been various proposals in terms of how you best resolve these issues. Over the years that I have been in this parliament, I have seen a number of different models either in use or proposed. We have had the model where we ultimately, each and every time, set the salary ourselves and that was always much criticised. We have had the model where an independent tribunal looked at it. On one particular occasion, when there was a very significant salary increase proposed, there was media and community outrage at the size of the proposed salary increase, so there was pressure on members and the parliament not to accept that.

We have had the most recent model which is locking it into, in essence, a band of salaries which are at the senior levels of the federal Public Service, then flowing on from those increases to federal members of parliament to state members of parliament. The argument was, if federal members were going to get a 3 per cent increase, then state members would get a 3 per cent increase as well. The federal members' original argument was, if federal public servants were getting a 3 per cent increase, then federal members of parliament should get a 3 per cent increase as well. That was the model upon which our current system was based.

Having been in government and having tried to determine the issue, I know of not only the issues in relation parliamentary members' salaries but also ministerial staffers' salaries. It is one of

those issues as well. Essentially, the model that was adopted when we were there was essentially to say, 'Okay, what did the state public service get over the last 12 months in terms of salary increases?' and we applied that particular percentage factor to ministerial staffers. The argument was that, if in the end you were paying state public servants a particular salary increase, was there an argument against state members of parliament getting that particular salary increase? That was the same thinking at the federal level at the start of this particular model that we are talking about and the basis of how you actually determine what a salary is worth.

My colleague in another place the Hon. Dr Bob Such (the member for Fisher) and I have regularly done a radio program on FIVEaa. The Hon. Dr Such has always been of the view that it should be done by an independent tribunal after a work salary case. It is my absolutely strongly-held view that, if that was ever done—that is certainly what is being done in part at the federal level at the moment—members of parliament would be by any reasonably-based independent tribunal recommended for a very significant salary increase. I have no doubt about that, and I will put on the record some evidence in relation to salaries in some other areas that exist at the moment.

As I have said to the Hon. Dr Bob Such on a number of occasions, if you had this independent tribunal and if it came up with a recommendation for a 50 per cent increase in salaries, what do you think the response would be from members of the media, the community and, indeed, from some of those members of parliament who support this particular model? They would switch into reverse gear as quickly as you could ever contemplate in relation to an independent tribunal, having done a work value case, recommending a massive increase in salaries for members of parliament.

As I said, based on my knowledge of what members do, their time commitments compared with other professions and occupations, I have no doubt that, if such an independent work value case was done, there would be a significant increase. I also have no doubt that there would be massive opposition to that from members of the media, members of the community and some members of parliament, even perhaps some members of parliament who to support the notion that it should be done by an independent tribunal after a work value case has been undertaken.

Having been the chair of the Budget and Finance Committee for a period of time and having taken evidence from a significant number of public servants over however many years the committee has operated, I just want to place on the record that, looking at the most recent Auditor-General's Report, I have had taken out from the most recent report (which is 2010-11) the number of public servants within government departments and agencies—not all, but most of the bigger ones—who are currently on a remuneration package greater than $150,700.

The current salary for members of parliament is about $140,000, so I just worked it out on the basis of that plus the 9 per cent superannuation. That was the closest salary band that I could ascertain. The number of South Australian public servants in the Auditor-General's Report earning packages above $150,700 was 832. There are 69 state members of parliament. Some of those are ministers and hold other offices, but in terms of the base salary position of state members of parliament, there are 69. There are 832 state public servants earning packages greater than $150,000, and some departments, like education and children's services, have 121 public servants in that department earning more than $150,700.

The Attorney-General's Department has 112 public servants above that particular level, and so it goes on. This is not all the departments and agencies: this is the top 15 or 16 agencies including SA Water, which has 70, and I am sure the Hon. Mr Darley will not be surprised at that. WorkCover has 15. There are 832 of them, and I then went just to three or four of those agencies to look at the individual breakdowns.

The health department has not had its accounts audited for 2010-11 because of the mess of the financial accounts that has occurred there, so I had to go back to 2009-10, and these figures are now almost 18 months out of date. However, 18 months ago, there were 18 public servants in health earning packages of more than $250,000 a year. That is 18 public servants, 18 months ago—so it will be even more now—earning packages of $250,000 or more in the health department.

In Premier and Cabinet, which is a relatively small department in terms of numbers, at 30 June 2011, there were 15 public servants earning packages of $250,000 or more, and going up to the top package of $420,000 in Premier and Cabinet. I omitted to mention that in the health department, there were four employees in 2010 earning more than $390,000. If I move to SA Water—

The Hon. D.G.E. Hood: That's eight grand a week.

The Hon. R.I. LUCAS: Eight grand a week, the Hon. Mr Hood usefully reminds me and other members. If we move to SA Water, an agency of great interest to the Hon. Mr Darley, there are 14 public servants or officers there earning salary packages of greater than $250,000 or more with the highest package being $470,000 plus, and there are about eight earning more than $300,000 in SA Water.

Finally, in the Attorney-General's Department, on 30 June 2011, there were actually 45 listed employees earning more than $250,000 or more. To be fair, a number of those, unspecified, may well have been those who, during the year, were paid out a termination payment, and that increased their numbers, so to be fair I went back to the 2010 number, and the number of employees earning more than $250,000 in the Attorney-General's Department 18 months ago was 26.

I am not going to delay proceedings today by going through what local government CEOs earn. Private executives, as the Hon. Mr Hood can attest, is a whole different world. All I am seeking to do here, I guess, is put on the record the others that are paid for by the taxpayers of South Australia, who are state public servants.

As I have said publicly, and I am happy to say it again today, I have never been fearful of defending the fact that I believe members of parliament should be paid appropriate salaries and allowances. I am of the school that says the bigger the salary, the smaller the allowance. That sort of debate which is going on, I am sympathetic to, but that is a personal view in relation to that issue.

But ministers and chairs of parliamentary committees and others, week after week, are confronted by 832 public servants who are earning more than $150,000 a year from the taxpayers of South Australia. With the greatest respect—and I know that many of them are hardworking as well—in the end, the job that is charged to members of parliament is at a level of determining the laws of the land, the laws of the state, and all of those issues ultimately right across the board.

I, in no way, would ever resile from the fact that I believe members of parliament are entitled to be paid a reasonable salary and package, and certainly one which is at a level higher than the one that is currently there. If that justification can be made for 832 state public servants, then I challenge those who think that state members of parliament are paid too much to put a point of view in relation to the relativity between 832 state public servants and the 69 state members of parliament. In particular, I am talking about those who are not in ministerial positions or higher office such as presiding members in the houses.

With that, I indicate the Liberal Party's support for the legislation. This is not going to buy time, it is just going to delay the inevitable decision. Given the process that has been adopted, it will concentrate the attention on whatever the ultimate decision is going to be over a longer period of time, and I suspect it will make it harder for governments, oppositions and members of parliament in relation to reaching a resolution on this particular issue.

