LEGISLATIVE COUNCIL

Thursday 1 March 2012

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:03 and read prayers.

STANDING ORDERS SUSPENSION

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (11:04): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 15 minutes past 2 o'clock.

Motion carried.

ADDRESS IN REPLY

Adjourned debate on motion for adoption.

(Continued from 29 February 2012.)

The Hon. R.I. LUCAS (11:05): I rise to support the Address in Reply and to thank the Governor for his speech for the opening of this session of parliament. There are two or three issues that I want to address in my contribution. The first relates to freedom of information and the government's position in relation to a number of issues under that broad heading.

Members will be aware that on a number of occasions I have expressed the view, and I suspect some are coming to agree with that view, that this government is the most secretive government in this state's history, not just in relation to its attitude towards freedom of information but in a range of other areas as well. This morning I want to address the issue of freedom of information, because the government always seeks to pat itself on the back in relation to how open, transparent and accountable it can be in relation to freedom of information.

I would like to raise a number of issues, at least, which would certainly prove that claim as wrong and erroneous as many of us would know it to be. I noticed earlier in the week that treasurer Snelling took a Dorothy Dixer from his own backbench and indicated that the government is now going to make information in relation to Treasury analysis of economic information available on the Treasury website. Having patted himself on the back—because he couldn't find anyone else to pat him on the back—he went on to say:

This news may be of particular interest to the Hon. Rob Lucas in the other place. Mr Lucas has a habit of submitting monthly freedom of information requests to my department for their internal economic briefings rather than doing his own work and sourcing his own information directly from the ABS. I hope that by—

Then members interjected, and that would include, of course, Messrs Atkinson, Koutsantonis and a variety of others. Then Mr Snelling went on to say:

[I hope that publishing Treasury's] economic briefs online will relieve some of the burden that Mr Lucas has placed on the hardworking public servants of the Department of Treasury and Finance, who spend considerable time and precious taxpayer resources—

Then he went on to say:

They spend considerable time and precious taxpayer resources to process his requests for information he could just as easily gain directly from the Australian Bureau of Statistics.

I want to quickly analyse those particular claims of the Treasurer. During the period of the former Liberal government, I became aware, obviously, that Treasury, on a regular basis, provided internal economic briefings to the treasurer of the day in relation to economic statistics, whether they were provided by the Australian Bureau of Statistics, or companies like Access Economics or organisations like the South Australian Centre for Economic Studies.

It would not just be a summary of the statistics because, clearly, that is publicly available or available by way of subscription: it would provide a free and frank assessment of the information included in that particular bulletin and, on occasions, a free and frank assessment as to, potentially, the warning signs for the government of the day and the treasurer to take into account in relation to the health of the South Australian economy. Certainly, during that particular period, they were

useful briefings because, as I said, they did not just provide a verbatim statement or summary of what was publicly available: they offered Treasury analysis or commentary as well.

For the first few years after the change of government in 2002, obviously being aware that these documents were provided by the Treasury to the Treasurer on a regular basis, the Treasurer is correct, on a monthly basis we would submit FOI requests for these confidential economic briefings provided to the Treasurer.

As I said, for the first couple of years the documents that were provided to the opposition under that freedom of information request continued to include the same level of free and frank advice that I had seen when we were in government; that is, on occasions there would be commentary from Treasury raising warning flags to the Treasurer and to the government about what these particular figures indicated. On occasions they might even raise issues about policy directions in a number of areas, levels of taxation, for example, and the impact of government policies on economic indicators such as retail sales, etc.

For the first few years that was what occurred. Obviously what then happened—this was under former treasurer Foley—was there was increasing concern that the opposition was getting access to this sort of economic analysis that was being provided by Treasury. What we gradually saw over a period of time was, firstly, a sanitising of the commentary from Treasury. Clearly, a note had gone out to indicate that the opposition was getting access to this information and that needed to be borne in mind when analysis was being put to paper in relation to the economic statistics and indicators.

Further along the track the government then developed, together with Treasury, a device to avoid disclosure in any way of the full and frank advice the Treasury was providing in these areas. The device they used, and that they continue to use these days, is that that sort of advice is now provided to a cabinet committee. For example, over a number of years now, when the South Australian Centre for Economic Studies produces a quarterly bulletin on the state's economy and government policy, the Treasurer and Treasury have refused access to that, claimed exemption in full under clause 1 of the Freedom of Information Act, because that particular briefing, which had been provided to the Treasurer, has been walked into a cabinet committee and provided to other members of that particular cabinet committee as well.

By using that particular device, which had not been used under the previous government, that advice provided to the Treasurer would have been subject to the FOI process if the Labor opposition at that time had either had the wit to seek that particular briefing under FOI or were prepared to get off their backsides and work hard enough using the FOI process to seek that document. What this government did was that it, through the device of the cabinet committee, used that device to prevent the disclosure of what was previously being provided under freedom of information through the requests that I had submitted.

So we now regularly get, under the monthly FOI requests, it is correct, the sanitised versions. The first one, on retail sales, has been placed on the Treasury website in the last 24 hours, consistent with the Treasurer's announcement earlier this week. The opposition has continued to get those, but the full and frank advice provided by Treasury is prevented from disclosure by being walked into cabinet committees on a regular basis. That, of course, is not referred to in the Dorothy Dixer by treasurer Snelling in the house earlier this week.

Clearly the FOI that has now been submitted by the opposition has led to this policy change; it would not have occurred without the persistence of the opposition in lodging these FOI requests, and journalists and others other than the opposition will now have access to that sort of information.

I might also add that, when the Treasurer is critical, when he says—disingenuously I might add—that this is a waste of the time of hardworking public servants in Treasury processing the request, they have been doing it for eight years. It is a simple 'yes, yes, yes' to documents that have already been produced because they have been sanitised and they know them to be, and it is 'no, no, no' when they walk them through the cabinet committee process because they know that they do not want to release that particular document.

Whilst we obviously welcome the fact that some limited, sanitised Treasury advice and analysis will now be placed on the website for all to see, journalists, commentators and others should not be deluded into thinking that this is part of some open, transparent and accountable government and a change of heart. It is consistent with a minister and a government that is the most secretive in the state's history, particularly in relation to freedom of information. The

government continues to hide from public release, through the FOI process or indeed any other, a range of documents by walking them through the cabinet committee process.

Secondly, in relation to freedom of information in this most secretive government in the state's history, there have been recent examples that I want to draw to the public's attention. I notice that in the last 48 hours or so—certainly that is when I became aware of it—*The Australian* has, on its website, an example of a recent freedom of information request that it submitted. I do not have a copy of that particular one at the moment—but I am sure my hardworking staff will have it on their desk or my desk—but I raise the general example of a similar one submitted by the Leader of the Opposition's office in relation to the office of Jay Weatherill.

This particular FOI request was for all files, documents and briefs held by the office of Jay Weatherill MP for his information as the incoming premier. I will not go into the actual drafting of that particular FOI request, but the element of it that I want to address is that the request actually said 'the office of Jay Weatherill MP'. The purpose of the FOI was, in essence, to try to get the incoming brief for the incoming premier. This was at the time when the former premier had been knifed by the incoming premier and Mr Malinauskas, the head of the shoppies union in South Australia. There are incoming briefs prepared by the Department of the Premier and Cabinet on behalf of all departments and agencies for the incoming premier, and they would have been on the desk for incoming premier Mr Weatherill.

However, the FOI request had been drafted specifically to say 'the office of Jay Weatherill MP'. That request, which had been addressed to the Minister for Education and Child Development's office because that was the position the Hon. Mr Weatherill held at that time, and which went to that particular office, was rejected on the following grounds:

> In my view, your application has not been made to a Minister of the Crown as defined under section 4 of the FOI Act, which states an agency is defined as a Minister of the Crown.
>
> As your application seeks access to files, documents and briefs held by the Office of Jay Weatherill MP and is not an application to Hon. Jay Weatherill, in his capacity as Minister for a particular portfolio, such as Education or Early Childhood Education, I have declined to make a determination on your application under the FOI Act, on the basis that your request was not made to an agency for the purposes of the FOI Act.

There are a number of examples like that. The example from *The Australian*, which is up on their website, was for information in relation to the current Minister for Education and Child Development, the Hon. Grace Portolesi. It obviously related to the scandal from late last year, where the minister took, at taxpayer expense of $7,000 each for herself and for her daughter, business class flights on an overseas trip. *The Australian* was obviously seeking information of public interest in relation to this. It said:

> Information...specifically, all travel-related expenses—summary documents, applications and acquittals, not including receipts—for Grace Portolesi and, where applicable, her daughter Allegra.

It is absolutely clear what was being sought in relation to this particular freedom of information request. Again, the Minister for Education and Child Development officer's response to this, in the letter back to the Freedom of Information Editor, Mr Sean Parnell, of *The Australian*, was as follows:

> In my view, your application has not been made to a Minister of the Crown as defined under section 4 of the FOI Act, which states an agency is defined as a Minister of the Crown.
>
> As your application seeks access to documents that relate to 'Grace Portolesi and, where applicable, her daughter Allegra', and does not relate to Ms Portolesi as a Minister of the Crown, such as, Minister for Education and Child Development, nor indicate a time period for such documents, your application cannot be processed.

Both those examples—and there are others—are an outrageous perversion of the intent of the freedom of information legislation. They are indicative of a government comprised of ministers, such as former minister Weatherill, now premier Weatherill, and minister Portolesi, who are part of a government that is the most secretive government in this state's history. These are devices being used to prevent freedom of information. They are devices being used to stymie access to information of genuine and general public interest, such as *The Australian's* request, which was seeking information, as I said, on the minister spending $7,000 for business class travel for herself and her daughter. No-one can argue that is not a genuine matter of public interest.

The request in relation to incoming briefing notes to an incoming premier who had just knifed a former premier are matters of genuine public interest. In both cases, and in others, this government, its ministers, its agencies and its officers are using these devices to prevent the release of information which is being genuinely sought and is a matter of genuine public interest.

This device that 'because in your request you did not refer to Grace Portolesi, Minister for Education and Child Development, and because you just said Grace Portolesi', when everyone knows who Grace Portolesi is—it has been addressed to her office as the Minister for Education and Child Development. It was not addressed to her personal address, whatever that might be: it was sent to the Minister for Education and Child Development's office. It related to the name of the minister—in this case Grace Portolesi and, in the previous one, Jay Weatherill—and had clearly been processed as correspondence through the ministerial office by ministerial officers and then this device was used to subvert the intention of the Freedom of Information Act by saying, 'Well, you didn't describe the minister by the correct title.'

What next? If someone makes a spelling error in the spelling of the name of the minister—and this is after some weeks, because this doesn't happen straightaway. It is not as if 24 hours later you get a response. This government makes sure these things are strung out for some weeks and, in some cases, months, even though they are all meant to be processed within 28 days. You eventually get a knock back on the grounds of some absurd technicality such as this which, as I said and I repeat, subverts the true intent of the freedom of information legislation.

The third example of freedom of information I want to highlight is again in relation to another monthly request that we have put in since the turn of government for the monitoring that was being produced by a taxpayer-funded media monitoring branch for all government ministers and members and, as we have now subsequently found out, some government agencies as well. I know that the monitoring brief goes to all of the spin doctors—not only in the ministers' offices, but also the hundreds existing within government departments and agencies.

Members are familiar with the fact that we receive a summary on a regular basis through the day, Monday to Friday, containing a transcript of matters of state interest on radio. I was aware, after the change of government in 2002, that the media monitoring did not just provide that, it actually provided transcripts of television news services—not just the news service but current affairs programs, for example, and the like. Those transcripts were provided to the government of the day.

We were intrigued as to why, as an opposition, we could not get access to that sort of information. So, from 2002, on a regular basis, we submitted this monthly request to the government to get a copy of the actual transcript which was submitted to ministers so that it would be even-handed. Now, after months on each occasion—we would get it months later—we eventually, on a regular basis, started getting the media monitoring transcripts and then, ultimately, in recent years it has turned into a CD which is provided to me as the opposition and I then share it amongst my colleagues and others as well.

That monitor, in those days, provided the TV transcripts but, of course, in recent years, we have started to receive a service through the parliamentary library, which now provides transcripts of television services and, indeed, the vision as well. That is a very good service which is made available to all members of parliament.

But the media monitoring CD-ROM that is provided still provides to us now, albeit on a delayed basis, access to information which is not available to all members of parliament. It provides transcripts of the *Country Hour*, it provides summaries of TV news—which, as I have said, are now available through the library—it provides an hourly talkback radio summary and radio news from every station is provided in that particular media monitoring. So, as I said, in recent years, the difference between what is provided to the government, other than on timing, has been reduced due to the work being done by the parliamentary library, which we acknowledge.

On varying occasions through the last 10 years, we have raised this with government ministers and said, 'Look, why don't you save yourself a lot of trouble with your FOI requests you keep complaining about? We get these things every month. Why don't you just release them publicly (the TV transcripts) in the early years? Why don't you just release them publicly to all members of parliament rather than us go through the process every month of having to submit an FOI request and getting them eventually, albeit late?'

The government response on every occasion was a refusal to provide it. What it did for a period of time, until the library came into play, was it gave the government an advantage for a period of months. The government had access to the transcripts of TV news services and current affairs programs, and the opposition did not have the same access. It had a competitive advantage, and it wanted to keep that advantage all through that particular process.

Even through the period when we had the supposedly independent Peter Lewis as the speaker, who said that he was interested in transparency and accountability, he refused to ensure the release of this sort of information to the opposition as part of his arrangement with the Labor government of the day.

They are just three broad areas where this government has been subverting the true intent of freedom of information legislation. There are many others. I do not propose to canvass those today, but I did want to raise those particular areas and express my concern about the government's ongoing role in seeking to prevent the release of information.

The second and final issue I want to raise today relates to a matter of interest to members of parliament in particular—I guess it is also a public interest as well, of course—regarding those journalists who seek to cover the proceedings of parliament. I hasten to say, given that it is Address in Reply, that the views I am expressing are my views. I do not purport to represent the views of all of my colleagues and certainly my party on this particular issue. It has not been an issue, as far as I am aware, about which there has been recent debate in our party room.

I want to canvass the issue of the access of cameras and photographers to the proceedings of the parliament. On a number of occasions—and I think as recently as the last sitting week—you, Mr President, as the Presiding Member of this chamber, were moved to issue a warning to a television cameraman, and possibly a photographer as well, in relation to the guidelines that govern the access of cameramen and photographers to the proceedings of this chamber. I guess similar arguments could be made in relation to the House of Assembly as well; however, I speak in relation to this chamber.

On those occasions, Mr President, you issued a warning from the chair that the cameraman, in your view, was seeking to film or photograph a member of parliament who was sitting at the time—he was not standing and speaking—and, if that was to continue, they would be removed from the chamber. There was always the potential for a presidential-imposed sanction or ban on that cameraman or photographer, or that news organisation, for a period of time in terms of access to this particular chamber.

Looking back at the history, debate on these matters was not much of an issue many decades ago, but certainly through the period of the 70s and 80s, when the role of the Legislative Council became quite controversial, there were issues in relation to what sort of access, if any, we would provide to photographers in particular, and camera people, to the proceedings of the parliament. That went on through the 70s and 80s.

I have been reminded of a real stoush that went on between this chamber and its former president and the former editor of *The Advertiser* back in the early 1990s when the Liberal Party was in opposition and the Labor Party was in government. The former president, Gordon Bruce, was a meek and mild-mannered member of the Labor Party in most people's experience, but he, on behalf of this chamber, engaged in a blazing row with the editor of *The Advertiser,* who was then Mr Piers Ackerman.

I will not trace the whole gory history of that dispute, although it involved the exchange of correspondence and a statement to the house by the then president in February 1990 where he detailed blow by blow the derogatory remarks which had been exchanged in conversations between Mr Akerman and himself. The end result of that ended up on the front page of *The Advertiser* at that particular time where he was described as the new president in a flowing wig and a big white car. Some very critical comments were made of the Hon. Mr Bruce, as the president of the Legislative Council, by *The Advertiser* and of the Legislative Council and its chamber generally as well.

That all related to a blazing row about whether or not *The Advertiser* should have access to a photographer to take photographs of members of parliament when the house was sitting. This was 1990, only 20 years or so ago. We are not talking about 100 years ago; we are talking about 20 years ago. In that correspondence and in that debate, it highlighted that even at that stage there was limited access to upper houses generally, not just in South Australia, for news organisations in relation to filming.

Part of the problems in the 1970s and 1980s was that there had been a former Labor minister who had once been unflatteringly filmed picking their nose (I will not give away the sex of the minister). There have been concerns at varying occasions that the cameramen or photographers may well take film or photographs of members asleep in their chair while the

parliament is sitting or may well take photographs or film of members in an undignified or unflattering pose or in undignified or unflattering behaviour.

This is not a criticism of one party or another because under both governments of both parties, these particular conventions have prevailed forever. We still have the situation (as you did recently, Mr President) where a cameraman comes in here wanting to film or photograph a member who does not happen to be speaking at the time, and that particular person is threatened from the chair with eviction from the chamber, potential bans and other sanctions.

As I said, the view that having witnessed this over a number of years is I guess informed in part by the power of social media as well. In recent times I remember seeing on Twitter someone who had been into the federal parliament and had reported that such and such a member had been playing solitaire on their computer when they should have been following the debate in the federal parliament. That prompted various other tweets in the Twitterverse of people saying, 'I have been there and I have seen members do this and members do that.' This is instantaneous. It does not rely on journalists in the radio, the press or the television to report it. It is being reported firsthand by those who tweet or use other social media in terms of having been into parliament and seen it.

There is nothing that prevents a radio, TV or print journalist, because they do cross media presentations these days, from writing or reporting that 'the Hon. Mr Smith' was asleep in his chair, or 'the Hon. Ms Brown' was scratching her nose inappropriately, or that 'the Hon. Somebody Else' was playing solitaire or reading a book or looking at travel brochures. That was one of the criticisms in the past that a TV camera once saw a member of parliament reading a travel brochure for what was portrayed by that member of the media as an impending overseas trip at taxpayers' expense.

Nothing prevents journalists from writing that; nothing prevents them from reporting that on television or radio; nothing prevents them from tweeting it; nothing prevents them from posting it on Facebook. It is and can be public knowledge, but our conventions and guidelines say that it cannot be photographed or televised because it will hold us up to ridicule or it is undignified to allow that to occur.

Social media and modern media today are a reality and, it is, in my humble view, time. The President is a mere representative of the members of this chamber, and in the stoush with *The Advertiser* 20 years ago he said, 'Look, I represent the views of my colleagues in the chamber, and these are the guidelines that they support.' I am sure that this President, and the Hon. Mr Gazzola when he takes over later this year—Hon. Mr Gazzola, who thus far has not been seen as a radical reformer of anything, other than assiduously collecting the highest amount of remuneration of any backbencher in the living history of this chamber; to his credit, he does have that record on his CV—see this as an opportune time to actually do something worthwhile.

With the greatest respect to you, Mr President, as you near your retirement, I am giving up on you. But here is an opportunity for the Hon. Mr Gazzola to forge a path to consult, obviously not just myself but other members in this chamber—the Independents and minor parties—to see whether in the year 2012 we are prepared to jettison the guidelines of the past, move with the spirit of where we are now and allow access, in a more open, transparent and accountable way, to members of the media to the proceedings of the chamber.

Personally, I do not have a concern if a member of parliament is caught snoring or sleeping on the backbench: it might be a concern to some of the government ministers and some of the backbenchers. In the end, we are here being paid a reasonable, but I will not say excessive, amount of money (certainly nowhere near as much as the public servants ministers oversee), and there is the capacity for members in this chamber to work with an incoming president to see whether or not we are prepared to open up the proceedings. As always, I will accept the majority view of members of this chamber. It should not be just the two major parties, that is, the government and the opposition. We have seven Independent and minor party members—

The Hon. T.A. Franks: Eight.

The Hon. R.I. LUCAS: Eight? Who is the eighth? Have you snuck another one in? The Greens are sneaking another one in here without me looking!

Members interjecting:

The Hon. R.I. LUCAS: The unknown, yes. Given that that person is unnamed, I did not want to refer to them. Seven or eight—I take the point the Hon. Ms Franks is making. Anyway, we have a significant number of members in this chamber who are not representatives of the two major parties at the moment. I think it is time for us to reflect on it to see whether we are prepared

to move with the times. We are accountable, and we should be accountable, and when we are in here on show in my humble view, as I said, we ought to be part of that process.

The photographers from *The Advertiser* or *The Australian* should have access to the chamber. They should not have to go through the device of sneaking in here trying to get film or photographs of unnamed MPs, or particular MPs who might be in a scandal or controversy at one point in time and who are smart enough, under the guidelines, not to stand on their feet and say anything because the current guidelines protect them from being filmed or photographed in the chamber. There will still need to be sensible guidelines, even if we do open it up, and that should be part of the debate. If media organisations transgress those guidelines, clearly, there should be sanctions. I am not supporting open slather, but there should be greater access.

The other aspect of media access is that there have been restrictions on media being able to film or photograph what occurs in the public galleries. I must say, on reflection when thinking about this, I think there is probably still good argument for those tighter restrictions. The reason I submit that is that, for it to be otherwise, it may well be that it would encourage protesters and demonstrators to come to the public galleries and dump asbestos, or whatever it is, on members below, to make public protest, knowing full well that they can be filmed and photographed.

I think that, in itself, is a dangerous and demeaning spectacle of the parliament and I think the restriction we have probably makes good sense. Then again, I am interested in the views of other members on that but I do see the argument in relation to, in essence, discouraging protesters coming to parliament and being filmed or photographed doing that. If they want to protest and be filmed or photographed, they can certainly do that outside the parliament walls. It should not, in my view, be encouraged within the public gallery of this chamber. With those words, I support the Address in Reply.

The Hon. J.A. DARLEY (11:47): I rise to support the motion that the Address in Reply be adopted. At the outset, I, too, would like to thank His Excellency the Governor for the opening of parliament and congratulate him on his reappointment for a further two-year term. I would also like to thank both the Governor and his wife for their exemplary service to our state.

The Governor's speech identified seven primary areas of focus for action by the government. Those areas included: clean green food industry, the mining boom and its benefits, advanced manufacturing, a vibrant city, safe and active neighbourhoods, affordable living and early childhood. I want to read into *Hansard* a speech that I think picks up on most of the primary areas identified in the Governor's speech.

The speech is entitled 'Murray Murmurings: emotive people aren't the lunatic fringe, they're the residents'. It was delivered by Finley High School principal Bernie Roebuck at the Murray-Darling Basin Plan consultations in Deniliquin on 16 December last year and subsequently posted on Crikey's Murray Murmurings blog. Murray Murmurings is a series of articles on the Murray-Darling Basin Plan from different interested parties, including farmers, lobby groups, environmentalists and other concerned groups.

According to Crikey, Mr Roebuck received a standing ovation from 3,000 people present at the Deniliquin consultation, including federal water minister Tony Burke and Murray-Darling Basin Authority head, Craig Knowles. Crikey reported that after the speech minister Burke commented:

> Everything at these meetings obviously stays with me but I don't think there's been a presentation that I've been to probably in my life that will stay with me like Bernie's.

I share minister Burke's sentiments. Mr Roebuck's speech struck a real chord with me and simply to quote from it would not do justice to the sentiments Mr Roebuck expresses. The speech reads as follows:

> My name is Bernie Roebuck and I am currently the principal at Finley High School. Previously I was principal at Deniliquin High School and for a two-year period worked as a principal consultant across all schools in the Riverina.
>
> Though I might be called a 'blow in' by some standards I have lived and worked in communities in the Murray Valley for 34 years. My grandfather settled in Deniliquin during WW1 and my father was born in Deniliquin in 1919. My children have all been born in the Murray Valley and two have started their working lives there. So 'blow in' maybe, but for 96 years and four generations my family have lived in this part of the world and it gives us a claim of having a vested interest in the future of Riverina communities.
>
> I represent the New South Wales Secondary Principals Council, a professional organisation of public school secondary principals. You may well ask, so what has the Murray-Darling Basin Plan have to do with school principals? In truth, heaps. The reason for our existence, our students, are the group of people that will be most

affected by whatever the final decision is in regard to the Basin Plan—the full effects of these proposals will fall on my children's heads and their children. We must not forget this.

It also affects our staff—their future employment is at stake, the value of the homes that many of them purchase is at stake. It also affects school communities. Uncertainty has already taken its toll in many instances. The young people that we work with on a daily basis are not oblivious to the pressures that their mums and dads are under, and there is no question that affects many of them.

This is my second stint at Finley High. In 1990 when I was first appointed there as a head teacher the student population was 720. Currently our enrolment is 450—a decline of close to 40%. In the Deniliquin area of schools known as South West Riverina this enrolment decline is similar across all schools. In fact, apart from Albury, and to a lesser extent Wagga, it is the pattern across the whole Riverina.

What has this meant for schools? Less students means we can give students less options in terms of curriculum choice, recruiting staff is more challenging. Because there is uncertainty of employment the pool of quality students in each year group continues to get smaller and this can have a critical impact on student outcomes. We have any number of schools that are so critically small now that they are absolutely in danger of closing or of not being able to deliver a quality education.

This is not some emotive throwaway line, it is the honest truth. Of greatest concern for students is their life after school. Increasingly they know that local jobs are hard to come by. Increasingly young people see no future in their communities. Some see no point in studying when there is a limited future. We constantly hear about things such as skills shortages, but as an example try and find a building apprenticeship easily in this part of the world. Increasingly they seek work away from these communities and so not surprisingly rural communities have less and less young people.

The decline of schools in our communities has other effects as well. Less students means less teaching and admin staff, and often affects trades that support schools such as builders, plumbers, electricians, local grocers, bus drivers etc, so that income therefore disappears from the local economy and the multiplier effect on local businesses rolls out. I feel bemused, and confused and quite frankly angry when I hear criticism as soon as someone makes any emotive response to the plan, or when someone wants to talk about the human cost of the plan, such as what I am doing right now.

Constantly I hear that emotive calls, emotive language, emotive pleas, emotive people should be dismissed as the lunatic fringe because they exaggerate, they misrepresent, they do not produce balance nor facts in dealing with the plan. I would say how can one not be emotive if your livelihood, and all that is important to you, is at stake. I see no reason for us to need to apologise for being emotive. But that does not mean we cannot be rational or that we do not understand what is happening in the basin.

Few would deny that the Murray-Darling Basin has a complexity of issues to address. And find me an irrigator who would not applaud the concept of a sustainable Murray-Darling river system. Many of my students have real mums and dads who are farmers. The very same people who produce the quality wine, rice, rockmelons, potatoes and grains that are in such demand in the supermarket. The vast majority of them are not environmental vandals. They are in many cases hard-working, highly skilled operators who have a vested interest in protecting and preserving their land, and they do so. Why would they not want a sustainable future for their sons and daughters? These people are happy to discuss changes to aspects of water policy that would lead to a sustainable future. They would love to see real investment in the infrastructures that would save enormous quantities of water that could contribute to environmental flows.

I for one applaud the announcement this week by Mr Burke of some major infrastructure programs. But why has it taken till this week for such an announcement to be made? And in truth, I would like to think this is but the first step. Let's be frank here, our nation is currently spending tens of billions of dollars to ensure that Australia has the technology base for the 21st century through the national broadband network. The infrastructure base for our irrigation systems is in many cases 70-80 years old—what we are asking for is a fraction of the NBN but it would give this nation a base for huge water savings and at the same time allow for productive 21st century agriculture. It would also create the jobs and the certainty to give the young and not-so-young people of rural communities hope, security and to feel that they can make a real contribution. Without a commitment to long-term sustainable development in rural Australia our future is potentially very grim.

My staff and my students and my community are full of some of the very best people. These are the very same people who endure higher fuel prices, higher food costs, poorer medical facilities and poorer educational outcomes than any other part of our country. It is not reasonable, nor acceptable, for people in these communities to continue being treated as the rural underclass. We are not second-rate—we have some of the best brains, the best thinkers, the most creative talents and the best students. I cannot continue to accept that my students and the students of my colleagues at other basin schools should have a quality of life that is less than that of any students in Sydney or Canberra. How totally inequitable and unAustralian would that be?

I do not ever want to see my school become so small and so residualised and marginalised that it cannot deliver top-quality education as it now does. Yet that is clearly the fate in the very near future of many of our rural schools. I implore you not to sell us down the drain. This issue needs serious and sustained consideration.

The [Murray-Darling Basin Administration] chairman Craig Knowles has said that in consideration of the plan there have been vastly opposite views of what needs to happen and what should happen. None of us doubt that. We accept that, we are reasonable people, we will compromise. Some of those views, however, come from those whose livelihoods are not at stake. They come from those who do not have to worry about their kids futures.

In comparison our governments and business magnates are hell bent on digging everything and anything from the ground. The environmental issues in so many places related to mining receive scant consideration—such developments are perceived to be in the public interest and therefore environmental costs are deemed acceptable. The hypocrisy is totally unacceptable.

In truth, rural people do not accept that they are treated with respect. Their opinions, though considered, are often derided as second-rate compared to their politically powerful, well-connected urban counterparts, and rarely if ever are rural communities given the chance to be a part of the solutions. In my 34 years in the Riverina I have seen the slow but constant decline in communities to the point where we now have those publicly saying 'Are communities under 15,000 people worth saving? Is it a waste of government money to keep them afloat?'

All this at a time of urban congestion, rising urban social violence, transport gridlocks, a lack of affordable urban housing, and the need to feed a rapidly rising population in this country and the rest of the world. We have a rapidly declining manufacturing base and a massive over reliance on the mining sector that has a limited life span. There is a clear and obvious reason why vibrant and sustainable rural environments are critical to this nation. In conclusion, I want to give my students and my community hope. I want them to vigorously support the concept of long-term sustainability, but I want governments to give them the sensible, pragmatic means to do that.

I plead for some commonsense, practical solutions, not those concocted in the pristine halls of power away from the very people who are most affected. Include rural people way beyond flying one day visits, way beyond fly-in fly-out three hour meetings. Way beyond tokenistic representation on committees and working parties. Engage with the people here, negotiate with them. Properly and sincerely and seriously engage with them—work with them to find some reasonable solutions. I implore you not to be so naive as to think that the people of these communities are unreasonable or are not important.

There is no doubt that Mr Roebuck's concerns about his community apply equally to those of not only regional communities but also the wider community of South Australia. His comments that emotive pleas should be dismissed as the lunatic fringe because they exaggerate, misrepresent or do not produce balance nor facts in dealing with the Murray-Darling Basin Plan are entirely appropriate. I cannot but agree that, when your livelihood and all that is important to you is at stake, there is no need for apology.

I also think there is a lot to be said about his comments in relation to rural people not accepting that they are treated with respect and their opinions often being derided as second rate compared to their politically powerful and well connected urban counterparts. Rural communities need to be given the opportunity to be part of the solution. Mr Roebuck's pleas for practical solutions rather than solutions 'concocted in the pristine halls of power away from the very people who are most affected' should not fall on deaf ears. It is up to each and every one of us to ensure that this happens.

Mr Roebuck's concerns were further confirmed in an article published in *The Australian* newspaper just yesterday. That article, entitled 'Growing pains become unbearable', talks about the fact that the future looks far from certain for Australia's food producers. According to the article, a 50-year-old tomato growing business, SP Exports, owned by the Philip family in Queensland, has now gone into voluntary administration, owing some $31 million. This is a company that produces a third of all tomatoes eaten in Australia.

Andrew Philip, who took the helm of the family business some 13 years ago, was nationally acclaimed as the best future-focused farmer of the year in Australia in 2009. Now his family's company's future looks bleak. If honourable members have not already read the article, I strongly recommend they do. In closing, there is no question that our state faces many challenges. I hope the government is truly committed to the reforms expressed in the Governor's speech.

The Hon. J.M. GAZZOLA (12:03): I thank the Governor for his opening address to parliament. I join with the Governor in acknowledging the passing away during the First Session of the Fifty-Second Parliament of former governor, Sir Donald Dunstan; former member and minister, Mr William Alan Rodda, in 2010; and, lastly, in 2011, the Hon. Leonard James King AC QC, former member of parliament and chief justice of the Supreme Court. However, on a happier note, I congratulate the Duke and Duchess of Cambridge on their wedding and wish them well for the future.

The Hon. J.S.L. Dawkins: You old monarchist, you.

The Hon. J.M. GAZZOLA: I hope to be, fairly soon.

The Hon. R.I. Lucas: The President's dinner is coming up soon.

The Hon. J.M. GAZZOLA: Yes; well, not that soon. I wish to acknowledge the traditional owners of this land, the Kaurna people, and I fervently hope that the Fifty-Second Parliament sees further positive resolution for Indigenous people.

I note that, 10 years ago, I made my first contribution to the council, when I commented on public concerns over the trust in which politicians are held. Politicians can do much to improve the standard of debate, as the Governor noted and as the Premier has raised on several occasions. The opening day question time in the house shows that we have room to improve here.

Acrimony and personal attacks are a poor substitute for substantive debate and policy, nor are they conducive to public faith in politicians and the political process. The slew in interpretation of some addresses in reply by the opposition and some Independents is alarming in the lack of balance and, frankly, coherence. As politicians, we need to resist the example set by some sections of the media to let shock and awe set the tone and substance of political debate. This is our collective responsibility.

This brings me to the reply by the Leader of the Opposition in this council, which should be read in conjunction with The Liberal Way—the guiding principles of Liberal philosophy. 'Liberalism,' it says in part, 'is the enemy of...sectional interests and narrow prejudice'. It is clear that the Leader of the Opposition's reply is based on broad prejudice as he opens up on all fronts in his enfiladed response. Is he seriously suggesting that the government program has no credibility in the eyes of most stakeholders and constituents in this state? Even against his own party's tenets in The Liberal Way, he opposes the good work of this government as offending the 'wellbeing of all', whatever this could precisely mean.

The Hon. J.M.A. Lensink: You have been some doing sound research, better than the usual stuff you read, John.

The Hon. J.M. GAZZOLA: I would refer to Stephen Hawking. The facts, the public interest tests and much-needed utilities of the new hospital, the oval and Riverside redevelopments, to name some important achievements, are repudiated as 'exercises in vanity' by the Leader of the Opposition, but they meet, I would argue, the spirit and the letter of his own party's doctrinal stance.

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

The PRESIDENT: The Hon. Ms Lensink should sit there and suffer in silence.

The Hon. J.M. GAZZOLA: The opportunity of Address in Reply deserves much better than this fanciful flight of hyperbole, grandstanding and confected righteousness. I might add that over time I have expressed concerns with government priorities, but credit where credit is due is required in debate.

