LEGISLATIVE COUNCIL

Tuesday 30 October 2012

The PRESIDENT (Hon. J.M. Gazzola) took the chair at 14:19 and read prayers.

STATUTES AMENDMENT AND REPEAL (SUPERANNUATION) BILL

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (NATIONAL ENERGY RETAIL LAW IMPLEMENTATION) BILL

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:22): I move:

That the sitting of the Legislative Council be not suspended during the conference on the bill.

Motion carried.

STATUTES AMENDMENT AND REPEAL (TAFE SA CONSEQUENTIAL PROVISIONS) BILL

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:23): I move:

That the sitting of the Legislative Council be not suspended during the conference on the bill.

Motion carried.

GRAFFITI CONTROL (MISCELLANEOUS) AMENDMENT BILL

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:23): I move:

That the sitting of the Legislative Council be not suspended during the conference on the bill.

Motion carried.

PAPERS

The following papers were laid on the table:

By the President—

Joint Parliamentary Service—Report, 2011-12

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

Operations of the Auditor-General's Department—Report, 2011-12
Regulations under the following Acts—
Aquaculture Act 2001—Lease Areas and Licence Areas
Liquor Licensing Act 1997—
Dry Areas—
Victor Harbor—Period of Prohibition

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

Reports, 2011-12—
Adelaide Festival Centre
Balaklava Riverton Health Advisory Council Inc.
Bio Innovation SA
Construction Industry Long Service Leave Board
JamFactory Contemporary Craft and Design Inc.
Kingston/Robe Health Advisory Council Inc.
Libraries Board of South Australia
Naracoorte Area Health Advisory Council Inc.
Northern Yorke Peninsula Health Advisory Council Inc.
Penola and Districts Health Advisory Council Inc.
Privacy Committee of South Australia

Retirement Villages Act 1987
South Australian Museum Board
The Murray Bridge Soldiers' Memorial Hospital Health Advisory Council Inc.
Yorke Peninsula Health Advisory Council Inc.

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

Reports, 2011-12—
Dog and Cat Management Board
Flinders Ranges National Park Co-management Board
Upper South East Dryland Salinity and Flood Management Act 2002
Vulkathunha-Gammon Ranges National Park Co-management Board
Witjira National Park Co-management Board
Regulations under the following Acts—
Maritime Services (Access) Act 2000—Revocation of Maritime Services (Access) Regulations 2001
Government's Response to the Natural Resources Committee's Bushfire Study Tour, dated 18 October 2012

BUDGET AND FINANCE COMMITTEE

The Hon. R.I. LUCAS (14:26): I bring up the report of the operations of the committee 2011-12, together with minutes of proceedings and evidence.

Report received and ordered to be published.

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) (14:31): I move:

That the Hon. Kyam Maher be substituted in place of the Hon. Carmel Zollo (resigned) on the Budget and Finance Committee.

Motion carried.

QUESTION TIME

MINISTERIAL TRAVEL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:32): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about a malfeasance, the suffering South Australian taxpayer and the minister's duty to see Europe with his family.

Leave granted.

The Hon. D.W. RIDGWAY: The Minister for Local Government spent $47,000 of taxpayers' funds—$47,000—on a three-week trip to Europe accompanied by his wife, former senator Dana Wortley, and their teenage son. The trip included the desirable visitor destinations of Paris, London and Edinburgh. As a South Australian taxpayer, I want to see where my money has been spent and why.

As we all know, when a member of this chamber goes on safari to wild and exotic places, or even travels within this state, section 7 of rule 13 of the *Members' Handbook* states that the member must lodge a travel report within 90 days of the trip. However, a check of the relevant parliamentary website is curiously blank on this junior minister's 19-day magical tour and, as we have learnt, the minister is refusing to release the itinerary.