I think there would have been (and there have been) alternative ways of handling this process better but, as I indicated earlier, we are where we are and, given the circumstances, I do not believe that there is any alternative other than to delay the time for this inevitable decision. But in essence what it means is that a lot of work now will have to be done in terms of managing a decision. I am fearful, in part, that this will be left until the death knell and we will come close to the end of June next year and people will still be fluffing around trying to make a decision on this issue. What is going to be needed is some determination to make a decision, some strength to make a decision, and then ultimately some strength to stand up and defend whatever decision ultimately is taken on this difficult issue.

The Hon. M. PARNELL (15:53): The Greens will be supporting this bill. It is a sensible measure that is required to be passed by us as a matter of urgency because the federal arrangements on which our salaries are based are likely to change and, if we do not break the nexus, then there could well be unforeseen consequences that arise from that change. I point out to members that this bill is very similar to one that is currently on the *Notice Paper*. It will be in the *Notice Paper* for tomorrow in private members' business; it is order of the day No. 45. It is a very similar bill to this one, and that bill on the *Notice Paper* now is similar to one that I introduced back in 2009 which has a similar effect. I will come to what that is shortly.

One thing that has struck me over the last several years as we have debated the pay scales for members of parliament and for other public servants is how unfair the system is in relation to how pay rises turn up in your pay packet. A number of members here have probably experienced how we have been out on the steps of state parliament, there have been teachers or nurses or other public servants who have been fighting tooth and nail to get a modest pay rise and yet, when it comes to members of parliament, it simply appears in your pay packet without you having asked for it, without any justification being given for it. It is just there. It just turns up.

I think we need a great deal more transparency in the system. The Greens' approach is fairly simple. The first thing that we would do is break the connection, but not for a six-month period, as this bill proposes. We would break the connection entirely between state and federal MP salaries. The second thing that we would do is put a local remuneration tribunal in charge of coming up with an appropriate salary and making a recommendation. We would put the South Australian Remuneration Tribunal in charge.

The Hon. R.I. Lucas interjecting:

The Hon. M. PARNELL: The Hon. Rob Lucas interjects: 'And you'd accept it, whatever it said.' Well, that brings me to the next element of the Green's bill, and that is that any suggested pay rise from the South Australian Remuneration Tribunal should, in fact, be regulated in regulations and become a disallowable instrument. That would have the effect of members of parliament having the ability, if they saw fit, to decide that the time was not right to receive a pay rise, and it would be disallowable.

The Hon. Rob Lucas, in his contribution, basically observed that, in his experience of these matters and dealing with governments, he does not expect the bill to finally determine the position about state MP salaries to come on until the death knell (I think, were his words), right up until the six months are about to expire. Well, that is the honourable member's prediction. My prediction: I know when we will do it; we will do it on budget day. That is what we have done before, when we give ourselves a rise in superannuation: we do it on budget day. We bring the bill on, as all attention is being paid on the other house to the Treasurer's delivery of the budget, and we will do it then.

I would urge the government to bring a package of measures before the parliament as soon as we know what the final result from the federal regime is; then we should know whether or not the nexus should be severed for good or whether it can keep going. Like I say, the Greens' preference is to sever it for good and to put a local remuneration tribunal in charge of recommending pay rises. For now, we see this as a temporary measure to get us out of a fix, if you like, and the Greens will be supporting it.

The Hon. G.E. GAGO: I would like to rise to make a few very brief concluding remarks, given that there is overall support for this amendment bill and that it is quite a straightforward bill. The bill seeks to suspend until 30 June 2012 the existing arrangements in which the basic salary paid to a member of parliament is automatically linked to the annual salary allowance paid to a member of the House of Representatives of the parliament of the commonwealth. It will ensure that any move to incorporate electorate allowances into the commonwealth parliamentary base salary will not result in any unintended consequences.

We are between a rock and a hard place with this bill in terms of ways to go forward. We believe that this is the best way to go forward, the most prudent way to go forward and the fairest way to go forward in an attempt to not create unintended consequences for South Australian state members of parliament. I want to take this opportunity to thank honourable members for their second reading contributions and for their support for this bill, and look forward to dealing with it expeditiously through this committee stage.

Bill read a second time.

In committee.

Clause 1.

The Hon. D.G.E. HOOD: I have a question for the minister. My understanding of this bill is that whilst it breaks the nexus between state and federal MP salaries, the bill is worded in such a way that the return; that is, the re-nexifying—I do not know if that is the right term, I think everyone knows what I mean, however: I like that term, I will use it again at some stage—is automatic at the end of six months. So, there is an onus on this place to fix it within that time period. That is my understanding of the bill. I wonder if the minister could please comment on that.

The Hon. G.E. GAGO: My advice is that your 'hoodification of the nexification' is quite correct, that if nothing else happens the nexus will be automatically defaulted back to its existing form and it is only if some other decision was made by parliament that it would not be defaulted back to.

The Hon. M. PARNELL: What is the minister's latest intelligence on a likely date for the Commonwealth Remuneration Tribunal to finish its work?

Members interjecting:

The Hon. M. PARNELL: I am asking the minister: does she have any intelligence on when that might happen?

The Hon. G.E. GAGO: We have not received any federal updates.

The Hon. M. PARNELL: I think the word in the second reading contribution might have been 'imminent', or a similar word was used. Are we looking at something that is happening this month, next month or next year?

The Hon. G.E. GAGO: The advice I have received is that no date has been indicated, so we do not know.

The Hon. D.G.E. HOOD: This is the last question from me. I wonder if the minister could, as best as she can, outline the process, if indeed there is one envisaged at this stage, under which these matters will be determined over the ensuing months?

The Hon. G.E. GAGO: Basically, it is the federal government that will make a decision and then the state government will need to consider that and respond to it accordingly, depending on what the implications are for us.

Clause passed.

Remaining clauses (2 and 3) and title passed.

Bill reported without amendment.

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) (16:03): I move:

That this bill be now read a third time.

Bill read a third time and passed.

WORKERS REHABILITATION AND COMPENSATION (EMPLOYER PAYMENTS) AMENDMENT BILL

In committee (resumed on motion).

Clause 1.

The Hon. G.E. GAGO: A question was asked by the Hon. Rob Lucas to clause 1. I have the answer to that question which I would like to take this opportunity to put on the record.

The Hon. Rob Lucas asked about the caps to premium discounts. I confirm that the transitional provisions, including the level of capping and the period over which the caps will apply, will be properly consulted on following the passage of this bill through parliament.

I can also confirm that, consistent with the position paper released by WorkCover in July 2011, it is envisaged that transitional arrangements will apply for the first four years of the new approach and that any increase or decrease in the employer's premium rate will be capped at 125 per cent of the previous year's rate in the period 1 July 2012 and 30 July 2016 subject to any changes agreed to during the consultation process.

The government is aware that, with any change to the amount employers pay, there needs to be in-built protections. The government has listened to employers and has included transitional provisions which will cap the amount of discount or increase to premiums.