I also noted in my first speech the responsibility of government to improve both the quality of living for all and the wellbeing of workers, families and the less privileged in our society. It is pleasing to see that, in outlining the government's priorities and legislative program, the Governor spoke of the government's commitment to continuing economic growth as well as reaffirming those initiatives that are the building blocks and cement of a responsible and caring society.

I finally note that in the 10 years of state Labor government much has been accomplished and that much is in the process of being accomplished. Under this government's strenuous efforts, the City of Adelaide is being revitalised. I will not, however, reiterate those initiatives, as they have been more than adequately covered by the contributions of the government mover and seconder, but we should note that it is and will be an impressive list of planning and achievements that we should rightly be proud of—projects that are necessary to carry our state forward.

I congratulate the new members of parliament—Zoe Bettison, in the seat of Ramsay, and Dr Susan Close, in the seat of Port Adelaide. I am confident that they will both do well despite the warm and graceful welcome of the Hon. Rob Lucas. Finally, in salvaging something from the wrecks of other contributions, I continue to be a proud ASU member, a proud ALP member and a proud member of this great state. I commend the motion to the council.

Debate adjourned on motion of Hon. R.P. Wortley.

WORK HEALTH AND SAFETY BILL

Adjourned debate on second reading.

(Continued from 16 February 2011.)

The Hon. R.I. LUCAS (12:11): I rise to speak to the second reading of the Work Health and Safety Bill. This has been a controversial piece of legislation which was first introduced what seems like many years ago but was actually in April last year by the then minister, the then leader

of the government, the Hon. Bernard Finnigan. In April last year, or around that time, the government and the minister collectively patted themselves on the back indicating that they were trailblazers, the first of the jurisdictions to introduce the legislation.

They wanted to see the early passage of the bill. As my lengthy contribution today will outline, there has been significant controversy about the legislation before the chamber at the moment. There has been increasing opposition and there remains, of course, strong support for the government's position from a number of stakeholders as well.

The prime reason given for this legislation is that this was part of a supposedly national agreement between all the states and territories and the commonwealth government on the introduction of harmonised legislation; that is, in essence, an agreed national takeover of occupational health and safety or, in this case, work health and safety legislation. At the time, virtually all of the governments were of Labor orientation—not all, but virtually all—and, I guess, it was a touch easier for the governments at that particular stage to reach a unanimous agreement in relation to the proposition for national harmonised legislation.

First, I want to address what the current state of play is in relation to the major reason why there should be harmonised legislation. As we debate this in early 2012, the legislation has passed in the federal parliament, the Queensland parliament, the Northern Territory parliament and the Australian Capital Territory parliament. An amended version of the bill—not the harmonised or model bill—has passed the New South Wales parliament. The Legislative Council in New South Wales moved a series of amendments. Some of those, which everyone acknowledges are union-friendly amendments, were passed ultimately by the New South Wales parliament.

The model bill suffered its first defeat in the New South Wales parliament when it was passed with the union-friendly amendments to the model bill. The bill has still not been introduced into the Victorian parliament, bearing in mind that this was introduced in South Australia in April last year and the agreement was that it was to be up and operational with all the regulations and codes of practice by 1 January 2012. That was what we were told: everyone had agreed and would implement that.

In Victoria, obviously one of the bigger states in the federation, it has not even been introduced into the parliament. The Victorian Liberal government has indicated significant concerns to the model bill. I do not propose in this contribution to go through all of their concerns, but they have indicated significant concerns. They have—and I will address this later—implemented a regulatory impact statement to be undertaken in Victoria, and the final copy of that regulatory impact statement is still not available.

Contrary to some media reports, the Victorian government has not at this stage finalised its position by saying that it is not going to proceed with work health and safety. I think it is fair to say that they will not proceed with the current model bill. The prospects of the model bill passing through Victoria are very slim indeed. It is likely at the very least to be significantly amended in Victoria. There are some people who are suggesting that the Victorian government might not proceed at all but, as I said, contrary to media reports, they have not made that decision as we speak.

Their position, as their minister's office advised me prior to this debate, is that they are awaiting the final copy of the regulatory impact statement and, at that stage, cabinet will consider its position and any possible amendments. However, the model bill will not be passed, in my judgement, in Victoria.

The bill has still not been introduced into the Western Australian parliament. Western Australia is interesting because supposedly we were going to have harmonised legislation, but all of the government and its advocates have always said, 'Right from the word go, we always accepted it was a model bill,' but Western Australia was not going to introduce the model bill. We always acknowledged that in at least four significant areas they were going to move amendments to the model legislation.

Western Australia is in a similar position to Victoria. They are instituting—and I will make some comments later on about the details of this—their own regulatory impact statement and they say that when they have received that they will make final judgements about the number, breadth and depth of the amendments that they would move to the model bill. But there is no prospect at all that there will be a model bill passed in Western Australia.

The bill has been introduced into parliament by the Labor government in Tasmania. There is significant opposition and concern in Tasmania as well. There was an amendment passed in the Legislative Council to delay the introduction of the bill until 1 January 2013 (a 12-month delay). We are told that the debate is going to resume in their House of Assembly (that amendment was moved in the Legislative Council) this month in March 2012. The ultimate position of the Tasmanian parliament is still up in the air in terms of what will or will not occur.

Clearly, there is significant concern in the Legislative Council to the degree that, in essence, they delayed the introduction until 2013. I think they will watch our debate here in South Australia with some interest because with all of this the debate from the governments has been that this is a national agreement and you cannot do anything that is different. If, at some stage, a jurisdiction moves in a different way and stands up and says, 'Hey, we are not going to accept this,' then that may have a ripple effect through other jurisdictions as well.

As members are aware, the bill was introduced in South Australia in April and it was passed by the House of Assembly. Ultimately its debate was adjourned by a majority of the Legislative Council late last year when the government was trying to force it through to be ready for recommencement of debate in February-March 2012.

The foolishness of the government's position late last year when it said, 'Yeah, we're ready to go for 1 January 2012; let's get this bill through in November-December' is quite apparent now. To think, as we look at where we are now having this debate, that this government thought it was in a position to impose this bill (600 or 700 pages of regulations and thousands of pages of codes of practice) on an industry on 1 January 2012 was foolishness in the extreme. So, that is the national position.

In relation to two other matters in terms of summarising the national position, it is correct that in the federal debate my colleagues in the federal Coalition indicated and have subsequently indicated that they support the harmonisation of occupational health and safety laws in Australia. They have noted publicly that the Howard government got the ball rolling in relation to harmonisation.

They have indicated that they sought to move amendments in particular to a couple of the key areas. The control amendment, which I will discuss later, and the right to silence amendment are a couple of areas that they sought to move amendments in. The Labor government, together with the Greens, did not support those and the model bill went through the federal parliament. The Coalition ultimately did not oppose the legislation on the final vote in the federal parliament.

The other point I make in relation to the Liberal Party nationally is that there have been some media reports that the Queensland Liberal National Party that is currently in opposition has indicated that it will repeal the legislation if elected at this month's election. We have spoken to the shadow minister in the area and he has confirmed for the public record, and I place it on the public record, that that is not a correct statement of their current position.

What they have indicated is that there are significant concerns with the legislation. Secondly, if elected, they will review the impact of the legislation in Queensland. Thirdly, subsequent to that, they would reserve the right as to whether they would seek to move amendments or not.

As members know, because Queensland is a unicameral system if the government decides it wants to make some changes to legislation it does not have the safety valve or, as some might see it, the impediment of an upper house to second-guess any decision it takes, so it may or may not have the capacity to amend the model bill.

When you go through it, the main argument for this was a COAG agreement and harmonised legislation (I will talk about the claims of supposed savings later), but these were the major claims for this, and it is clear that that target is unachievable; it will not happen. Irrespective of what we do in this chamber, it will not happen. There is not going to be harmonised legislation as envisaged by COAG and the various governments two or three years ago.

Clearly, an amended bill has passed in New South Wales. Clearly, any bill in Western Australia and Victoria—certainly in Western Australia's case—will also be significantly amended, and in my judgement it is likely to be significantly amended in Victoria, although they have not said that publicly at this stage. It is my judgement that in South Australia whatever the final attitude is at the very least I suspect there will be significant amendment to the legislation.

Tasmania remains up in the air, because there is concern there and the Legislative Council has expressed that so far. In Queensland, if a Liberal National Party government is elected there is the potential for amendment too. So, the notion that there is an agreement for a model bill and harmonised legislation is out the door, out the window, unachievable, and will not happen. However you want to describe it, that is the reality. It was the goal but it is not going to happen, and this debate in this chamber needs to be conducted in the full knowledge of those particular facts.

I want to talk about the claimed benefits of harmonisation. The various governments and the federal Labor government have made many statements in relation to this, and I will refer to just one of those. In a release on 25 November 2011, minister and senator the Hon. Chris Evans issued a statement under the heading 'Landmark model OHS legislation highlights WA and Victorian Governments' failure'. This is the statement:

> Australia is a step closer to nationally harmonised OHS laws that will generate productivity improvements of up to $2 billion a year and deliver safer workplaces for millions of Australians and their families.

Further on in the release it says:

> 'The harmonised OHS laws reduce red tape saving business $250 million and improving safety in Australia's workplaces,' Senator Evans said.

The rest of the press release goes on to make those various statements. The claimed saving is $250 million a year, if it is completely harmonised, and productivity improvements will be $2 billion a year, if it is completely harmonised. They are based on a regulatory impact statement which is on the SafeWork Australia website dated November 2011, part of which says:

> While there will be one-off implementation costs, the quantitative analysis undertaken at the national level for adopting the model WHS Regulations indicates net benefits (i.e. after implementation costs) of around $250 million per annum to the Australian economy over each of the next 10 years. This estimate does not include expected productivity benefits. While noting the difficulties in estimating the productivity benefit, a reasonable conclusion would be that the reforms will provide a positive and meaningful productivity benefit. Specific figures were excluded from the quantitative analysis, largely due to the difficulties in providing a sufficiently robust estimate. Based on a review of the analysis in this RIS, productivity improvements in the order of $1.5 billion to $2 billion per annum over the next 10 years are considered likely. Multi-state businesses are expected to benefit from harmonisation by approximately $80 million per annum.

The first point I will make—and, to be fair, I am going to make this general comment and it will apply to a number of the estimates—is that it is notoriously difficult to estimate, and there are estimates by the government and its supporters and there are estimates by stakeholders who oppose the bill and people who have been employed by them.

It is difficult because, in the end, the consultants have to make assumptions and, let me assure members that you can always pick apart the assumptions and, therefore, the estimations made by consultants employed, all the way round. So, whilst I am going to be critical of these particular claims, I accept that one can apply the same sorts of criticism, potentially, to lots of the estimates that have been made. That is why I think you have then got to look at the detail of the legislation and make judgements as to, on balance, who is more likely to be right, and that is particularly going to be the case when I address some comments to housing affordability costs in South Australia later.

The reality about those claims from the federal government and the ministers such as the Hon. Mr Wortley, and others who are seeking support for the legislation, is they know they cannot and will not be achieved, because all of that analysis was done on the basis of harmonised legislation. All of that analysis was done on a model bill being passed and, therefore, it being easy for multi-state businesses and others to operate across all jurisdictions. As I have highlighted before, that is not going to happen and will not happen and, therefore, the analysis that has been quoted by this minister in this chamber, and others supporting the productivity benefits, needs to be considered in the new light that we are not going to see the model bill passed in all the jurisdictions.

On the other side of this equation a number of the industry groups have commissioned consultancies to look at the impact of the legislation on the economy. Again, reputable consultants Hudson Howells have been commissioned by, I believe, the Housing Industry Association. Their assessment, in letters that the HIA has written to members of parliament, is that if this bill is adopted in South Australia it will lead to up to 12,500 job losses every year, annual economic damage of up to $1.4 billion and the destruction of home affordability for thousands of young South Australians.

Similar claims are being made in other states as well in relation to the impact of the legislation on the state economy and by extension the national economy as well. The Victorian and

Western Australian governments' position is obviously important in relation to this. I want to refer to statements from the Hon. Gordon Rich-Phillips, who is the responsible minister in the Victorian government. On 14 September, under the heading 'Important information missing in the Commonwealth Regulation Impact Statement for National Occupational Health and Safety Harmonisation' he said:

> The Regulatory Impact Statement (RIS) for the proposed National Occupational Health and Safety harmonisation released by the Federal Minister…fails to include critical details on the impacts for Victoria.

Mr Rich-Phillips said:

> …the Commonwealth had committed to including impacts in dollar terms for each state and territory.

That is, when they said they would do this regulatory impact statement their commitment was to include impacts in dollar terms for each state and territory. The statement continues:

> The RIS released by the Commonwealth falls short of including the vital detail that should have been in the final impact statement. This leaves Victorian businesses in the dark on the potential costs of this proposed scheme. It is also concerning that the final RIS released by the Commonwealth varies considerably from the draft provided to state jurisdictions just one month ago and the projected benefits of the scheme have been significantly reduced. Mr Rich-Phillips said Victoria would now complete further analysis of the final RIS provided by the Commonwealth and consider whether a separate Victorian RIS is required.

Ultimately, subsequent to that release, the Victorian government decided that it was so deficient that it needed to go ahead and commission its own regulatory impact statement because the commonwealth one was so deficient in terms of what the impact would be in Victoria. In Western Australia a similar position has been adopted. A statement on their government website answering the question 'When will the model bill and model regulations start?' says:

> The Commonwealth Government's Regulation Impact Statement (RIS) for the model WHS regulations is inadequate for Western Australia. As a result, a local RIS including public consultation in relation to the implementation of the model WHS regulations in WA is required. The process, which should take up to six months, has commenced. It is anticipated that the public consultation element of the process will be started around February 2012.
>
> In order to aid its decision-making, this process will provide the Government with information and analysis about the consequences the model WHS regulations would have on workers, businesses, government and the economy if applied to Western Australian workplaces. In view of these circumstances, the date of implementation for the model laws in WA has not been determined and will need to be reassessed.

It is quite clear in Western Australia their process for this RIS is starting in February this year. It is going to take at least six months, which takes us through to round about August of this year before they get the results of that. It will need to be considered by cabinet and then they will have to decide. So the prospects of it even starting in Western Australia by 1 January 2013 are indeed slim.

Certainly, as they have indicated and as I said earlier, there will be significant amendments to the Western Australian legislation, the model bill in Western Australia, when it eventually is introduced, if it is introduced. It is clear then from the federal government's viewpoint they conducted an albeit now inadequate regulatory impact statement. The Victorian and Western Australian governments have conceded that, because of the controversy and the varying claims, they needed to get more information about the impact on their businesses, their economy and their community.

The same requests have been made of the South Australian government, as to whether it now acknowledges that it should have conducted, or should still conduct, its own regulatory impact statement, like Victoria and Western Australia, to see what the impact of this bill would be on the economy, on housing affordability, on small and large businesses, and on workers in South Australia.

Sadly, the minister and the Premier responsible are clearly not going to go down that particular pass. They continue to say to opponents, 'Well, the commonwealth has done a regulatory impact statement.' Even though they know it is inadequate and even though they know it no longer applies, they continue to say, 'Well, there is a national agreement, there has been a national regulatory impact statement. We don't have to better inform ourselves of the impact on the South Australian economy.'

Tied up with all of this has been this COAG process, which has been driving part of it. This is the claim that if the state government does not move down a particular pass the federal

government will financially penalise the state, and the earlier statement I referred to from Senator Chris Evans referred to that in relation to Victoria and Western Australia.

The government's advice to all of us is that under the national partnership agreement to achieve a seamless national economy, which was agreed at COAG in 2008, there is a total of $33 million over two years—that is financial year 2011-12, which is this financial year, and next financial year 2012-13—which is available to South Australia subject to it meeting the undertakings in the agreement.

The total payment of $33 million over two years is for achieving all 27 legislative priorities agreed by COAG in March 2011; 27 legislative priorities to get $33 million back over two years. The bill that we are debating is listed as one of the 10 priority items of the 27. In my view any possible loss to the state of South Australia because of not doing what the commonwealth says has been agreed will not be $33 million; it will be some unspecified component of the $33 million.

When that question is put to the government advocates they say that they do not know, and during any committee stage of this bill that will obviously be one of the questions we will need to put to the minister—or I suppose the minister could respond at the end of the second reading in terms of what Treasury advice is here. However the claims, by inference, that the government is making that it will lose $33 million if it does not proceed with this legislation are clearly not based on fact.

As I said, the $33 million is for achieving 27 legislative priorities, and this is one of 10 high priority areas. If you want to pro rata it, it might be somewhere between $1 million and $3 million; if the commonwealth decided that that was an even higher priority of the 10 high priorities it might be more than that, but it ain't gonna be $33 million financial penalty in terms of the impact on the state budget. I think that is important, because that issue is being used as a sledgehammer to beat opponents of the legislation into potential submission.

What I found interesting—and as members will know I am new to the area of having responsibility for work health and safety legislation—is that in this debate the driver, which has constantly been referred to, is economic reform, cost savings to business and improvements and productivity gains to the national economy. Interestingly, as I said, the driver for the reform is not improved worker safety, and I want to address some comments in relation to that.

After all, surely the driver for harmonisation ought to be some evidence and argument that, by harmonising the laws, we will actually improve worker safety in South Australian workplaces. We could then make judgements as to whether this model bill, harmonised or not, is actually better for worker safety. Of course, there are judgements about better for business and better for the economy as well which need to be considered, but it should not be just the economic and business drivers that are pre-eminent in relation to consideration of the legislation.

I want to look at South Australia's record on work safety and, as I said, I am new to this area. I note that the former minister, the Hon. Bernard Finnigan, on 2 March last year issued a press statement, titled 'South Australia leads the way in reducing workplace injuries'. The Hon. Bernard Finnigan said:

> South Australia leads the way in meeting nationally agreed targets to reduce workplace harm.
>
> Industrial Relations Minister Bernard Finnigan says South Australia has been recognised as the best jurisdiction for reducing injury claims. 'While we strive towards zero harm, and one injury is one too many, the published results are a pleasing outcome in terms of comparative performance,' Mr Finnigan said. 'All states and territories are working towards a 40 per cent reduction in injury claims across the 10 years to 2012, as agreed under the National OHS Strategy 2002-12. 'Only two jurisdictions met the required rate of improvement to the end of 2008-09—

At that stage, that was 28 per cent—

> and South Australia leads the way with a 36.5pc improvement.' The figures are contained in the 12th edition of the Comparative Performance Monitoring (CPM) Report.

That was the position in March of last year, as released by the former minister, prior to this debate about changes to the work health and safety legislation. For the benefit of this debate, I have updated the figures from the Hon. Bernard Finnigan. I seek leave to have incorporated into *Hansard* without my reading it a purely statistical table on work safety figures.

Leave granted.

Indicator 2—Incidence rates (claims per 1,000 employees) and percentage improvement of serious* compensated injury and musculoskeletal claims by jurisdiction.

Jurisdiction	Base period	2006-07	2007-08	2008-09	2009-10 Preliminary	2009-10 projected	Percentage improvement (%)**
South Australia	18.3	14.6	12.4	11.4	10.7	11.2	38.8
New South Wales	17.1	12.6	12.6	12.4	11.8	12.2	28.7
Victoria	11.3	9.5	9.0	8.6	7.9.	8.1	28.3
Australian Government	8.8	6.9	5.5	6.7	5.9	6.4	27.3
Queensland	16.6	15.9	16.3	15.0	13.6	13.8	16.9
Tasmania	16.2	15.7	14.7	14.8	13.4	13.7	12.3
Western Australia	12.5	12.3	12.3	11.7	10.5	11.0	12.0
Northern Territory	12.4	11.4	12.1	11.0	10.7	11.2	9.7
Australian Capital Territory	11.4	11.6	11.5	11.9	11.9	12.2	-7.0
Seacare	36.3	27.1	26.8	34.3	36.6	36.6	-0.8
Australia	14.8	12.4	12.1	11.6	10.8	11.1	25.0

* Includes accepted workers' compensation claims for temporary incapacity involving one or more weeks compensation plus all claims for fatality and permanent incapacity.

** Percentage improvement from base period (2000-01 to 2002-03) to 2009-10 projected.

Source: Comparative Performance Monitoring Report 13th Edition—SafeWork Australia

The Hon. R.I. LUCAS: This table comes from the Comparative Performance Monitoring Report, edition 13, whereas the Hon. Mr Finnigan referred to the Comparative Performance Monitoring Report 12th edition. This shows, and let me quote:

Indicator 2—Incidence rates (serious claims per 1,000 employees) and percentage improvement of serious* compensated injury and musculoskeletal claims by jurisdiction.

The base period is 2006-07. The most recent figures are now updated to 2009-10. What this report says, under the heading of Jurisdictional Progress, is 'only South Australia exceeded the required rate of improvement to meet the target'. That is, of all the jurisdictions, only South Australia exceeded the required rate of improvement.

This table I have just incorporated shows that South Australia's improvement figure was 38.8 per cent. In New South Wales, it was 28.7 per cent; in Victoria, 28.3 per cent; the Australian government, 27.3 per cent; Queensland, 16.9 per cent; Tasmania, 12.3 per cent; Western Australia, 12.0 per cent, the Northern Territory, 9.7 per cent; the Australian Capital Territory, negative 7.0 per cent; Seacare, negative 0.8 per cent; and then the Australian figure was 25.0 per cent.

Again, what that shows, on the most updated figures—and that was released in October of 2011—is that, under our existing occupational health and safety legislation, we continue (as boasted by the former minister) to lead all the jurisdictions in terms of work health and safety performance. The Hon. Mr Finnigan boasted proudly, back in March, of that improvement and performance. Similarly, we—not that we individually have anything to do with it, but businesses and workers working together under the existing law—still lead all jurisdictions in terms of our improvement: a 38.8 per cent improvement in the measured period compared to all of those other jurisdictions. Further on in the same report, under the heading of 'Serious claims', it states:

Indicator 5 shows that the Australian incidence rate for serious claims has steadily declined over the past four years, decreasing 9% from 14.9 to 13.5 claims per 1000 employees between 2005-06 and 2008-09. Preliminary data for 2009-10 indicates an incidence rate of 12.6 claims per 1000 employees. While it is expected that this rate will rise when updated data are available, the preliminary data indicate a continuing improvement in incidence rates.

Substantial falls in incidence rates from 2005-06 to 2008-09 were recorded by South Australia (down 30%), the Australian Government (down 20%), Northern Territory (down 15%), Victoria (down 14%), Tasmania (down 7%), Western Australia (down 6%) and New South Wales (down 5%).

There are a lot of other details in that report. I am not going to go through that report. Members can go to it if they want to inform themselves about our comparative performance. What it is showing is that, whatever is occurring in South Australia under our existing legislation, Labor ministers were patting themselves on the back about it, businesses and workers should pat themselves on the back about it and we ought to be informed, as we approach this particular bill, as to making a judgement: does it actually improve worker safety or does it have the potential to, in essence, reduce our comparative performance in South Australia and do more harm for worker safety than what exists under the current legislation?

Certainly, those who are making the claim that we should support the legislation need to indicate, because they are the ones advocating change, where in the legislation worker safety specifically will be improved as a result of the changes they want us to implement. The second broad area of evidence is in relation to the WorkCover Annual Report. We have the most recent one of 2010-11, and I seek leave to have incorporated into *Hansard*, without my reading it, a purely statistical table on some WorkCover figures.

Leave granted.

Graph 5: Total claims incurred by injury year for register employers

Year	Number of Claims
2000-01	28,123
2001-02	26,514
2002-03	25,110
2003-04	25,482
2004-05	24,746
2005-06	23,119
2006-07	22,105
2007-08	20,873
2008-09	19,166
2009-10	18,315
2010-11	18,634

*Source: WorkCover Annual Report 2010-11

The Hon. R.I. LUCAS: This is an annual production of figures which is on claim numbers for registered employers. It is on total claim numbers that WorkCover records, which is a reasonable indicator, obviously, of worker safety in the state.

What we see there is that, back in 2000-01, just on 10 years ago, the total claims incurred by injury year for registered employers in South Australia by WorkCover was 28,123. The most recent figure for 2010-11 in the WorkCover Annual Report is a very significant decline to 18,634. So, in the space of those 10 years, under the existing occupational health and safety legislation, we have almost 10,000 fewer claims off a base of 28,000 claims.

Now, that is a very significant improvement in worker safety. That is a very significant number in terms of what WorkCover, as the agency recording these things, has recorded. I think it was the Hon. Mr Finnigan who said that one claim is one too many. We accept that, but, under the existing legislation, we have seen, and continue to see, massive, significant improvement in terms of the recorded figures.

I will put a question to the minister, and he will obviously answer it at the second reading stage. I note that that particular table, when one compares the actual numbers in the 2010-11 report, is actually different from the 2009-10 report. When you look at the numbers for 2000-01 right through to 2008-09, the actual numbers in last year's report for those years are different from the numbers in the WorkCover report. I do not expect the minister to know why that is the case, but certainly WorkCover should know.

Whilst the Hon. Mr Snelling is responsible for WorkCover, my question is to the minister, as he is in charge of the Work Health and Safety Bill: can he explain why the numbers are actually different? The trend is the same. Under the old numbers from last year's report, the decline is from 26,610 down to 19,700 whereas, under the most recent report, the decline is from 28,123 down to

18,634. So, there has obviously been some re-calculation of 10 year's worth of figures. The trend is the same, but the numbers are different, and I seek an answer from the minister as to the reasons for that.

In summarising those numbers, it was, as I said, surprising to me—being new to this debate—that most of this debate was about the economy, business and all those sorts of things, which are important. Clearly, if we are debating work health and safety, we ought to be looking at the impact on work health and safety, what has and has not been working in the existing laws and what has been our performance relative to other jurisdictions, and that ought to better inform us as to whether or not we should throw everything out by supporting the model legislation.

In summary, I think you can say that, from the figures from the comparative report and from WorkCover, we actually have a pretty good record in South Australia relative to the other jurisdictions under our existing legislation. The pressure is now back on the government, in my view, to say, 'You now have to make the case as to why and how this model bill will actually improve work safety performance? There are other issues to be considered as well, but you explain to us how this bill will improve work safety performance'.

Members will have to make judgements, as we all will, on the impact on housing affordability, the cost of doing business and the impact on the economy. They are important issues as well. This government and this minister need to say to us, 'Okay; this is how this bill will actually improve work safety' compared to the very significant improvements we are already achieving under the existing law.

The next topic I want to turn to is the critical issue of the impact on housing affordability in South Australia. All members know that housing affordability is a critical issue in South Australia. We have families struggling to continue to hold their homes or to purchase new homes. The ability to be able to purchase a new home is a dream for many—not all—young South Australians. I think every member would have to agree that, in recent years, housing affordability has been made harder and harder for many young, struggling couples and families in South Australia.

Those of us in this chamber who are generally older look at our children or our grandchildren and try to work out how on earth they can afford mortgages of $300,000 or so (which appears to be about the average these days) to get into first homes. It is beyond comprehension. In many cases, of course, parents and grandparents, and others, assist with trying to get them into a first home. The issue of this bill in terms of its impact on housing affordability has to be prominent and it has to be closely considered.

Local industry groups, such as the Housing Industry Association (HIA), have informed our debate and our understanding of this bill by commissioning research and doing their own analysis in terms of the impact on affordability. The Housing Industry Association's position is that they did their own analysis of the impact of the bill and the regulations and codes of practice on housing affordability in South Australia. Their estimate was that it would increase costs in South Australia by $20,690 for a single storey dwelling and $29,335 for a double storey dwelling in South Australia.

They then went to a nationally and internationally reputable firm of quantity surveyors, Rider Levett Bucknall. I am sure the minister and the state government will not criticise Rider Levett Bucknall because they have used Rider Levett Bucknall to do their cost estimates on any number of projects in South Australia, most recently on the Adelaide Oval project. I have seen some free and easy criticism by the minister and the government about the consultants' work in relation to these issues. The minister needs to bear in mind that he and his government have commissioned these international quantity surveyors on any number of occasions and proudly used their cost estimates to justify their case on projects such as Adelaide Oval and others.

The international quantity surveyors Rider Levett Bucknall have confirmed the estimates of the HIA in a report to the HIA, with their own estimates being slightly different—that is, an increase to the cost of a single storey dwelling of $20,088 and an increase in cost of a double storey dwelling of $28,450. For all intents and purposes, they are virtually the same. I seek leave to conclude my remarks.

Leave granted; debate adjourned.

[Sitting suspended from 12:58 to 14:18]

ONE AND ALL

The Hon. T.A. FRANKS: Presented a petition signed by 1,994 residents of South Australia requesting the council to take immediate action to—

1. Secure a new operator for the iconic South Australian tall ship, the *One and All*;

2. Ensure that it continues to be used for youth development and training purposes; and

3. Keep it publicly accessible in Port Adelaide for the people of South Australia.

PAPERS

The following papers were laid on the table:

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

Natural Resources Management Council—Report, 2010-11
Regulations under the following Act—
Education and Early Childhood Services (Registration and Standards) Act 2011—
General
Revocation of Regulations
SACE Board of South Australia Act 1983—Fees
Firearms Prohibition Orders—Report prepared by the Commissioner of Police
Parliamentary Tabling Report—Report prepared by the Deputy State Coroner

TOURISM COMMISSION

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) (14:19): I seek leave to make a ministerial statement on tourism.

Leave granted.

The Hon. G.E. GAGO: I recently requested that the SATC board consider how it could focus the SATC business to better leverage activities to drive tourism in the state and how resources and expenditure would best be directed towards promoting South Australia. In addition to previous savings requirements, the South Australian Tourism Commission is required to find a further $1.2 million per annum savings arising out of the Mid-Year Budget Review.

Earlier today the Governor accepted the recommendation made by me and the SATC board that the position occupied by the current full-time chief executive of the South Australian Tourism Commission be replaced with a part-time chief executive in order to create the efficiencies within the commission and drive the savings targets. I am advised that the board was unanimous in its deliberations.

I am pleased to advise the chamber that the new chief executive of the South Australian Tourism Commission will be Ms Jane Jeffreys. Ms Jeffreys commences her role as chief executive and will also retain her role as chair of the SATC board. Ms Jeffreys is obviously in a very unique position to drive tourism in SA. Her experience as SATC chair gives her not only an insight into the important and significant role of the commission but also means that her network skills and knowledge in the tourism sector can be better utilised for the good of tourism in this state.

Ms Jeffreys has extensive experience working with boards and senior management teams to ensure maximum efficiency and performance. I am sure that in this role as an executive chair she will be of great assistance in the restructuring and repositioning of the Tourism Commission. Her appointment as chief executive is intended to be for no more than 12 months. I am confident that Ms Jeffreys will structure the agency in such a way as to ensure the efficient operation of the organisation and will deliver on the necessary savings.

I would like to thank the outgoing chief executive for his hard work and commitment to the tourism sector in South Australia and I wish him all the best for the future. As I am sure members are aware, with organisational restructures there are one-off transitional costs. The effect of the outgoing CEO's contract is that he will receive a severance package of approximately nine months' remuneration.

I believe that a revitalised operational structure for the SATC will deliver significant savings in the longer term, coupled with the government's recent commitment to a set of strategic priorities

which underpin the government's directions and will drive the commission's efforts to maximise the promotion of South Australia as a tourist destination.

SUICIDE PREVENTION ADVISORY COMMITTEE

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:23): I table a copy of a ministerial statement relating to the Suicide Prevention Advisory Committee made by the Hon. John Hill, Minister for Health, in another place.

QUESTION TIME

TOURISM COMMISSION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:23): I seek leave to ask the Minister for Tourism a question about the tourism restructure.

Leave granted.

The Hon. D.W. RIDGWAY: Does the minister recognise the following quote:

> I have put it on the record before that the current chief executive I believe has worked extremely hard in difficult circumstances. He works hard, he works in a very diligent way, he is incredibly passionate about his commitment to tourism and he should be acknowledged for the work that he does.

Was the minister, in that answer to parliament just two days ago, talking about the chief executive of the Tourism Commission who was sacked today? If so, why was he sacked and what wrongs has he committed to deserve this dismissal?

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) (14:24): I thank the honourable member for his questions. I can assure this chamber that the decision made today to replace the current chief executive with a restructured new part-time chief executive position was not based on concerns about Ian Darbyshire's performance. I can assure members that it was certainly not based on any concerns about his performance.

The decision was made because we needed to produce a more efficient structure in terms of our Tourism Commission. We needed to restructure and reform the organisation into a flatter, more efficient organisation, and of course we are required to deliver significant cost savings. It was felt that these cost savings, given we have a series of previous budgetary savings targets that we are required meet and that the Mid-Year Budget Review has delivered yet another $1.2 million of savings that the commission is required to find, cannot be delivered with the current structure of the organisation.

We are looking to reform and restructure the organisation, to better be able to leverage opportunities that promote and support tourism in their very important role. We know that the work that the Tourism Commission does is vital for this state. It underpins the work of the tourism industry and it generates hundreds of millions of dollars to this state. I believe it is in everyone's interest to ensure that we have the most efficient and effective structure so we can move on.

The announcement was made not very long ago and I am very pleased to note that already SATIC, the industry council, has come out and warmly supported the changes. So too has the McLaren Vale Grape, Wine and Tourism Association and also the Tourism and Transport Forum. So already key industry tourism stakeholders are showing support for this announcement and these changes.

TOURISM COMMISSION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:27): I seek leave to make a brief explanation before asking the Minister for Tourism a question about the tourism restructure.

Leave granted.

The Hon. D.W. RIDGWAY: In 1991 the State Bank of South Australia collapsed with debts of around $3.5 billion. Not counting inflation, that is less than South Australia's tourism industry is worth to the state each year. Today the minister terminated the employment of the Tourism Commission's chief executive, Mr Ian Darbyshire, and employed instead a part-time acting CEO.

Incidentally, there was a royal commission into the State Bank collapse. The commissioner's judgement and the public verdict was that responsibility went all the way to the top.

To paraphrase the intent of the findings, a minister has to take responsibility for all entities under his or her portfolio, not just politically, but managerially as well. If not, the appointed managers can risk public money without accountability.

Today the Minister for Tourism denied three times—although the cock is crowing—responsibility for the fiasco that engulfs the state's tourism body. She absolved herself of blame by saying the commission is a statutory body—which it is, just like the State Bank. She cannot pretend that she does not know what is going on inside the commission, because when I asked the minister in this chamber yesterday how often she receives briefings from the chief executive or other officers of the Tourism Commission, her answer was, 'Regularly'. My questions to the minister are:

1. What role will the former Michael Atkinson, Kevin Foley and Mike Rann media spin doctor Rik Morris take in the new, flatter structure?