In fact, not even the Premier had seen Mr Wortley's travel report—neither, as I understand it, had anyone else in cabinet—until the minister was forced to explain himself. Some functionary in his office has come up with a set of words that would make the scriptwriters of *Yes Minister* blush. The lackey said:

The purpose of the travel was to examine a number of areas relevant to the local government portfolio, including community capacity building, the concept of 'localism', the roles and responsibilities of councils, and, specifically, in relation to the responsibilities for the Adelaide Cemeteries Authority, the management of the heritage aspects of cemeteries

My questions are:

1. What does the minister understand by the term 'community capacity building'?

2. Can the minister please explain the concept of localism, and why he did not study the concept of localism locally?

3. Can the minister only study localism in Paris, London and Edinburgh?

4. When the minister was supposedly studying overseas cemeteries, did he see the gravestone of ministerial accountability?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:34): In regard to the duration of the trip, I departed on 21 September and arrived back in Adelaide on 9 October, so it was not three weeks. The honourable member is wrong. The purpose of the travel was to examine a number of areas that are currently of great relevance to the state/local government portfolio in South Australia. These include community capacity building, the concept of localism and the role and responsibilities of council, among others. There have been some very significant changes in local—

Members interjecting:

The Hon. R.P. WORTLEY: Do you want to hear the answer?

Honourable members: Yes, we do.

The Hon. R.P. WORTLEY: Well, that's good. I think everyone else would like to hear it, too. There have been some very significant changes in local and regional government in the United Kingdom over the past 15 years. In 1997, the Blair government created the Scottish and Welsh parliaments and instigated a policy of 'new localism' with an increased focus on the capacity of local government to provide essential services.

The Cameron government is now implementing its own localism policies which have devolved even more power to a local level. Within this context of change, this travel provided an opportunity to meet with people in local, regional and central government who have spent the past decade and a half giving careful thought to the relationships between the spheres of government and the best way to deliver services to their communities.

Within the wider discussions on the reform of roles and responsibilities, I also took the opportunity to examine specific issues that we are currently examining here in South Australia. These include the English and Scottish councils' experience and policies on the conduct and accountability of public officials. The many interesting discussions I had in this area will inform the work of the Office for State/Local Government Relations as they continue to consider the broad range of issues relating to council governance, accountability and conduct that are at the next stage of our local government accountability reforms.

I also met with representatives from the city of Paris to examine the Paris Open Data initiative and the management and/or revival of dilapidated buildings. Also, given my responsibility for the Adelaide Cemeteries Authority, the travel provided an opportunity to take a closer look at the management of the heritage aspects of cemeteries and the opportunities for tourism that this heritage can provide. A briefing was also provided by the management of the Père-Lachaise Cemetery about heritage and preservation issues for graves of historical significance.

Since 2002, local government policy in South Australia has focused on building capacity within the sector, for councils to become more financially sustainable, to better manage assets, to become more accountable to their communities particularly in regard to financial and governance practices, and to increase voter participation in local government elections.

Over this time, local government has been the subject of similar changes in jurisdictions across the world in countries that have focused on the best way to deliver local services. Over the past couple of years, councils across the United Kingdom have been promoting a localist agenda while focusing on the best way to deliver key local services. I was able to take a closer look at many of the proposed changes, particularly the provisions of the new Localism Act 2011 which focuses on empowering cities and other local areas.

I met with representatives of local councils in England and Scotland, along with the peak representative body for councils in Scotland and with members of the central government in both Edinburgh and London to discuss many issues including matters relevant to the conduct and accountability of public officials in local government and the policies that affect not only councils but the entire community of the United Kingdom.

I met with representatives of local government from the city of Paris in France to examine the Parisian Open Data initiative to explore the potential hurdles and risks linked with shared data and statistics. South Australian local government has a strong interest in this idea, and there has been discussion of creating a coherent process for managing data and its release into the public domain to better inform all citizens.

It is this data that will increase government accountability and transparency, and that can be the catalyst for a stronger link between communities and government. My view is that a project of this nature could also tap into real potential for innovation and economic development. I met with the deputy mayor of housing to discuss the management of dilapidated buildings and to gain an insight into the council's wide-ranging responsibilities for the restructure of older run-down buildings that still have heritage value.

I also had the privilege of meeting with Pascal-Hervé Daniel, head of cemetery services. His comprehensive briefing and the tour of the cemetery were not only fascinating but a significant lesson about the heritage value of cemeteries in general. We had interesting discussions about the practical aspects of managing such an iconic cemetery in the 21st century.