In relation to the queries from the MBA about the impact of those employers just encapsulated in the experience rating scheme, it is correct that for an employer the amount of premium based on their own experience will be limited. Smaller employers are significantly less

likely to experience a claim, therefore their claims experience is not an appropriate lever to significantly influence behavioural impact on the amount they pay.

The larger an employer is the more influence they have over injury prevention and injury management; therefore, it is appropriate that their claims experience is a larger component of their premium calculation. There must be an entry threshold for any scheme like this. The entry threshold to the experience rating system has been determined following analysis of the historical claims reporting data for South Australia and consistent with advice received from the scheme's independent actuary Finity Consulting.

Progress reported; committee to sit again.

WORK HEALTH AND SAFETY BILL

Adjourned debate on second reading.

(Continued from 22 November 2011.)

The Hon. A. BRESSINGTON (16:08): I rise to indicate my position on the Work Health and Safety Bill 2011 and specifically why I will be supporting amendments to delay its introduction amongst other proposed amendments by the Liberal Party. However, I do believe that an amendment to delay the bill is not an appropriate action, so let us wait and see how that happens.

Along with other crossbenchers, I have for some time been bombarded by emails from those in the residential building industry—literally from single-man operations to small family-owned country businesses to large commercial developers—expressing their concerns that the bill and associated regulations will significantly increase their compliance costs, and as such the price of residential homes without increasing workplace safety.

I believe many cite the independent analysis by Hudson Howells, which finds that the bill will potentially cost the state economy $1.425 billion in annual economic activity, of which $285 million will be lost by the home building industry due to the increase in the price of new homes, and potentially cost $12,500 jobs per annum, 2,500 of which are in the building sector.

Whilst these are necessarily only preliminary estimates, these claims are nonetheless supported by the well-respected international firm Rider Levett Bucknall, who confirm the Housing Industry Association's estimates of the cost of compliance at $20,000 for a single-storey home and $28,000 for a double-storey home.

Housing affordability must be a priority for this parliament. It has surely escaped no member's attention just how tough many residents of this state are doing it. With escalating prices, the great Australian dream of home ownership is becoming less and less attainable, particularly for first homebuyers. At a time of such uncertainty and when we are scaling back government assistance, I fear the foreshadowed cost increases will be too much for many to bear. As the Hudson Howells analysis shows, the impact of this bill will not solely be felt by potential homebuyers but also, of course, those who would otherwise be building the homes this state so desperately needs, with up to 2,500 jobs in the building sector alone under threat.

Whilst I acknowledge that these claims are disputed by the government, unions and others, with suggestions of double counting and by proffering contrary analysis, I have nonetheless accepted that the increased requirements on the building industry will have a significant cost impact on the price of a new home. This is influenced by both the legal advice provided to the industry and me personally, which suggests a significant remodelling of the principal, contractor and subcontractor relationship will be required, as I will now detail.

Like other members, I have also been approached by representatives of the Housing Industry Association and the Master Builders Association, who have raised serious concerns about the specific impact the bill will have on the residential housing industry. Each has conveyed or provided written opinions by prominent legal practitioners, including Queen's Counsel, expressing concern about the proposed formulation of employers' or principals' liability expressed in section 19, referred to as 'the person conducting a business or undertaking a test, amongst other duties'.

Unlike the existing control test in section 22 of the Occupational Health, Safety and Welfare Act 1986, the new duty on employers is not constrained by a requirement that the employer or, depending on the structure, the principal have actual control over the risk-taking activity in order to be liable. Instead, the only restraint on an employer's liability is the rider to which SafeWork SA, the

minister and the unions point, that the employer must only take such steps as are reasonably practicable.

Mr Richard Whitington QC, from Hanson Chambers, who accepted a brief at the request of the Housing Industry Association to advise on the implications of the bill for builders in the residential home industry, states in his advice that this restriction is likely to be 'of very limited operation for a home builder'. This follows a detailed analysis of the existing Occupational Health, Safety and Welfare Act and the judicial interpretation of the actual control test within it and the likely interpretation of its lesser equivalent in the bill. Mr Whitington QC goes on to state:

> SafeWork SA's attitude to the more stringent restriction on duty or liability of 'actual control', (referring to the existing OHSW Act)...it is likely that SafeWork SA does not or will not see an absence of control, as any bar to a home builder being reasonably required and reasonably able to discharge the duties in, for example, subsections 19, 20 and 26 of the 2011 bill, including for example by employing special supervisors and frequent and consistent monitoring of the work practices of their expert contractors and subcontractors.
>
> It is to be expected that, in practice, under the provisions of the bill the burden of ensuring contractors and subcontractors on home building sites conduct their activities safely will fall on the employer/principal. To what extent this imposes unsustainable costs on the employer/principal and shifts practical responsibility away from contractors and subcontractors where it presently, and critically, rests, is a matter for the industry to judge.

As I have said, the housing industry has judged and found the increase in costs to be significant and the burden too great to carry. It is such opinions by such eminent barristers that have made it difficult to accept SafeWork SA's and the minister's assurances that employers and principals will be able to discharge their duty by simply having contractors and subcontractors sign a pro forma spelling out their obligations. I have no doubt that the Housing Industry Association finds this equally hard to swallow.

Mr Whitington QC is by no means alone. In advice to the HIA, Ms Elizabeth Perry, a partner at EMA Legal, warns:

> ...the shift from the recognised concept of control to a new untested concept of PCBUs is likely to result in a great deal of confusion and costly, extensive court cases as to the true meaning and extent of responsibility.

It is here that I fear we will see the interpretation foreshadowed by Mr Whitington QC play out. Ms Perry then adds:

> ...the combination of the duties for PCBUs, the new definition of a workplace and the duties imposed by the new Regulations and Codes of Conduct will change in a fundamental manner the way that residential builders are able to conduct their work processes and compliance practices. Costs will necessarily increase substantially.