2. Will he, a man with no experience in the industry, now be the de facto chief executive?

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) (14:29): In response to the last question, I can answer no; that's quite straightforward. To go back to some of the earlier questions and assumptions underpinning that, first, I need to put on the record that Ms Jeffreys will not be an acting chief executive, as the Hon. David Ridgway indicated. She is not acting in the role: she will be the chief executive. She will be operating at a 0.5 FTE position in conjunction with also chairing the commission, and that will be for a period of up to 12 months. She will have the full responsibilities of the chief executive as outlined in legislation. So, she is in charge.

In terms of absolving responsibilities, I have never shied away from wearing responsibilities, never. I am not afraid to make difficult decisions and I do not shy away from the responsibilities I have as minister—or, for that matter, any other responsibilities I have in my life. I have the same set of values that underpin everything I do and all my actions.

I reiterate the point: the board is an independent statutory authority. Obviously, in terms of their adherence to legislative requirements there are elements that the government has a responsibility for, and as Minister for Tourism I certainly have responsibilities in respect of those matters. In terms of the operational management of the day-to-day decision-making of the board of the commission, they are matters for the board and I do not interfere with that. It is not my responsibility and I do not have the mechanism to do that. I have a very blunt and broad power to direct the board, but that requires tabling that here in parliament.

So members can see that the line of responsibility and accountability is set up in such a way as to maximise the independent operation of the Tourism Commission and for it to operate in a commercially viable way—and, clearly, at arm's length from government. They need to get on and do the job they do, a job they do extremely well. We hear the buzz of the Clipsal race going on in the background but no-one highlights how wonderful the successes of the South Australian Tourism Commission are.

I saw people here at the Tour Down Under who were enjoying the hospitality of that event, a race that this government has advanced to become the leading event here in South Australia. It is a race that is coveted by every other jurisdiction, and this government has been able to take it from a race that lost money for the first few years after it commenced to one that now generates $40-odd million, with visitor rates of 37,000-odd. It is a highly successful, highly coveted race.

We do not hear anyone from the opposition espousing the achievements and successes of the South Australian Tourism Commission—no, no, no. What we hear is them bagging and badmouthing, pulling down our state, pulling down one of our leading brands—

The Hon. D.W. Ridgway: You deserve to be bagged.

The PRESIDENT: Order!

The Hon. G.E. GAGO: —the South Australian Tourism Commission. They pull them down, they bag them and badmouth them, and it is an irresponsible thing to do. Bagging and badmouthing these important state brands has adverse effects on the state. It is a major brand in this state, one that is very important in underpinning the tourism industry. It erodes public confidence and has the effect of potentially damaging future opportunities for this state. The opposition is completely irresponsible in the way that they are dealing with this.

In terms of the role that Rik Morris is having in relation to the new structure, Ms Jeffreys, in her new role as Chief Executive, has been given the responsibility to put together a strategy for a restructure and reform of the organisation. She is in the role as of today and she will commence that work immediately. I look forward to hearing from the board and seeing the plan that they put forward to restructure and reform the organisation to maximise some opportunities for tourism and to drive efficiencies and deliver savings.

TOURISM COMMISSION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:35): Supplementary question. How does appointing Mr Morris in late December on a six-figure salary deliver cost savings and a flatter structure?

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) (14:35): The appointment of staff within the South Australian Tourism Commission is a matter for the Tourism Commission and the board. They are completely responsible for the hiring and firing of all of their staff, and the way they structure their operations and the day-to-day way that they manage that. The whole of the organisation will be looked at and reviewed by the board. That work has just commenced. As I said, we look forward to seeing what proposals the board put forward in terms of recommendations for the restructure.

TOURISM COMMISSION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:36): Further supplementary: did the minister discuss Mr Morris's appointment in any of her regular meetings with the chief executive?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:36): Is the honourable member is suggesting—what, prior to his appointment, that I had—

The Hon. D.W. Ridgway: You can choose to answer it any way you want—prior, since.

The Hon. G.E. GAGO: So, have I had any discussions about his appointment?

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: I am just clarifying the question. Is the question: have I had any discussions with either the board or the chief executive?

The Hon. D.W. Ridgway: Well, you haven't, because you haven't met with the board.

The Hon. G.E. GAGO: I have met with the chair several times, so I am still—

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Order! Have you got a further supplementary question?

TOURISM COMMISSION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:37): Further supplementary: the minister said yesterday in this chamber that she met with the chief executive regularly. I ask: did she have any discussions in relation to the role that Mr Morris will play with the chief executive?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:37): No. I was informed that he had been employed. In fact, to the best of my knowledge, I was not even aware that he was applying for the position. I cannot remember exactly, but I remember I was quite surprised at the time. So, I had no knowledge. I had no discussions about that prior to his appointment, and I have certainly had no discussions about his appointment, other than to be informed that he had been appointed and what his new role would be.

TOURISM COMMISSION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:38): Further supplementary: what are the job specifications for the position of general manager?

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 think it is operational manager. I could not—

The Hon. D.W. Ridgway: You just said you discussed it with them.

The Hon. G.E. GAGO: The job descriptions of staff members are a matter for the commission. These are questions that would be better directed at the chief executive.

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

TOURISM COMMISSION

The Hon. T.J. STEPHENS (14:38): Given that you have been the minister for five months, are you telling me that throughout this whole debacle you still have not met with the full board of the South Australian Tourism Commission?

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 have already answered that question.

Members interjecting:

The PRESIDENT: Order! That was a statement, not—

The Hon. T.J. STEPHENS: Supplementary question.

The PRESIDENT: No, it was not a supplementary question: it was a statement.

The Hon. T.J. STEPHENS: I want to ask a supplementary question.

The PRESIDENT: Have you got another supplementary question?

The Hon. T.J. STEPHENS: I have a supplementary question.

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

TOURISM COMMISSION

The Hon. T.J. STEPHENS (14:39): Have you met with the full board of the South Australian Tourism Commission?

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 have answered it. You are wasting your time.

TOURISM COMMISSION

The Hon. R.L. BROKENSHIRE (14:39): A supplementary question: can the minister confirm to the house that due process and transparency occurred in the appointment of Mr Rik Morris? If the minister has not investigated that, can the minister investigate and report back to this house?

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): That's outrageous! What an outrageous assertion! That is outrageous, and I really find it incredibly offensive that members of parliament can come into this place, cower under parliamentary privilege, cower under the protection of that and use this place as an opportunity to create innuendo that would create a disreputable—

The Hon. R.I. Lucas: Spit it out, Gail.

The Hon. G.E. GAGO: Well, I am flabbergasted, I have to say. I am flabbergasted. I find this really incredibly difficult to come to grips with—that members of parliament could be so despicable. If the honourable member has any evidence whatsoever to suggest—it's disgraceful behaviour. It's absolutely disgraceful.

You come in here and you ruin the reputation of good people and it's a disgrace. It's an absolute disgrace. It's an abuse of privilege—an absolute abuse of privilege. If he has any minute bit of evidence, even one tiny skerrick of evidence that there was anything untoward in relation to that process, well, put up or shut up. It's an absolute disgrace to come in here and cast such innuendo and aspersions on good, hardworking people.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Lucas might as well have one, too.

TOURISM COMMISSION

The Hon. R.I. LUCAS (14:41): When was the minister first advised of the decision to restructure the position of the chief executive and who advised her?

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) (14:42): The decision of the board?

The Hon. R.I. Lucas: No, the decision to restructure the position to a part-time one.

The Hon. G.E. GAGO: The decision? Sorry, I am just clarifying. I am just checking. He is asking the question: when was I advised of the decision?

The PRESIDENT: The Hon. Mr Lucas already knows the answer, minister.

The Hon. G.E. GAGO: Is that correct; when I am advised of the decision?

The PRESIDENT: The Hon. Mr Lucas already knows the answer.

The Hon. R.I. LUCAS: I am happy to repeat the question for the minister. She is having difficulty with these. It is a simple question. When was the minister first advised of the decision to restructure the chief executive position to a part-time position and who advised her?

The Hon. G.E. GAGO: The decision to restructure was made by the board yesterday afternoon and I was informed of the recommendations that came from the board yesterday evening. The information was passed through to my chief of staff and she then passed it on to me.

TOURISM COMMISSION

The Hon. R.I. LUCAS (14:43): A supplementary question arising out of the answer: when was the minister first advised of the intention to restructure? The minister has just indicated the decision, but when was she advised it was intended to restructure the position to make it a part-time one and by whom?

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) (14:43): I and I am sure the board have also been putting their mind to these things for some time. I certainly have, so I have been contemplating what strategies might be available to assist the board to be able to deliver the efficiencies that it would need, since the Mid-Year Budget Review handed down a further saving requirement of $1.2 million.

So, I have been putting my mind to that and thinking through and looking at options since then and I am sure the board has been doing so as well. I know that they are an incredibly high-calibre board. We have a group of quite incredibly competent people who are very good at what they do, so I am sure that they have been putting their mind to these things as well. I have certainly been looking at what options are available. As I said—

The Hon. R.I. Lucas: But when did you have that first discussion?

The PRESIDENT: Order!

TOURISM COMMISSION

The Hon. R.I. LUCAS (14:44): I have a supplementary question arising out of the answer. When did the minister have the first discussion with the Chair of the South Australian Tourism Commission about the possibility of restructuring the chief executive's position into a part-time one? When was that first discussion?

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) (14:45): We have been having discussions about this for a number of weeks, as I said, exploring a range of different options. I cannot remember exactly which week that occurred in, but I can certainly put on the table that those discussions have been occurring for some time.

TOURISM COMMISSION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:45): Final supplementary question. Can the minister name any other tourism body in any Australian state which has a part-time chief executive?

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) (14:45): No.

NARACOORTE REGIONAL LIVESTOCK EXCHANGE

The Hon. CARMEL ZOLLO (14:45): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about the Naracoorte Regional Livestock Exchange.

Leave granted.

The Hon. CARMEL ZOLLO: The marketplace is, of course, important in the study of economics because it provides a place for buyers and sellers to meet to trade goods and services. Attracting buyers and sellers to use market facilities is also important, and key to this is providing facilities that enable transactions between buyers and sellers to progress with full information at minimal cost and in the quickest time. My question to the minister is: can she please explain how the government is supporting the sale of livestock in South Australia?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:46): I thank the honourable member for her most important question. Members will be familiar with the system of selling livestock such as sheep and cattle in rural saleyards. It has been a feature of Australian country life for many years. One of this state's most important livestock exchanges is the Naracoorte Regional Livestock Exchange, which is run by the Naracoorte Lucindale Council.

The livestock exchange is a nationally accredited facility located five kilometres east of Naracoorte and it is one of the top stock-handling facilities by throughput volume in South Australia. It is of significant economic importance to the region's farmers, feedlot operators and also meat processors and it is a major source of supply for Teys Meatworks, Naracoorte's largest employer.

To give members some idea of the size of the operation, during the 2010-11 financial year, the exchange handled over 600,000 sheep and 118,000 cattle, including livestock from New South Wales, Victoria, the Northern Territory and Western Australia.

The saleyard was established in 1973 and, although it has been well maintained over the years, we all know that equipment ages, new technology becomes available and operational constraints emerge. The changes to the industry and its practices in the 39 years since this livestock exchange was established are considerable. Just to take two examples, B-double trucks and electronic ear tags which identify each animal are the norm not the exception, and the infrastructure to sell stock must keep pace with best practice to ensure its ongoing usefulness.

I understand that, as a result, last year the council approved plans to upgrade this important community asset. Phase 1 of the project, which is being undertaken in this financial year at a cost of $4.2 million, is directed to water management and saving. It involves the upgrade of existing wash-down water treatment of trucks, collection of run-off from the new yard roofing and treatment of storm and wastewater.

When complete, stage 1 upgrades to the existing wash-down treatment and collection of roof run-off from the new yard roofing at the exchange will result in re-use of blended treated wastewater and stormwater from the site to irrigate council community open space. This re-use will help to reduce dependency on groundwater for water supply in the town.

I am pleased to advise that I have approved a grant from the Regional Development Infrastructure Fund of $200,000 to contribute to phase 2 of this $1.84 million project by the Naracoorte Lucindale Council. The RDIF grant will go to the cost of the new electronic weighbridge (about $320,000) and 162 gates for the lead-up yard ($98,000) as part of phase 2 of the project.

This phase of the project is due to occur in 2012-13. This important contribution is helping to maintain Naracoorte as the premier livestock selling facility in the region through providing high quality infrastructure that meets the needs of this important industry. In 2010-11, the Food

Scorecard estimated the value of SA beef production as $286 million, while sheep and lamb production value was $428 million out of a total livestock production of $1.09 billion, so it is a very important industry to us.

Project benefits include improved efficiency of livestock weighing. This means that more stock can be processed per hour, and this is done more accurately, giving a fair result for both buyers and sellers. In turn, this improves the attractiveness of the livestock exchange for sellers and buyers, increasing economic activity in the district. The economic impact statement made by the council also indicates that the project will lead to the employment of an additional 1.5 FTEs.

I am advised that the Naracoorte Lucindale Council was approached by a company seeking to lease the facility from them. Following stakeholder and community consultation, which supported the council's retention of the exchange, it developed the projects to improve the site before making application for assistance under the RDIF.

PUBLIC SERVICE, FAIR WORK PRINCIPLES

The Hon. R.L. BROKENSHIRE (14:51): I seek leave to make a brief explanation before asking the Minister for Industrial Relations a question about fair work principles in the Public Service.

Leave granted.

The Hon. R.L. BROKENSHIRE: I note the minister's passion about fair work principles from his answer to my question yesterday and his determination to see the passage of the Work Health and Safety Bill. I also recall the former premier proudly proclaimed that he had singlehandedly saved the workers in the South Australian Public Service from the injustices of WorkChoices by preventing IR powers from commonwealth takeover.

My constituents allege that the public sector workers have at times been pushed out of their jobs using the excuse of mental health provisions within the Public Sector Act 2009. That act was a bill of this parliament promoted to the public as a bill to give power to departmental chiefs to 'hire and fire' staff. For instance, on page 7 of *The Advertiser*, an article by Mr Greg Kelton described them as 'radical changes' and the 'biggest shake-up of the state's public sector in 20 years'.

The proponent of that bill, I note, was the former minister assisting the Premier in cabinet business and public sector management (now Premier), the Hon. Jay Weatherill MP. My question is: does the minister believe section 56 of the Public Sector Act 2009 contains enough safeguards to ensure it is not abused by departmental chiefs or his/her nominees to push alienated workers out of work via mental health grounds?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:53): I thank the member for his question. You do cover some quite important issues, and some of them could be quite complex. It is not a matter of just looking and quoting a section of the act. I want to check with the Public Sector Workforce Relations. I want to discuss this issue in detail and get back to you with an answer.

CENTRAL LOCAL GOVERNMENT ASSOCIATION

The Hon. G.A. KANDELAARS (14:54): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about the Central Local Government Association.

Leave granted.

The Hon. G.A. KANDELAARS: I understand the minister recently attended the Central Local Government Region of Councils meeting. Can the minister provide further information on this matter?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:54): As part of my wanting to develop a very good relationship with local government, I take the time to go out into the regions and attend their local regional government association meetings. Recently I had the honour of attending and speaking at a meeting of the Central Local Government Region. The association is made up of 15 councils that span the Mid North, Flinders Ranges, Yorke Peninsula, Clare and Barossa Valleys.

James Maitland, Mayor of the Wakefield Regional Council, is the president of the association and chairs the meetings. This meeting was held at Balaklava. One of the most topical

issues of the day was the Local Government Disaster Fund. As I have previously advised the chamber, a number of councils within the Central Local Government Region sustained extensive wind and flood damage to local government infrastructure in late 2010 and early 2011. A number of councils applied to the Local Government Disaster Fund Committee for funding assistance and payments were approved as part of the Mid-Year Budget Review late last year.

I was able to talk to the association about membership, about the lessons learnt from this experience and ensuring that we plan for the future. I also had the opportunity to address the association about a broad range of issues ranging from governance, accountability and codes of conduct as part of the next stage of the local government accountability reforms. This discussion provided an excellent opportunity for various mayors and representatives to put forward their views and ideas. Of course, all councils will have the opportunity to make submissions to the consultation paper that is shortly to be released by the government and the LGA.

This meeting also provided an excellent opportunity to hear about some of the local issues facing the association's membership at the present time. While we do not always agree with each other on various issues, I believe it is essential that as elected officials we listen to councils and their representative organisations about matters that affect regional South Australians. I welcome the input and contribution that an organisation such as the Central Local Government Region can provide.

POLICE, DISABILITY TRAINING

The Hon. K.L. VINCENT (14:56): I seek leave to make a brief explanation before asking the minister representing the Minister for Police a question about police training around people with disabilities.

Leave granted.

The Hon. K.L. VINCENT: When the new Minister for Police, Hon. Jennifer Rankine, was appointed last year, I was quite excited. I was excited because I had not had much luck interesting her predecessor, Mr Kevin Foley, in a very serious issue. That issue is of course the problem of police interactions with people with disabilities. I am sure members have heard me speak about this before, but to refresh their memories I am concerned about the lack of police training in dealing with and interviewing people with disabilities.

The police have little training around disability itself; in fact, all they have is a short course delivered online. They have no specific training around disabilities, which they might need to deal with often, such as autism, and they have no training in how to interview or question someone with a disability, which is a particular problem when it comes to interviewing people who communicate using methods other than speech.

The result of these shortfalls, in summary, is a miscarriage of justice for people with disabilities. Their voices are most often not respected by the police and, when they are heard, they are often misunderstood. I want to address this issue, so I naturally sought to meet with the former minister for police, Kevin Foley. I made a request and his office rang to say that he was too busy working on the Olympic Dam mine expansion and that they would have to get back to us later. But, of course, for former minister Foley there was no later.

Minister Rankine was then appointed to the portfolio and I thought that I might have more luck with her. So, a month ago my office made a request to her office, asking for a meeting to be granted to discuss these issues. To this day I have had no response at all to that request. My questions of the minister are as follows:

1. Will the minister meet with me to discuss the very serious issue of police interaction with people with disabilities?

2. Is this issue not of interest to her, despite its being part of her portfolio area?

3. Does the minister, like her predecessor, believe that other areas, like mining, are of a higher priority than the human rights of people with a disability?

4. Has the minister spoken with her colleague, the Attorney-General, about the issue of justice for people with disabilities, or is she unaware of the reforms the government is supposed to be making in this area that directly affect her portfolio?

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 questions on a very important topic regarding police training on the issues faced by people with disabilities. I will undertake to take that question to the minister in another place and bring back a response. I might just take the opportunity to refresh our collective memories about what the government has promised to do in terms of the disability justice plan, which will be developed in further consultation with people living with a disability. The Attorney-General in another place, the Hon. John Rau, has publicly committed to reviewing the Evidence Act 1929 to assist vulnerable people in the justice system, and I look forward to working with the Hon. Ms Vincent in pursuing those goals.

DISABILITY SERVICES

The Hon. J.M.A. LENSINK (14:59): My questions are to the Minister for Disabilities regarding the investigation by the Public Advocate into equipment purchases:

1. How much money was involved in total?

2. Were there any breaches of the Public Service Act, the Disability Services Act or the Public Service code of conduct?

3. Will the government refund the clients who had money taken without their authority?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:00): I would like to thank the honourable member for her important question. Today I am advised that if people have paid for equipment that they were eligible for they will be reimbursed. I have been advised that there is a system that is checked at multiple levels by staff providing support and staff monitoring for trust funds to ensure people who are eligible for equipment receive the equipment for free.

Through working with the Public Advocate, 51 pieces of equipment were identified. Not all items were within the scope of the current equipment provisions and some clients elected to pay for the equipment themselves. We do not discourage people from purchasing their own equipment if they wish to do so, but we do assist where we can. To provide some context around equipment provision through this government, in 2011-12 we will provide 5,000 equipment items and 600 home modifications, I am advised.

As a result of our commitments we have increased the amount of disability equipment supplied by 400 per cent since 2001-02. Since 2002 we have invested an unprecedented $50.5 million in disability equipment, and this commitment will boost our annual commitment to disability equipment, repairs and home modifications for both adults and children to $9.3 million; an increase of 95 per cent since 2002-03. I reiterate that for any instances in which people have been charged in the past through their trust accounts for equipment for which they would be eligible otherwise, the department will reimburse those costs.

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

DISABILITY SERVICES

The Hon. J.M.A. LENSINK (15:01): Will the minister answer my questions about the breaches and how much was involved or not?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:02): I apologise; I overlooked those earlier questions. I will undertake to get a response on those and bring it back to the house.

The PRESIDENT: The Hon. Kelly Vincent has a supplementary.

DISABILITY SERVICES

The Hon. K.L. VINCENT (15:02): Has the Minister for Disabilities yet reached a decision on whether he will rescind the government decision to move funds from the disability trust fund to the Public Trustee; and if he has when will he announce that decision?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:02): I thank the honourable minister for her supplementary. Yes, I have; and in my own good time.

Members interjecting:

The PRESIDENT: Order!

INVEST NORTHERN ADELAIDE

The Hon. J.M. GAZZOLA (15:02): Can the minister advise how the launch of Invest Northern Adelaide will benefit the communities in northern Adelaide and South Australia?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:02): I would like to thank the honourable member for his very important question. Invest Northern Adelaide is a website that will promote the major economic advantages of doing business in the northern region of Adelaide. The project is a collaboration between the cities of Playford, Tea Tree Gully and Salisbury, and it is supported by the state government's Northern Connections, which has contributed $20,000 to the project.

The website will be an important tool for potential investors, developers and commercial property agents to access and share information about this very important and growing region of our state. By visiting the site, visitors can explore, investigate and learn about the $23 billion worth of major projects either underway or planned in the area. An interactive map highlights existing infrastructure, industry clusters and major projects, and showcases potential opportunities for advanced manufacturing and urban developments which provide affordable living options, commercial development and new infrastructure projects.

The map is designed to be (oh dear!) iPad-friendly, allowing the website maximum portability. It is designed to embed into other businesses' websites to provide a resource to their own clients. Someone is going to make me have a look at it soon, I imagine! Users can also subscribe to receive updates about new investment projects and opportunities. At the launch of Invest Northern Adelaide at Mawson Lakes earlier this month, the Premier and I welcomed this innovation as a great opportunity to raise the profile of the area as a primary attraction for investment, as did the City of Playford Mayor, Glenn Docherty, who said:

> This collaborative project between councils gives local industries the tools to promote and encourage investment in our region.

It makes sense to combine our resources, and I strongly support a regional approach to investment attraction to the northern Adelaide region. Invest Northern Adelaide is another example of how the Weatherill Labor government is working collaboratively with the community to benefit South Australia as we prepare for the mining boom and ensure that prosperity is shared across the entire community. I congratulate the cities of Playford and Salisbury for driving this very important innovative project.

SA WATER

The Hon. J.A. DARLEY (15:05): I seek leave to make a brief explanation before asking the Minister for Communities and Social Inclusion, representing the Minister for Water, a question relating to SA Water and Allwater.

Leave granted.

The Hon. J.A. DARLEY: On 9 February 2011 the Minister for Water announced that Allwater had been chosen as the preferred bidder to manage metropolitan Adelaide's water and wastewater services, and that the $1.129 billion contract would take effect from 1 July 2011. I am told that, understandably, the $1.129 billion is paid by SA Water to Allwater in periodical payments.

I also understand that Allwater subcontracts a number of smaller operators to assist in the management and maintenance of Adelaide's water and wastewater infrastructure and networks. I have been contacted by constituents who have raised concerns about the delay in which Allwater is paying these subcontractors, putting enormous financial pressure on these small businesses. My questions to the minister are:

1. Is my understanding of periodical payments for the $1.129 billion contract correct?

2. Can the minister advise whether any of these payments from SA Water to Allwater have been late and, if so, how many and how late?

3. Is there any penalty for late payment?

4. Is there a provision in the contract for SA Water to become involved should Allwater fail to pay subcontractors?

5. Is the minister aware of any situations where Allwater has been late in paying subcontractors and, if so, on how many occasions?

6. I understand United Water used to pay within 30 days of invoice and that there were two cheque runs per month. Is the minister aware of Allwater's payment schedule for outstanding invoices and, if so, can he provide details?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:07): I thank the honourable member for his important questions on Allwater regarding periodical payments, late payments, penalties, contractual provisions and the payment schedule. I undertake to take that question to the Minister for Water and the River Murray in the other place and bring back a response.

CAVAN TRAINING CENTRE

The Hon. S.G. WADE (15:07): I ask the Minister for Communities and Social Inclusion:

1. As the response to the mass escape at Cavan enters its fourth day, how much has the recapture of Monday night's mass breakout from Cavan cost the taxpayers of South Australia so far?

2. Will his department reimburse SA Police and other agencies involved in the recapture?

3. Wouldn't it have been cheaper for the government to raise the six-foot high perimeter fence and implement effective security at Cavan rather then deploy hundreds of police to recapture offenders who were already in custody?

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): I thank the honourable member for his very important questions regarding the costs to the taxpayer. I will undertake to take that question to the Minister for Police in another place and bring back a response. With regard to his question about hindsight, I can only say that hindsight is a wonderful thing. What I am concerned about though is having an investigation into this escape and finding out how we can prevent such escapes in the future. That is what I am interested in.

RIVERBANK PRECINCT

The Hon. CARMEL ZOLLO (15:08): I seek leave to make a brief explanation before asking the Minister for Tourism a question about the Regattas opening.

Leave granted.

The Hon. CARMEL ZOLLO: We have heard much in this place about the redevelopment of the Riverbank. The redevelopment will revitalise this part of the city and it is a wonderful example of the Weatherill government's commitment to making Adelaide a vibrant and interesting place. I understand that the minister attended the opening of the new Regattas Bistro and Bar, which is the first major work completed as part of the Convention Centre upgrade. Can the minister tell the chamber about the opening?

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) (15:09): This goes to one of the issues I was referring to earlier and that is that we see the opposition daily bagging our tourism brand, daily pulling down this state, and being negative about this state day in, day out. It is important to remind them of the many wonderful successes and wonderful initiatives that are in place.

I was pleased to officially launch the new $3.86 million Panorama Suite in Regattas Bistro and Bar complex earlier this month. As the member noted, Regattas is the first custom-designed and built stand-alone restaurant, bar and function place to open in the Riverbank precinct, supporting the Weatherill government's rejuvenation of the area.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: The rejuvenation obviously includes the $350 million expansion of the Adelaide Convention Centre over the next five years, but there are other important works as well. As members know, the redevelopment of the Adelaide Oval—including the infamous

footbridge—is also a part of the work we are doing in the area. We have already seen some work completed. The extension of the tramline to the Entertainment Centre has linked the city fringe with the heart of Adelaide, which we know—

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: Yes, it does go past Regattas. I know that the honourable member does not know his way around Adelaide very well, but we have extended the tramline down North Terrace right out to the Entertainment Centre. Of course, that means that it helps bring traffic and visitors down along the Riverbank area, which was a wonderful initiative of this Labor government. It helps link the city fringes with the heart of Adelaide, and we know that is an important part of revitalising and making the most of our town.

The redevelopment of the Riverbank precinct is one of the city's largest and most significant urban renewal projects ever undertaken. It aims to create a key crossing point between destinations to the north, south, east and west to create a place will come to symbolise Adelaide and all the things we value and love about our city.

I was very impressed with the new Regattas. Its location is right on the Riverbank, and its very expansive glass facade provides some fabulous views of the town, and patrons are able to see way up the river to Elder Park and the Adelaide Oval. It was wonderful to see the new Regattas Bistro and Bar offering extensive outdoor seating overlooking the river, with a new casual alfresco menu in addition to the à la carte menu, and a more relaxed environment for patrons.

I should also mention another exciting development. During this year's Adelaide Fringe Festival Regattas Bistro and Bar will be transformed into the Blue Note Club, with nightly live music and entertainment. The Blue Note Club is part of The Big Slapple at the Adelaide Convention Centre, an official Fringe hub in the West End, and that is also a new initiative.

The Big Slapple is Adelaide's newest Fringe precinct, which is hosting a range of 2012 Fringe shows including cabaret, comedy, live music and public art spaces. The Big Slapple provides festival-goers with the opportunity to visit shows in a bustling precinct atmosphere and will include themed venues, bars, restaurants, interactive displays and more.

Along with the Blue Note Club, other venues in The Big Slapple include the 48 Lounge, a fully themed cabaret venue, and the Tribeca Theatre. I am sure that members will agree with me that it is wonderful to see the Fringe Festival spreading to this part of the city, and I am sure that many Fringe customers will take the opportunity to see a show and have a drink at the fabulous new Regattas bar.

In addition to launching Regattas, guests at the launch event were also able to see the new first floor Panorama Suite, the first of many new meeting and event spaces to be created in the Adelaide Convention Centre over the next five years. The Panorama Suite lives up to its name, taking full advantage of its location overlooking the River Torrens. It is able to cater for boardroom-style events of up to 44 people and banquet-style events of up to 80 people.

The views from there are absolutely spectacular, and I strongly recommend that anyone who has a function requiring a room of that size should investigate hiring the venue. It is particularly beautiful and showcases Adelaide city. As I said, the views are quite spectacular, and I urge members to visit both Regattas and the Panorama Suite. I am sure they will be impressed.

RIVERBANK PRECINCT

The Hon. T.A. FRANKS (15:14): I have a supplementary question. Could the minister outline how much food was left over from the function and how much was donated to OzHarvest, if there was a leftover amount?

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 do not know how much food was left over. There was some finger food provided. It was a very modest event with some finger food and a few dips. I am very happy to find out whether there were any leftovers and to find out what Regattas generally do with their leftover food. It is always good to see these opportunities being made available to those who are in need.

POINT LOWLY

The Hon. M. PARNELL (15:15): I seek leave to make a brief explanation before asking a question of the Leader of Government Business, representing the Minister for Planning, in relation to development at Point Lowly.

Leave granted.

The Hon. M. PARNELL: In today's government *Gazette* is the announcement that the Minister for Planning has declared the proposed iron ore export facility at Point Lowly a major project. This proposal involves iron ore storage facilities, ore unloading facilities, a railway spur and ancillary development, including a wharf potentially up to three kilometres long. I note that this development is on top of existing industrial development at Point Lowly, including the existing diesel fuel facility that we know leaks.

There is also a proposed new diesel facility—perhaps two. We also have the proposed desalination plant that we know will pump billions of litres of waste into the gulf. We also have a proposal for an explosives factory. As members would know, Point Lowly is the site of the only known breeding aggregation of giant Australian cuttlefish in the world and is also a valued recreational area for the people of Whyalla. My questions of the minister are:

1. What analysis did the government undertake into alternative locations for a bulk ore export facility on Eyre Peninsula before agreeing to declare the Point Lowly project a major development?

2. What assurance can the minister give that the EIS for the proposed bulk ore export facility at Point Lowly will include a comprehensive, independent analysis of alternative port sites on Eyre Peninsula, noting that the minister has the power to require this analysis under the Development Act?

3. Given the potential cumulative impact of existing and proposed industrial developments at Point Lowly, isn't this latest proposal a potential sentence of death by a thousand cuts to the giant Australian cuttlefish at Point Lowly?

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) (15:15): I thank the honourable member for his important questions. I will refer them to the Minister for Planning in another place and bring back a response.

MINISTERIAL STAFF

The Hon. R.I. LUCAS (15:18): I seek leave to make a brief explanation prior to directing a question to the Minister for Industrial Relations on the subject of ministerial staff.

Leave granted.

The Hon. R.I. LUCAS: The confidential ministerial directory dated December 2011 shows that the minister, who has the onerous responsibilities for relations with local government and industrial relations, has 14 full-time staff, three part-time staff and a ministerial chauffeur. Amongst his 14 full-time staff is a chief of staff, a media adviser, two ministerial advisers, a policy adviser, a ministerial liaison officer for industrial relations, a ministerial liaison officer for local government relations, as well as office managers and various other advisers and assistants within the office.

1. Can the minister inform the house as to whether it is correct that prominent unionist, Mr Jimmy Watson, either has joined his ministerial staff or is soon to join his ministerial staff?

2. If that is true, is that in addition to these 14 full-time staff, three part-time staff and a ministerial chauffeur, or is Mr Watson joining to replace somebody else on the minister's staff?

3. If it is true that he is joining the minister's staff, what role in particular is Mr Watson to adopt?

4. If it is true, on what date did Mr Watson resign from his position on the WorkCover Corporation board?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:19): First of all, Jimmy Watson has been employed in my office for probably around about three weeks, I suppose. I understand he immediately, upon joining my

office, resigned from the WorkCover board. Jimmy Watson will provide some very valuable industrial relations advice.

I have known Jimmy Watson for over 20 years—a very, very highly regarded and well-respected union official. He will provide some very good industrial relations advice. He will also be able to keep the doors of communication open with the industrial unions. He also has great contacts and liaison with the employer associations. I treat them as equal with each other. It is important to keep the doors open.

Members interjecting:

The Hon. R.P. WORTLEY: While the opposition might mock industrial relations and local government as irrelevant, we on the Labor side of things think industrial relations and local government are pretty core to the economic activity of this state, and we don't shy away from that. As I said, I am quite proud to have Jimmy Watson as one of my staff.

The Hon. R.I. Lucas: What is he? A ministerial staffer?

The Hon. R.P. WORTLEY: He is my industrial relations liaison officer, and he will provide a very, very good—I must say, I don't know the actual title he has got. All I know is he provides a very valuable position for me, and I value the contribution he actually makes in my office.

MINISTERIAL STAFF

The Hon. R.I. LUCAS (15:21): I have a supplementary question arising out of the answer. Given that one of the 14 full-time staff members is Mr Michael Irvine, Ministerial Liaison Officer, Industrial Relations, has his position been terminated on your staff or is he continuing to be employed? If so, what is his role compared to Mr Jimmy Watson who, you have just indicated, is doing exactly the same task? What is the remuneration package for Mr Jimmy Watson on your staff?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:22): The position of Michael Irvine is that Michael Irvine has previously worked for SafeWork, and he is my liaison officer between myself and SafeWork. Jimmy Watson is a ministerial liaison officer.

Members interjecting:

The Hon. R.P. WORTLEY: Do you want the answer or not? I am quite happy to give you the answer. I am not quite sure of the salaries of these people. It is probably up in the $90,000-odd, I imagine.

The Hon. R.I. Lucas: You will bring it back?

The Hon. R.P. WORTLEY: I will bring it back, but these aren't hard to find. With all ministerial advisers, if they are gazetted, their wages are gazetted. I imagine you only have to look it up, but I am happy to get back to you in the future.

The PRESIDENT: Probably use their own voices too, those people. The Hon. Mr Kandelaars.

Members interjecting:

The PRESIDENT: Order!

SAFEWORK SA INSPECTORS

The Hon. G.A. KANDELAARS (15:23): My question is to the Minister for Industrial Relations. Can the minister advise the house about the important work of SafeWork SA's country teams?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:23): I would like to thank the honourable member for his very important question and also acknowledge the many years that the honourable member has been a great advocate for his members.