MINISTERIAL TRAVEL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:40): I have a supplementary question. Will the minister provide this chamber with a copy of his itinerary?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:40): As the member alluded to a little while ago, there are certain rules which cover the parliamentary travel of members of this parliament. There are also rules and procedures which cover ministerial travel and, in accordance with those guidelines, I will have the appropriate briefings on my travel.

MINISTERIAL TRAVEL

The Hon. R.L. BROKENSHIRE (14:40): I have a supplementary question. Will the minister confirm whether it is still procedure for ministers to give detailed proposals to cabinet prior to departing on trips overseas and, if so, did the minister do so?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:41): This just shows the nature of the beast in this council. I do not know of any minister from the opposition, which was in power for nearly 10 years, who would have given a report of their travel. The thing is that I agree with accountability and, in accordance with our guidelines, I will have the details of that trip given to cabinet.

MINISTERIAL TRAVEL

The Hon. R.L. BROKENSHIRE (14:41): I have a further supplementary question. My supplementary question referred to the fact that there was a protocol that ministers put a proposal to the cabinet and/or the Premier prior to going overseas and whether this still applied and, if so, did the minister put that to the cabinet and/or the Premier?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:41): Yes, I did.

MINISTERIAL TRAVEL

The Hon. T.J. STEPHENS (14:41): I have a supplementary question. Will the minister tell the chamber which staff he took and what their responsibilities were?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:42): I took my ministerial adviser for local government and also the Director of the Office for State/Local Government.

MINISTERIAL TRAVEL

The Hon. R.I. LUCAS (14:42): I have a supplementary question arising from the minister's answer. Can the minister indicate on how many of the 18 or 19 days for which he was away did he have official appointments?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:42): Offhand, I am not quite sure, but I think that every day we were not travelling, and apart from the weekends, we had appointments—every day.

TOURISM, YORKE PENINSULA

The Hon. J.M.A. LENSINK (14:42): I seek leave to make a brief explanation before asking the Minister for Tourism questions about the decline in tourism visitation to Yorke Peninsula.

Leave granted.

The Hon. J.M.A. LENSINK: And, yes, you and I, Mr President, have certainly done our bit to contribute to tourism on Yorke Peninsula—I just noted your quizzical look there, Mr President. As detailed in the draft Innes National Park Visitor Experience Plan, which was obtained through a freedom of information request from my office, the South Australian Tourism Commission has recorded a decline in the number of visitors to Yorke Peninsula from 2003, and the national and international visitors surveys show a decline of some 9.7 per cent over that period. The data also showed that visitors were most likely to visit Yorke Peninsula to go to the beach (49 per cent), go fishing (49 per cent) and sightseeing (32 per cent).

In September, the minister announced that $35,000 from the Tourism Development Fund was to be injected into a full-scale upgrade of the Moonta Bay Patio Motel and Restaurant into a premium option for Yorke Peninsula. My questions are:

1. Is the minister aware whether that decline has continued?

2. With a cash injection into the transformation of this motel, did the minister look into any initiatives to boost visitor numbers in the area to ensure that the funds will be utilised?

3. Has the minister considered possible future decline due to the state government's marine parks in this area and was this considered when the minister made that grant?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:44): I thank the honourable member for her most important questions. Indeed, it gives me an opportunity to talk about some of the fabulous successes we have had in tourism, although those opportunities do not exist throughout the whole of the state. Nevertheless, the bulk of the regions throughout South Australia have in the past been doing quite well in terms of tourism development. Going from memory from the last report, I think the two regions that have struggled are Kangaroo Island and Yorke Peninsula. They are the areas facing particular challenges, but, across the regions, generally speaking, there has been significant growth in the past, and we have been doing particularly well here in South Australia overall.

In fact, the total domestic expenditure in South Australia in the 12 months to June 2012 was $4.47 billion, an increase of 5.3 per cent from previous years. SA's growth was due to gains in both overnight and day-trip expenditure, and nationally the total domestic expenditure also increased. South Australia attracted over 5.2 million domestic overnight visitors, which was an increase of 4.1 per cent for the year ending June 2012. For the year ending June 2012, 19.17 million domestic visitor nights were spent in SA, and that was a 3.5 per cent increase on the previous year.