Also expressing his concerns to the HIA is the former Australian building and construction commissioner, and now Director of Work Reform and Productivity at the Institute of Public Affairs, the Hon. John Lloyd. In a letter to the HIA SA Executive Director, Mr Lloyd states:

> My examination of the WHS Bill leads me to the conclusion that it is a significant departure from widely accepted Australian and international occupational health and safety (OHS) principles...
>
> It is my view that the WHS Bill and proposed association regulations do not provide a better mechanism to reduce the incidence of workplace injuries and death. Instead the WHS Bill is likely to cause confusion in the workplace as each person attempts to ascertain the nature of the duty of care they may be responsible for under the legislation. If they are able to ascertain the nature of their duty of care I anticipate that they will then encounter difficulty in determining how they should go about discharging their duty. Confusion and uncertainty about such fundamental responsibilities could make workplaces less safe and result in an increase of the number of workplace incidents.
>
> The WHS Bill introduces new concepts into the previously accepted notion as to who is responsible for the control of occupational health and safety of a workplace. Previous legislation in Australia recognised the primary duty of care as emanating from the employer's capacity to control a workplace and take reasonably practicable steps to minimise risk. Obligations were also recognised for employees, contractors, occupiers of premises, and makers and suppliers of plant and equipment. These obligations were also related to the degree of control they exercised and the consequent capacity to mitigate risk. I consider that it is a proven and widely accepted approach that 'control' should be predominant principle in determining an OHS duty of care.
>
> The Roebens style of legislative regulation has been accepted by Australian and many overseas jurisdictions for many years as the basis for regulating OHS. It directed OHS responsibility to those at the workplace. This contrasted to the previous approach of vesting responsibility in inspectors and regulators. The Roebens approach was about employers and responsibility for OHS. The WHS Bill departs from this approach and returns to a highly regulated and punitive system.
>
> The WHS Bill in establishing the primary duty of care introduces a new entity 'a person conducting a business or undertaking.' The definition of the person's responsibilities is imprecise. The WHS Bill at clause 19(b) provides that the person in discharging its obligations is responsible for: 'workers whose activities in carrying out work are influenced or directed by the person'.

The introduction of influence into the definition of responsibilities has the potential to result in an expansive and contradictory jurisprudence about where the boundaries of a person's control rests. Mr Lloyd goes on to state:

> The confusion about the duty of care is alarming as the WHS bill attaches harsh penalties for contravention of the obligations imposed by the duty of care. The principal penalties in Division 5 of the bill range from $100,000 to $600,000 and 5 years imprisonment.

Mr Lloyd's opinion ties in with that of the Housing Industry Association and the builders who have contacted me by email, that being that the bill will significantly add to the compliance cost without actually increasing workplace safety. For these reasons, I am supportive of moves to revert to the existing actual control test. I will also be supporting the amendment to remove union right of entry for workplace safety reasons. Whilst I acknowledge that South Australia is alone in not permitting union representatives access to worksites and also accept that SafeWork SA would benefit from the additional eyes and ears inspecting safety issues, I nonetheless believe that the proposed model places too much power in the hands of union officials on worksites where their power has been rightfully limited.

I have also heard employers' concerns about the potential abuse of power and their concern that it will lead to a unionisation of their workforce, fearing the enthusiasm for this move reveals the recruitment intention. I also indicate that I will be supporting the introduction of the right to silence in clause 172. I have spoken previously at length in this place of my concerns about the removal of the right to silence. This has been in circumstances where information extracted could not be used against the individual or business. When this is not acceptable, did the government really believe I would accept the removal of the right to silence when such a protection does not apply?

Also, moving away from issues raised by the residential building industry, I have been contacted by numerous stakeholders who have raised their concerns about the seemingly backward steps the bill, regulation and associated code of conduct take in relation to asbestos monitoring and its safe removal. The recently formed Asbestos Steering Committee, chaired by Mr Andrew Butler—who should be commended for his persistence in highlighting these issues despite the resistance and, regrettably, the threats by some in the union movement who saw his lobbying as undermining the union gains made in this bill—has identified three areas of concern.

The first relates to the somewhat contradictory relaxation of mandatory air monitoring which, in effect will only be required if a licensed removalist considers the exposure standard is likely to be exceeded. This contrasts to the existing South Australian statute which has some 20 years standing and which requires air monitoring by approved airborne fibre monitoring companies at all removals over 10 square metres, which I believe is known as the bathroom exception. Airborne monitoring is essential to ensure exposure levels are not exceeded during removal and also when an area is safe to reoccupy.

The second issue identified is increasing the period from two days to five days of notification to the regulator, SafeWork SA, of an intention to undertake asbestos removal. Whilst SafeWork SA has informed me that the vast majority of their notifications are received well in excess of the two days currently required, it is the fear of the Asbestos Steering Group that such a lengthy period is inflexible and would encourage employers to pressure removalists to push on with a job without notifying SafeWork SA.

Lastly, concerns were understandably raised about moving from yearly inspections of registered premises to five-yearly inspections. Mr Butler and others have expressed concerns about the ambiguity of the proposed review model, and that without mandatory annual reviews, building owner/occupiers will find excuses not to inspect. They also argue that the value of the annual review lies in its facilitation of onsite awareness, resulting in real time hazard management.

My office has met with representatives of SafeWork SA and the minister, who were aware of the concerns raised and sought to provide assurances to me that they were being addressed which, on the condition the minister states these assurances in the council, I am willing to accept. As such, I ask the minister to state categorically the government's intentions to continue mandatory air monitoring in the first twelve months of the operation of this bill, during which time SafeWork SA and the government will seek to convince interstate jurisdictions to also move to mandatory air monitoring. If they fail, I ask the minister to assure the council that the government will continue to require air monitoring as a licence condition for non-friable asbestos removalists.

Furthermore, in addition to the extension of the notification period, I was assured that urgent applications where there are unforeseen circumstances, or asbestos was not known of, will be given priority and, unless there are complicating circumstances, such as proximity to a school or the like, permission will be granted on the same day, which, I am led to believe, is SafeWork SA's existing practice. I ask the minister to confirm this on the record for the industry.

As for the third issue identified by the asbestos steering group, the government's position, which I share, is that, whilst moving from mandatory one-year to five-year inspections of registered premises seems at first to be a retrograde step, on balance, the increased active reporting requirements of the proposed asbestos management plan for all buildings built prior to 2003, regardless of whether they contain asbestos, is an improvement on the existing arrangements.

While a review, at the least, must be undertaken every five years, the asbestos management plan must also be reviewed when further asbestos is identified; if asbestos is disturbed, removed, sealed or enclosed and the plan is no longer adequate; or a health and safety representative requests a review. Each time a review is conducted, a visual inspection of the asbestos is required and the register revised accordingly. Whilst the new arrangement loses the regularity of an inspector coming to the site and the familiarity this engenders, I nonetheless accept that the active reporting requirements, under threat of penalty for noncompliance, will achieve the same outcome.

I look forward to seeing how this is going to continue in the house. Hopefully, the government can see the necessity for this bill to be deferred until next year and until some of the problems mentioned can be addressed in full and amendments made and agreed to.

The Hon. K.L. VINCENT (16:28): Today, I would like to speak briefly to indicate my support for the second reading of the Work Health and Safety Bill. This bill has been some years in the making. I believe that discussion and consultation rounds with stakeholders from industry, employers and the unions certainly began well before my time in this place, that is, in 2008. I am told by the Roofing Tile Association that action on falls prevention began way back when in 2004. In fact, the minister told me that in 1995 the Productivity Commission first pointed out the complications caused by having nine different jurisdictions for workplace health and safety.

So, here we are today, discussing national harmonisation on workplace safety in the form of this bill. The lobbying on this bill to crossbenchers has certainly been more intense and vigorous than on many other pieces of legislation I have had before me, and I imagine that this is because the opposition had signalled its intent to oppose this bill.