SafeWork SA has the vital role of promoting and encouraging safe, fair and productive working lives for South Australians right across this state and fulfils its role through a combination of strategic actions involving the provision of information, assistance and advice and ensuring

compliance with and enforcement of the state's industrial relations and occupational health and safety laws.

I recently had the pleasure of visiting SafeWork SA's Port Pirie and Whyalla offices to gain a better understanding of the specific work undertaken by inspectors to ensure safe, fair and productive workplaces in the regional areas of the state. Last year, I also had the pleasure of attending the Mount Gambier and Port Lincoln regional offices and met many employees, who should be commended for their ongoing commitment to workplace safety.

I also travelled to Ceduna, where I had the pleasure of attending my first ever 'truck stop'. I had the opportunity to view the important work of SafeWork SA inspectors in ensuring that operators and drivers met their occupational health and safety obligations, including in the safe transport of dangerous goods.

I am advised that, during the five-day operation, which also involved commonwealth and state authorities—such as the Department of Immigration and Citizenship, the South Australia Police and the Department for Transport, Energy and Infrastructure—SafeWork SA inspected approximately 100 vehicles. As result of these inspections, SafeWork SA inspectors issued 35 occupational health and safety compliance notices for issues such as first-aid kits and fire extinguishers in vehicles, and 40 dangerous substances improvement notices for issues such as inappropriate records and signage.

Truck stops are only one facet of the unique work undertaken by SafeWork SA inspectors in regional areas of the state. SafeWork SA regional inspectors have also conducted a fishing industry improvement program, which has seen inspectors audit various fishing vessels that operate in waters off Gulf St Vincent, Spencer Gulf and the West Coast.

SafeWork SA recognises that workers and employers have specific needs when it comes to proactive injury prevention activities, and SafeWork SA has tailored its strategies so that they are delivered at times and in places that better accommodate the needs of regional workplaces and industries.

For example, for Safe Work Week in 2011, 48 presentations were made at various times throughout the year to fit in with the seasonal work engagements of the regional communities. This approach proved to be successful, with over 2,500 people attending these regional sessions. It is important that we recognise the important work of SafeWork SA inspectors right across the state in ensuring positive industrial relations and occupational health and safety outcomes.

ANSWERS TO QUESTIONS

FEMALE GENITAL MUTILATION

In reply to the **Hon. S.G. WADE** (15 September 2010) (First Session).

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): The Minister for Police has provided the following response to question one:

1. Female genital mutilation is a serious offence which carries a penalty of up to seven years imprisonment and is not acceptable under any circumstances. I assure you that the safety of women and children is of paramount concern to both the South Australia Police and to other agencies involved in these matters.

If anyone has any has any evidence or suspicions of this offence being committed in South Australia, I urge them to make a report to SAPOL so the matter can be investigated without delay.

The Minister for Multicultural Affairs has provided the following response to question two:

2. Since 1997, the government has funded the South Australian Program for the Elimination of FGM. This community development program works with community organisations and supports women and men from relevant cultural communities to work with their communities to educate them about the law in South Australia and to provide information and education to support the elimination of this practice.

The program trains women and men as peer educators who provide community leadership and information about FGM. It also undertakes programs for young people and children to promote awareness and aims to identify and support women and children at risk.

The program has close links with and supports women from the affected communities who work in welfare services or as interpreters. These peer educators or community facilitators play a vital role when undertaking for consultations with families.

The program works with agencies such as Police, social workers in Families SA, hospitals and health services to raise awareness of the issue and promote referral of any children or women at risk and provide support and intervention where needed. The program also provides placement for social work students. Twenty-seven students have been trained in the past 10 years ensuring expertise about this issue is developed in the health and child protection workforce.

The program has worked in partnership with relevant communities to produced information resources in English, Somali, Arabic, Tigrinya, Amharic and Kurdish.

For more information about the South Australian Program for the Elimination of FGM contact Women's Health Statewide on 8239 9600.

The Minister for Education and Child Development has provided the following response to question three:

3. No cases of Female Genital Mutilation (FGM) have been confirmed by Families SA in the last five financial years. Families SA cannot comment on how many mandatory notification reports may have been received relating to FGM because data recorded about notifications of suspected abuse or risk of abuse does not capture this for statistical reporting purposes.

Currently a notification of FGM would be recorded as a reported suspicion of physical abuse. It would only be recorded as FGM following an investigation in which this abuse or risk of this abuse is confirmed. Families SA will change its screening and recording systems to specifically capture information regarding notifications relating to FGM for statistical reporting purposes.

GENDER IDENTITY

In reply to the **Hon. K.L. VINCENT** (15 September 2011) (First Session).

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): The Attorney-General has been advised:

1. For official data-collection purposes such as the registration of births, South Australian law knows of only two sexes; male and female. There may well be people who subjectively feel that they do not belong to either category, but just the same, they will have been registered at birth as either one or the other. Accordingly, and quite reasonably, where it is relevant for the government to collect data about a person's sex, those are the two options normally offered on forms.

2. The Attorney-General would advise persons filling in official forms that require an indication of their sex to indicate the sex shown on their birth certificate unless they have legally changed sex, in which case they should indicate the sex shown on the legal document evidencing that change.

3. The Attorney-General has considered the report of the Australian Human Rights Commission entitled The Sex Files, published in 2009. The report raises some interesting social issues but the Attorney-General's stance is based on current South Australian law.

SEX TRAFFICKING

In reply to the **Hon. R.L. BROKENSHIRE** (20 October 2011) (First Session).

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): I am advised:

1. Yes.

2. I asked to seek information from South Australia Police on the extent of sex trafficking in South Australia and I am advised that it is does not appear to be a major issue of concern for South Australia.

3. I am also advised that in 2000, South Australia implemented Chapter 9 of the Model Criminal Code as recommended by the Standing Committee of Attorneys-General through

Part 3, Division 12 of the *Criminal Law Consolidation Act 1935* (the Act). The Division targets traffickers at the domestic level and covers conduct that occurs in South Australia.

CEDUNA QUARANTINE STATION

In reply to the **Hon. J.S.L. DAWKINS** (22 November 2011) (First Session).

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): I am advised:

1. A practical completion inspection of the new quarantine station building was initially due on 16 July 2011 and occupancy of the new building was planned for end of July.

2. There were a significant number of faults detected at the practical completion inspection of the new building. The defects processes is a normal part of any construction fit out but unfortunately in this instance issues associated with the level of the surrounds, sloping pavement and tripping hazards made occupation of the building impossible on an Occupational Health Safety and Welfare (OHS&W) basis.

3. The portable facility was a proper transportable worksite office, hired from a local contractor, and met OHS&W requirements.

4. I am happy to report that Primary Industries and Regions SA (PIRSA) staff took occupancy of the new Ceduna Quarantine Station building on the 22 December 2011.

5. As I indicated in my initial response to this question, I want to put on the record that PIRSA is very committed to the facilities in relation to these quarantine stations. I am satisfied with the current arrangements and have no intention of making any changes at this point in time.

CEDUNA QUARANTINE STATION

In reply to the **Hon. J.S.L. DAWKINS** (22 November 2011) (First Session).

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): I am happy to report that PIRSA staff took occupancy of the new Ceduna Quarantine Station building on 22 December 2011.

BUSINESS NAMES (COMMONWEALTH POWERS) BILL

Adjourned debate on second reading.

(Continued from 29 February 2012.)

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) (15:28): I would like to thank honourable members for their contribution to the second reading debate. A question was asked by the Hon. Michelle Lensink. Essentially, clause 4 of the Business Names (Commonwealth Powers) Bill operates with clause 6 to define the matters being referred to the parliament of the commonwealth for the purpose of future amendments to the commonwealth law establishing the national business names registration system.

In order to achieve national consistency, these provisions were drafted by the Parliamentary Counsel's Committee and the business names legislation working group, both of which comprise representatives from all states and territories and the commonwealth. State, territory and commonwealth representatives agreed that it was reasonable for the commonwealth parliament to have a power to amend the national law as it relates to business names held by those engaged in unlawful conduct.

This is to help ensure the integrity of the public register for business names. For example, the commonwealth may reasonably wish to amend provisions of the national law which restrict who is eligible to register or renew a business name based on unlawful conduct. This would include, for example, offences under the national law and serious breaches of the Corporations Act.

While not identical to the Business Names Act 1996, section 8(4)(c) of that act already provides that a person must not register or renew the registration of a business name if the applicant (or one of the applicants), because of a conviction for an offence, would be prohibited under part 5 from carrying on a business under that name. Part 5 of that act requires that offenders

convicted of certain offences must not carry on business under a business name in this state without the permission of the District Court.

Bill read a second time.

In committee.

Clause 1.

The Hon. J.M.A. LENSINK: In relation to the cost of registration, could the minister advise the chamber what the cost to register is in South Australia and what the cost will be nationally when this comes into force in May 2013?

The Hon. G.E. GAGO: For South Australia, the fee for registration of a business name and renewal of existing business name, I have been advised, is expected to be lower. Under the national system, the fee for one year registration is proposed to be $30 and, for three years' registration, it is proposed to be $70. The current application fee in South Australia is $159. The current renewal fee is $128 for three years' registration.

The Hon. J.M.A. LENSINK: I presume then that there is some loss of revenue to the state government through OCBA. Can the government advise what that would be per annum and perhaps some forward projections?

The Hon. G.E. GAGO: I have been advised that the national partnership agreement provides for the facilitation of reward payments to be made by the commonwealth to states and territories for the achievement of key milestones in 27 key areas, including the establishment of a National Business Names Registration System. Under the agreement, South Australia will be entitled to up to $33 million in reward payments on the completion of relevant project milestones, including those related to the National Business Names Registration System.

Foregone business names registration revenue for South Australia is estimated to be about $596,000 in the 2011-12 financial year, representing five weeks of operation of the national system. On the basis of an expected commencement date of 28 May 2012, from the first entire year of operation (which is 2012-13), foregone revenue is estimated to be about $6.4 million per year ongoing, indexed over the forward estimates.

The Hon. J.M.A. LENSINK: If I could confirm—and I am not sure whether I heard all of the minister's answer—that is just for the business names section of the national partnership. Is that correct?

The Hon. G.E. GAGO: The information I gave in terms of the commonwealth funds, the rewards payments, that $33 million was in relation to the completion of all relevant milestones across the 27 key areas, and the loss of revenue was in relation to business names registration.

Clause passed.

Remaining clauses (2 to 9) 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) (15:36): I move:

That this bill be now read a third time.

Bill read a third time and passed.

BUSINESS NAMES REGISTRATION (TRANSITIONAL ARRANGEMENTS) BILL

Adjourned debate on second reading.

(Continued from 29 February 2012.)

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) (15:37): I thank members for their second reading contributions and look forward to this bill being dealt with expeditiously through committee.

Bill read a second time.

Bill taken through committee 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) (15:39): I move:

That this bill be now read a third time.

Bill read a third time and passed.

VOCATIONAL EDUCATION AND TRAINING (COMMONWEALTH POWERS) BILL

In committee.

Clause 1.

The Hon. R.I. LUCAS: The question I asked in the second reading was raised, in part, in the House of Assembly, I believe, and that was seeking a response from the minister on the record as to what the government is saying in relation to the impact of the proposed transfer on the fees that will be charged. I am happy to wait for the minister's advisers.

The Hon. R.P. WORTLEY: There were a number of questions asked in the lower house during committee and one of them was the cost of regulation to TAFE SA in the first year of transferring to the national regulator. The national regulator released a fee schedule in early 2011, which caused concern among RTOs. The national regulator considered the feedback from RTOs through the regulatory impact statement process and in response revised their fee schedule and agreed to phase in full cost recovery. It is therefore not expected that regulatory fees will substantially impact on South Australia's RTOs at initial transition.

It should be noted that the state has also begun to move to full cost recovery, which would have also seen increased fees for RTOs. Regarding fees for students, the different arrangements for charging fees across states and territories make it difficult to compare student fees. The fee paid depends on the circumstances of the individual, where they are studying and whether they are receiving publicly funded or privately funded training.

From 1 July 2012 the fees paid by students for vocational education training courses will change with the expansion of subsidised training under Skills for All. Under the new arrangements courses will attract a subsidy ranging from 100 per cent at the lower level qualifications up to 70 per cent subsidy for higher level qualifications. Registered providers will be able to charge fees for courses that are not fully subsidised, but the department will set a cap on the maximum fees that can be charged for each course.

The Hon. R.I. LUCAS: Is the minister indicating that the government is not in a position to indicate whether the claim that on average fees in South Australia for students are generally lower than the national average is correct or not? I accept that it is difficult because the government indicates that it has no evidence to support that proposition which has been put to the opposition that generally fees in South Australia have been lower than the national average and that therefore this move, albeit delayed by up to four years, will mean greater than proportionate increases for South Australian students compared to those in other states and territories.

The Hon. R.P. WORTLEY: At the moment some fees are higher and some fees are lower, depending on what courses they are doing, but the fee structure will be managed through Skills for All, and prices will be set and will be benchmarked with other states.

The Hon. R.I. LUCAS: I understand that they will be benchmarked, but is the minister saying that under this new arrangement the benchmarking could be that South Australian fees will be set at a level below those in the other states, as is the contention that exists at the moment, or is he saying the benchmarking is that they will be equivalent to, that is, eventually after the four-year transition students in South Australia will pay exactly the same fees as everybody else in the nation?

The Hon. R.P. WORTLEY: The fee are not set by the national regulator. They are actually set by the providers and state governments.

The Hon. R.I. LUCAS: The state government remains, as the government would know, an important provider. Is the government committing, should it continue for the next four years, to ensure that its state-imposed fees will be at a level below those in the other states, or is it saying that it is going to benchmark them at the equivalent level to the state government provided equivalent fees in the other states?

The Hon. R.P. WORTLEY: We cannot actually determine that; we are still modelling for the fees. However, the fees will be regulated with regard to the sort of course they are taking, and the state government will be mindful of the level of fees that are being charged at the moment to ensure that there is no big impost on students.

The Hon. R.I. LUCAS: I will not delay the committee any longer on this but—

The Hon. R.L. Brokenshire: Hear, hear!

The Hon. R.I. LUCAS: I am sure that the Hon. Mr Brokenshire would like the interests and concerns of those young people and older people who have to pay fees for courses to be pursued during this debate. I put on the record that clearly one of the concerns from some of those associated with VET training is that we will see significant increases in fees, and more significant increases in South Australia because they believe that we have had lower levels of fees than some of the other states and that this move (and I raised this issue yesterday in relation to this bill as well as the Work Health and Safety Bill) to national harmonisation or uniformity, or whatever you want to call it, in some cases disadvantages smaller states like South Australia.

I guess we will not know until four years down the track, but I put on the record here that I am a cynic in relation to this. The issue has been raised and I raise it again, and note that we have not really been given any assurance from the government that this will not be the case. In four years' time we may well see our students facing the most significant fee increases of all the students in the nation for the reasons that I have outlined. Their position has not really been protected by this government and its ministers during this particular debate.

The Hon. R.P. WORTLEY: I note the honourable member's concerns, but all that is being transferred nationally is the ability to regulate the regulation of providers. Standard settings and policy regulation and fee setting are still in the hands of this state.

The Hon. A. BRESSINGTON: Just out of curiosity, with all the other harmonisation legislation there has been money passed from the commonwealth to the state. Is that the case with this particular legislation as well? If so, how much and who gets it?

The Hon. R.P. WORTLEY: There is no actual money allocated through the COAG arrangements with regard to this, but because we are a reformed state there will be money coming our way; how much is still being negotiated.

The Hon. R.L. Brokenshire: So you pass the legislation and—

The CHAIR: Order!

Clause passed.

Remaining clauses (2 to 10), schedule and title passed.

Bill reported without amendment.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:55): I move:

That this bill be now read a third time.

Bill read a third time and passed.

LIVESTOCK (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 February 2012.)

The Hon. R.L. BROKENSHIRE (15:56): For your relief, I will not be talking too much, because I already said quite a deal on this the other night. I want to conclude my remarks on this bill, because it is an important bill. I also want to put a few questions on notice to assist the minister for the committee stage.

The first question to the government is: has the government consulted on this draft bill with stakeholder groups? If so, who did the government consult with? I also ask, in summing up my second reading contribution: what was the intergovernmental agreement on contribution towards the costs in the biosecurity area as between federal government, state government and industry shares? The argument has been put to us that shares were agreed to, but any biosecurity levy

would in fact extract costs from farmers to pay for the state government's share, which is of concern.

I ask the government if it can explain what the requirements will be under the Emergency Animal Disease Response Agreement (EADRA)? In other words, how does the emergency animal cost sharing agreement interface with this bill? Can the minister please also answer as to what extent surveillance will be carried out for horses and what the costs will be, if any, in the government's intent with respect to any surveillance regarding horses? This is particularly in light of what we have seen, sadly, with some diseases of horses in the Mid North of South Australia.

Many of my constituents and stakeholder groups that I work with have an objection to section 25, where the government has legislation to introduce this new biosecurity levy, and totally reject that. This is the idea of coming up with a new tax that is not necessary. They argue—and I support them—that what they are doing is trying to get farmers to pay twice. We are picking up that South Australia, through a national agreement, signed off on an Australian national biosecurity plan. It relied upon agreed state, commonwealth and industry contributions.

We believe that, with the South Australian government introducing this biosecurity levy, we are the only state now contemplating this—the only state. We believe this levy is raising money to cover the SA government's share. In fact, I am damned sure that it is. Under the agreed rules, our industries are already paying. This is an additional thing in South Australia that the government has come up with. We can only suspect that it is using this extra levy to help make us pay—and I say 'us' as I declare that myself and my family are farmers, too, so no-one has a go at me—for what was originally the South Australian government's share.

The other point is that a farmer got a letter from someone—I will not say who—who was in those government negotiations regarding the state-commonwealth-industry share. My understanding is that plant biosecurity is still involving state contribution. I ask the minister to closely look at this, and I will be challenging the minister on this during committee, because there is no means to recover plant biosecurity.

So, the government, as it rightly should be, is using some of the massive amount of money—$15 billion of general revenue—to pay the state contribution to plant biosecurity, and I am happy about that. However, the livestock industry worked on creating both the National Livestock Identification Scheme (known as NLIS) and the Property Identification Code system (known as PIC), which costs farmers a lot of money, I might add. I mentioned some of that last night, but it costs farmers a lot of money.

We agreed, and so did the stakeholders at that time, to create those things because there was good purpose and reason for them. Then, the part that really does frustrate stakeholder groups and farmers is that, as soon as they had agreed—and, therefore, this government had everyone onside and paying for it—the government has now turned around and used that information to give it the information to charge PIC holders. There is not an equivalent mechanism to achieve this via plant biosecurity.

In summary, what I am saying and what I am asking the minister to respond to in committee is that I believe—and I am convinced that this is the situation—that the government is hitting livestock industries through a mechanism that the livestock industries in very good faith, over a number of years, agreed to with the government for NLIS and PIC. Now, it is using that goodwill to undermine fairness with respect to some sectors of agriculture, namely, in this situation, livestock.

To me, that is totally unacceptable. To the key stakeholder groups, that is totally unacceptable. It is time that the government came clean in this chamber during the committee stage and told us what the truth is so that honourable members have the opportunity to make a decision about what they do and do not support in respect of this bill.

I encourage my colleagues to look at the amendments that I have tabled. As I said in my remarks earlier, one of the amendments that Family First has now tabled—just in case members have not had a chance to read them—is that, categorically, we knock out once and for all any opportunity that the government has to double dip and now hit livestock producers in respect of biosecurity fees.

When I spoke the other night, I may have offended a former minister and that is the way it is when you are a minister. If you are in charge of a situation at a time and certain things occur and you support them, you cop it. However, at least this minister has listened and realises that there is

a concern. She realises that there will be revolt. Mark my words: if there is any charge for these biosecurity fees, there will be a revolt this time. They will not sit back and put up with this any longer.

I do not want to see any goodwill that is still there between farmers and Primary Industries and the Will Zacharins of this world destroyed. I have said this before and I will say it again—and I am not using parliamentary privilege for this, I am simply saying this because it needs to be said and this is the place in which to say it—as a legislator, I have lost confidence in Will Zacharin and so has most of the agricultural sector.

What they now see is that Will Zacharin's primary job is no longer to focus on biosecurity—that is, the protection of our industries—but, one way or another, to find full cost recovery to satisfy the bean counters in Treasury and the accounting people within PIRSA and to get whatever he can for this government from farmers—and that is tragic. Some would argue that Will Zacharin is just doing his job. I am sure that he is probably a very good, loyal public servant for the government, but we need to build the goodwill, we need to rebuild the bridge between agriculture, the minister and the government. Prior to this minister taking over, that bridge has been in very much disrepair, and we know the reasons why.

This is the final straw that will break the camel's back, and I do not say that lightly. I have been told by many—in the parliament, around the table—who have been involved in so-called stakeholder input that they have had enough. So that we can go forward and see the good things that this minister and the Premier have done in putting together a comprehensive package of portfolios for agriculture in the rural and regional communities, give this minister a chance to actually rebuild that bridge, and, in doing so, grow opportunities for the state, for agriculture and for the government.

However, I put on public notice today that, from what I have observed across the state and with a fair bit of contact with a lot of people, we have a very fragile situation at the moment. It can be repaired, and one way to start that is to actually ensure that we have support one way or another with respect to biosecurity fees, and the government should find a way of managing it.

I made mention yesterday that provision was made for some money through PICs and the NLIS that may soften the amount of money that the government might then strike for a biosecurity fee. I put this on the record again, because I have been told that $1.2 million has now come out of the PIC, so only $1 million to $1.5 million has to come out of biosecurity under the animal health fund. I need an answer on this from the government during committee. I want to know the truth; that is all I want to know. Has there been a sleight of hand where systems that had been created in good faith by industry in a cooperative manner with the government are now being used to siphon out an additional $1.2 million so that only $1 million to $1.5 million has to be collected?

Where the Zacharins of this world might have made a little slip up is that they happened to actually say that, if they cannot get the last $1 million to $1.5 million, or they have at least recouped a fair bit that will assist them with the money that they were supposed to be getting under this, that is my concern. If a minister can categorically deny this with evidence in committee, I will take that back to the people that I am working with. I have trust and good faith with those people. They have only told me to put this on the public record because they are totally frustrated with what has been going on.

It is fair to say that this would have happened without any consultation with even the former minister probably, because it is the people in the bureaucracy who actually work out from where they are going to get the micro amounts to meet the efficiency dividends that they have to find. Unless they are really connected with the minister, they may not necessarily tell the minister. What the minister needs to do is look back through the *Stock Journal* and country papers and he will soon see how angry the rural sector was getting on this one.

I conclude by saying that there are some very good things in this bill, but this is an opportunity for us because we have been caught out before. As legislators, we have actually taken many things in good faith. In committee, when we have questioned and challenged this or that situation, we have been reassured, 'That is alright. You don't have to worry about that. That is all under control.' Only then do we find out that people get hit in the pocket. This time I do not want to take anyone at face value, and that is why I have proposed this very clear amendment:

87A—Nonrecovery of cost of biosecurity measures

> Fees for registration or allocation or renewal of identification codes or other fees imposed under this Act must not be used to recover the cost of biosecurity measures relating to livestock

> implemented by the administrative unit that is, under the Minister, responsible for the administration of this Act.

It is a pretty simple paragraph, but I have put it in there because I do not trust just taking an answer in committee now and then sitting there and passing that legislation to find that there is another sneaky way that people are hit in the back pocket.

In the past that has happened with goodwill. There is commonwealth money coming back to the states on a lot of this. There are industry sectors right across the spectrum of the livestock industry that are paying money every time they sell their commodities. They are happy to do that, but they have said no more. I look forward to the committee stage. I have put all my concerns on the record now for the minister and the minister's office to have a look at. I look forward to the minister's response once we get into committee.

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) (16:12): Given that there are no other indicated second reading contributions, I take this opportunity to sum up. I thank honourable members for their contributions to the second reading debate. I take this opportunity to respond to some of the questions raised and, if there are matters (some of which have been raised just now), I propose to deal with them in committee at clause 1, if members allow me that.

The Hon. Mr Brokenshire has raised a number of questions and matters for clarification in the first part of his second reading contribution. He queried the discontinuance of end of declaration booklets and their replacement with online registration and livestock sales. I believe he was referring to this in relation to using the National Livestock Identification System (NLIS). The NLIS is an industry initiative which the government has been pleased to support. The NLIS commenced many years ago. The books Mr Brokenshire referred to were produced and provided by the industry through their national research and development body, Meat and Livestock Australia.

The South Australian government of the day helped industry launch this initiative by assisting in the distribution of the books in South Australia but the books were provided without charge to users by industry, although industry funded the books through their national levies. The industry has since decided how the vendor declaration forms are made available and how they will be funded by the industry. The South Australian government is not making these decisions. The South Australian government supports the NLIS and provides support where it can such as through the legislative framework, but this is a system that is primarily managed and funded by the industry, not government.

In relation to artificial breeding, our current registration system is to ensure that where artificial breeding services are carried out as a fee for service, minimal standards are met to protect farmers and their stock. This is not applied to farmers performing artificial insemination on their own animals. The amendment to section 19 is to correct an oversight that currently makes it an offence for a person to carry artificial breeding procedures on their own stock, other than by a veterinary surgeon. Earlier legislation allowed farmers to perform artificial insemination on their own animals, and it was an oversight, and this was not continued.

Mr Brokenshire also raised a query in relation to clause 24 which amends section 47—Establishment of Fund. He indicated that he did not see why South Australia needed a new fund. The fund in question is the South Australian Exotic Diseases Eradication Fund. This is not a new fund. The fund has been in existence for many years. It exists to enable money received by South Australia for a major national emergency to be legally accepted, held and disbursed.

These moneys will be provided under the national Emergency Animal Disease Response Agreement, which is a cost-sharing agreement between industry sections and all Australian governments for sharing the costs of national responses to exotic animal disease incursions. Once the national agreement has been formally activated for an emergency disease, the national cost-sharing deed protocols are followed for calculating payments, and when and how they are provided. This money covers compensation to farmers affected by the exotic disease response. When there is no declared emergency, as is currently the case, there are no monies in the fund. This system is strongly supported by industry and obviously government.

The proposed amendments are to improve the operation of national cost-sharing arrangements in South Australia in the event of exotic disease outbreak. The amendments reflect changes made in the national deed (and I note that the honourable member has tabled

amendments and they will be dealt with in committee). However, I can foreshadow that the government is likely to have some difficulty with those amendments.

As set out in the second reading speech, this bill is finetuning the act. It includes enabling expiation processes as these are, in many cases, more appropriate than prosecution for some offences. The intention is a graded system of expiation amounts to a maximum of $500. Due to an oversight, proposed changes to section 88(2)(h) were omitted and I have tabled a government amendment to allow all new expiation fine tiers to be implemented in regulation following consultation with the industry. The bill arises following extensive consultation with industry, and I believe is supported well by industry. I commend it to the council.

Bill read a second time.

TOBACCO PRODUCTS REGULATION (FURTHER RESTRICTIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 February 2012.)

The Hon. D.G.E. HOOD (16:17): I have a very brief contribution on this bill. Family First is supportive of this bill and I understand that all members will support the bill, ultimately into legislation. I have a few comments in terms of what I see as the potential to improve the bill. The bill deals with the specifics of smoking exposure to children, and the like, and talks about specific distances from playgrounds, and all of that Family First supports. I do not think anyone has a problem with that necessarily in this place.

However, it is time we had a look at some of the bigger issues. We seem to be playing at the edges, to some extent. For instance, in the ACT and Queensland smoking has now been banned in any area where food is served. A typical scenario would be an outdoor area in a cafe, even in outdoor areas in hotels. In that state and territory the act of smoking has been banned in those areas. Certainly it has not destroyed their economies. There may be some varying views on that and maybe we should have such a debate.

Members may recall that I moved a bill in this place a few years ago to do exactly that. There was very little support for the bill at that time, but it seems that we are moving in that direction. Other states are doing that, so we need to look at that. There will be criticism of the bill—I accept that—but it is time that we understood that that is what is happening elsewhere. We may try to hold back the dam wall, but we are heading there anyway, and I ask the government to consider and look at it.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (16:19): I would like to take this opportunity to thank honourable members for their contribution to the second reading debate and I look forward to this being dealt with expeditiously through the committee stage.

Bill read a second time.

WORK HEALTH AND SAFETY BILL

Adjourned debate on second reading (resumed on motion).

The Hon. R.I. LUCAS (16:21): I am sure members will recall that I was speaking prior to the lunch break and now, refreshed and invigorated, I can continue. Just prior to the break I quoted the figures from the HIA and Rider Levett Bucknall. I was addressing the issue of the impact on affordability and I pointed out that Rider Levett Bucknall had been used by this government to do the Adelaide Oval costings, etc. and they had come up with these costings, together with the HIA, with the impact on affordability from somewhere between $20,000 and $30,000 for single-storey to double-storey dwellings.

At the same time the government has basically been attacking the HIA and the consultants that it has used on a number of occasions, in essence saying that what they have claimed is garbage and that it is part of a scare campaign. Here are just a couple of examples of what the minister, Mr Wortley, has said on radio. On 27 September last year he said:

> The reality is they are saying on your program the cost is $22,000 or so for the building of a house. What we're saying is it's insignificant.

They are making a lot of statements on radio and publicly which, to me, do not carry any weight at all. So, the minister is there saying 'insignificant'. Then in *The Advertiser* a bit later, on 1 October, minister Wortley is quoted as saying:

> Let's look at the ramifications for those businesses which are operating within our borders. If you are complying with the current act and regulations then by and large you will be under the new system as well and compliance costs will be minimal.

So it is marginally above insignificant but nevertheless it is down at the bottom end of the continuum. Further to that (still on the SafeWork SA website, I am told, as of today) is a questions and answers guide. The question is simply, 'Will it cost more to build houses under this new legislation?' The answer from the government and SafeWork SA is no; full-stop.

I accept that when consultants are employed in relation to the national regulatory impact statement and others it does depend, to a large degree, on the assumptions that they make. I accept that, but I do not know anybody who believes the government's position in relation to this—and SafeWork SA's and others—that there will not be one extra dollar in extra costs as a result of the bill: 500 pages of regulations and thousands of pages of codes of practice.

The Hon. Mr Wortley, the government and the advocates want us to believe what SafeWork SA has put on its website on behalf of the minister: 'Will it cost more to build houses under this new legislation? No.' Not that it is minimal or it is insignificant or it is only a small amount or it is worth it for the benefit for worker safety—none of that. It is just no; it will not cost a dollar or dollars more in relation to the new package. As I said, I do not know of anyone who believes that. I certainly do not believe it and the challenge for the minister when he replies in this chamber is to back up that extraordinary claim that he is making.

There can be argument as to whether or not the increase will be $20,000 or $30,000, or some significant number in between; I accept that. It depends on the assumptions that the consultant has made, particularly in relation, for example, to the degree of fencing that is going to be required or the work safety statements that might have to be undertaken. You can certainly read the regulations and the codes of practice and others to require those in virtually every circumstance, and that is what would have been, I am sure, included in the costings.

There is no doubt that there is going to be significantly more paperwork and more requirements, and therefore significantly more costs in relation to the implementation of this package. For the minister in a bold-faced way, together with his advocates, to say, 'It ain't gonna cost a dollar more', does him, the government and those who support the bill no good at all. It does not do them any good at all to be making those particular claims.

I just want to look at one particular area, although there is a second area I could look at, which is fencing. As an example of the changed requirements, scaffolding is one of the issues that has been debated on talkback radio and elsewhere. The Hon. Mr Darley put some very good questions to the minister on FIVEaa one morning in relation to requirements on scaffolding. I am not aware that the minister has answered those questions and certainly would be interested to see the answers to the questions.

They were simple questions such as: will the tradespeople who work on insulation in your roof, put solar panels on your roof—this is a normal standard suburban house, we are not talking about major buildings or anything—put a satellite dish on top of your roof, clean out your gutters, or do retiling on your roof be required to have the additional costs of scaffolding in terms of the work that they undertake?

I am not aware of the minister's answer to that. I think this chamber deserves an answer in relation to that, because certainly tradespeople are already saying that, if that is required for those sorts of standard tasks that many of us have implemented in our homes, the additional cost can be $5,000 or $6,000 for each particular job that might have to be done. For example, painting would be another one—potentially up to an extra $5,000 or $6,000 just for the scaffolding that is involved in some of those cases.

In relation to the scaffolding issue, I have sought advice on this from the HIA, the MBA and others. This is the advice that I have been provided with and I put this on the public record. The minister is wrong where he is claiming there has been no change in scaffolding requirements under these new laws. The minister's line is that the scaffolding requirements under the new laws are no different to the existing ones.

It is certainly my advice that that claim from the minister is wrong. I think that is in part why the minister claims there is no cost increase, because he is saying these are already existing scaffolding requirements being undertaken by tradespeople and businesses already. On FIVEaa on Monday 26 September Mr Wortley said:

> 'Look, currently existing legislation provides that people working at heights of greater than two metres must put controls in place to mitigate the chance of a worker falling from such a height...this requirement will not change under the new legislation nor will it impose greater requirements that don't already exist.

The Housing Industry Association has advised me that what the minister has said is incorrect; that is, this bill will not enforce greater requirements than already exist. The HIA has advised me that the new two-metre height limit for installing scaffolding is much more prescriptive than present guidelines and the proposed regulations require a risk assessment to be conducted for working at any height. There is no cut-off of two metres but before you work at any height—one metre, two metres, three metres, or above—you have to do a risk assessment and fill out a form.

What I have been advised is that, whilst there is no specified height limit in the existing regulations, the current industry practice is that scaffolding is only installed for work above three metres. Given that this three-metre limit is the usual industry practice, it is clear that SafeWork SA has accepted this practice as consistent with the existing regulations. In fact, the HIA has advised me that it is not aware of any prosecutions that have occurred in South Australia for people working at heights of less than three metres on a standard building project.

The evidence from the HIA and other industry groups clearly demonstrates that it is impossible for cost increases to be insignificant or minimal, as Mr Wortley claims. This is true in a number of other areas as well. So the essential evidence from the HIA—and it is for the minister to respond—is that when the minister said and continues to say publicly that current existing legislation providing that people working at heights greater than two metres must put controls in place to mitigate the chances of a worker falling from such a height will not change, that is not correct.

The HIA is saying that is not correct. It is saying that the current industry practice, in essence sanctioned or approved by SafeWork SA because they work with the MBA and the HIA, is that scaffolding is generally used in the industry at levels of three metres and above. If you are going to implement this at two metres and if, at any height, you have to do an assessment—a risk assessment has to be conducted at any height—then clearly they are additional costs for a lot of standard tasks that are undertaken on each and every one of our homes at any particular time of the year.

That must be an additional cost. A tradesperson who has to install additional scaffolding and do additional risk assessments does that at a cost, and the tradesperson cannot absorb that cost himself or herself; it has to be met by the client, who is the home-owner. So costs will have to increase in relation to many of those areas. I have only highlighted the issue of scaffolding. You can look at dozens of other areas, but I have enough to cover in this contribution without going through all those.

I highlight scaffolding as proof positive, from the industry viewpoint and others, that it is just impossible to believe the minister's claim that none of these are additional imposts or new requirements, that they all exist at the moment and there is no cost increase at all as a result of this particular package. That is the government's position, and if it wants this bill to be passed by this chamber it will need to somehow sustain that argument and provide evidence to the chamber that it is indeed the case.

I certainly do not believe it, the industry certainly does not believe it, and I suspect the government would be hard pressed to find anyone who would support that particular contention, other than their own bureaucrats within SafeWork SA. Obviously there are significant changes in this bill. Two of the more controversial ones, which have occupied the minds of lawyers—at great expense to everyone, I suspect—I want to address in relation to legal opinions, because they are important.

One is that this new bill introduces the completely new concept in work safety legislation of a PCBU, a person controlling a business or undertaking. Under our current legislation there is no such concept as a PCBU, thankfully. We talk about businesses and we talk about employers and we talk about employees, but for some reason the bureaucrats and the ministers have agreed to introduce this completely new concept, which is currently untested in the law, as to what is a person conducting a business or an undertaking.

Clearly it is now to cover a variety of organisations and others that are not traditionally considered as businesses. For example, it covers anyone who is engaging in any undertaking, and an undertaking can be anything. Volunteer associations are an undertaking, a football club is an undertaking. If you can think of anything that is, in essence, a task or an activity then it is highly probable that it will come within the definition of an undertaking and potentially under the purview of this legislation.

That is one of the more significant changes that has been implemented in the legislation. I want to refer to one of the pieces of legal advice, dated 22 December 2011, from prominent QC Dick Whitington, who was employed by lawyers working for the Housing Industry Association. Mr Whitington's legal opinion makes this point quite explicit. He says:

> The 2011 Bill indisputably alters radically the nature and scope of industrial health and safety duties applying to employers and others in South Australia...The 2011 bill contains no comprehensive definition of a 'person conducting a business or undertaking'. Instead, there is a provision in s 5 which merely operates to confirm certain aspects of the reach of the provision without actually explaining what is meant by the expression and, in particular, without explaining what is meant by 'conducting', 'business' or 'undertaking'.
>
> The expression 'business' is one with a reasonably well-established meaning in law. The expression 'undertaking' is not so clear. The relevant meaning given in the Macquarie Dictionary is of a 'task' or 'enterprise'. Plainly, the expression is wide enough to cover such things as home renovations and possibly even a single task of work in a residence (eg, changing a light bulb) (and this appears to be confirmed by the terms of s 20). In this context, the word 'conducting' may not be a limiting expression.

I repeat that Dick Whitington QC is saying that this definition of 'undertaking' could include something as wide as home renovations or a single task, such as changing a light bulb in your home. This could come within the definition of 'person conducting a business or an undertaking' and potentially come within the purview of duties in terms of worker safety and health and safety of others in the workplace. I will continue with Dick Whitington's opinion:

> Hence, the basal criterion or pre-condition of liability informing the primary duty of care is no longer a relationship of employer and employee and instead is one of general (circumstantial) proximity between a person carrying on some business or undertaking and a person exposed to risks to health or safety ultimately as a result of that business or undertaking. Further, there is no requirement that the PCBU shall actually have created the relevant risk which resulted in injury or possible injury nor that they have any control over the risk.

I repeat that what Whitington is saying is that you have this indeterminate PCBU and that there is no requirement that the PCBU shall actually have created the risk or have any actual control over the risk. You could still potentially be held responsible. Dick Whitington goes on:

> In practice, in many cases the duty will be derivative in the sense that the PCBU will not be responsible for controlling the relevant risk to health and safety although they will have engaged the person who has created the risk in connection with the PCBU's business or undertaking.

That is the first of the two significant legal points from Whitington I wanted to put on the public record, and that is the indeterminate nature of what is a PCBU and the requirements that spring from that. I now want to turn to the second one, which has been even more controversial, which is the notion of control. This has applied considerable amounts of my time and lawyers' time in terms of seeking to come to a resolution on this particular issue.

I want to place on the record, firstly, Dick Whitington's advice on this particular issue. There are two pieces of advice from Dick Whitington. There is one dated 18 October 2011. He refers to section 4(2) of the existing act, which is the control provision within the existing legislation. The essential argument in relation to this, in layperson's terms—as I am not a lawyer either—is that under the existing act there is a notion of control. If you control something you can be prosecuted for it.

The main argument is that, under the new bill, that control element or test has disappeared completely. That is, there might be events that you do not control and you still might be prosecuted and held responsible for that. So, in non-legal terms—and as most of us are non-lawyers—that is essentially the argument. This is now the legal argument from Dick Whitington to back that up. Dick Whitington argues that section 4(2) of the current act, which is the control test in the current act:

> ...is not merely a definitional provision expanding the scope of the class of employees to include independent contractors engaged by an employer/principal and their employees or sub-contractors, it is also a substantive provision restricting the duty which is consequentially attracted to the employer/principal in respect of such deemed employees so that it covers only 'matters over which the principal has control or would have control but for some agreement to the contrary etc.'

Further on in that opinion, he says:

However, the restrictive duty criterion of 'control over matters' has been held to require actual control, referring to things which the deemed employer is managing or organising...

He quotes a case, Complete Scaffolding Services Pty Ltd v. Adelaide Brighton Cement Ltd [2001] SASC 199 [56]:

The Western Australian counterpart to section 19 of the [Occupational Health, Safety and Welfare] Act is s. 19 of the Occupational Safety and Health Act 1984. Section 19(4) contains a counterpart to s. 4(2) of the [Occupational Health, Safety and Welfare] Act and provides that where a principal engages another person (called the 'contractor') to carry out work for the principal, 'the principal is deemed, in relation to matters over which he has control...to be the employer of the contractor...and any person employed or engaged by the contractor to carry out or to assist in carrying out the work' and those persons other than the principal are deemed in relation to such matters to be employees of the principal. The Western Australian Court of Appeal has held that s. 19(4) requires actual control (including the right of actual control, whether exercised or not) over the particular matter affecting safety. It has been held that the section is not intended to impose upon a principal who has engaged a specialist contractor a general obligation to supervise the manner in which the contractor goes about the performance of the work entrusted to it. The Court of Appeal has held:

'A construction that imposed such a far-reaching obligation on a principal would produce unworkable consequences. There is no real scope for a principal (lacking the requisite expertise) to exercise actual control over the detailed manner of performance of work by a specialist subcontractor. If it endeavoured to do so, this would be more likely to lead to hazards than to avoid them.

As to the suggestion that the principal should be required in such a case to engage an expert to oversee the method of work adopted by the expert subcontractor, the Western Australian Court of Appeal observed:

'That solution seems to us to be unworkable. A builder, (for example) would have to 'double up', at significant cost, on contractors having special expertise. Work performed by a plumber or an electrician would have to be overseen by another plumber or electrician (whose manner of supervision of the work of the first plumber or electrician would, on this construction, also be subject to the control of the builder).

Again in nonlegal terms, what Dick Whitington is saying in that, based on both the South Australian law and the Western Australian law and on a Western Australian Court of Appeal case, is, essentially, if you are an employer or a business and you have employed a specialist contractor like an electrician who you are relying on to undertake the particular work, the suggestion is that, okay; you have a responsibility. Even though you are not the specialist and you might not know anything about electrical matters, you are the one who is in control of that and, if you have got any doubt about knowledge of electrical matters, you should actually employ another specialist electrician to oversight the work of the electrician to satisfy yourself that you have managed the risk appropriately.

The Western Australian Court of Appeal, according to Dick Whitington, is saying that is just nonsense. It would increase costs considerably and it still would not satisfactorily resolve the situation anyway. That, in nonlegal terms, is what Dick Whitington is saying to us in relation to this notion. You are employing experts—electricians and others—with expertise in the particular areas. As a general employer or businessman or as a principal of that particular business, you are relying on the expertise of that specialist electrician out on that work site to manage the risk—and work within a general program, of course—as it relates to matters of the work of the electrician.

Under the existing legislation, you are not expected to employ another specialist electrician to provide you with oversight of the work that that electrician is doing on that particular worksite. That is the advice from Dick Whitington on 18 October. He follows that up with his advice of 22 December, and I place that on the record as well. He says:

I advised in my advice of 19 October 2011 that the 2011 bill did not contain a provision such as s4(2) of the Occupational Health, Safety and Welfare Act..which not only deemed a principal the employer of a contractor or subcontractor and their employees but also confined the duty of the principal to matters over which the principal had control or would have control but for some agreement to the contrary between the principal and the contractor. I noted that the concept of 'control' in this provision had been held to require actual control over the matters giving rise to the relevant risk to health and safety, and that it was consistent with accepted commercial and industrial practice to acknowledge that there was no real scope for a principal to exercise actual control over the manner of performance of work by a specialised contractor. In other words, the cases in this area have effectively drawn a distinction between control over what is to be done and control over how it is done. It is the latter which has customarily been regarded as the proper basis for liability for the existence of a risk to health and safety.

This approach is also consistent with that adopted in the seminal 1972 report of Lord Robens into Safety and Health at Work. I also advised in my advice of 19 October 2011 that the duties enacted by the 2011 bill might be realigned with that basal principal by an overriding provision generally to the effect that a person who does not have actual control of a particular safety risk does not have a responsibility for eliminating or reducing that risk so far as reasonably practicable.

His legal advice goes on for pages and pages, but they are the essential elements of the advice on that critical issue of control. In essence, what he saying is that there is a provision in the existing bill—section 4(2)—which is an issue in relation to control; that is, you are responsible for and prosecuted for issues over which you have control. This bill does not have that. The way to actually sort out one of the issues in this bill is to provide for a control provision.

He says that this control provision, which exists in our current act and in the Western Australian act but which is not in the bill, is consistent with what he says is the seminal work on occupational health and safety going back to 1972, and it has governed occupational health and safety legislation in this country since that time (for nearly 40 years) in virtually all of our jurisdictions. That is, that you are responsible for and prosecuted for issues over which you have control. It seems a common sense issue but, for whatever reason, all of these governments, all of these bureaucrats and all of these others have thrown out decades of history in this particular area and they are seeking to impose their own view of the world.

The lawyers, having worked from that advice in relation to the proposed bill, raised a number of scenarios. I only want to put two on the public record, but there are literally dozens that they have produced to highlight the significance and the reach of this legislation now as a result some of these changes. These scenarios are provided by lawyers representing the HIA. The first scenario is:

> Mrs Jones owns an investment property that she rents out to a tenant. She does not employ anyone, however, she contracts the maintenance of the house to a maintenance company that specialises in residential tenancies.

What is the impact of these new laws on that particular circumstance, familiar to many of us in this chamber, I am sure? Under the current Occupational Health, Safety and Welfare Act, Mrs Jones, who has this investment property, is not an employer and her investment property is not a workplace. So, she is not an employer and therefore not covered under the provisions of the current legislation. However, under the new laws, Mrs Jones is a PCBU. She is a person conducting a business or an undertaking. The undertaking is owning an investment property. She has a tenant in her property and she has a maintenance company that maintains the property on her behalf.

As Mrs Jones is now a PCBU under clause 5, she will now have a duty to ensure so far as is reasonably practicable the health and safety of that contractor—or any other—who performs work on her rental property, regardless of whether she has any control over how the contractor performs the work or whether she has any expertise in building maintenance. That is under clause 19. She will be required to provide and maintain safe systems of work for the contractor under clause 19(3)(c). If it is reasonably practicable for her to do so, she will be required to supervise the work done by the contractor and ensure that the work that is done does not place other persons at risk (clause 19(2)).

The point is that Mrs Jones will now have duties which are enforceable under the criminal law to which she will now have to turn her mind and decide what she will need to do to comply. She will have to do that in reference not only to the bill but to the regulations and to any of the applicable codes of practice. There is an argument there about what the potential offences are, and I will not go through those. They are clear.

The second example is an example of Dave, who is a self-employed farmer, aged 50. He works alone on his family's wheat farm. He usually does all the labouring work himself; however, sometimes he engages his farmer mate, John, who owns a farming property nearby to help him out with spraying his crops. When he is engaged by Dave, John works unsupervised and uses his own crop-sprayer to do the work. John gives Dave a valid invoice for his time that Dave pays. Dave believes that he is hiring John as an independent contractor. What is the impact of this scenario under the proposed bill?

The legal advice is that under the current laws, Dave is not an employer and John is not Dave's employee. It is an independent contracting arrangement between a farmer and another farmer who is providing crop-spraying activities for him. However, under the new laws, John will be a worker under clause 7 and Dave will be a PCBU under clause 5. It is also possible that John will be a PCBU under clause 5 while he is doing the work for Dave.

Accordingly, as PCBUs, both Dave and John will have a duty to ensure so far as reasonably practicable that John's health and safety is not put at risk while he is working for Dave. Dave will owe a duty to John because he is a worker and arguably John will owe a duty to himself

because he is a PCBU and a worker. These obligations apply regardless of whether Dave is supervising or controlling John's work and regardless of the fact that John is not Dave's employee. The advice goes on to highlight the other requirements. There are many other scenarios that have been painted by the lawyers representing the HIA and others, but I think those two highlight the breadth of the application of these laws.

The investment property one is a common example for many; certainly, a self-employed farmer. There are examples here in relation to the wine industry and others like that where, contrary to the claims being made by the minister, there is nothing in this bill which is significantly different to what exists at the moment. If there is an existing obligation under the current act, that will be reflected in the new legislation. That advice, according to all of the legal advice, is just palpable nonsense. It just ain't so in relation to those particular claims. There are dozens of other examples like that, but I do not have the time today to put them on the record.

The next area I want to touch on is the vexed issue of volunteers. Ralph Bonig from the Law Society is not somebody who can be dismissed, as the minister has done, as a vested interest as he has dismissed many other criticisms. He was quoted on 13 February with a wide range of criticisms of the bill. I want to refer to the bit that relates to volunteers. This is Ralph Bonig from the Law Society. He said that one insidious (his word) consequence of this is the bill's effect on those volunteer run organisations that conduct a business or undertaking. For instance, a local community club that exists to provide a range of community sporting activities, but is principally financed by takings from its bar and kitchen, will be bound by the law if it engages a contractor to do the cleaning, carry out maintenance or carry out upgrades such as the installation of new lights.

Not only will the club be caught by the law, but the volunteers who comprise the committee that manage the club may attract individual responsibilities and liabilities. That is not the political opposition of the government; that is not industry groups conducting a scare campaign. That is the President of the Law Society highlighting the concerns in relation to volunteers. What has been the minister's response to these claims that volunteers are going to be impacted in a different way in this legislation? This is his radio grab from 14 February and there are many others similar to it:

> Mr WORTLEY: A volunteer cannot be charged for a breach of the occ health and safety act. They can only be charged if they cause injury or death through reckless or negligent behaviour. Now, if they weren't charged under the Work Health and Safety Act, there would be some other act they would be charged under if they caused a death under those circumstances.

That is his claim on 14 February. On I think the same date was an interview with Bevan and Abraham on ABC radio as follows:

> Any volunteer that has obligations now, there will be no difference with the new workplace health and safety legislation. If you've got obligations now, you'll have obligations under the new act.

So, there is absolutely no difference, according to the minister, and you can only ever be charged if you have caused injury or death through reckless or negligent behaviour. Again, that is just palpable nonsense. The Law Society President has highlighted that, as has all the other legal advice, and the challenge I put to the minister is to come into this chamber and repeat that statement.

It is quite clear that under sections 28 and 29 of the new bill volunteers within clubs can be charged and prosecuted for offences against clauses 28 and 29 of the legislation, and they make no reference to only being limited to causing death or injury through, in the minister's words, 'reckless or negligent behaviour'. They clearly include that, but they go much broader than that. There are the general duties, responsibilities and risks that volunteers are exposed to. This government and its advocates have sold a pup to the volunteer sector in South Australia.

With the greatest respect (and I make no criticism, because I'm not a lawyer and most of the people in these volunteer groups are not lawyers), they have been told what the minister has just said on the public record. They have all been told, 'Don't listen to the Law Society President, don't listen to Lucas, don't listen to the others who are saying there are changes in this legislation—I'm minister Wortley and I know best, and there will be no change. You can only been prosecuted if you cause death or injury through reckless behaviour', and that is just wrong. It is indefensible.

It cannot be sustained by the minister, yet the minister then runs around and says, 'Well, Volunteering SA agrees with the legislation and the volunteer groups agree with the legislation.' If the minister is saying to us and others, 'There ain't no change at all; it's exactly the same and you will only get prosecuted if you are reckless or indifferent and cause death or injury', then that is a

different perspective from the advice that the President of the Law Society and others have highlighted.

Even SafeWork SA and SafeWork Australia's websites have acknowledged that volunteers can be prosecuted. Their websites, in terms of frequently asked questions, are at least acknowledging that in certain circumstances volunteers can be prosecuted. Advice from Scouts New South Wales has already indicated that, if you don't follow directives, policies and procedures, you may be fined, that is, prosecuted and potentially fined under the new arrangements.

What has changed is that under the existing legislation there was a responsible officer who had to be nominated and that responsible officer has been removed under the new bill, and I think that a number of volunteer organisations are pleased in relation to that, because they believe the responsible officer has gone. The dilemma for them is that in many cases all volunteers potentially are liable. I have been through with the lawyers some common examples to put on the record.

I looked at the example of a footy club that employs a coach for four or five hours a week. Everyone else in the footy club, country or suburban, is a volunteer. But they happen to employ a coach or a barperson for four hours a week on a Saturday afternoon at the peak period during the footy game. No-one else is employed; everyone else is a volunteer, giving of their time. The legal advice is that that footy club in those circumstances loses the exemption of being a volunteer association, because the definition of volunteer association is if you are 100 per cent volunteers.

If you employ a coach or a barperson for three hours a week and everyone else is a volunteer, you no longer enjoy the exemption of being a volunteer association. There would be hundreds of our sporting clubs who pay for a coach or occasional ground staff, for example, to help with green keeping on the weekend for a bowling club or something like that, but the bulk of the work is being undertaken by all of the volunteers. In those circumstances, under the current act, if a volunteer breaks a leg at your local footy club, none of the volunteers can be prosecuted. Even if you could mount an argument that if it was a business someone should not have left the hole in the middle of the ground or someone should not have left oil on the floor of the kitchen or whatever, in those circumstances, under the current act, a volunteer cannot be prosecuted. A volunteer member cannot be prosecuted if another volunteer injures himself or herself.

However, the legal advice is that, under the proposed bill, in exactly the same circumstances a volunteer could be prosecuted under sections 28 or 29 of the legislation in those circumstances. The local footy club has employed a coach for three hours a week, another volunteer is injured in the workplace—or the business and undertaking (the PCBU)—and breaks a leg. A volunteer, if she or he could be held liable, can be prosecuted for the broken leg in those particular circumstances—not possible under the existing legislation. That is just one of the many examples in terms of the potential impact on volunteers in South Australia. That is contrary to the assurances that minister Wortley and others have been giving on behalf of the government.

In South Australia, as a result of this debate, there has been growing opposition to the bill. Let me acknowledge at the outset that there are, together with the government, a number of groups who have lobbied the opposition (and others I am sure) wanting complete support for the legislation. SA Unions and Voice of Industrial Death have lobbied strongly. A number of other like-minded organisations, whilst they have not lobbied the opposition directly, I am sure share the views of those groups.

I have to say that of all the business and industry groups in South Australia there has only been one which has lobbied both with direct meetings and also through letters of support for the harmonised bill, and that is the Australian Industry Group (AIG). Its position has been quite clear and quite explicit; it has supported it at the national level. I also acknowledge that at the national level a number of organisations or bodies support the harmonised bill. The AIG group, the Business Council of Australia and a number of other national business and industry organisations have continued to support the bill being implemented without any amendments.

In South Australia we have seen that, as more detail of the implications of the legislation has become apparent, there has been growing concern and growing opposition to the government and its proposed bill. Last year when the bill was being debated in the House of Assembly, our own categorisation of industry lobby groups in South Australia was that the vast bulk of the industry groups were lobbying strongly for significant amendments to the bill.

Even though their national bodies were not supporting amendments at all, the vast majority of industry groups in South Australia were lobbying for significant amendments, and if those amendments were not achieved by the Legislative Council, they were supporting defeat of the bill

at the third reading. That was the position of many of those industry groups in South Australia, the vast majority. AIG was supporting the bill but the overwhelming majority of the remaining industry groups was supporting a number of the amendments that needed to be made to bring the bill back closer to the existing legislation.

As we now move to February-March 2012 there has been a further significant move in terms of the feedback from industry and business groups. In the last three weeks we went out for another round of consultation with business and industry groups. We circulated at that stage our latest draft of amendments to the bill, which was more comprehensive than we had floated even in the House of Assembly debates late last year.

What we have now established is that there has been a significant increase in the number of business groups actually wanting this bill defeated at the second reading of the legislation. In that I would categorise groups such as the Housing Industry Association, the Master Builders Association, the Independent Contractors of Australia, the South Australian Farmers Federation, the Urban Development Institute and also the Hardware Association of South Australia which are lobbying for the outright defeat of the legislation.

We then still have a significant group who want more and more significant amendments to the bill and if they are unsuccessful to have the bill defeated at the third reading. This group includes Business SA, the Australian Hotels Association, the Motor Trade Association, the Wine Industry Association, the Self Insurers of South Australia, the Australian Meat Industry Council, the National Electrical and Communications Association, and the Association of Independent Schools of South Australia.

The remaining continuing supporting group for the bill is the Australian Industry Group (AIG). It remains in support. All those other industry and business associations are saying either defeat the bill at the second reading and let's stick with our existing legislation, or move significant amendments to it and if they are unsuccessful defeat the bill at the third reading.

To be fair to those groups supporting amendments, some are only supporting amendments in a smaller number of areas, a number of supporting amendments right across the board in terms of the amendments that we have circulated to business and industry. I believe that the Council of Small Business of Australia is also in that category that I have designated as wanting significant amendments to the bill. As I mentioned earlier, the President of the Law Society has also expressed significant concerns about the bill as well and is clearly supporting amendment in a number of significant areas.

The Liberal Party has moved significant amendments in the House of Assembly and we have been consulting since late last year on a further range of amendments. Given the time today, I only want to refer in particular to two amendments, because they have attracted a lot of contention or publicity, but I will list the areas that our amendments currently cover.

They cover the control test; the right to remain silent; union right of entry; volunteers and volunteer associations; health and safety representatives' power to appoint advisers; codes of practice; the power of parliament to disallow, and the fact that they must be approved by the advisory council; reductions in penalties, back to approximately the existing levels; a redefinition of the workplace; clarification of the delegation of power; a delay in the commencement date to 1 January 2013; and the power to seize property and workplaces.

That is not a complete list, but it is a list of the range of the major amendments that the Liberal Party has been consulting on in recent weeks with those groups that are supporting changes to the legislation. The first of the only two that I wanted to mention in a little detail is the union right of entry, because, unsurprisingly, I am sure the union-dominated Labor government will seek to defend this, and I want to put on the record the Liberal Party's position in relation to that.

The amendments that the Liberal Party will be moving if we get to the committee stage will be to remove the insertion of the union right of entry for occupational health and safety grounds. Our argument is driven largely by the figures that I gave earlier to say the existing legislation in South Australia has driven our performance in South Australia to be the best of all the jurisdictions under the current arrangements. That has been without having unions with an automatic right of entry into the worksites. There is certainly an argument there in relation to these things, if it ain't broken, why fix it? Someone needs to justify what it is that giving automatic union right of entry will do that will assist in relation to these issues.

The point I want to make in this is that our existing laws, and what would continue if the Liberal Party amendments in this area were successful, allow workers to elect their own health and safety representatives. There is nothing that prevents workers in a workplace electing a union representative to represent them if they so wish; there is nothing in the legislation that prevents the workers, when electing their health and safety representatives—who, I am told, have been a very important part of our current law—from electing a union representative to be the health and safety representative if they want.

So the unions can be involved if the workers actually want them to be, by way of electing them to be health and safety representatives. Health and safety representatives have significant powers under the legislation. They can stop workers from working in an unsafe worksite, so they are not figureheads; health and safety representatives have the power to stop workers from having to work in an unsafe worksite if they so choose.

They also have the authority to bring in a properly trained and approved adviser if they wish. That adviser can also be a member of the union if that union member is properly trained in occupational health and safety issues; there are restrictions under the act that provide that if you are going to be an adviser brought in by the health and safety rep you have to have certain qualifications in the area. There is nothing that stops the health and safety representative or a worker on a worksite bringing in a properly trained union adviser if they so wish to assist them in the resolution of a problem at a worksite.

So it is not correct to say that at the moment, under the current law, unions are prevented from being active in the worksite and work safety. If the workers want them they can be elected as the health and safety representative; if the workers want them they can bring them in as their advisers, if they are properly trained.

Why shouldn't the decision be left to the workers as to whether or not they want the union to come in? Why should it be left to a position where the union can say, even if it does not have a member at the site, 'Hey, I've got an interest in this. I am coming into the worksite in relation to a work safety issue,'—even if they do not want to be a member of the union, even if they do not want to union representative to come in, even if they prefer to handle those particular issues themselves. However, the government and the unions want to impose an automatic right of entry for union bosses and unions.

So what are the issues in relation to that? I have heard the minister and others say that there is nothing wrong with that, that there is no evidence to indicate that unions will use this in any way to further causes other than work safety. Well, I refer members to the royal commission report into the building and construction industry conducted by Commissioner Cole. The Cole royal commission report stated:

> Occupational health and safety is often misused by unions as an industrial tool. This trivialises safety, and deflects attention away from real problems...scope for misuse of safety must be reduced and if possible eliminated.

In other evidence to the royal commission it was noted that:

> ...it is not uncommon for a builder or a subcontractor who is in dispute with the union over an unrelated industrial issue to receive visits from union officials investigating and finding alleged safety breaches. The union official asserts that an immediate risk exists, work ceases while employees sit in the sheds or worse, leave the site.

That is the evidence, they are the conclusions of the Cole Royal Commission into the Building and Construction Industry. There is evidence in other states where this power exists that union bosses use this power not for work safety issues but to leverage power in relation to industrial issues, and in particular to enterprise bargaining issues.

In September last year I highlighted that the Master Builders Association reported to me that they already had union officials in South Australia walking onto sites unannounced, stating words to the effect of 'We're just getting you ready for 1 January when we can come in whenever we like.' The MBA cited a recent example in South Australia where a union stopped work on a large project due to purported safety claims. The MBA said that the claim related to a matter which had been independently certified by an engineer as safe and which had also been independently approved by SafeWork SA.

They concluded to me that the number of reports of breaches by union officials of right of entry laws have increased at an alarming rate in the last two months, as they were preparing for what they believed was the inevitable passage of this legislation late last year for commencement on 1 January this year.

The second area that I wanted to raise and highlight in relation to the amendments was the issue of codes of practice. Whilst we agree with some of the industry associations, on this particular area the Liberal Party has not been able to reach agreement with the Housing Industry Association and some others, whose preferred course, if the bill is to be amended, is to remove sections 274 and 275 of the bill completely and remove reference to codes of practice in the legislation.

I put on the public record that we have not agreed with that position from the industry associations. The codes or practice—albeit much fewer in number and not as comprehensive in breadth and length—exist under the current act. There are current provisions in relation to codes of practice, and the Liberal Party has not been prepared to support that particular aspect of the industry view to us, that, if the bill was to pass in an amended form, the codes of practice should be removed from it.

We believe there is an argument under the existing act that there are codes of practice, and for the Liberal Party to support codes of practice was a step too far for us in relation to that issue. What we have foreshadowed are some amendments that would actually reflect the current situation, and that is that a code of practice would have to be, firstly, recommended by the advisory council (which is both employer and employee) to the minister, and that the parliament, as with regulations, would have the power to disallow. If the legislation gets through, there may well be a lot of activity in relation to considering codes of practice.

However, I have given my commitment to the industry that, if that is the circumstance, the Liberal Party is certainly up for it and we will only be prepared to support those codes of practice which can be guaranteed to make sense, to improve or maintain worker safety, but also not to impose significant additional imposts on struggling South Australian families trying to purchase a first home or to undertake maintenance activities on their existing home.

In concluding putting the Liberal Party's position, I indicate that, as will have been evident, the Liberal Party in South Australia has strongly opposed this bill since April of last year. In a political sense, the Liberal Party in South Australia has led the charge nationally against the legislation. We accept that some industry groups, such as the HIA in South Australia and other groups, have led the charge in a business and industry group sense.

We acknowledge that our position in South Australia—which I indicate, and indicated this week—is that we will now be moving to vote against the second reading of the legislation in the Legislative Council. We acknowledge that that position that we are adopting in South Australia is different from the position that our federal coalition colleagues have ultimately adopted and which I outlined earlier in my contribution today.

We also acknowledge that it is different—and a much stronger position in support of small businesses in South Australia and struggling South Australian families—from the position thus far adopted by the Liberal Party in other state jurisdictions at this stage. At this stage there is no other Liberal Party in the state or territory jurisdictions which is either voting against the legislation or committed to voting against it.

I hasten to say that it is possible that, after the Victorian and Western Australian governments look at their regulatory impact statements, they might adopt a position of either significant amendment or opposition to it. However, at this stage they have not yet committed to that particular position.

My contribution, lengthy as it has been today, has outlined many of the problems. However, I am sure members, who have been lobbied by everyone, will know that I have not really touched the surface on literally hundreds of other problems that various groups have raised in relation to the legislation. As in many cases, the devil is in the detail in relation to this supposed harmonisation.

I think it is easy, as I have highlighted over the last two days, to scream that harmonisation is a good thing. The reality we have highlighted today, I hope, is that just screaming harmonisation and saying it is a good thing does not answer the many questions I have put today and I know other members will put when they make their contributions when we return in a couple of weeks.

We have seen in this bill a perfect example of the problems of a federal takeover or national takeovers, harmonisation and the COAG process, when we have weak ministers, such as the Hon. Mr Wortley and the Hon. Mr Finnigan and others, representing our state's interest at ministerial councils, when we have bureaucrats who have been driving the process, literally for

years, and no-one being prepared at those national fora to actually stand up and ask the difficult questions.

All they are prepared to do is what we have seen minister Wortley do—parrot the lines he has been given and probably make up a few more he was not given, such as, 'The only volunteers who can be prosecuted are those who have caused death or injury through,' and I forget the phrase, but I have put on the record anyway the quote Mr Wortley used at that particular time.

He has made those claims, which are just unsustainable. Certainly, if we do get to the committee stage, we will be challenging the minister to justify the statements which I have put on the public record and which he has made during this debate on this legislation—the claims he made about scaffolding, which were clearly wrong; the claims on volunteers, which were clearly wrong.

The problem we have with this legislation is that we are seeing an averaging down in the interests of supposed harmonisation. This state, as I indicated, has had a very good record in terms of worker safety. We have led the nation, according to former minister Bernard Finnigan. The figures indicate that, under our existing legislation.

What we have before us is bad legislation which will have a negative impact on families in South Australia. It will have a negative impact on small businesses in South Australia. It will have a negative impact on struggling South Australians seeking to purchase their first home. For those reasons, the Liberal Party now believes the bill should be defeated at the second reading.

The Hon. D.G.E. HOOD (17:22): I rise to make my contribution on behalf of my party, Family First, to this piece of legislation which has been the subject of a great deal of consultation. I am sure, as the Hon. Rob Lucas has just indicated in his contribution, that our party, like other parties and the Independents here, have been consulted and subject to lobbying from all sides. Certainly, in the case of our party—and I am sure it is true in the case of my colleagues here today—we have had an open-door policy to all sides of the argument because we genuinely want to hear from all sides of the debate, which is a very significant one for our state.

The bill has been presented as offering a number of advantages to our state, including the reduction of red tape, which is one of the key selling points which has been used for this piece of legislation. It has also been suggested that it would create harmonisation—that is, the laws across state borders would be harmonised, so to speak—and also that it would create safer workplaces. They are the three key arguments that have been used to justify support of this bill.

I think it is known, and as I have said publicly on radio, television and in the paper, that Family First does not accept those arguments. In fact, we have taken a very close look at this bill over many months, and we have been examining it since about April or March last year, and we have come to the very strong conclusion that we will oppose this bill.

We believe that there are many items of concern in this bill, which I will outline in some detail as I get to the meat of my contribution, but let me say at the outset that I am not convinced and Family First is not convinced that this bill will actually reduce red tape at all. In fact, I think there is a very strong argument that it will actually lead to a substantial increase in red tape.

I have been fortunate to have the time to go through the proposed legislation in a good deal of detail and, in addition to the examples the Hon. Mr Lucas outlined, which show what I perceive as an increase in red tape and the associated burden on business, there are many other examples which could be given and I will give a few shortly.

In terms of the question of harmonisation, I think that argument is also a very weak one. The reality is that this bill has only been adopted in full—unamended—as I understand it, in the state of Queensland and nowhere else. As a result of that, harmonisation of this legislation will not be achieved; it is impossible. That is, of course, one of the strongest arguments, one of the main reasons that we are even considering this legislation today. That is, the issue of harmonisation or creating harmonised legislation across the country will actually lead to freeing up business.

However, the facts are that we have very different legislation around the country, and this bill will not achieve harmonisation because only Queensland has passed it unamended. It has been substantially amended elsewhere and not passed in other states, as I will address in more detail shortly.

Furthermore, we are told that this bill will create safer workplaces. I will again outline why Family First does not accept that at all. I should say finally, before I get to the heart of all of this,

that it has also been suggested that this bill really does not make much change at all, that it is essentially the same as the existing act and that the changes are really quite minor. That has also been one of the threads of argument used in order to convince us that this legislation is worthy of adopting. If that is the case, I ask the very obvious question, as I am sure other members in this place will when their time comes: why would we bother? If really we are not seeing much change here, as has been suggested, why would we bother at all? As I say, Family First is not convinced by those arguments and we will not be supporting the bill.

I turn to the substantive note of my contribution. In doing so, I would like to make a point at the outset. I have no doubt that everyone in this chamber, whatever political hat they happen to wear, would want the safest possible workplaces throughout our state, throughout our country and, I guess, taking it to the extreme, throughout the world. That is something that people inherently desire. Nobody wants less safety in anything we do. The question is: how do we achieve that safety? Like everything else, when a particular group or individual, whether it be a government or a body—whatever it is—seeks to make change, the onus is on that group to explain why we should have the change.