It would seem, not surprisingly, that amongst ardent supporters of this bill are all the unions and many union members. Additionally, the Australian Industry Group, Roofing Tile Association of Australia and the Working Women's Centre all maintain the need for these reforms. Meanwhile the Housing Industry Association and Business SA are not so keen to see these reforms occur in legislation and have raised a number of concerns, which include the right to silence, union right of entry, penalties and costs of implementation, and I will address some of these concerns shortly. The Master Buildings Association did not oppose the bill outright. It supported the concept of harmonisation, but it was concerned that there was not a division between the commercial and housing construction industries.

I have met with most of the organisations I have listed. I have had about a dozen submissions or delegations urging me to vote for the bill and several delegations and submissions opposing it. By this morning, I had received almost 2,000 emails in support of this bill and a small amount, in comparison, opposing it.

Workplace accidents obviously can cause some tragic deaths. Legislation which seeks to reduce this risk must be seen as a positive measure, in my opinion. In addition to possibly preventable deaths, there is also the issue of both temporary and permanent disability created by workplace accidents and injuries. Of course while I very much enjoy representing people with disabilities in the parliament, I think it is fair to say that I am keen to keep my list of constituents as short as possible. It is far more favourable to see all workers and employers in workplaces view safety and welfare in the workplace as a shared responsibility.

It is something that we all need to be mindful of and practise due diligence, and take reasonable precautions to ensure that work is safe for all, particularly in workplaces that tend to have more inherent risk such as industrial sites, whether they be construction, manufacturing or mining, and so on. Yes, accidents will still of course happen, but let us minimise the number that do occur and ensure that harm is minimised when things do go wrong.

At the SA Unions briefing a month ago I believe the Hon. John Darley raised some apprehension at the practical implementation of these harmonised laws and regulations. On that day I was speaking at a conference in Whyalla so I was not able to attend, but my adviser told me that the honourable member talked of his concerns about the resourcing of this legislation once it came into force, and I certainly believe he has a good point.

I appreciated the briefing that the minister and his staff provided on the bill, and I did query the minister on this exact point. He reassured me that there would be adequate resourcing for this legislation, and that there would be adequate enforcement and training in workplaces. My question to the minister now is: exactly what training and education programs will be implemented in the new year on these reforms?

In addition to the groups and individuals mentioned earlier, I have also been contacted by several asbestos management businesses. They are concerned that air-monitoring measures will be reduced under this legislation and worker safety put in jeopardy. I understand that the minister has made some changes to—or plans to change—this bill to appease the asbestos management industry's concerns. My question to the minister on this is: will these amendments be in relation to the bill or will this be a regulation change once legislation is enacted? What is the impact of these legislative reforms for the asbestos management industry, and how will they ensure that current protections for asbestos workers do indeed remain?

I go to some of the reservations raised by Business SA and the Housing industry Association (HIA). First, the HIA has talked with me about what it sees as very real concerns on the cost of implementing additional safety measures. Its report suggested that it would cost in excess of $21,000 for every single-storey dwelling constructed. It claims the housing industry in South Australia would be close to collapse on the passing of this bill, but it seems to me that some of its costings are based on an exaggerated state of affairs. For example, a fence is already likely to be erected for security; why would you not have one for safety? Falls prevention is, of course, essential. My brother has previously worked as a labourer on building sites and intends to do so again in future, and I would want to know that his safety is enshrined in law and that, even without reform, worksites would want to have their workers safe when working at heights.

I do think the figures provided by the HIA and its consultant, Rider Levitt Bucknall, are not an accurate reflection of the real costs. If it does indeed cost that amount to set up a site safely, that suggests to me that they do not currently employ adequate safety measures on their sites anyway. I do not expect the housing industry to collapse on the back of this bill. Instead, the minister assures me that their modelling gives a more realistic figure of an additional $2,000 at the very most.

Safety mainly takes common sense but does sometimes mean spending money, and I do not think preventing injury or saving lives is something we can very easily put a monetary figure on. At the very least, a lifetime disability that takes someone out of work when they are, say, in their 20s is likely to cost the state some millions of dollars.

The HIA also say that the number of laws and regulations they must abide by are ridiculously onerous. They have showed me photographs of the mountains of paperwork their workers will be required to comply with. They also have concerns about the imminence of the introduction on 1 January 2012. However, the minister informs me that, of the 600 pages of legislation, only 32 apply to the construction industry and there will be a 12-month grace period granted to allow for educational processes and compliance.

The HIA have said that they believe theirs is a safe industry and that their workers do not need to be told how to be safe. Mr Tony Tanner from the Roofing Tile Association tells a different story, however. He said that significant falls occur within housing construction. Both roof tilers and roof plumbers are often not unionised and are subcontractors or sole traders. Falls are under-reported as these people often self-insure and take time off work when falls and injuries do occur. Tony has had more than 40 years of experience in the industry and says housing construction is not as safe as it claims to be. Despite the likely under-reporting, there are still more than 90 reportable injuries a year in the roof tiling industry in Australia and, unfortunately, some of those have indeed resulted in deaths.

On the issue of union right of entry, the HIA is concerned that private residences may be entered by unions seeking to resolve workplace safety concerns. I do not believe this is going to occur. I do not believe that Black Hawk helicopters will appear above houses, with union officials rappelling down to invade your average home renovator in their own house. I also do not believe

union entry into industrial work sites will be abused by the union, and research provided to me by Dr Kevin Purse certainly supports this assertion. Unions in South Australia do not generally have a reputation for aggressive or bullyboy tactics and I do not expect them to take this on in the future.

On the matter of self-incrimination, as a civil libertarian, I was initially concerned that the right to silence and not to self-incriminate was not adequately covered by this bill. However, following advice from the unions and further legal opinion from crown law, I am now satisfied that this is a reasonable measure, particularly where serious workplace injuries or death occur and the culture of not dobbing in your mates may prevent accurate reporting of events. I can see that the need for workplace safety and community good sits above the rights of the individual in this circumstance.

Evidence given under these provisions cannot be used to prosecute in courts and already exist in the Local Government Act and the Environment Protection Act. I would hope that, where these provisions are invoked, it is to ensure ongoing work health and safety and not for other reasons.

I have a final question to the minister on this point: will an investor or resident who renovates a house on weekends, to the extent that the renovation is worth more than $250,000, be required to have a safety inspector on site? This is a matter the Master Builders Association raised with me and I wondered if it was an accurate concern. I therefore would like to pose that question to the minister.

In summary, I am supportive of amendments that seek to harmonise laws across the country, although I acknowledge that this will not necessarily occur in the fashion that we originally hoped for, due to interstate amendments. However, I think we should plough on to make this the best legislation we can. I think that this legislation acknowledges the modern workplace, instead of previous typical workplaces, where we had employers and employee.