In the particular case of attempting to create safer workplaces, I think it is worth taking the time to look at the statistics. Where is the data? Where is the data that says that we have particularly significant problems with work safety in this state? I want to be clear about this. Let us be straight about this: there are accidents in the workplace. Nobody wants that. Whatever political hat you wear, or even if you are not in politics—whoever you are—nobody wants unsafe workplaces. Certainly nobody wants injuries in the workplace; there is no dispute about that whatsoever.

However, it is worth noting that Safe Work Australia conducts comparative performance monitoring and reports on workers compensation data on a state-by-state basis. I will quote directly from the last report, which was October 2011. This is very relevant to this debate. Of note in the report:

> The reduction in the incidence rate of injury and musculoskeletal claims between the base period (2000-01 to 2002-03) and 2009-10—

So from 2000 to 2009-10, basically—

> the reduction was 25%, which is below the rate required to meet the 2002-2012 National OHS strategy target of a 40% improvement by 30 June 2012.

This is the important bit:

> South Australia was the only jurisdiction which met the required rate of improvement with 39 per cent improvement.

Clearly, our state is doing quite well in this regard. Can we do better? Of course, we can do better. No-one is arguing that; I want to be absolutely clear about that. No-one is arguing that.

However, when our state is compared to the other states—and this is Safe Work Australia. This is not a business report, this is not a biased report prepared by some particular organisation with a particular axe to grind; in fact, if Safe Work Australia had any axe to grind it would be to push for further safety measures. Yet, they say in their own words in their most recent report that South Australia is actually leading the way. Where is the case for change? That is my question.

The two questions that this bill raises are, firstly, to what extent do criminal sanctions bring about greater workplace safety? That is what this bill does: it imposes criminal sanctions for breaches in areas that it deems unacceptable and, indeed, creates criminal sanctions for them. Secondly, will imposing a very strict and wide-ranging set of procedural requirements on business and charitable organisations (that is, volunteer organisations, as the Hon. Mr Lucas referred to) lead to greater safety or just greater frustration and expense?

The Family First party is always concerned about safety in the workplace, as I am sure every member of this place is, but we have major concerns with a number of aspects of this bill. We believe that this bill places undue weight on the criminalising of certain conduct and places significant additional burdens on businesses and charitable associations, volunteers and the like. We are great believers in the concept of charitable work in the community and we believe that governments of all persuasions should support this work.

While every workplace accident is a tragedy, I do not see that increased rigour in the regulatory regime will necessarily prevent accidents. My question is: how does this bill actually

improve safety? It is important that our businesses are not caught up in administration and red tape. While identical legislation in each state is highly desirable from an efficiency perspective, that goal should not result in the acceptance of bad legislation in this state.

There are specific matters of concern that I will now discuss in some detail individually. The first one was also highlighted by the Hon. Mr Lucas, and that is the issue of volunteers and charities. Volunteer and charitable associations play a vital role in our society. We need to give them every encouragement. My major concern in this bill is that it will act as a disincentive to volunteers and potential volunteers. There are many associations that have a few paid employees and many volunteers. Those do not come within the definition of volunteer associations in clause 5(8).

Therefore, these associations are caught by this legislation for the first time in many cases. Only associations with no paid employees whatsoever—and that is really important—are considered volunteer associations and therefore not caught by this particular bill. Clause 7 defines a worker as including a volunteer in a situation where any organisation has some paid staff. An example was given in an earlier contribution about a football club where you might have somebody who is paid to work on the bar, for example, for a few hours a week during peak periods. In that example, the whole organisation—all the volunteers, the people who clean the boots, wash the guernseys, make the pies, cut the oranges, etc.—would be caught under this legislation.

The feedback I am getting is that charitable associations that have volunteers carry out much of their work do not see any benefit from this legislation by way of increased safety for those involved. Rather, they are concerned that their determination to do good in the community will be sidetracked by the need to read up on the legislation and the very substantial regulations and to come grips with the applicable codes of practice. These are complex matters and things that people cutting oranges for their local football team really do not want to be involved in.

These associations are also concerned that there are very significant criminal penalties for failure to meet the standards. These significant criminal penalties apply regardless of whether or not there is any negligence and regardless of whether or not there is even an accident. That is a very significant change under this bill.

What are the respective duties imposed on the paid employees in the head office of a charitable association and the volunteers who do the actual work in the field? As I said, in the example I gave of the football club, these volunteers would be caught under this bill. Clause 28 sets out the duties on these people and clause 29 sets out the duties on every person at that workplace, and the people involved in that football club would be caught under this.

Clause 34 makes it clear that volunteers are subject to these duties. For all workers and all persons present at a workplace, whether volunteers or not, these duties include a duty to comply so far as the person is reasonably able with any reasonable instruction to allow the person conducting the business or undertaking to comply with the act. It is a very broad definition. What I can see will happen is that those in the head office of charitable associations will give instructions to volunteers to do such things as conduct safety audits and report any systems that are noncompliant with the act or regulations.

The bill provides clearly that someone must carry out these functions for all workplaces. These instructions may well be quite general in their terms, but the effect of such instructions would be to shift the duty of compliance from the paid employee in head office, who would thereby have done all they can, to volunteers who actually work at the site—'work' I use in the sense of a volunteer worker who is volunteering their time.

By that means a volunteer given such an instruction will become subject to serious criminal penalties if he or she failed to carry out those instructions in a competent and compliant manner. Who would want to perform volunteer work under these circumstances? Why would anyone want to volunteer under these circumstances if they expose themself to very substantial criminal penalties for simply volunteering at their local football club, for example, their local St Vincent de Paul or local whatever it may be.

The result may well be that the work able to be done by charitable organisations may substantially decrease. That is a genuine concern I have. My consultation with a number of charitable organisations around the place says to me that they also share that concern when the implications of this bill are explained to them. Volunteers do not want to spend their time and efforts in finding out what the applicable codes of conduct are or what the regulations are and making a

detailed study of them when all that want to do is feed the hungry, supervise youth sporting teams, run a Scout group or whatever it may be.

They may feel well placed to use common sense to make their own decisions about doing what they regard as safe, without the need to formalise the process with record keeping and filling out of endless forms. They may simply cease volunteering and the community would certainly be much the worse off if that were the case.

There has been confusion by various opinions about the status of volunteers, under this bill and the current act, being thrown around in the media recently, which I will now attempt to clarify. Section 19 of the Occupational Health, Safety and Welfare Act 1986 (OHSW Act) prescribes duties for employers. An 'employer' is defined in section 4(1) of the OHSW Act—and I quote directly from the act:

> A person by whom an employee is employed under a contract of service or for whom work is done by an employee under a contract of service.

In addition, section 4(2) of the act deems certain persons to be employees in the principal and contractor relationship.

An employee is defined in section 4(1) of the OHSW Act as a person who is employed under a contract of service or who works under a contract of service. Section 4(3) of the OHSW Act provides that, where a person in connection with a trade or business carried on by the employer, performs work for an employer gratuitously, the person will be taken to be employed by the employer. Accordingly, at present section 4(3) deems certain persons to be employees of an employer when they are performing basically services for free in connection with the business of the employer.

It is not clear whether the performance of these services is intended to include volunteers currently as the act stands (I am talking about the act and not the bill, for clarity). But the OHSW Act does not contain the word 'volunteer', nor does it specifically prescribe duties for volunteers. It is also not clear that the intention of section 4(3) is to prescribe an OH&S responsibility for those performing gratuitous work. I consider there is a strong argument that the sole intention of section 4(3) is to place duties or obligations upon employers who utilise these services in connection with their business and trade. This is somewhat complex, but I am getting to the point.

However, assuming volunteers are performing these services, they will be deemed employees if they are performing work in connection with the employer's business. Further, assuming the intention of section 4(3) is to ensure that such persons have OH&S responsibilities, then they will also have duties under section 21 of the OHSW Act. This point is not absolutely crystal clear in the legislation, but certainly upon the legal advice we have had, this opens up these people to potential prosecution. I suspect this is the point that has been central to the arguments that have been conducted in the media in recent times and it is something that needs further explanation. I am sure the minister will attempt to outline that when we get to the committee stage, if we get to the committee stage.

There will be some circumstances where a business, say, a car yard, is an employer because it engages persons under a contract of service. That car yard may also have persons performing services for free through a work experience person, for example. In those circumstances, the minister may be right when he says that the work experience people are treated as employees of the car yard and as such the law will be no different for them.

But—and this is the important point—that line of argument does not extend to circumstances where a retired lady of her own volition visits the Women's and Children's Hospital for the purpose of handing out handmade soft toys to sick children or whatever other volunteer activity may be referred to. In the case of that retired lady, she cannot possibly be performing work in connection with the trade or business of the Women's and Children's Hospital and that is the key point. Therefore, she will not be deemed an employee and as such she will not have OH&S responsibilities as prescribed by section 21 of the act, that is, the current act.

There are probably many other examples like the retired lady. The point I make is that she would be caught under this bill but she is not caught under the current act. The point of the debate which has been lost in translation is that there are thousands of people who perform volunteer work which is not in connection with a trade or business and who are not employees. It is these people who are misinformed about the OH&S obligations that they will have under these new laws. The

bottom line is that they will be caught under this bill. They will be caught under this bill and they are not caught under the current act.

The matter gets further complicated under the new laws because volunteer associations will become, as was referred to by the Hon. Mr Lucas, 'persons conducting a business or undertaking'. That is the new term we see in the bill (the PCBUs) when they employ just one person. In those circumstances, the volunteer organisation will have OH&S responsibilities and their workers, including volunteers, will also have those responsibilities.

These scenarios are very different from the current laws and I consider any broad, sweeping suggestions that these will not be caught under this bill to simply be inaccurate. It is a complex matter but it is very important. We are changing the face of our volunteer sector and I believe it will have a very significant impact.

I want to very briefly emphasise the importance of our volunteer organisations to our society. I am sure that all members in this place would agree that our volunteers add a great deal to our community. The Australian Bureau of Statistics General Social Survey Summary of Results (No. 4159.0) released on 30 September last year for the 2010 Census indicated that in a 12-month period 6.4 million Australians aged 18 and over did some form of voluntary work. That is 38 per cent of the population in that age group.

These volunteers were spread across a wide range of age groups and were involved in work with such things as sporting groups, community welfare groups, religious groups, education and training groups and parenting groups. The benefit from volunteering to the Australian community has been estimated by the ABS at approximately $14.6 billion per year. The ABS figures published in 2006 showed that helping the community was the reason for volunteering for 57 per cent of volunteers. However, volunteers also identified benefits for themselves, with 44 per cent reporting 'personal satisfaction' and 36 per cent reporting 'to do something worthwhile' as the reason for being a volunteer.

I am sure that all of us in this place appreciate the benefit of volunteers. The point I raise is that suddenly they will be caught by this bill and we run the very real risk of people simply not sticking up their hands to be involved in these worthwhile pursuits. Will some people still want to pursue these things? Of course they will. The question is: will it be a disincentive for some people? I think equally the answer is: of course it will for some people.

Under the bill a workplace is defined as a place where work is carried out for a business or undertaking and includes any place where a worker goes or is likely to be while at work. The concepts of 'a place where the worker goes' and 'a place where the worker is likely to be' are very vague concepts indeed. What if the boss does not know that a worker goes to a particular place? What if a worker goes to a place once or twice, but is unlikely ever to go there again? Does that qualify as a workplace? If a business or volunteer association sends workers into people's homes, for example, to provide home help for the elderly, these homes, under a strict reading of this bill, will be a workplace, yet the person conducting the business or undertaking will have no control over such places.

As I understand the bill, the person in charge will have a duty to ensure that all workers are made aware of the risks that might arise in people's homes and how to overcome those risks. Surely it is a matter of common sense as to what risks a person may face when he or she goes into someone's home. Do we really need to regulate this? Are we becoming a society where we assume that nobody has any common sense whatsoever?

There are difficulties in placing safety responsibilities on employers where they have no control over premises and in considering them a workplace. This is even more the case when the employer has no knowledge of the premises whatsoever and has never been there. If foster parents are caught by this bill—and it is my understanding that they would be—then their house would be deemed a workplace. Who is going to pay for any upgrades that are considered necessary to a house upon a safety audit, no matter how trivial?

Is this process really necessary in these circumstances? According to a report in *The Australian* on 19 January, Anglicare Victoria told *The Australian* it feared the new system would be so dysfunctional it would be impossible to comply with and lead to chaos for foster carers. There we have the Victorian branch of one of the main welfare agencies in Australia, Anglicare, saying that it thought, using its words, it 'would be so dysfunctional it would be impossible to comply with and lead to chaos for foster carers'. The Anglicare Victorian chief executive is reported to have said:

> We consider this would be a compliance impossibility to ensure individual residential homes comply, and a financial black hole in addressing all the compliance requirement.

He went on:

> There is a further possibility that as a result of this legislation foster carers may well withdraw rather than meet the compliance requirements.

Family First is aware that this is a federal initiative. This has been driven, I think with noble aims actually, to improve the level of similarity of our laws across the country, but I think we need to pause and take a serious look at the sort of comments that are being made by our major volunteer organisations and ask ourselves if this bill is achieving the objectives that it seeks to achieve.

We have to ask ourselves if there is a need for more regulation. Certainly in the eyes of Anglicare Victoria this poses a real threat. I am not convinced that there is a demonstrated need to expand the definition of the workplace to include places over which the employer has no direct control or even indirect control. I am also not convinced that there is a demonstrated problem with volunteers at charitable organisations suffering injuries on a regular basis that might be—and this is the key point—prevented by this bill. How will this bill prevent them? That is my question.

The obligations imposed by this bill do not simply require an employer to have sensible systems in place for safety and to avoid dangerous systems; rather, he or she must obtain and consider the legislation, regulations and all relevant codes of practice (which amounts to many hundreds of pages); keep up to date with any changes to them; consider all the risks by conducting a safety assessment; consider the costs associated with eliminating any hazards identified; consult with workers in accordance with a strict procedure set out; keep records of all assessments done, consultations and decisions made; and monitor compliance.

These processes are appropriate for an industrial plant and a place where workers work where there is obvious danger, but are not appropriate for a group of people meeting on a Friday night after work to distribute food to homeless people. That is so whether or not the group is part of an association that has many paid employees in its head office or not. As to the effect on business, my colleague the Hon. Rob Lucas outlined a number of figures, and I would like to add some more to that if I may.

I turn to a very significant part of this bill, that is, the effect on business itself. The Housing Industry Association has been one of the lead voices in the campaign against this bill, and I must say that they do present some very persuasive figures indeed. They have had management consultants Hudson Howells, in conjunction with quantity surveyors Rider Levett Bucknall, estimate the additional cost of building a house if this bill does become law, and the figures that they have put in front of us are, I think, extraordinary. They estimate the compliance cost to be approximately $20,088 for a single-storey home and about $28,450 for a two-storey house. The figures that these organisations have come up with are actually quite similar to the HIA's own estimates (the HIA's are slightly higher, but very similar).

My consultation with the building groups has informed me that the consequences for the housing sector will be the reduced ability of homebuyers to avoid this additional cost and therefore they will be subject to greater costs in building a home. Obviously, this will particularly effect first home buyers, who are the most price sensitive in this market. There would be significant job losses in the housing industry, and there is every reason to expect that other industries would be similarly affected.

The report also concluded that the consequences could include annual job losses in the order of 2,500 full-time equivalents in the building industry, and for South Australia generally annual job losses of 10,000 to 12,500, with the cost to the South Australian economy being up to $1.425 billion per annum. Even if people do not want to accept those figures, the point is that those are the figures that have been presented, and it must be said that they are very substantial figures. At the very least, they are cause for significant concern.

If this additional expense is necessary, all homebuyers will simply have to pay it or defer buying or building a house until they can pay the extra money. However, the information I have received from the Housing Industry Association is that the rates of injury on domestic housing sites is actually very low. The HIA states that the major builders in Adelaide who are their members, and who build 80 per cent of the houses around Adelaide, according to their own data have had only three incidents that have required some form of hospitalisation of an injured worker in the last five years.

The Hon. R.P. Wortley interjecting:

The Hon. D.G.E. HOOD: That's good; I look forward to hearing a response to it. I am not the authority on these figures; all I can do is repeat the figures that are presented to me, and I look forward to a response from the minister. He has every right to put forward the data he has; what I can tell you is that the HIA stands behind those figures—that they have had three incidents that have required some form of hospitalisation in the last five years on their building sites.

It is claimed that uniformity in laws across Australia will have great benefits for businesses that operate nationally, which I have partially addressed in my opening. However, it is my understanding that four jurisdictions across Australia have not adopted 1 January 2011 as a start date for this legislation; they are, obviously, South Australia, as we are still debating the bill, Victoria, Western Australia and Tasmania. All are giving detailed consideration to the provisions. I understand that Western Australia has identified some specific objections to certain provisions.

I now turn to workplace entry for unions. I accept that unions have a very significant and important place in industry and that over the last century, in particular, they have performed an outstanding role in improving safety and the like for workers. However, the reality is that there are worrying aspects of allowing work health and safety representatives of a union to have a right of entry to a workplace when that particular organisation does not even have any members of that union.

The size of the penalties is also something I have great concern about. The Family First party is in favour of penalties that encourage law and order, but there are many hardworking people in the community who operate small businesses and the like, and I believe that these people are concerned with the safety and welfare of their workers just as a normal part of them being decent citizens. They are concerned because they know the workers personally, they know their families and they are a part of their lives.

There are also workers compensation incentives to encourage safety awareness that already exist. There will always be a few who do the wrong thing in any group, regardless of what legislation we pass in this place, but I believe that the size of the penalties will not be a deterrent to them in many, many cases.

As a director of a family company that runs a small business, they might incur a penalty of up to five years' imprisonment for a breach—even a relatively minor breach—and his or her family company might be fined up to $3 million, which of course would send almost all of those small businesses to the wall, and not to mention ruin the lives of the individuals concerned. All of this is without an injury actually occurring, because it is not required in the bill for that to trigger the prosecution. Of course, I understand that the courts do not normally impose the maximum penalty, but the point is that the threat is there.

The size of the penalties would also be a concern to charitable associations that are caught by this bill. Those in charge of charities, where most of the work is done by volunteers, will presumably ask volunteers to carry out safety assessments to comply with the requirements of this bill. Who would want to take on such a charitable task as a volunteer and thereby risk a penalty of up to $50,000 for the lowest class of offence, namely, where there is no risk of death or serious injury. This could occur without negligence, simply because the volunteer failed to sufficiently acquaint him or herself with the applicable code of practice.

I do not dismiss my concerns because of a belief that a volunteer would not be prosecuted in those circumstances. We need to look more closely at the sorts of businesses and undertakings that are caught by this bill and the applicable penalties, and ask ourselves if they are in fact suitable for the offence.

Another area of concern to Family First in this bill is the change in the right to silence provisions. There are other matters of concern. This includes clause 172, that provides for the reversal of the right to silence that people would otherwise have where they might be accused of an offence outside of this particular bill. The right to silence is a common law right that has existed for hundreds of years. The law regards it as unfair if a person accused of an offence is compelled to answer a question where the answer would amount to an admission of criminal guilt. Rather, he or she can decline to answer it if they so choose.

The rule is particularly important where the person being questioned is taken by surprise or is not particularly astute in legal matters. It is generally considered fair that he or she should be given an opportunity to consult their lawyer or other adviser and then decide how to answer those

questions. Under this bill, the person would be required to answer any question, even if it did incriminate that person, but the answer could not be used in a prosecution. However, the prosecutor would of course know that the admission was made, and that knowledge would be a useful weapon in any prosecution.

Let us be clear: the provision is not about preventing accidents, it is about the gathering of evidence for a prosecution after the relevant events have occurred. My view is that we should only remove legal privileges that have existed for centuries if there is a clearly demonstrated need. South Australians who operate businesses and employ workers are not a group of serious criminals and gangsters. The common law rule for them of the right to remain silent should continue no matter what.

I have a couple of final points. The first is the pressure to prosecute. Clause 231 sets out a procedure for a person to follow if he or she believes that the government regulator should commence a prosecution but has not done so. It should be up to prosecution authorities to determine whether or not a prosecution is appropriate, free from all outside pressure. Indeed, the Director of Public Prosecutions has been set up specifically for that purpose in relation to the prosecution of serious crimes generally.

Any person who has sought to apply pressure for a prosecution to commence would presumably have his or her own reasons. The reasons behind such pressure may or may not be proper, and that is an important point. This section should be removed and the regulator should make up his or her own mind whether or not to prosecute for any breach. Any person could still write to the regulator, making it aware of any facts or even seeking action, but such a request would not be supported by legislation that might require the legislator to refer the matter to the DPP or to give reasons for not prosecuting any person. The point is that this particular clause actually creates a situation that could be used with malice or with bad intent.

Let me summarise my contribution today. Family First is strongly of the view that it is for the proponent of any bill to justify the need for change. We do not believe that the case for change has been well argued or has been successfully argued in this case.

The two bases on which this legislation is being pursued are essentially a need to improve safety and, secondly, the need for national uniformity of legislation. I am not persuaded that this legislation will have any beneficial effect on safety. All it will do is increase the documentation required. There is no guarantee at all that there will ever be uniformity of legislation across Australia. Indeed, as I have outlined, it looks almost certain that there will not be.

So, we should not feel pressured into enacting bad legislation that will be a hindrance to businesses and charities in this state. There are many flaws in this bill, of which I have outlined just a few, and I am particularly concerned at the following aspects:

- the effect it will have on charities that perform good work in the community;
- the cost of compliance for businesses and undertakings—firstly for charities that simply cannot afford such costs and also for businesses that will try to pass on the costs and thereby increase the cost of things such as housing by a very substantial amount;
- the flow-on effect of those cost increases resulting in job losses and a slowing economy;
- the very loose definition of the word 'workplace' in the bill and the consequent difficulties in defining the area over which the employers have obligations, particularly when they have no control over that particular area;
- the right of entry by unions where they do not even have members on that site;
- the size of criminal penalties are excessive;
- the removal of the well-established common law right to silence; and
- the ability of a person who may well have a self-serving or even a malicious intention to put pressure on the regulator to prosecute a particular employee.

There are many, many more things I could say but, in my very quick closing remarks, I would make it clear that we do not support this bill, we will not support the second reading and we will vote against this bill at the second reading. If the bill passes at the second reading, there are substantial amendments that the Liberal Party has prepared which we intend to support. It will come as no surprise that we do not intend to support the amendments that the Greens have put forward on this

particular bill. I ask that people really consider what the impact of this bill will be for our state and businesses, for volunteers and all the other issues I have addressed.

Debate adjourned on motion of Hon. C. Zollo.

ADDRESS IN REPLY

Adjourned debate on motion for adoption (resumed on motion).

The Hon. K.L. VINCENT (18:02): I rise to support the adoption of the Address in Reply to the Governor's speech and I wish to thank His Excellency for his ongoing service to the state of South Australia. In the Governor's speech, he outlined seven primary areas where we will see the government's action focused. They all sounded wholesome and reasonable; however, as many of my colleagues have noted, it is ongoing reform, rather than words, that we must and will judge this government on.

I begin by outlining my response to each of the seven areas. The first three refer to our state industries—industries that are seen to make our state great and that our economic wellbeing supposedly hinges upon. The government says we need to foster a clean, green food industry, support the mining boom and sustain our advanced manufacturing industries. I mention all three together because I see them as being inexorably linked.

Without a stable water supply, we cannot have clean, green food industries, yet manufacturing and mining are greedy consumers of water. The need for water is so great for the approved Olympic Dam expansion, a desalination plant will be constructed at Point Lowly, adjacent to the giant cuttlefish breeding grounds. Now, whatever your views on desalination plant locations and construction, you have to wonder whether the same would ever be considered for farmers in our food bowl regions. It is no coincidence that there are farmers' markets in Angaston and Willunga, adjacent to our two premier wine regions in the Barossa Valley and McLaren Vale.

To support a clean, green food industry, we need tourism to support what we are already famous for; that is, our local foodie fare and wine. While securing the health of the River Murray and appropriate water allocations are a valuable part of this, I would have thought that having a functioning, accessible tourism centre would also be helpful. At present, we do not have this.

In addition to exporting our food and wine interstate and overseas, in times of global economic crisis, it is local uptake of our produce that is more important than ever. A great example of supporting small and medium-size local industry, manufacturing and produce was recently aired on an episode of the ABC's *Foreign Correspondent*. In *A Bavarian Fairy Tale,* they examined the concept of 'mittelstand' and Germany's role as the world's second-biggest exporter, that is, after China. I encourage all members to view this episode on iView because I believe it provides a fascinating insight into how economic success can still occur while the rest of a continent is besieged with economic instability and crises.

Germany has high labour costs, excellent workers' rights, and salaries and safety are not only enshrined in law but also in workplace culture. As I understand it, Germany has fairly stringent environmental regulations also, and these are some of the reasons that southern Germany continues to thrive. They have excellent training for workers, and company bosses are keenly attuned to all the workings of their business.

In Bavaria, there is no hysteria or shouting from the rooftops or chest-beating from the government, nor from the industry for that matter, about booms or crises or coups. Instead, there is a steady work ethic that fosters long-term benefits ahead of short-term political gain. As a consequence, this region of the world is successfully weathering the storm of the global financial crisis.

I wonder whether our South Australian manufacturing and trade minister has visited this region and whether a state like South Australia might possibly benefit from some of the ideas we see there. We keep providing corporate welfare to Holden to stay open so that it can continue to employ workers. The government is terrified that it will be blamed for unemployment. I do not understand why a highly-developed first-world country like Germany can run a successful automotive industry yet we keep having to bail out the Holden factory at Elizabeth. What is it that we are doing wrong?

I do not have figures on Germany's uptake of people with disabilities in the workforce, but I can tell you that Australia ranks 21st out of 29 OECD countries when comes to workforce

participation for people with disabilities, according to the December 2011 report by PricewaterhouseCoopers.

The Hon. T.A. Franks interjecting:

The Hon. K.L. VINCENT: And, as the Hon. Ms Franks interjects, that is a point of great shame for this country. I also add that South Australia has gone backward, not forward, in the past few years when it comes to employing people with disabilities in the Public Service.

Our state government says that we are having a mining boom and that thousands of South Australians will be employed as a consequence of this. This is all very well, but when I queried the Olympic Dam Task Force and BHP in early December on employment figures for people with disabilities, it was clear that it had not even entered into the equation. I do not believe it had even been considered.

Employment of local youth and indigenous people is, of course, on the agenda, and I am the first to say that that is a great thing, but there has been no innovative thinking when it comes to people with disabilities and their employment opportunities. This is unfortunate since the sector has lower employment participation rates than both the youth and indigenous sectors.

The Weekend Australian employment section discussed the PricewaterhouseCoopers report less than three weeks ago. It highlighted the economic benefit of people with disabilities gaining employment. I am seeking to meet with minister Koutsantonis and the Olympic Dam Task Force on this very issue. I think it is essential that the government ensure BHP looks at employing people with disabilities if this mining boom is to be truly for all South Australians.

The fourth government priority area is a vibrant city—referring, of course, to the City of Adelaide. I strongly support the government's agenda here. I enjoy a good working relationship with Lord Mayor Stephen Yarwood. His role is critical to the success of such a project, but I would remind everyone that, while I support the idea of a vibrant city, I am also very aware that we have a long way to go before we have an accessible city. As an example, I would say the Splash Adelaide project needs to ensure that it stops encroaching on accessible car parks.

Making Adelaide more wheel accessible is something I am also passionate about. I would love for all footpaths and corridors around the city to accommodate all wheelchairs hospitably—and prams as well as people on frames and crutches, for that matter. There is no doubt that having a city that feels available to all people in wheelchairs, to people on bikes and to families with children and prams will help make Adelaide a flourishing cosmopolitan city.

This brings me to action No. 5: Safe and active neighbourhoods. People with disabilities would love to feel safe and be able to be active in their communities, but their options are sometimes limited. For a start, not all people with disabilities can rely on buses and trains being accessible. As I have stated in this place before, only 82 per cent of buses in our current public transport network are accessible to wheelchairs and other mobility aids. This makes catching an accessible bus something of a lottery.

My office gets calls from constituents who are waiting at bus stops in all kinds of weather, hoping that an accessible bus will turn up soon, since those that have already been past were not so. The quicker the state government updates the bus fleet, the sooner people with disabilities will be able to get out into the community and into the workforce.

As for feeling safe, it would be wonderful if police in this state were given training on how to manage interacting with people with disabilities. People with disabilities are over-represented in our criminal justice system—this is no secret—both as victims and as perpetrators. I will talk more on this but for now I will say that, as I have already said today in this chamber, I have sought to meet with the Minister for Police and her predecessor Kevin Foley to discuss the inadequacy of current police training on disability.

Area action No. 6 is affordable living. Living with a disability in this state is currently a full-time job, either for the person with the disability or for the carer. This is due to the burden of navigating the confusing array of government and non-government services. This sure is not affordable. So, this area seems a pipe dream if you are living with a disability.

I get sick of raising this repeatedly but I guess I am going to have to until something actually changes—unmet needs. There is an accommodation crisis for people with disabilities in this state. There is not adequate affordable housing to meet demand. We are not talking about a few people either. There are nearly 1,200 people awaiting accommodation support and more than

1,700 awaiting community support and access and respite, for example. It is not good, and I will expand on this a little later.

No. 7, Early childhood: cherishing early childhood and ensuring early intervention, especially for children with disabilities, is something I again feel very passionate about and something this government fails at. I was very happy to join with the government in enshrining rapid passage of legislation that will see improved education and training of child workers as well as improved staff to child ratios in child care.

But that only tells one small part of the story. We must introduce a system for not only early diagnosis of disability in children but also for adequate support and programs for both children and their families. The community needs choices so that, for example, a parent told that their child has autism does not just get given a cheque and a few phone numbers to try but a choice of comprehensive integrated programs that are shown to work.

In the spirit of the government's predisposition for espousing bold visions for the future, I am now going to outline my own. Just like the government's seven steps to a brave new South Australia, I have seven steps which I think would bring us closer to a South Australia in which people with disabilities have a quality of life which is equal to that of others.

The first step is pretty simple and pretty obvious. How about if the government is so committed to prioritising the rights of people with disabilities it makes a start by clearing that infamous unmet needs list? I was on the radio talking about this very idea with the Minister for Disabilities this very morning. Minister Hunter said that his government did not want to pour any more money into a system which is failing people and leaking dollars. Instead, the government is going to institute an entire reform of the disability services system.

I am the first to say that this is wonderful, absolutely wonderful. The government has finally admitted that it has been epically failing at disability services provision and now it is going to think about fixing that failure. Great! Brilliant! The disability sector would certainly be rejoicing if it were not so busy dealing with homelessness, lack of essential supports, and financial and emotional stresses. Unfortunately, long-term wide-arching reforms—these things that sound great dripping from the lips of a government minister—take time, and time is not something that these people languishing on the unmet needs list have.

In the years that it will take the government to fully implement its much-needed reform, people who have nowhere to live, people who have no-one to help them access showers or food, people who have no social interaction each week will continue to suffer. I say to the government, 'Congratulations on your agenda of reform, but you are still failing those people on the unmet needs list who need your help and need it now. They can't wait for this reform to happen so if you actually care about those individuals with disabilities, you will help them with an immediate injection of funding.'

Next on my wish list for disability reform is a call for universal self-managed funding. I will explain this concept quickly for those listening. Self-managed funding is a model of service delivery which recognises that the person with a disability or their carer knows what is best for them. Astoundingly, at the moment, South Australians who receive government-funded services are forced to accept whoever shows up on their doorstep to provide that service.

They do not get to choose which agency delivers their service necessarily. They often do not get to choose when that service is delivered and sometimes they do not have a choice in where. It is a paternalistic and dysfunctional model. Self-managed funding hands back the power to the people with disability, giving them the ability to choose how their services are delivered. To reinforce how important this is, think about it this way, just from one example: if you had to have a stranger help you shower every morning, would you like the power to at least choose who that stranger is? I think the answer is yes.

I must congratulate the government for committing to implement this model. I am very pleased that it has recognised the need for people with disabilities to be involved in their own service delivery and life outcomes. However, I am worried because people in the service provider industry have been telling me that there has been no support provided to them thus far so that they can prepare for this huge change.

We are supposed to have up to 2,400 people transitioning to the new system from July of this year, but disability services agencies have not been offered any help to change their accounting and administration to suit the new method. If the government is serious about this

change, I would expect some more action to happen very soon on this front. The system of self-managed funding is but one small step in the direction of a rights-based approach to disability services delivery.

The third piece of my vision is another step which will enable the rights of people with disability to be prioritised. The first thing we need to do is also no secret: overhaul the Disability Services Act. The problem with the current act is that it is this legislation that has delivered us to our current standing, where we are reliant on an inefficient, ineffective and condescending system that puts bureaucrats at its centre ahead of the people it is supposed to serve.

The government has in fact committed to reforming the Disability Services Act and, in that weird governmental way, has talked around the idea of aligning it in a rights-based approach but, of course, first they will be doing consultation. You know how much I love that word, Mr President. This, quite frankly, blows my mind. The disability sector has just waited through two years of consultation to deliver the current Blueprint for Disability Reform, and it is certainly worth mentioning that this blueprint comes on top of all the other documents that are currently sitting on governmental shelves in terms of disability service provision.

As a result of this consultation, the Social Inclusion Unit has recommended that the Disability Services Act be overhauled and redrafted in line with a rights-based approach. What else does the government need to know from the community, or can the government not be bothered to pick up the phone and call the Social Inclusion Unit to ask for the documentation of the consultation that has just been done?

Honestly, I think we all know what is going on here. Minister Hunter is obviously in this case using the word 'consultation' as shorthand for 'We're going to delay doing anything because this is a giant problem, and it's too hard.' Consultation is great, but the government has done that on this issue. Now it is time for some action, so I say: get drafting, government, or else I will be happy to draft my own disability services act and you will be very welcome and surely obligated to support it.

Next on my wish list is action No. 4, preparation for the national disability insurance scheme. Undoubtedly, the things I have mentioned already will act as good preparation for South Australia to become part of an integrated NDIS, especially if we keep an NDIS in frame while drafting that infamous new disability services act. However, there is a lot more that needs to be done.

In Victoria, for example, the state government has been funding research into transitioning into an NDIS since 2010, and that government is constantly pushing the federal government to make the interim financial commitment, which was recommended by the Productivity Commission, to quickly raise the quality of life for thousands of Australians with disabilities, so again not just leaving them to wait. Queensland is another state that has actually put its money where its mouth is and started funding transitional moves towards the NDIS.