We now recognise that there are employers, contractors, subcontractors, sole traders and so on, and there are persons conducting a business or undertaking. All these people on a worksite will be held to account and need to provide a safe environment. I am also in the process of considering the amendments tabled by the Hon. Ms Franks and I believe that they have some merit. With those words I indicate my support for the second reading of the bill at this point

The Hon. T.A. FRANKS (16:40): I rise to speak on the Work Health and Safety Bill 2011, almost some five or six months after it was first introduced into this place. Far from falling from the sky overnight, I acknowledge that in fact this bill is the result of an impressive initiative which has taken many years of negotiation between all states and territories, stakeholder groups (including unions) and, of course, employer associations.

I indicate that the Greens have strong support for this bill before us today. I will also be moving amendments, but I certainly do not predicate the success of those amendments on support for the bill. The objective of this bill is to have one set of consistent occupational health and safety laws across the nation to cut through the current red tape and regulation arrangements so that employers and workers do not have to work with eight different sets of occupational health and safety laws and regulations, as they currently do.

Members would be aware that there are industries across the country where employees constantly need to cross state borders and are moving from one jurisdiction to another. Having one set of laws, not called 'occupational health and safety' but much more simply, I would say, and in plain English, 'work health and safety', will increase the productivity of the nation, set higher safety standards and cut red tape. If the opposition supports less government regulation of business, it would be in the interests of their constituents to support this bill.

A number of large bodies and quite credible bodies have conducted economic analyses of the new proposals, including the Productivity Commission, the Business Council of Australia, the Allen Consulting Group and Access Economics. Those reports certainly informed the Greens' support for this bill. The reports established indicate that the support for a process of harmonisation and the move to simplify regulation by cutting the additional red tape under this new model will, in fact, be good economic sense.

The point has been made that injuries caused in the workplace drive down the productivity of a particular workplace and also impose additional cost to the employers. However, by preventing injuries and implementing higher standards of work health and safety or occupational health and

safety practices, employers will, in fact, find that the scheme makes their enterprises more cost-effective, as suggested by the economic analyses of the aforementioned groups.

I would like to make the point here that the nine-page report commissioned by Hudson Howells, which the opposition has been captive to, claims that the costs are estimated to be $1.4 billion to businesses moving towards this harmonisation of occupational health and safety laws. The report has no transparency in its calculations, and it seems to simply be a lobbying mechanism to delay the implementation of this scheme which the employer associations and the union groups had previously agreed to. I suggest that this report not be heavily relied on as its credibility is questionable.

The states will receive financial assistance from the commonwealth when it comes to the implementation of the new scheme, and hopefully South Australia will be participating by 1 January 2012. I think in South Australia that payment is worth some $30 million for all the COAG reforms, but if the minister could clarify that for me it would be appreciated.

As members would be aware, injuries in the workplace can take place at any time and in any form. People in the workplace need to be protected from either a physical or psychological injury—and I welcome the recognition of psychological harm that is contained within this bill, the sorts of injuries that may come about from stress, harassment and bullying—and that is certainly accommodated in this bill, and I do acknowledge that.

I would like to note that when a worker suffers from a severe injury or, indeed, there is a death in the workplace from an accident which could have been prevented, it is the families of those workers who are at the losing end. I cannot imagine looking into the faces of these families and informing them that their son, daughter, parent, friend or relative has died in the workplace from an injury which could have been prevented. If we had to explain to them that that injury could have been prevented had we had better work health and safety laws in this state, I certainly would not want to take on that job of informing those people that their loved one had died.

There are so many cases of workplace injuries and deaths, not only in our state but also across the nation, which could actually be prevented. We must recognise that we have come a long way in the improvement of work health and safety in this country over many decades. That work has come from unions working with employers productively to ensure that the best education and the best information are used whenever possible to prevent injuries; certainly in this case prevention is far better than cure.

Out of respect for the families, I will not address any particular stories in this place. However, I would make the point that we should keep in our minds as we debate this bill the stories of those families, many of whom we are familiar with, who have lost their loved ones, or who have had loved ones lose parts of their lives—whether that is through physical or psychological harm done to them through the workplace—that they will never recover. I will certainly be keeping those at the forefront of my mind as we debate this bill.

This bill contains the introduction of union right of entry in the workplace, According to arguments presented, there are only 100 inspectors relevant for 820,000 workers and more than 50,000 employers and 44,000 work-related injuries in South Australia. Union right of entry, while it does not currently exist in South Australia, certainly does exist across the country.

One of the most interesting spurious debates that I have heard is that we should not be proceeding with this bill today because WA is not going forward with it. If you actually go and have a look at what the Western Australian government has said about this bill—and we all do know that Western Australia tends to be a little bit different from the other kids when it comes to any harmonisation laws—Western Australia has certainly put on record that they are very proud of their union right of entry. They have no problem with that in the implementation of laws across the country and certainly they have stated that they would like to see that union right of entry protected by their state legislation.

Certainly that is not a point of contention from the point of view of WA, and certainly it seems to work elsewhere in the country without the terrible consequences that we are told will result in terms of our introduction of a union right of entry in this state. I think if New South Wales can do it, if Victoria can do it, if Queensland can do it, if every other state and territory except for South Australia can do it, I am not sure that the sky will fall in if we have well regulated and well monitored union right of entry in this state.

At this point I would like to acknowledge a current project that is happening in South Australia that has actually been inspired by the young workers memorial LifeQuilt project in Canada. It is being auspiced under the Working Women's Centre and it is called the LifeQuilt project. This project has been 'initiated to pay tribute to those who are woven together in life by a common thread, a fatal workplace injury'. This project seeks to bring families together who have lost loved ones, so that they can take some comfort that their loved ones will be remembered and that there is a movement to ensure that safety is made a priority in any workplace.

That movement is the union movement. I am proud to stand here today and say that the Greens are committed, alongside the union movement, to improving work health and safety in this country and in this state. We all work to ensure that members of our community return home at the end of the day without enduring a preventable injury.

I would like to foreshadow that the Greens have tabled amendments to this bill, and they will in fact seek to restore some of the current protections that we are sacrificing with this move to harmonisation. Again, far from the assertions that we have heard that this is all paying for South Australia and is taking on a whole range of new, supposedly onerous, obligations, we are in fact losing some protections that South Australians currently enjoy. Those protections—and the Greens' amendments will seek to reinstate them—include the provision of five days training for occupational health, safety and welfare to appropriate people, as currently exists in the entitlement, to ensure that we have workers in our workforce who are aware, alert and actively engaged in the prevention of workplace injuries.

We will also seek to insert the protections around workplace bullying that are currently enjoyed by South Australians. Certainly, our current laws give a nod to that with the use of the word 'welfare' in our legislation, in terms of occupational health, safety and welfare, which is a term very familiar to South Australians—a little different to the terminology used in other states. I will, as I have said, acknowledge that the bill does, in fact, contain measures around psychological harm. I would hope that that will go some way to ensuring that workplace bullying is given some due consideration in the implementation of these laws.