My fourth wish is that our government stands up and does the same as these other states, that it proves its commitment to the NDIS by beginning to prepare all the agencies, including the government departments involved, for this huge switch over. Even if these four steps were completed alone, I know that South Australians with disabilities would be immeasurably better off. However, I do not think we should stop at 'better off'. We must go all the way and look at how we can give South Australians with disabilities the same standard of living that other South Australians expect and enjoy.

Next on my list is the implementation of a suite of protective measures to better safeguard vulnerable people with disabilities. It is important to note that not all people with disabilities need the things I am about to touch on. Some people with disabilities are very capable of standing up for themselves and decrying abuses or breaches of rights, but others, be it through intellectual disability, physical disability or a lack of understanding, cannot protect themselves, and because of that it is the duty of the state to step up and provide protection from predators, abusers and neglect.

We do these things for our children and for our elderly, but if you are a person who is vulnerable due to disability between the ages of 18 and 65, sorry, but you are on your own. That is why I have suggested we implement a mandatory reporting system for people with disabilities. I know it is not a perfect model, but we have it in aged care and in schools, and there is no doubt that it is effective in at least identifying hundreds of cases of abuse every year. We can, of course,

make it better, and I am willing to work on doing that. We can apply it to vulnerable people with disabilities. I have drafted the legislation, and all the government needs to did is support it.

We can also provide better protection for people with disabilities by not cost-cutting in areas where vulnerability is exacerbated. Instead of letting bus drivers transport kids with severe disabilities to school unsupervised, fork out the extra money to put school support officers on buses, as well as a CCTV camera and GPS tracking devices on these buses transporting the most vulnerable children. It may cost a little to begin with, but it is worth it to keep our children safe.

Since we are talking about protecting children or indeed anyone from abuse, we also need to talk about what is the process when a crime is actually committed by or against a person with a disability. It is evident from speeches I have made in the past that the justice system is currently dismally failing to include South Australians with disabilities. Many of them have no voice in a court of law, and many of them are ignored or excluded by the police. Lawyers in the department of public prosecutions are forced to drop their cases often because they are considered unreliable witnesses.

The sixth part of my vision for a better South Australia is the development of an inclusive justice system. We need to address every part of the process—from the way police are trained to think about disability to the way they interview people with disabilities. The perception of people with disabilities as unreliable by the courts is a huge issue, as is the inability for someone with a communication disability to give evidence.

It is a big job, and I am pleased to say that the Attorney-General does seem keen to begin work on this. However, I am still very concerned that the Minister for Police is opting for an 'ignore and avoid' approach on this issue. My office requested a meeting with Jennifer Rankine a month ago, as I have already touched upon, and we have not heard a whisper of response. If South Australians with disabilities are to be given a fair go in our justice system, the overhaul of it needs to be holistic, so I call on this government to get all portfolio areas involved.

Finally, on a slightly cheerier note, I come to my final wish. You may have noticed a general theme in my wishes, that is, a desire for people with disability to have their rights realised. This last wish has to do with the same idea but through a different medium of expression. I want all South Australians and, indeed, all South Australians with a disability, to have the right to an empowered and fulfilled life. It might seem like I have been talking about empowerment and fulfilment this whole time, but really what I have been talking about are very basic human rights. Empowerment and fulfilment can sometimes involve a higher level of participation in society than just having appropriate accommodation. To achieve these fulfilments, you need access to what are sometimes more subtle things, such as sexual expression and, indeed, employment.

I want the workforce participation rate of people with disabilities to be lifted out of the shallows it currently resides in. People with disabilities should be able to look forward to a career and career development, not feel lucky if they get a casual job for a six-month period. Of course, for people with disabilities to work they need support and workplaces often need support so that they can understand and cater for the employee with disability needs. The government, at a federal and state level, need to provide this support.

Something else that needs to be considered when it comes to empowering people with disabilities is their access to sexual expression. For plenty of people with disabilities, accessing sex is not a problem. They have partners or lovers or other people in their life with whom they can be comfortably sexually active. Of course, for other people with disabilities, sex also is not a problem because they are not particularly interested, just like some people without disabilities are not. They might have religious beliefs, which means that they do not want to engage in sexual activity, or they might just not have a high sex drive.

But there is a significant number of people with disabilities for whom sexual activity is both wanted and very difficult. People who live in group homes, for example, and have little privacy; people who might have physical conditions which mean they need extra help to achieve sexual pleasure; and even people who find it difficult to find sexual partners because of their disability. These people, who are capable of making informed choices about wanting to engage in sex but are not always able to make that choice become a reality, are some of the people on whose behalf I want to run this campaign. It is worth noting that for a lot people with disabilities, particularly people who have acquired disabilities in a car accident, for example, sex can also be a form of rehabilitation, physical and, indeed, emotional therapy, and it must also be addressed this way, and this is something I look forward to working on in the near future.

When you think about it, there are lots of things many of us take for granted, including housing, social interaction, fulfilling employment and, indeed, personal intimacy. I think it would be great if people with disabilities could take these life-enriching things for granted, too. So, that is what I think we should be working toward, and it is what I and my party, Dignity for Disability, will be working towards.

To sum up, we start this new parliamentary session with some big problems and some big opportunities to make lives better. We will not solve all these problems by just sticking to this government's seven step plan for a 'better South Australia'. So, I hope we can work together to implement some more diverse ideas like those I have just outlined. I look very much to that.

Debate adjourned on motion of Hon. G.E. Gago.

STATUTES AMENDMENT (SERIOUS AND ORGANISED CRIME) BILL

Received from the House of Assembly and read a first time.

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) (18:30): 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.

Introduction

In 2007-2008 the Government began the process that would lead to the enactment of the *Serious and Organised Crime (Control) Act 2008*. On November 11, 2010 the High Court, by a majority of 6-1, decided that at least in so far as the Magistrates Court was required to make the control order by the *Serious and Organised Crime (Control) Act 2008* on a finding that the respondent was a member of a declared organisation, that court was acting at the direction of the executive, was deprived of its essential character as a court within the meaning of Chapter III of the Commonwealth *Constitution* and that section was, therefore invalid (*South Australia v Totani* [2010] HCA 39). The net effect of that decision was that a key part of the legislative scheme in the Act was inoperable.

The State of New South Wales enacted the *Crimes (Criminal Organisations Control) Act* in 2009. That Act was a version of the South Australian Act, with this significant exception. Section 6 of the Act provides that the Commissioner of Police may apply to an "eligible Judge" of the Supreme Court (rather than the Attorney-General) for a declaration that a particular organisation is a "declared organisation" for the purposes of the Act. On 23 June, 2011, the High Court, by a majority of 6-1, held the entire Act to be invalid, essentially because there was no requirement to provide reasons.

In August 2011, the Government released 5 draft Bills on the subject for public comment. One was a series of amendments to the *Serious and Organised Crime (Control) Act 2008* to repair the constitutional damage and to make some changes that, on advice, would improve its effectiveness. The other four were aimed at serious and organised crime by attacking what they do, rather than what they are. They were the *Statutes Amendment (Serious and Organised Crime—Offences) Bill 2011*, the *Statutes Amendment (Serious and Organised Crime—Procedures) Bill 2011*, the *Statutes Amendment (Consorting, Loitering and Other Matters) Bill 2011* and the *Evidence (Out of Court Statements) Amendment Bill 2011*.

Lengthy and sometimes complicated comments were received from the Law Society/Bar Association, the Commissioner of Police, the Crown Solicitor, the Legal Services Commission, the judiciary and the DPP. It is no surprise that the comments varied from firm opposition to the view that the proposals did not go far enough.

The previously released four proposed Bills additional to the Bill to repair the *Serious and Organised (Crime) Control Act 2008* have been consolidated into one and improved by a variety of comments made on consultation.

General Comments

It is quite clear that the Government must respond decisively to the High Court decisions and do so comprehensively and expeditiously. Expert advice has been taken from the Crown Solicitor and the Solicitor-General about the effect and content of the decisions in *Totani* and *Wainohu* and how the Government might best respond to repair the legislation. Constitutional repair of the *Serious and Organised Crime (Control) Act 2008* by the *Serious and Organised Crime (Control) (Miscellaneous) Amendment Bill 2012* is the subject of a separate Bill.

The Government has an announced election policy on serious and organised crime. It is:

> *'Continuing to support police and prosecutors with our nation leading anti-bikie legislation to help disrupt and dismantle serious and organised crime gangs.'*

There must and will be a response to the *Totani* decision by the Government. It must be comprehensive and, in particular, designed so that (a) the effectiveness of the Government policy to harass and disrupt criminal gangs, particularly bikie gangs, is restored and (b) the intent of the Government's policy is not thwarted by constitutional issues. This Bill contains a suite of related measures designed to disrupt and harass the activities of

criminals of all persuasions, organised, disorganised, competent and incompetent. There can be little doubt that the Bill will be the subject of sustained criticism in some quarters. The answer is and must be that these measures are carefully targeted at serious and organised crime and it is recognised in international law and the laws of other sovereign nations that the traditional criminal justice system deals poorly with the threats that serious and organised crime suspects may pose to the integrity of the criminal justice system.

Serious and Organised Crime Offences—Aggravated Offences

The *United Nations Convention against Transnational Organized Crime* ('the *Palermo Convention*') provides an internationally recognised and respected legislative model for preventing and combatting organised crime. The Convention was adopted on 15 November 2000; entered into force on 29 September 2003; and ratified by Australia on 27 May 2004. Article 5 deals with criminalisation of participation in an organised criminal group.

The *Palermo Convention* defines an organised criminal group as follows:

> *'Organised criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this convention, in order to obtain, directly or indirectly, a financial or other material benefit.*

Article 5(1) of the convention recommends:

Criminalization of participation in an organized criminal group

> *1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*
>
> *(a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:*
>
> *(i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;*
>
> *(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:*
>
> *a. Criminal activities of the organized criminal group;*
>
> *b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;*
>
> *(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.*

The spirit of the Convention has been applied in a number of countries. The Canadian *Criminal Code* contains its version of the Palermo recommendations. For example, section 467.11 says:

> *(1) Every person who, for the purpose of enhancing the ability of a criminal organization to facilitate or commit an indictable offence under this or any other Act of Parliament, knowingly, by act or omission, participates in or contributes to any activity of the criminal organization is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.*
>
> *(2) In a prosecution for an offence under subsection (1), it is not necessary for the prosecutor to prove that—*
>
> *(a) the criminal organization actually facilitated or committed an indictable offence;*
>
> *(b) the participation or contribution of the accused actually enhanced the ability of the criminal organization to facilitate or commit an indictable offence;*
>
> *(c) the accused knew the specific nature of any indictable offence that may have been facilitated or committed by the criminal organization; or*
>
> *(d) the accused knew the identity of any of the persons who constitute the criminal organization.*
>
> *(3) In determining whether an accused participates in or contributes to any activity of a criminal organization, the Court may consider, among other factors, whether the accused—*
>
> *(a) uses a name, word, symbol or other representation that identifies, or is associated with, the criminal organization;*

(b) frequently associates with any of the persons who constitute the criminal organization;

(c) receives any benefit from the criminal organization; or

(d) repeatedly engages in activities at the instruction of any of the persons who constitute the criminal organization.

The Commonwealth *Crimes Legislation Amendment (Serious and Organised Crime) Act (No 2) 2010* also contains a version of the Palermo recommendations. Schedule 4 of the Act inserts a new Part 9.9 into the *Criminal Code* dealing with criminal associations and organisations. The Code contains a suite of offences with penalties of up to 15 years imprisonment. For example, section 390.4 (the least serious offence) says:

Supporting a criminal organisation

(1) A person commits an offence if:

(a) the person provides material support or resources to an organisation or a member of an organisation; and

(b) either:

(i) the provision of the support or resources aids; or

(ii) there is a risk that the provision of the support or resources will aid the organisation to engage in conduct constituting an offence against any law; and

(c) the organisation consists of 2 or more persons; and

(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and

(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and

(f) the offence against any law mentioned in paragraph (b) is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: *Imprisonment for 5 years.*

New South Wales has enacted similar offences in sections 93S and 93T of its *Crimes Act 1900*.

The conventional criminal law framework is ill-suited to preventing and combatting organised crime in that secondary and inchoate liability do not adequately extend liability to the root activities and organisation of a criminal group. For example, secondary liability does not cover the non-criminal activities of a person who only indirectly contributes to the criminal activities of a criminal group. Equally, inchoate liability, in particular the offence of conspiracy, does not criminalise persons within a criminal group who are not a party to the agreement to commit the crime. This often omits the leadership of a criminal group, which operates above the street level preparation and commission of offences.

Serious and organised crime legislation must therefore aim to create offences that comprehensively target the criminal activities of a criminal group, providing scope to charge all persons who knowingly contribute to the criminal activities of the group. Moreover, serious and organised crime legislation must create offences that target a criminal group at the level of the organisation. The objectives of any such legislation must therefore be to prevent and reduce criminal activity with a group aspect by—

- extending liability to all unjustified involvement in criminal group activities, and
- making impotent the organisational capacity of a criminal group.

The centrepiece of the proposed Bill is the insertion into the *Criminal Law Consolidation Act 1935* of a new Part 3B entitled *Offences relating to criminal organisations*. There is a proposed new core offence of participation in a criminal organisation knowing or being reckless as to both (a) whether it is a criminal organisation and (b) whether the participation contributes to the occurrence of any criminal activity. A criminal organisation means both a criminal group and an organisation declared under the *Serious and Organised Crime (Control) Act 2008*. A criminal group means a group of 2 or more whose aim is the commission or facilitation of a serious offence of violence or the commission or facilitation of the commission of a serious offence that will benefit the group, participants or associates. Participation is partially defined to include recruiting others to participate in the organisation; and supporting the organisation; and committing an offence for the benefit of, or at the direction of, the organisation; and occupying a leadership or management position in the organisation or otherwise directing any acts of the organisation. This offence carries a maximum penalty of 15 years imprisonment.

There then follows a sequence of particular offences directed at typical behaviour of organised crime gangs-assaulting another, threatening to damage or destroy property of another (each 20 years) and assaulting a public officer in the execution of that officer's duty (25 years). Notably, public officers include judges, jurors, police officers, people who work for the Crown and so on.

There are four other provisions of particular note in this part. The first is that a person will be presumed in the absence of evidence to the contrary to be participating in a criminal organisation if that person is at the relevant

time displaying (whether on an article of clothing, as a tattoo or otherwise) the insignia of the criminal organisation. The second is that once a court finds that a group is a criminal organisation and makes a declaration to that effect, that finding stands, again in the absence of proof to the contrary.

The second feature deals with maximum penalties. The Bill creates aggravated versions of various existing offences, the aggravation being that the offence was committed for the benefit of, at the direction of, in association with a criminal organisation or the offender identifies him or herself as the member of a criminal organisation (whether or not that is true). The same deeming provision about insignia applies unless the person proves that the insignia were not displayed knowingly or recklessly.

The offences aggravated are various serious drug offences in the *Controlled Substances Act 1984*, and the general criminal law offences of blackmail, and abuse of public office. The Bill also increases the maximum penalty applicable to threats or reprisals against people involved in criminal investigations or judicial proceedings and threats or reprisals against public officers from 7 years to 10.

The third feature deals with sentencing. The Bill provides that a sentence for an offence against the new criminal organisation offences will be cumulative on a sentence for any other offence that is not another of those offences. So, for example, if a person is found guilty of possession of a firearm to commit an offence and participating in a criminal organisation, and both attract sentences of imprisonment, those sentences are to be cumulative.

Consorting, Loitering and Other Matters

(i)—The Consorting Offence

The High Court in *Totani* criticised the legislated scheme of control orders. But French CJ discussed traditional consorting offences without criticism and, while the other majority judgments do not do so, they do not gainsay anything that the Chief Justice said. In particular, he said:

> *Concerns that they might impinge on innocent members of the community were expressed in opposition to such laws. Consorting did extend to innocent association with proscribed classes of persons such as reputed thieves or known prostitutes or persons who had been convicted of having no visible lawful means of support. However, unlike the provisions of the SOCC Act providing for ministerial declarations and judicial control orders, the vagrancy and consorting laws created offences, based upon norms of conduct, which did not depend upon the prior existence of an executive or judicial order.*

The old consorting offence was the subject of High Court consideration in *Johanson v Dixon* (1979) 143 CLR 376. That case concerned the Victorian equivalent which differed from its South Australian equivalent in that it made it a defence for the defendant to prove to the satisfaction of the court lawful means of support and "good and sufficient reasons" for consorting. Mason J said:

> *However, it seems reasonably clear that to constitute the offence, habitually consorting with more than one person, with a plurality of persons, is required. Association with a reputed thief would not be enough. The legislative policy which underlies the provision negatives the statutory rule of construction requiring that the reference in the plural should be read in the singular. It is a policy which was designed to inhibit a person from habitually associating with persons of the three designated classes, because the association might expose that individual to temptation or lead to his involvement in criminal activity. It is not to the point that the section is a provision of long standing and that it reflects a policy which came into existence many years ago. The fact, if it be a fact, that the policy is now a matter of some controversy, is no justification for our construing the provision otherwise than in accordance with its terms. If a change in the statute is thought to be desirable on account of changed conditions or changed attitudes, it is for Parliament to decide whether that change should be made.*

No constitutional challenge to the offence was argued, nor raised, nor contemplated.

The consorting offence was reviewed by the *Criminal Law and Penal Methods Reform Committee* (more commonly referred to as the Mitchell Committee) in 1977 and that Committee presciently reported:

> *…there are many serious crimes committed in company to which the consorting law does not apply. Today many crimes of violence are committed by those who are in frequent association. It may be argued therefore that, if it is an offence habitually to consort with reputed thieves, it should equally be an offence habitually to consort with reputed thugs, so that consorting with members of some 'bikie' gangs with a reputation for violence might in itself be an offence.*

A new version of the old consorting offence is proposed that is more discriminate in its operation and more up to date. While society retains a level of concern about reputed thieves - these were the organised criminals of the day and are represented in popular imagination as such by such authors as Dickens in *Oliver Twist* - and reputed prostitutes (although we are, perhaps, less hypocritical about the latter), modern society is far more concerned about a better class of organised criminal. In this instance, we should target consorting with those who have committed or who are reasonably suspected of having committed, a serious and organised crime offence.

The meaning of that term is defined in the amendments to the *Criminal Law Consolidation Act 1935* described above. For present purposes, it suffices to say that the definition will state that a serious and organised crime offence means one of the proposed new dedicated offences, any offence punishable by life imprisonment or an aggravated offence where the offender committed the offence for the benefit of a criminal organisation or 2 or more members of a criminal organisation, or at the direction of, or in association with, a criminal organisation; or in

the course of committing the offence, identified himself or herself in some way as belonging to, or otherwise being associated with, a criminal organisation (whether or not the offender did in fact belong to, or was in fact associated with, the organisation).

(ii)—Consorting Notices

The Mitchell Committee went on to say that the section 13 consorting offence in its then form was outmoded and over-draconian (which it was) and recommended its replacement. The Committee recommended a system by which a police officer of or above the rank of superintendant could issue a notice requiring the person to desist from consorting with named people and stating the basis for that requirement. That person could then apply to a judge to have the notice rescinded on the ground that there is good reason for the association but, in the absence of a rescission, it is an offence to habitually consort against the terms of the notice.

This proposal operates in lieu of a defence of 'reasonable excuse' or 'lawful excuse'. It has much to commend it. Although it adds a extra step of court time (these days, the application would be made to a magistrate), it has the effect that the onus is on the defendant to initiate the court action and the result (whether court action is so taken or not) is certainty for the police and the defendant. It is an offence to contravene the notice with no defence. This is worth implementing.

Consorting is keeping or accepting an association. A person does not give a good account of habitually consorting merely by establishing that it was for an innocent purpose. The consorting must be persistent and as a matter of habit (*Johanson v Dixon* (1975) 143 CLR 376).

It remains to consider the subjects of the consorting charge. It is proposed that the offence apply to habitually consorting with a person convicted of or reasonably suspected of having committed any or any combination of:

- a commercial drug offence;
- an indictable firearms offence;
- an indictable offence of violence (as defined);
- extortion;
- money laundering;
- a serious and organised crime offence;
- any offence of attempting to commit or assault with intent to commit any of these offences; and
- any offence against the law of another jurisdiction that matches any of these offences.

For reasons of commonsense and constitutional protection, the legislation must contain exemptions, including to exempt consorting with a close family member (defined as including a spouse or former spouse or person in a close personal relationship or a parent or grandparent (whether by blood or by marriage); or a brother or sister (whether by blood or by marriage); or guardian or carer). Other exempt associations should include association for genuine political purposes, association while in lawful custody or in obedience to a court order and associations occurring at a rehabilitation, counselling or therapy session of a prescribed kind.

The notice procedure requires such machinery provisions as the information that the notice must contain, the way in which it is to be served and a certification provision about the fact of service. The effect of the consorting order is indefinite in duration, but the defendant may challenge it by making an application to the Magistrates Court for variation or cancellation of the order. If that is not done within 4 weeks of the service of the order, an application for revocation or variation may only be made by the defendant with the permission of the Court and permission is only to be granted if the Court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied. There are also to be suitable provisions for appeals. There is the obvious need for the protection of criminal intelligence in dealing with suspicious associations between criminals and that is to be done in the form that the Government maintains is correct after the decision of the High Court in *K-Generation Pty Ltd v Liquor Licensing Court* [2009] HCA 4.

The maximum penalty must be such as to match and deter the seriousness of the associations being attacked but, balanced against that, the consorter may of course be innocent of any other offence. While the outmoded offence was mostly punished by a fine, it did attract imprisonment (when done, one month was chosen) and the maximum was 6 months. I propose to escalate this to 2 years.

(iii)—Non-association and Place Restriction Orders

It is proposed to introduce a system of non-association and place restrictions orders that, to a degree, overlap with but are complementary to the other proposals in this Bill. These are judicial orders with full judicial discretion and they should survive any *Totani* based challenge.

The system contemplated is that a police officer may apply to the Magistrates Court for a non-association order or a place restriction order or both. The criteria given to the Court for making either order are that (a) the defendant has within the past two years been convicted of an indictable offence (here or elsewhere); and (b) the Court is satisfied that the order is reasonably necessary to ensure that the defendant does not commit any more indictable offences. The order will have a specified period that cannot be more than 2 years.

A non-association order will prohibit a person from being in company with a named person, or communicating with a named person either with or without exceptions. A place restriction order will prohibit a person from frequenting or visiting a specified place or area either absolutely or at specified times.

A non-association order may not specify a member of the person's close family unless the defendant requests that or the Court is satisfied that there is an appreciable risk of further indictable offending unless the order is made. Similarly a place restriction order may not specify a person's residence, place of employment, place of residence of a close family member, the person's educational institution or any place of worship regularly attended by the person unless that is requested by the defendant or unless the Court is satisfied that there is an appreciable risk of further indictable offending unless the order is made.

There are to be machinery provisions about the service of process, the cases in which the order may be made ex parte and the variation or revocation of the order. Non-compliance with the order without reasonable excuse is of course an offence punishable on first offence by imprisonment for 6 months and for a second offence by imprisonment for 2 years.

The defence of 'reasonable excuse' is to be complemented by guidance. It should not be an offence to associate with a person in a forbidden way if the association was in accordance with an order of a court. It should not be an offence to associate with a person in a forbidden way if the association was unintentional and the defendant terminated the association as soon as was reasonably practicable. Similarly, it should not be an offence to be in a forbidden place or area if the conduct was in accordance with an order of a court. It should not be an offence to be in a forbidden place if the conduct was unintentional and the defendant left the place as soon as was reasonably practicable. Further, it should not be an offence to be in a forbidden place to receive a health, welfare or legal service.

A non-association or place restriction order is to be made a sentencing option so that one or the other (or both) may be made by a sentencing court without the necessity of separate court application.

(iv)—Loitering

The old loitering offence derived from the *Police Act* of 1841 and was at that time an adaptation of the ancient UK *Vagrancy Acts*, but was adapted from time to time over the centuries. This loitering offence was repealed in 1985 on the recommendation of the Mitchell Committee. The Mitchell Committee thought that insofar as the offence was directed at the prevention of crime by attacking outward manifestations of preparations to commit it, the offence was too wide and should be attacked through the law of attempted crime. The Committee also thought that the unbridled generality of the offence went too far. It said:

> *Perhaps some extension of the power is warranted, but in our view the 'loitering' provisions are at best a subterfuge and at worst an unwarranted interference with the liberty of all persons to use streets and other public places*.

The Committee's criticisms are sound, but rather than being abandoned, the concept of requiring a suspicious person to give a satisfactory account of his or herself can be a legitimate and useful tool of law enforcement if properly targeted in such a way that it does not allow the harassment of ordinary law-abiding citizens going about their lawful business. The essence of the proposal is maintaining a proper balance between the interests of the ordinary law-abiding citizen and the disruption and harassment of the activities of criminals.

There should be an offence of loitering in a public place. The proposed structure is that if a prescribed person is loitering, a police officer is entitled to require that person to give an account of his (the loiterer's) presence. The essence of the offence is in failing to give a 'satisfactory reason' for so loitering. One satisfactory reason will suffice. It should be for the court, not the police officer, to determine whether the reason is satisfactory. A reason is to be satisfactory if it is a true and lawful reason even if it does not satisfy the member of the police force who required it and even if the police officer was reasonable in being unsatisfied.

A prescribed person for this purpose is to be any person who has been found guilty of, or who is reasonably suspected of having committed, a serious and organised crime offence; a person who is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; a person who is subject to a non-association or place restriction order under this Act; a person who is subject to a firearms control order or a weapons control order; a person who is subject to a non-consorting order under this Act; a commercial drug trafficker; and a person subject to a paedophile restraining order. There should also be provision for adding to this list by regulation.

The maximum penalty is to be a fine of $5,000 or imprisonment for three months.

(v)—Co-operation with the authorities

An important weapon against serious and organised crime is getting people with inside or other secret knowledge of the activities and membership of the organisation to co-operate with the authorities and spill the beans. These people can be at their most vulnerable when they have been caught committing crimes, perhaps serious crime, and are facing spending a significant period in prison.

The Government has already announced a policy for dealing with the sentencing of people who plead guilty to their offences and, at that time, undertake to co-operate with authorities and provide information, either by way of testimony or otherwise. This is an important area of law and very significant inducements indeed may need to be provided to encourage these offenders to take the risk of danger to life or limb by so doing.

However, there is one area of the law that should be dealt with in this Bill. For any number of reasons, an offender of this kind may decide that, for example, the risks are not worth it and decide not to co-operate and do their time. But what if, having made that decision, the offender faces the bleak reality of that choice and months or even

years later decides that the decision is the wrong one? The law needs that evidence should it be forthcoming and should allow such an offender to change his or her mind and recant. If that is done, it is only right that the effective sentence should be reconsidered in light of that co-operation, however belated, and an incentive offered in the form of a reconsideration of sentence. That is what is proposed here.

(vi)—Australian Crime Commission - Power of Examination and Production

The legislative structure of the Australian Crime Commission (that used to be the National Crime Authority) is based on a co-operative legislative structure that consists of complementary State and Commonwealth Acts. It is fair to say that the Commonwealth Act is the principal Act and the State Act buttresses it as needed for constitutional reasons.

The Commonwealth found that the power of the Australian Crime Commission to sanction by contempt those who at best frustrated and at worst refused to co-operate with the statutory powers of the Commission to compel testimony or the production of documents was inadequate to deter those subject to investigation. In brief, the contempt processes were unnecessarily cumbersome and time consuming.

As a result of this, the Commonwealth Parliament enacted the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010.* After the Bill passed the Parliament and was brought into force, the Commonwealth Government asked the States to amend the co-operative State legislation so as to mirror the new Commonwealth provisions. That is obviously sensible and this is the first opportunity that can be taken to do so.

It should be added that powers of examination and production backed by contempt are a vital tool in this kind of package. The power to commit for contempt should be rapid and tough. The Commonwealth amendments are aimed at that outcome and deserve full support.

(vii)—Bail

Witnesses should be supported by amendments to the *Bail Act 1985*. If a person is charged with a serious and organised crime offence and a grant of bail would cause a potential witness or other person connected with the case to reasonably fear for his safety, there should be a presumption against bail. Such a person is to be described as a serious and organised crime suspect. The presumption against bail can be rebutted by the applicant showing that he or she has not previously been convicted of a serious and organised crime offence.

The definition of 'serious and organised crime offence' should be one of the new dedicated offences proposed as serious and organised crime offences above, any offence punishable by life imprisonment and any offence aggravated because the offender committed the offence for the benefit of a criminal organisation or 2 or more members of the criminal organisation, or at the direction of, or in association with, a criminal organisation; or in the course of committing the offence, identified himself or herself in some way as belonging to, or otherwise being associated with, a criminal organisation (whether or not the offender did in fact belong to, or was in fact associated with, the organisation).

If there is any grant of bail, the conditions of any bail agreement must protect the witness from any and all association and contact with the person charged with the offence and any member of the organisation to which it is alleged the accused belongs to the extent required. This entails binding over other members not to approach or in any way communicate with the witness.

The Bill proposes measures to attain these two objectives. It should insert in the *Bail Act 1985* a new sub-section setting mandatory conditions for bail if granted to a serious and organised crime suspect. These are to be, in brief, home detention bail with electronic monitoring, and special conditions restricting the ability of the accused to communicate with specified people or classes of people and restricting the devices that the person on bail may use for communication.

But people should not be subjected to this harsh regime indefinitely or even for a very long time. The status of being a serious and organised crime suspect should expire after 6 months unless either the person is on trial or special proceedings (described below) have been taken against the suspect.

In addition, it is proposed to amend the Act in essence requiring the bail authority to consider applying for an order or imposing on the applicant for bail or any other person associated with the applicant an intervention order if the bail authority is made aware that the victim of the offence or a person otherwise connected with the proceedings feels a need for protection form the applicant or any person associated with the applicant.

(viii)—Frightened Witnesses

It is notorious that some serious and organised criminals and some members and associates of such organisations as outlaw motorcycle gangs try to subvert the normal operation of the criminal justice system and act with impunity by intimidating and threatening witnesses and victims. Witnesses and victims deserve the best protection the law can give them. This may take a number of forms. There is, at the high end, the *Witness Protection Act 1996* and the Government has been promoting the use in the law of public interest immunity and criminal intelligence to protect the life and limb of informers and sources of evidence. But we can and should do more. Cases still collapse because witnesses suddenly lose memory of key events or faces.

Among other jurisdictions, the United Kingdom has offered another weapon in this fight. The *Criminal Justice Act 2003* says in part:

> *(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if—*

(a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter,

(b) the person who made the statement (the relevant person) is identified to the court's satisfaction, and

(c) any of the five conditions mentioned in subsection (2) is satisfied.

(2) The conditions are—

...(e) that through fear the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence.

(3) For the purposes of subsection (2)(e) "fear" is to be widely construed and (for example) includes fear of the death or injury of another person or of financial loss.

The UK provision is an exception to the hearsay rule. It has other arms unrelated to the matters immediately at hand. It is proposed that this sensible provision be incorporated entire into the law of this State.

The other exceptions come into play if:

- the maker of the statement is dead;
- the maker of the statement is unfit to be a witness because of a mental or physical infirmity;
- the maker of the statement is out of the jurisdiction and it is not reasonably practicable to bring them before the court; and
- the maker of the statement cannot be found and steps that are reasonably practicable have been taken to find him or her.

There are broad ranging protections to ensure the proper protection of fairness to the defendant and the fairness of the trial process. The court retains a broad and unrestricted discretion to reject evidence sought to be adduced, or regulate the conditions in which it might be adduced, under the exception.

The protections also include providing that:

- evidence relating to the credibility of the maker of the out of court statement may be adduced as if the statement was made in court;
- evidence may be given in court with leave of any matter that could be put to the maker of the out of court statement as if the statement was made in court; and
- evidence of prior inconsistent statements made by the maker of the out of court statement may be admissible as if the statement was made in court.

In addition, there are protections that allow the court to stop the case where it is largely dependent on the out of court statement and a conviction would be unsafe and a statutory preservation of the general power to exclude evidence either on the basis that it would be a waste of time or that the dangers of admitting it would substantially outweigh the evidentiary value of the evidence.

It has been said by some in the consultation that adoption of the UK provisions denies the accused the right to a fair trial. This is demonstrably not the case. The UK provisions, which are mirrored in this Bill, were challenged in the Supreme Court of the United Kingdom (what used to be called the House of Lords) in *Horncastle* [2009] UKSC 14. The basis of the challenge was that the conviction of the appellant on evidence admitted under these provisions denied the appellant the right to a fair trial under Article 6 of the European Convention on Human Rights. The Court unanimously dismissed the argument. It said:

> *68One situation where Strasbourg has recognised that there is justification for not calling a witness to give evidence at the trial, or for permitting the witness to give that evidence anonymously, is where the witness is so frightened of the personal consequences if he gives evidence under his own name that he is not prepared to do so. If the defendant is responsible for the fear, then fairness demands that he should not profit from its consequences. Even if he is not, the reality may be that the prosecution are simply not in a position to prevail on the witness to give evidence. In such circumstances, having due regard for the human rights of the witness or the victim, as well as those of the defendant, fairness may well justify reading the statement of the witness or permitting him to testify anonymously. Claims of justification on such grounds have to be rigorously examined - see Doorson v The Netherlands (1996) 22 EHRR 330 at paragraph 71, Kok v The Netherlands (Application No 43149/98), Reports of Judgments and Decisions 2000-VI, p 597; Visser v The Netherlands (Application No 26668/95, BAILII: [2002] ECHR 108), 14 February 2002 at paragraph 47; Krasniki v Czech Republic (Application No 51277/99, BAILII: [2006] ECHR 176), 28 February 2006 at paragraphs 80-81; Lucà v Italy (2001) 36 EHRR 807 at paragraph 40:*
>
> > *As the Court has stated on a number of occasions, it may prove necessary in certain circumstances to refer to depositions made during the investigative stage (in particular, where a witness refuses to repeat his deposition in public owing to fears for his safety, a not infrequent occurrence in trials concerning Mafia-type organisations).*

> *Where the court has found justification for the admission of a statement from a witness not called, or for a witness giving evidence anonymously, the Court has been concerned with whether the process as a whole has been such as to involve the danger of a miscarriage of justice. The exercise has been similar to that conducted by the English Court of Appeal when considering whether, notwithstanding the breach of a rule relating to admissibility, the conviction is "safe". There is, of course, an overlap between considering whether procedure has been fair and whether a verdict is safe, and it is sometimes difficult to distinguish between the two questions.*

In addition, it is proposed to amend the *Evidence Act 1929* to include within the definition of vulnerable witness a person who will only consent to give evidence on the basis that he or she is treated as a vulnerable witness. This is another helping hand to the frightened witness whereby the existing framework constructed for vulnerable witnesses is made available for their protection.