We will also have a look at the best practice around the country, and the Greens will be moving to replicate the right of unions and employers—or unions in particular in the New South Wales case—to ensure that those groups have the right to prosecute breaches of workplace safety as they occur. That is something that has worked very successfully in New South Wales, and certainly in New South Wales they have amended the harmonised law to maintain that protection. The New South Wales Liberal government (and I believe this was initiated by the Greens but also has the support of the shooters party and Fred Nile's group) has seen fit to keep those protections. I will be outlining the ways in which those laws have worked for people in New South Wales when I move those particular amendments.

On behalf of the Greens, I will also seek to amend this bill to insert recognition of industrial manslaughter. I have previously outlined the case for those sorts of laws in my current private member's bill and, as I say, I do not expect these amendments to get up, but I certainly think they need to be put on the table to give some perspective to this debate. When we are talking about harmonisation, it should never be the lowest common denominator; in fact, we should enjoy equal rights and have the minimum amount of what you could call red tape and the minimum amount of difference between our states, but also afford our own citizens, in whatever state we are, the best of protections within that harmonised system. On those grounds, I do not believe any of those amendments will detract from having a harmonised law.

There is an advantage in improving health and safety in a workplace by allowing a union representing its members into that workplace. When we discuss the rights of unions to prosecute, that will be something on which I will be focusing. Going back to right of entry, I would like to refer members to the second report of the National Review into Model OHS Laws which was prepared for the Workplace Relations Ministers' Council in January 2009. That report recommended the inclusion of right of entry provisions in the model legislation, so it is little surprise that we have it in the bill which sits before us today. That recommendation stated:

> The majority of Australian OHS acts confer powers on authorised representatives of unions to enter workplaces...Any union official who wishes to exercise the federal right of entry must apply under and be assessed against the requirements of the federal Act. A permit will not be issued unless the applicant is a fit and proper person. In deciding that, the Industrial Registrar must consider various matters, including whether the applicant has been disqualified from having a right of entry under a State or Territory OHS law or has had such a right cancelled.

Therefore, the idea that has been floated in the debate on this bill that there will be so-called thuggish union officials storming into workplaces ostensibly to address health and safety issues but using that right to exercise undue power is completely spurious and completely without basis. There is a clear procedure that will have to be followed before these permits are issued. We must remember that at the heart of all this is the role of unions in ensuring that safety concerns for employees and employers are addressed. The rules for exercising a right of entry in the National Review into Model Occupational Health and Safety Laws report went on to say that:

> ...a union official intending to inspect or gain access to an employee record must [actually] give the occupier of the premises and any 'affected employer' written notice (and reasons) at least 24 hours before exercising the right. In addition, a permit holder exercising a State or Territory OHS right:
>
> - must not contravene a condition imposed on the entry permit [under] (clause 496);
> - must produce the entry permit for inspection when requested to do so by the occupier of the premises or an affected employer (clause 497);
> - may exercise a State or Territory [occupational health and safety] right only during working hours (clause 498);
> - must comply with any reasonable request by the occupier of the premises to comply with an OHS requirement that applies to the premises (clause 499);
> - must not intentionally hinder or obstruct any person, or otherwise action an improper manner (clause 500); and
> - must not misrepresent his or her authority under Part 3-4 [of] (clause 503).

As I say, this is not giving unions carte blanche to simply step into any workplace that they may choose to. There is a due and considered process and, certainly, it seems to work in every other state in this country.

Considerable evidence actually underscores the value of trade union officials being able to enter workplaces to assist in various ways in securing the improved occupational health and safety performance and effective outcomes, particularly when that comes to provision of support to workers who have been elected as health and safety representatives. At the international level, the involvement of workers and their representatives in occupational health and safety is, in fact, mandated by the International Labour Organisation's Occupational Safety and Health Convention, 1981. So, these are not new concepts and they are certainly not unique to South Australia.

I would note that Johnstone, Quinlan and Walters have observed that, 'Participatory mechanisms at jurisdictional, industry and workplace level play a pivotal role in Post-Robens OHS legislation in Australia.' They point to studies that establish a positive relationship between indicators of objective occupational health and safety performances and workplaces with joint arrangements or union involvement in worker representation or, in fact, a combination of the two. Studies from around the world pretty much show that, where you have got a positive relationship with unions and employers, you actually have positive outcomes both in terms of incidences, but also in terms of awareness.

The Queensland experience of union right of entry provisions under their work health and safety legislation amendment bill shows that the rights have not been abused there. They have ensured that workers have had additional sources of advice on occupational health and safety issues. Certainly, the national model itself includes the adequate checks, balances and requirements for periodical issuing of permits and successful completion of training and refresher courses and the like, as well as, of course, the disciplinary action, if necessary and appropriate. I note that the Hon. John Darley has an amendment with regard to the improper use of right of entry and, certainly, the Greens look forward to being informed about that amendment and possibly entertaining that.

In terms of the use of permits, I draw members' attention to page 72 of the Fair Work Australia 2009-10 Annual Report and the Fair Work Annual Quarterly Reports for 2010-11. The figures in this report indicate that, in the two-year period since the commencement of the Fair Work Act in July 2009, there have been 2,906 applications throughout Australia for right of entry permits but only one revocation and two suspensions. That is one revocation and two suspensions out of 2,906 applications. Certainly those figures go some way to reassuring the Greens that this does not open up any routes to a so-called abuse of union power. In fact, with that in mind, I think you would go a long way to find similar statistics where, out of 2,906 incidences, there were only three situations in which they had possibly been abused. That is certainly reassuring from the Greens point of view.

At this point, I just want to put on record that this is not about unions versus employers. Yet, often, when we do have discussions about these sorts of industrial relations issues and certainly things like right of entry, it does seem to become quite a polarised situation where people take one side or the other. The Greens do not believe that that is the way forward for Australia. We certainly acknowledge that we have good employers and we have good unions, and we have not so good employers and we have not so good unions. We are not here to prop up either; we are here to see the best outcomes; to see those who go into a workplace come out safe, well and alive.

I would also like to draw members' attention to the lobbying—and I am sure that most members are probably aware of it—from the Roofing Tile Association of Australia (RTAA). We were certainly pleased to receive information from this association, which was in fact involved for some years in the development of the code related to its industry.

The RTAA members have direct responsibility for the installation of over 90 per cent of tiles through manufacturers, contracting divisions and independent tradespeople. One of the RTAA members also has a nationwide metal roof installation business which confronts the same risks as those on roof tile installation. They pointed out that the risk and potential for injury are the same. In fact, they drew our attention to a recent situation where a tradesperson was killed in Queensland, having fallen 2.8 metres from the edge of a roof.

Had the risk control measures of the new code been in place, this accident would have been prevented. The RTAA had extensive knowledge, and I thank them for the information. They drew our attention to many similar instances that have thankfully resulted in far less traumatic and serious injury, but also to the large number of these incidences that are never reported in the official statistics. The information from the Roofing Tile Association of Australia is something that we have certainly taken on board with regards to the lobbying undertaken from the Housing Industry Association.

The RTAA was certainly very keen to see members support this bill in its current form. The consultation that had been undertaken with them as stakeholders had been many years in coming. In fact, they had been looking to have some specific work done for protection in their industry, but it was folded into this particular bill, and they were quite happy to see the many years of work on their industry acknowledged by them being subsumed by the current bill that we have before us.

Another part of the debate that we have had is the idea that nobody can handle the idea of a PCBU. If we cannot handle acronyms in occupational health and safety or work health and safety, then I think we are in the wrong place. Occupational health and safety or work health and safety are loaded with acronyms and, if people cannot handle a PCBU, then perhaps they are in the wrong place. Whether you like the idea of the language of employers or workers or whether you like the idea of occupational health and safety or work health and safety, the reality is, as we know, that language changes over time. In this case, we are seeing introduced the concept of persons conducting business or undertakings (PCBUs), and it will be the language that will be used across the country.

In terms of getting hung up on the idea that we have a new acronym to contend with, I do understand that the Hon. Terry Stephens does not like acronyms, and I certainly am not a big fan, but I have long since acknowledged that there will always be new acronyms and I will just have to deal with it, so the Greens would say that that is not a point we are going to entertain as a problem with this bill—the idea that PCBU is somehow threatening language.

I have many statistics here, but a lot of them were actually outlined quite ably by the Hon. Kelly Vincent with regard to injury rates and falls from the roof tilers, which have some great relevance, as I say, to the arguments put up against this bill from the housing industry. I will not replicate them here.

I will raise something that has not been introduced so far in this debate. Yesterday, when I was at the Our Work Our Lives mini-conference held at the Australian Services Union (auspiced by the Working Women's Centre and SA unions, I believe) there was an issue around occupational health and safety or work health and safety that was introduced that I thought possibly should have been part of the debate from the beginning and certainly I would hope would appear in any reiterations of national harmonised law.

This was put forward by the Young Workers Legal Service which, ably led by Nadine Levy and Anne Purdy, has been looking at the issue of sexual harassment in the workplace. They have actually suggested that it be put within a framework of occupational health and safety or work

health and safety. I have to agree with some of their arguments, and I just put it out there for the minister to take on board for future discussion of work health and safety.

They have been doing quite an extensive body of work on this and they represent young workers, and young women workers in particular; although not exclusive to that group, certainly young women workers do suffer from sex-based harassment in their workplaces. At the moment, the protections are there, but certainly they are not afforded as such through any occupational health and safety mechanisms. They are under equal opportunity and also under the Equal Opportunity for Women in the Workplace programs, and they can go to the Human Rights and Equal Opportunity Commission as well.

The Young Workers Legal Service has proposed that, perhaps by seeing sexual harassment as a work health and safety issue—and certainly there are areas there where psychological harm and, in fact, potentially other injury can occur—this should actually be reframed and seen in a preventative way as part of the rights of a worker to a safe environment. It would seem to me that some of those many thousands of workers who are sexually harassed in the workplace would prefer the preventative rather than the curative approach. I put that on the government's agenda for another time to perhaps have a look at that work being done by the Young Workers Legal Service.

With that, I indicate that the Greens will be supporting this bill, which I note has actually now been under the auspices of many ministers. A lot of the formative work was done under the former minister the Hon. Paul Holloway, it was introduced into this place some five or six months ago by the former minister the Hon. Bernard Finnigan, has had carriage by the member for Elder (Hon. Patrick Conlon), and currently is re-presented before us by minister Wortley. It has hardly fallen out of the sky overnight. It has hardly come before us without some long period of consultation, of negotiation, of bargaining, of people giving up certain things to get other things.

Certainly, no-one can claim that we have not known that this was coming for some many months, if not many years. There is a great body of work to support the harmonised laws. As I say, a national system in terms of work health and safety can only benefit workers, and one would imagine it would benefit employers as well. With that, the Greens will support the second reading of this bill and look forward to the amendments to be debated in committee. Under all of those ministers, I want to thank Jess Nitschke for being a stable voice and consulting with the Greens all the way through the various ministers and over the various months.

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

That the debate be now adjourned.

The council divided on the motion:

AYES (11)

Bressington, A.	Brokenshire, R.L.	Darley, J.A.
Dawkins, J.S.L.	Hood, D.G.E.	Lee, J.S.
Lensink, J.M.A.	Lucas, R.I. (teller)	Ridgway, D.W.
Stephens, T.J.	Wade, S.G.	

NOES (10)

Finnigan, B.V.	Franks, T.A.	Gago, G.E.
Gazzola, J.M.	Hunter, I.K.	Kandelaars, G.A.
Parnell, M.	Vincent, K.L.	Wortley, R.P. (teller)
Zollo, C.		

Majority of 1 for the ayes.

Motion thus carried.

The PRESIDENT: Order! The honourable minister, adjourned debate for?

The Hon. R.P. WORTLEY: On motion.

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

That the motion be amended to leave out 'on motion' and insert 'Tuesday 14 February 2012'.

The PRESIDENT: The question is that the words 'on motion' stand part of the motion.

The council divided on the question:

AYES (10)

Finnigan, B.V.	Franks, T.A.	Gago, G.E.
Gazzola, J.M.	Hunter, I.K.	Kandelaars, G.A.
Parnell, M.	Vincent, K.L.	Wortley, R.P. (teller)
Zollo, C.		

NOES (11)

Bressington, A.	Brokenshire, R.L.	Darley, J.A.
Dawkins, J.S.L.	Hood, D.G.E.	Lee, J.S.
Lensink, J.M.A.	Lucas, R.I. (teller)	Ridgway, D.W.
Stephens, T.J.	Wade, S.G.	

Majority of 1 for the noes.

Question thus negatived.

The Hon. T.A. FRANKS: Can I move to amend the motion to the next day of sitting?

The PRESIDENT: I think the motion has been put and the amendment moved by the Hon. Mr Lucas has been successful.

The Hon. T.A. FRANKS: I want to clarify whether members realise they just deferred it to next year.

The PRESIDENT: You can vote against the question. I have to put the question. The question now is that the matter be adjourned until 14 February 2012.

The council divided on the question:

AYES (11)

Bressington, A.	Brokenshire, R.L.	Darley, J.A.
Dawkins, J.S.L.	Hood, D.G.E.	Lee, J.S.
Lensink, J.M.A.	Lucas, R.I. (teller)	Ridgway, D.W.
Stephens, T.J.	Wade, S.G.	

NOES (10)

Finnigan, B.V.	Franks, T.A.	Gago, G.E.
Gazzola, J.M.	Hunter, I.K.	Kandelaars, G.A.
Parnell, M.	Vincent, K.L.	Wortley, R.P. (teller)
Zollo, C.		

Majority of 1 for the ayes.

Question thus carried; debate adjourned.

At 17:27 the council adjourned until Wednesday 30 November 2011 at 10:00.