(ix)—Special Procedure

Delay in the criminal justice system aids the defendant determined to intimidate and threaten witnesses, jurors and victims. The more delay, the more the opportunity. Therefore, the establishment of a special procedure of direct indictment in the hands of the Director of Public Prosecutions in the Supreme Court is proposed. Where that direct indictment is made, the trial of the accused must begin within 6 months of an operative determination by a bail authority that the defendant is a serious and organised crime suspect unless the Supreme Court determines that the commencement is not reasonably practicable or on application by either party that there are exceptional circumstances that justify delay. It is not the intention of the Government to dictate what those exceptional circumstances may be.

(x)—Trial By Jury

The right to trial by jury is rightly considered to be a fundamental right existing in relation to the trial of serious offences contained in the criminal justice process. It is so fundamental that it is one of the few fundamental freedoms recognised, at least in part, in the Commonwealth *Constitution*. But that right can be abused and may well be abused. Jurors are, and are meant to be, ordinary people. As ordinary people, they can be threatened, harassed and intimidated. This is not a statement of mere theory.

The criminal justice system can and does take steps to prevent jury tampering. For example, it is no longer practice to announce the home address of a juror. But more can and should be done.

A special procedure of direct indictment in the Supreme Court for a serious and organised crime offence is described above. It is also proposed that where the DPP decides to take that special path, the DPP may also apply to the court for trial by judge alone. The Court is to be given a general discretion to consider whether it is in the interests of justice to grant the application (and will hear from both parties on the question) but the Bill should also offer guidance on the situation contemplated by the conferral of the discretion. That situation is where the Court considers that there is a real possibility that the jury will be the target of interference of any kind.

(xi)—Privilege Against Self-Incrimination

R v Hicks and Hicks [2010] QSC 376 was a murder case. The applicant had also been charged with the murder but had been acquitted on a directed verdict. The Attorney-General, in contemplation of calling the applicant as a witness in the trial of the other co-accused, had provided the applicant with a very thorough undertaking that any answer statement or evidence provided in the proceedings would not be used against him. The applicant claimed that he would still be entitled to claim a privilege against self-incrimination in the proceedings in question, despite the undertaking. The court disagreed, ruling that the applicant would be obliged to answer questions under oath when called as a witness even though the answer might tend to incriminate him because of the undertaking. this is a salutary ruling going to the heart of the code of silence. This Bill amends the *Director of Public Prosecutions Act 1991* to mirror the Queensland provision.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Australian Crime Commission (South Australia) Act 2004*

4—Amendment of section 3—Interpretation

This clause inserts 2 new definitions as follows:

- a new definition of *constable*, for the purposes of proposed section 26D, meaning a member or special member of the Australian Federal Police or a member of the police force or police service of this State;
- a new definition of *in contempt of the ACC* which has the meaning given by proposed section 26A.

The clause also substitutes an amended definition of *intelligence operation* that proposes to include an operation investigating matters relating to relevant criminal activity.

5—Amendment of section 8—Functions of the Board

This clause extends the period of time within which the Chair of the Board must give a copy of a determination to the Inter-Governmental Committee from 3 days to 7 days.

6—Insertion of sections 26A to 26F

This clause inserts new sections dealing with when a person may be in contempt of the ACC.

26A—Contempt of the ACC

This proposed section defines the circumstances when a person is in contempt of the ACC.

26B—Supreme Court to deal with contempt

This proposed section provides for an examiner to apply to the Supreme Court for a person, who the examiner is of the opinion is in contempt of the ACC, to be dealt with in relation to the contempt. An application must be accompanied by a certificate stating the grounds for the application and providing evidence in support of it. The certificate must be provided to the person to whom the application relates. If the Court finds that the person was in contempt of the ACC under proposed section 26A the Court may then deal with the person as if the conduct constituted a contempt of that Court.

26C—Conduct of contempt proceedings

This proposed section provides that an application to a Court under proposed section 26B will be dealt with according to the laws (including any Rules of Court) that apply in that Court in relation to contempt proceedings. This section also provides that a certificate under proposed section 26B(3) is prima facie evidence of the matters specified in the certificate.

26D—Person in contempt may be detained

This proposed section provides for an examiner, who proposes to make an application to a Court under proposed section 26B(1) in relation to a person, to detain that person before he or she is brought before the Court (which must be done as soon as practicable). The Court may then order the conditional release or continued detention of the person pending the determination of the application.

26E—Examiner may withdraw contempt application

This proposed section provides that an examiner may at any time withdraw an application made in relation to a person under proposed section 26B(1) and if the person is detained in relation to that application he or she must be immediately released from detention.

26F—Relationship with section 34

This proposed section provides that, to avoid doubt, evidence relating to an application under proposed section 26B(1) is not required to be given to a person or authority under section 34(1).

7—Amendment of section 39—Double jeopardy

This clause amends section 39 to provide that if a person is dealt with by a Court under proposed section 26B(1) in relation to an act or omission, then the person is not liable to be prosecuted for an offence in respect of that act or omission. Similarly, if a person is prosecuted for an offence in relation to an act or omission then an application must not be made under proposed section 26B(1) in respect of that act or omission.

Part 3—Amendment of *Bail Act 1985*

8—Amendment of section 3—Interpretation

This clause inserts 3 new definitions as follows:

- Chief Executive Officer to have the same meaning as in the Correctional Services Act 1982;
- serious and organised crime offence to have the same meaning as in the Criminal Law Consolidation Act 1935;
- serious and organised crime suspect—which is defined in proposed section 3A.

9—Insertion of section 3A

This clause inserts proposed section 3A that provides for a bail authority to determine, on the application of the Crown, that a person is a *serious and organised crime suspect* if the person has been charged with a serious and organised crime offence, if the person was not a child at the time of the alleged offence, and if the grant of bail to the person is likely to cause a potential witness, or other person connected with proceedings for the alleged offence, to reasonably fear for his or her safety. A determination of a bail authority under this proposed section will cease to apply after 6 months if the person has not been tried, or is not on trial, for the offence and there has not been a determination of the Supreme Court under section 275(3) of the *Criminal Law Consolidation Act 1935*.

10—Amendment of section 4—Eligibility for bail

This clause amends section 4 to add to the list of persons eligible for release on bail a person who has been arrested under proposed section 19A and a person who is no longer a serious and organised crime suspect because of the operation of proposed section 3A(2) (and the previous bail agreement will cease to have effect if a new bail agreement is entered into).

11—Amendment of section 10A—Presumption against bail in certain cases

This clause amends section 10A, which provides for a presumption against bail in certain cases. This clause proposes to include an applicant who is a serious and organised crime suspect in the list of prescribed applicants to which section 10A applies. In addition, a serious and organised crime suspect will not be able to demonstrate special circumstances for the purposes of section 10A if he or she cannot prove, by evidence verified on oath or by affidavit, that he or she has not previously been convicted of a serious and organised crime offence.

12—Amendment of section 11—Conditions of bail

This clause amends section 11, which provides for conditions that a bail authority may impose in relation to a grant of bail. This clause proposes to introduce mandatory conditions of bail for a grant of bail in relation to a *serious and organised crime suspect* as follows:

- a condition that the person resides at a specified address and only leaves the residence for the purpose of necessary medical or dental treatment, to avert or minimise a serious risk of death or injury, or any other purpose approved by the Chief Executive Officer;
- a condition that the person is subject to electronic monitoring while on bail;
- a condition that the person agrees to not communicate with any other person other than those specified or of a specified class or of a prescribed class;
- a condition that the person agrees to use, or be in possession of, only specified telephones, mobile phones, computers or other communication devices.

13—Insertion of section 19A

This clause proposes to insert a new section 19A that provides for a court to cancel a bail agreement and issue a warrant of arrest if a person was released on bail without a police officer making an application for a determination under the provisions of proposed section 3A(1) and in the opinion of the court those provisions apply.

14—Insertion of section 23A

Under proposed section 23A, if a person who is a serious and organised crime suspect applies for bail and the bail authority is a court, the court must consider whether to make an intervention order. A court must also consider whether to make an intervention order if advised by the police or a Crown representative that the victim of the alleged offence, or a person otherwise connected with proceedings for the alleged offence, feels a need for protection from the alleged offender or any other person associated with the alleged offender. The section creates an obligation for a police officer or Crown representative to advise the court of the perceived need for protection during the bail hearing. A bail authority that is not a court is required to consider making an application in the Magistrates Court for an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*. An intervention order issued under the section will be issued as if it were issued under the *Intervention Orders (Prevention of Abuse) Act 2009*.

15—Amendment of section 24—Act not to affect provisions relating to intervention and restraining orders

The amendments made by this section to section 24 are consequential on the insertion of proposed section 23A.

16—Transitional provision

The transitional provision provides that the amendments to the *Bail Act 1985* only apply in relation to a person in custody in respect of an offence allegedly committed after the commencement of Part 3.

Part 4—Amendment of *Controlled Substances Act 1984*

17—Amendment of section 4—Interpretation

This clause inserts two new definitions into the *Controlled Substances Act 1984*.

The definitions of *aggravated offence* and *basic offence* are necessary because of the insertion of new penalty provisions for the purposes of some offences under the Act. The definitions explain that where a provision differentiates between the penalty for an aggravated offence and the penalty for a basic offence, the reference to an aggravated offence is a reference to the offence in its aggravated form and the reference to a basic offence is a reference to the offence in its non-aggravated form. The definitions refer to proposed section 43, which deals with aggravated offences. The definitions match the definitions of the same terms as used in the *Criminal Law Consolidation Act 1935*.

18—Amendment of section 32—Trafficking

This clause amends section 32 of the *Controlled Substances Act 1984* by substituting new penalty provisions for section 32(2), (2a) and (3). The new penalty provisions differentiate between the maximum penalty for an aggravated offence and the maximum penalty for a basic offence. In each case, the maximum penalty for the basic offence is the same as the current penalty. The aggravated offence penalties are as follows:

- section 32(2) (trafficking in a commercial quantity of a controlled drug)—$500 000 or imprisonment for life, or both;
- section 32(2a) (trafficking in a controlled drug in a prescribed area)—$200 000 or imprisonment for 25 years, or both;
- section 32(3) (trafficking in a controlled drug)—$75 000 or imprisonment for 15 years, or both.

19—Amendment of section 33—Manufacture of controlled drugs for sale

This clause amends section 33 of the Act by substituting new penalty provisions for section 33(2) and (3), both of which relate to the manufacturing of a controlled drug for sale. The new penalty provisions differentiate between the maximum penalty for an aggravated offence and the maximum penalty for a basic offence. In each case, the maximum penalty for the basic offence is the same as the current penalty. The aggravated offence penalties are as follows:

- section 33(2)—$500 000 or imprisonment for life, or both;
- section 33(3)—$75 000 or imprisonment for 15 years, or both.

20—Amendment of section 33A—Sale, manufacture etc of controlled precursor

This clause amends section 33A of the Act, which deals with the sale and manufacture of controlled precursors, by substituting new penalty provisions. The new penalty provisions differentiate between the maximum penalty for an aggravated offence and the maximum penalty for a basic offence. In each case, the maximum penalty for the basic offence is the same as the current penalty. The aggravated offence penalties are as follows:

- section 33A(1)—$500 000 or imprisonment for life, or both;
- section 33A(2)—$200 000 or imprisonment for life, or both;
- section 33A(3), (4) and (5)—$75 000 or imprisonment for 15 years, or both.

21—Amendment of section 33B—Cultivation of controlled plants for sale

This clause amends section 33B of the Act by substituting new penalty provisions for section 33B(2) and (3), which deal with the cultivation of controlled plants for sale. The new penalty provisions differentiate between the maximum penalty for an aggravated offence and the maximum penalty for a basic offence. In each case, the maximum penalty for the basic offence is the same as the current maximum penalty. The aggravated offence penalties are as follows:

- section 33B(2)—$500 000 or imprisonment for life, or both;
- section 33B(3)—$75 000 or imprisonment for 15 years, or both.

22—Amendment of section 33C—Sale of controlled plants

This clause amends section 33C of the Act by substituting new penalty provisions for section 33C(2) and (3), which deal with the sale of controlled plants. The new penalty provisions differentiate between the maximum penalty for an aggravated offence and the maximum penalty for a basic offence. In each case, the maximum penalty for the basic offence is the same as the current maximum penalty. The aggravated offence penalties are as follows:

- section 33C(2)—$500 000 or imprisonment for life, or both;
- section 33C(3)—$75 000 or imprisonment for 15 years, or both.

23—Amendment of section 33DA—Sale of instructions

This clause amends section 33DA of the Act by substituting a new penalty provision. The new penalty provision differentiates between the maximum penalty for an aggravated offence and the maximum penalty for a basic offence. The maximum penalty for the basic offence is the same as the current maximum penalty and the aggravated offence maximum penalty is $15 000 or imprisonment for 5 years, or both.

24—Amendment of section 33GB—Sale of instructions to a child

This clause amends section 33GB of the Act by substituting a new penalty provision. The new penalty provision differentiates between the maximum penalty for an aggravated offence and the maximum penalty for a basic offence. The maximum penalty for the basic offence is the same as the current penalty and the aggravated offence maximum penalty is $30 000 or imprisonment for 5 years, or both.

25—Insertion of section 43

This clause inserts a new section.

43—Aggravated offences

Proposed section 43 provides that an offence is an aggravated offence if—

- the offender committed the offence for the benefit of a criminal organisation or at the direction of, or in association with, a criminal organisation; or

- in connection with the offence, the offender identified himself or herself in some way as belonging to, or otherwise being associated with, a criminal organisation (irrespective of whether the offender actually belonged to or was associated with the organisation).

If a person displayed the insignia of a criminal organisation (whether on an article of clothing, as a tattoo or in some other way), he or she will be taken to have identified himself or herself as belonging to, or as being associated with, the organisation unless he or she did not do so knowingly or recklessly.

The term *criminal organisation* has the same meaning as in proposed Part 3B of the *Criminal Law Consolidation Act 1935*.

The proposed section also includes other provisions consistent with those that currently exist in relation to aggravated offences under the *Criminal Law Consolidation Act 1935*.

Part 5—Amendment of *Criminal Law (Sentencing) Act 1988*

26—Insertion of section 19AA

This clause inserts a new section into the *Criminal Law (Sentencing) Act 1988*. The proposed new section 19AA provides that a court sentencing a person for an indictable offence may exercise the powers of the Magistrates Court to issue a non-association order or a place restriction order against the defendant. Non-association orders and place restrictions orders are orders that are to be available under proposed amendments to the *Summary Procedure Act 1921*.

27—Insertion of Part 2 Division 6

This clause proposes the insertion of a new Division that provides for a person already serving a sentence of imprisonment to have that sentence (and any non-parole period) reduced by a court for cooperation with a law enforcement agency in relation to a serious offence that has been committed or may be committed in the future. The chief officer of the law enforcement agency (eg the Commissioner of Police), the Director of Public Prosecutions and the applicant are parties to the proceedings on the application. The court that imposed the relevant sentence may reduce the sentence by a percentage amount having regard to listed factors such as the nature and extent of the applicant's cooperation, and the truthfulness, completeness and reliability of any information or evidence provided by the defendant.

Part 6—Amendment of *Criminal Law Consolidation Act 1935*

28—Amendment of section 5—Interpretation

This clause inserts a definition of *criminal organisation* into the *Criminal Law Consolidation Act 1935*. The definition refers to proposed Part 3B.

Section 5 is also amended to include a definition of *serious and organised crime offence*, being—

- an offence against Part 3B; or
- an offence punishable by life imprisonment, or an aggravated offence, if it is alleged that the offence was committed in the circumstances where the offender committed it for the benefit of a criminal organisation (or 2 or more members of a criminal organisation) or at the direction of, or in association with, a criminal organisation or where, in the course of or in connection with the offence, the offender identified himself or herself in some way as belonging to, or otherwise being associated with, a criminal organisation.

29—Amendment of section 5AA—Aggravated offences

Under section 5AA of the *Criminal Law Consolidation Act 1935*, an offence committed in circumstances described in subsection (1) is an aggravated offence. An offence committed in its aggravated form is liable to a more severe maximum penalty than if committed in its non-aggravated form.

This clause amends the list of relevant circumstances set out in section 5AA by adding the following:

- the offender committed the offence for the benefit of a criminal organisation or at the direction of, or in association with, a criminal organisation;
- in the course of or in connection with the offence, the offender identified himself or herself, in some way, as belonging to, or as otherwise being associated with, a criminal organisation (whether or not the offender did in fact belong to, or was associated with, the organisation).

If a person displayed the insignia of a criminal organisation (whether on an article of clothing, as a tattoo or in some other way), the person will be taken to have identified himself or herself as belonging to, or as being associated with, the organisation unless the person proves that he or she did not do so knowingly or recklessly.

Subsection (4) of section 5AA requires a jury that finds a person guilty of an aggravated offence, where more than one aggravating factor is alleged, to state which of the aggravating factors it finds to have been established. This clause amends subsection (4) by making it clear that a failure to comply with this requirement does not affect the validity of the jury's verdict.

30—Insertion of Part 3B

This clause inserts a new Part into the Act. Part 3B deals with offences relating to criminal organisations.

Part 3B—Offences relating to criminal organisations

83D—Interpretation

Proposed section 83D includes definitions of a number of terms used in Part 3B.

The definition of *criminal group* provides that a group consisting of 2 or more persons is a criminal group if—

- an aim or activity of the group includes engaging in conduct, or facilitating engagement in conduct, constituting a serious offence of violence; or
- an aim or activity of the group includes engaging in conduct, or facilitating engagement in conduct, constituting a serious offence intending to benefit the group, persons who participate in the group or their associates.

A *criminal organisation* is a criminal group or a declared organisation (the latter having the same meaning as in the *Serious and Organised Crime (Control) Act 2008*).

A *serious offence* is an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more. A *serious offence of violence* is a serious offence where the conduct constituting the offence involves—

- the death of, or serious harm to, a person or a risk of the death of, or serious harm to, a person; or
- serious damage to property in circumstances involving a risk of the death of, or harm to, a person; or
- perverting the course of justice in relation to conduct that, if proved, would constitute a serious offence of violence as referred to in either of the above paragraphs.

This clause also makes it clear that a group of people is capable of being a criminal group whether or not any of them are subordinates or employees of others or only some people involved in the group are involved in planning, organising or carrying out a particular activity or membership changes from time to time.

83E—Participation in criminal organisation

This proposed section makes it an offence for a person to participate in a criminal organisation if the person knows that, or is reckless as to whether, the organisation is a criminal organisation and knows that, or is reckless as to whether, his or her participation in the organisation contributes to the occurrence of criminal activity. The maximum penalty is imprisonment for 15 years.

It is also an offence for a person to assault another person, knowing that, or being reckless as to whether, he or she is, by that act, participating in a criminal activity of a criminal organisation. The maximum penalty is imprisonment for 20 years.

A person is also guilty of an offence under the section if he or she destroys or damages, or threatens to destroy or damage, property belonging to another person, knowing that, or being reckless as to whether, he or she is, by that act, participating in a criminal activity of a criminal group. The maximum penalty is a imprisonment for 20 years.

It is also an offence under the section for a person to assault a public officer while in the execution of the officer's duty knowing that, or being reckless as to whether, the person is, by that act, participating in a criminal activity of a criminal organisation. The maximum penalty is imprisonment for 25 years.

A term of imprisonment imposed on a person under the section is to be cumulative on any other term of imprisonment or detention that the person is liable to serve in respect of another offence (other than another offence against the section).

A person will be presumed, in the absence of proof to the contrary, to be knowingly participating in an organisation at a particular time if the person is displaying at that time (whether on an article of clothing, as a tattoo or otherwise) the insignia of that organisation.

83F—Alternative verdicts

Proposed section 83F authorises a jury on the trial for an offence under section 83E(2), (3) or (4) to find the accused guilty of an offence under section 83E(1).

83G—Evidentiary

If a court is satisfied beyond a reasonable doubt in criminal proceedings that a group was, at a particular time, a criminal group, the court may make a declaration to that effect on the application of the Director of Public Prosecutions. Once a declaration is made, the group will, for the purposes of any subsequent criminal proceedings, be taken to be a criminal group in the absence of proof to the contrary.

31—Amendment of section 172—Blackmail

As a consequence of this amendment, the maximum penalty for an aggravated offence of blackmail will be imprisonment for 20 years. The current maximum penalty of imprisonment for 15 years will continue to apply for a non-aggravated offence.

32—Amendment of section 244—Offences relating to witnesses

33—Amendment of section 245—Offences relating to jurors

34—Amendment of section 248—Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings

35—Amendment of section 249—Bribery or corruption of public officers

36—Amendment of section 250—Threats or reprisals against public officers

Clauses 32 to 36 increase various maximum penalties from 7 years imprisonment to 10 years imprisonment.

37—Amendment of section 251—Abuse of public office

The maximum penalty for an offence under section 251 (Abuse of public office) is currently imprisonment for 7 years. This clause amends the penalty provisions to introduce an aggravated form of the offences, punishable by imprisonment for 10 years.

38—Amendment of section 275—Information may be presented in name of Director of Public Prosecutions

This clause amends section 275 to provide that the Supreme Court must make rules expediting proceedings for a serious and organised crime offence (or an offence joined in the same information as such an offence). The clause also provides, in cases where the defendant has been determined as a serious and organised crime suspect under the *Bail Act 1985*, that the matter must be commenced within the period of 6 months after the making of that determination but that the Court may dispense with that requirement where it is not reasonably practicable for the Court to deal with the matter within that period, or where exceptional circumstances exist that justify the matter being set down for trial at a later date.

Part 7—Amendment of *Director of Public Prosecutions Act 1991*

39—Amendment of section 7—Powers of Director

This clause amends section 7 to specify that the DPP has power to undertake to a person not to use, or make derivative use of, information or a thing against the person in a proceeding (other than in relation to false evidence given by the person in a proceeding).

Part 8—Amendment of *Evidence Act 1929*

40—Amendment of section 4—Interpretation

This clause inserts a definition of *statement* for the purposes of the Act and amends the definition of *vulnerable witness* to include a person who will only consent, in relation to proceedings for a serious and organised crime offence, to being a witness in the proceedings if he or she is treated as a vulnerable witness for the purposes of the proceedings.

41—Insertion of sections 34KA to 34KD

This clause inserts new sections as follows:

34KA—Admissibility of evidence of out of court statements by unavailable witnesses

Proposed section 34KA deals with the admissibility and use of an out of court statement by a person who is unavailable to give evidence in proceedings for a criminal offence or proceedings under the *Serious and Organised Crime (Control) Act 2008*. For such a statement to be admissible the court must be satisfied that—

- the evidence, given by the person, would be admissible if he or she attended court and gave the evidence as oral evidence; and
- the person is identified to the court's satisfaction; and
- the person is unavailable for one of several reasons, namely:
- the person is dead;
- the person is unfit to be a witness because of a bodily or mental condition;
- the person is outside of the State and it is not reasonably practicable to secure his or her attendance;
- the person cannot be found although such steps as it is reasonably practicable to take to find him or her have been taken;
- that through fear the person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence.

34KB—Credibility

This proposed section deals with the admissibility, in proceedings for a criminal offence or proceedings under the *Serious and Organised Crime (Control) Act 2008*, of evidence relevant to the credibility of a person who is the maker of the out of court statement which is admitted in proceedings (where the maker of the statement does not give oral evidence in connection with the subject matter of the statement).

34KC—Stopping the case where evidence is unconvincing

This proposed section provides for a court to direct an acquittal or discharge a jury where the court is satisfied that evidence provided by an out of court statement is so unconvincing that, considering its importance to the case against the defendant, a conviction of the offence would be unsafe.

34KD—Court's general discretion to exclude evidence

This proposed section specifies that a court may, in proceedings for a criminal offence or proceedings under the *Serious and Organised Crime (Control) Act 2008*, refuse to admit an out of court statement as evidence of a matter if the court is satisfied that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, taking account of the value of the evidence (but nothing in the section derogates from any other power of a court to exclude evidence at its discretion).

42—Transitional provision

This clause provides that new sections 34KA to 34KD of the *Evidence Act 1929* will only apply to proceedings commenced after the commencement of the amendments.

Part 9—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009*

43—Amendment of section 9—Priority for certain interventions

This clause amends section 9 of the *Intervention Orders (Prevention of Abuse) Act 2009* to include proceedings brought by a bail authority under proposed section 23A of the *Bail Act 1985* among those proceedings that must be dealt with as a matter of priority under the Act.

Part 10—Amendment of *Juries Act 1927*

44—Amendment of section 7—Trial without jury

This clause amends section 7 to provide that where an information that includes a charge of a serious and organised crime offence is presented to the District Court or the Supreme Court under section 275 of the *Criminal Law Consolidation Act 1935*, the Director of Public Prosecutions may apply to the court for an order that the accused be tried by judge alone. A court may make such an order if it considers it is in the interests of justice to do so, which may include the question of whether there is a real possibility that an offence would be committed in relation to a member of a jury under section 245 or 248 of the *Criminal Law Consolidation Act 1935*.

Part 11—Amendment of *Summary Offences Act 1953*

45—Amendment of section 4—Interpretation

This clause inserts a definition of *serious and organised crime offence* into the *Summary Offences Act 1953*. The term has the same meaning as is proposed by amendments to the *Criminal Law Consolidation Act 1935*.

46—Insertion of section 13

This clause inserts a new section.

13—Consorting

Proposed section 13 prohibits a person from habitually consorting with a prescribed person or persons without reasonable excuse. The maximum penalty for the offence is imprisonment for 2 years.

A person may consort with another for the purposes of the section by any means including by letter, telephone or fax or by email or other electronic means.

A *prescribed person* is a person who has been found guilty of, or who is reasonably suspected of having committed, a serious and organised crime offence.

47—Amendment of section 18—Loitering

Section 18, which deals with loitering, is amended by this clause to include new provisions allowing a police officer to require a person of a prescribed class who is reasonably suspected of loitering in a public place to state the reason that he or she is in the place.

48—Insertion of Part 14A

This clause inserts a new Part dealing with consorting prohibition notices.

Part 14A—Consorting prohibition notices

66—Interpretation

Proposed section 66 provides definitions of a number of terms used in the proposed Part.

66A—Senior police officer may issue consorting prohibition notice

This proposed section authorises a senior police officer to issue a consorting prohibition notice in certain circumstances. This is a notice prohibiting a person from consorting with a specified person or specified persons. The police officer must be satisfied either that the recipient of the notice is subject to a control order or that a person with whom the recipient of the notice is prohibited from consorting has been found guilty of 1 or more prescribed offences within the preceding period of 3 years or is reasonably suspected of having committed 1 or more prescribed offences within that period.

The officer must also be satisfied that the recipient of the notice has been habitually consorting with the person or persons specified on the notice and that the issuing of the notice is appropriate in the circumstances.

The section makes it clear that a consorting prohibition notice does not prohibit associations between close family members and does not prohibit associations occurring between persons—

- for genuine political purposes; or
- while the persons are in lawful custody; or
- while the persons are acting in compliance with a court order; or
- while the persons are attending a rehabilitation, counselling or therapy session of a prescribed kind.

A notice may specify other circumstances in which it does not apply.

66B—Form of notice

Proposed section 66B sets out certain requirements in relation to the form and content of consorting prohibition notices.

66C—Service of notice

A consorting prohibition notice is not binding on a recipient until it has been served on him or her personally.

A police officer who has reason to believe that a person is subject to a consorting prohibition notice that has not been served on the person may require the person to remain at a particular place for so long as may be necessary for the notice to be served on the person or two hours (whichever is the lesser). If the person refuses or fails to comply with the requirement, or the officer has reasonable grounds to believe that the requirement will not be complied with, the officer may arrest and detain the person in custody (without warrant) for the period referred to above.

If a police officer satisfies the Court that all reasonable efforts have been made to effect personal service of a notice on a recipient in accordance with section 66C but that those efforts have failed, the Court may make such orders as it thinks fit in relation to substituted service. The notice is then not binding on the recipient until it has been so served.

66D—Application for review

Under proposed section 66D, a recipient is entitled to lodge an application for review of a consorting prohibition notice that has been served on him or her. The application must be lodged within 4 weeks of service of the notice.

On a review, the Court may consider—

- whether sufficient grounds exist to satisfy the Court that the notice was properly issued in accordance with section 66A(1);
- whether any person specified in the notice is a close family member of the recipient or there are otherwise good reasons why a particular person should not be so specified;
- whether the notice should specify particular circumstances in which it does not apply.

The Court may confirm, vary or revoke the notice.

66E—Variation or revocation of consorting prohibition notice

This proposed section allows the Court to grant permission to the recipient of a consorting prohibition notice to apply to the Court for the variation or revocation of the notice. The Court may grant the permission if satisfied that there has been a substantial change in the relevant circumstances since the consorting prohibition notice was made or last varied. On the application, the Court may vary or revoke the notice. A copy of the application is to be served on the Commissioner of Police.

66F—Appeal

Under proposed section 66F, the Commissioner of Police or the recipient of a consorting prohibition notice can appeal to the Supreme Court against a decision of the Magistrates Court made under Part 14A. An appeal lies as of right on a question of law and with the permission of the Court on a question of fact.

66G—Revocation of notice by Commissioner

Proposed section 66G authorises the Commissioner of Police to revoke a consorting prohibition notice at any time by notice in writing to the recipient of the notice.

66H—Applications by or on behalf of child

This proposed section provides that an application that could be made under Part 14A by a person may, if the person is child, be made by the child (if her or she has attained the age of 14 years) or on behalf of the child by the child's parent or guardian or a person with whom the child normally or regularly resides.

66I—Evidence etc

In proceedings under Part 14A, the Court is not bound by the rules of evidence. Questions of fact to be decided in proceedings under Part 14A are to be decided on the balance of probabilities. This does not apply in relation to proceedings for an offence.

66J—Criminal intelligence

This proposed provision provides for the protection of criminal intelligence in proceedings under the Part.

The function of classifying information as criminal intelligence for the purposes of the Act may not be delegated by the Commissioner except to a Deputy Commissioner or Assistant Commissioner of Police.

66K—Offence to contravene or fail to comply with notice

This proposed section makes it an offence for a person to contravene or fail to comply with a consorting prohibition notice. The maximum penalty is imprisonment for 2 years.

It is made clear that a person does not commit an offence against proposed section 66K in respect of an act or omission unless the person knew, or was reckless as to the fact, that the act or omission constituted a contravention of, or failure to comply with, the notice.

Part 12—Amendment of *Summary Procedure Act 1921*

49—Insertion of Part 4 Division 5

This clause inserts a new Division into Part 4 of the *Summary Procedure Act 1921*. Division 5 provides for the making of non-association and place restriction orders.

Division 5—Non-association and place restriction orders

77—Interpretation

Proposed section 77 provides definitions for a number of terms used in Division 5.

A *non-association order* is an order under section 78 that—

- prohibits a defendant from being in company with a specified person or from communicating with that person by any means except at the times or in the circumstances (if any) specified in the order; or
- prohibits a defendant from being in company with a specified person and from communicating with that person by any means.

A *place restriction order* is an order under section 78 that—

- prohibits a defendant from frequenting or visiting a specified place or area except at the times or in the circumstances (if any) specified in the order; or
- prohibits a defendant from frequenting or visiting a specified place or area at any time or in any circumstance.

A *prescribed offence* is an indictable offence or an offence that would, if committed in South Australia, be an indictable offence.

78—Non-association and place-restriction orders

The Magistrates Court may, on complaint by a police officer, make a non-association order or a place restriction order in respect of the defendant if—

- the defendant has, within the period of 2 years immediately preceding the making of the complaint, been convicted (in South Australia or elsewhere) of a prescribed offence; and
- the Court is satisfied that it is reasonably necessary to do so to ensure that the defendant does not commit any further prescribed offences.

The order operates for the period of up to 2 years.

79—Non-association and place restriction orders not to restrict certain associations or activities

This proposed section specifies limits on the restrictions that can be included in non-association and place restriction orders.

80—Issue of non-association or place restriction order in absence of defendant

Proposed section 80 deals with the issue of a non-association order or place restriction order in the absence of the defendant. An order may be made in the defendant's absence if he or she failed to appear at the hearing of a complaint in obedience to a summons or in accordance with a bail condition.

The proposed section also allows for a non-association or place restriction order to be issued in the absence of the defendant where the defendant was not summoned to appear at the hearing. In that case, the Court is required to summon the defendant to appear before the Court to show cause why the order should not be confirmed.

A non-association or place restriction order issued in the absence of the defendant where the defendant was not summoned to appear continues in force until the conclusion of the hearing (or adjourned hearing) to which the defendant is summoned but is not effective following the conclusion of the hearing (or adjourned hearing) unless the order has been confirmed by the Court. The Court may confirm a non-association order or a place restriction order in an amended form.

81—Service

Proposed section 81 requires service of a non-association order or place restriction order on a defendant personally. The order is not binding until it has been so served. However, if a police officer satisfies the Court that all reasonable efforts have been made to effect personal service of an order on a recipient in accordance with section 81 but that those efforts have failed, the Court may make such orders as it thinks fit in relation to substituted service. The order is then not binding on the recipient until it has been so served.

82—Variation or revocation of non-association or place restriction order

This proposed section authorises the Court to vary or revoke a non-association order or place restriction order on application by a police officer or the defendant.

83—Contravention of non-association and place restriction orders

This proposed section makes it an offence for a person to contravene or fail to comply with a non-association order or a place restriction order. The maximum penalty for a first offence is imprisonment for 6 months. For a subsequent offence, the maximum penalty is imprisonment for 2 years. There is no offence if the person establishes that he or she had a reasonable excuse for the contravention or failure to comply.

50—Amendment of section 103—Procedure in the Magistrates Court

This clause amends section 103 to ensure that the ex officio indictment process is available to the DPP even if an information charging an indictable offence has already been filed in the Magistrates Court.

Part 13—Amendment of *Youth Court Act 1993*

51—Amendment of section 7—Jurisdiction

This amendment to section 7 of the *Youth Court Act 1993* gives the Youth Court the same jurisdiction as the Magistrates Court to make a non-association or place restriction order under the *Summary Procedure Act 1921* if the person to be subject to the order is a child or youth. The Youth Court has power under the *Summary Procedure Act 1921* to vary or revoke such an order previously made by the Court.

Debate adjourned on motion of Hon. D.W. Ridgway.

ARKAROOLA PROTECTION BILL

The House of Assembly has agreed to the amendments made by the Legislative Council without any amendment.

SERIOUS AND ORGANISED CRIME (CONTROL) (MISCELLANEOUS) AMENDMENT BILL

Received from the House of Assembly and read a first time.

At 18:33 the council adjourned until Tuesday 13 March 2012 at 14:15.