So you can see that the Hon. Michelle Lensink is being, as I said, very selective in her portrayal of how we are doing in this state, and that is the usual thing of the opposition. We know that the opposition come in here and all they want to do is talk down the state. All they want to do is bag the state, talk us down and shake public confidence. There are all these hard-working tourist operators out there—most of them are small businesses but many are family businesses—and all the opposition does is undermine the hard work of these operators. We are doing reasonably well in this state. We have a system—

The Hon. D.W. Ridgway: By whose standards?

The Hon. G.E. GAGO: Well, I've just read out the increases that we have achieved in our tourism growth, yet all we hear is bagging and talking down our state. All that does is undermine these small business operators, these hard-working families that are out there trying to make a tourism operation work. We have the opposition come in here day in, day out talking down and bagging this state and maligning the hard work of our tourism operators, who work in very hard circumstances. In fact, in the year ending June 2012, 3.3 million domestic visitors stayed in regional South Australia, which is 63 per cent of all visitors.

Members interjecting:

The PRESIDENT: Sorry, minister, can you repeat that? I am having difficulty hearing.

The Hon. G.E. GAGO: Yes, Mr President, they are a bunch of rabble-rousers over there. In the year ending 2012, 3.3 million domestic visitors stayed in regional South Australia, which is 63 per cent of all visitors and a 4.6 per cent increase on the previous year. Visitor nights in regional South Australia grew by 5.8 per cent over the period and also accounted for 63 per cent of all nights in South Australia, so our regions are doing quite well.

As I said, in the last report that I can recall, the two areas that were struggling were Kangaroo Island and Yorke Peninsula, and there have been a number of initiatives targeted at those areas. Tourism operators and key stakeholders in those regions have been given financial assistance to identify where tourism opportunities lie, because we believe it is the locals who understand the local tourism business best of all.

So, money was given to those locals for them to put together a set of priorities, a tourism plan for that region, and that is the plan that guides the funding that the SATC provides to assist those regions. Any grants that are given must align with that destination action plan, which is, as I said, driven by local knowledge, input and understanding. So, that is how we hook in and make sure that we understand what is happening locally. That is what has happened on the Yorke Peninsula as well.

In terms of marine parks, they offer an enormous tourism opportunity. Again, we see the opposition bagging and talking down opportunities. What they should be doing, if they were a responsible opposition, is assisting in promoting the opportunities for tourism. Marine parks will provide enormous tourism potential and opportunity because we know that our tourism tastes have evolved and changed over time. We know that tourism interest in eco and environmentally friendly initiatives has grown. We also know that the tourism experience has developed in a way that tourists now want the bigger picture. They want the story of the region and they want to understand how their experience and their—

The Hon. J.S.L. Dawkins: We've just had seven minutes of nothing.

The Hon. G.E. GAGO: Well, if you stopped interjecting I would be able to get through my answer much quicker. So again, marine parks offer an invaluable tourism opportunity to the Yorke Peninsula and other coastal regions.

STRONG VOICES REPORT

The Hon. S.G. WADE (14:51): I seek leave to make a brief explanation before asking the Minister for Disabilities a question relating to the Strong Voices report.

Leave granted.

The Hon. S.G. WADE: The No. 1 recommendation of Monsignor Cappo's Strong Voices report, released in October 2011, was the creation of a new disability services act. The second round of consultation concluded on 6 July of this year. One year after the recommendation, four months after consultation concluded, I ask the minister: when will a draft disability services bill be tabled? Secondly, what is the 2012-13 budget for the implementation of the proposed disability services act?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:52): I thank the honourable member for his most important question and congratulate him on his upcoming promotion in the new shadow cabinet. My answer to the question is: soon.

TOUR DOWN UNDER

The Hon. G.A. KANDELAARS (14:52): I seek leave to make a brief explanation before asking the Minister for Tourism a question about Detours.

Leave granted.

The Hon. G.A. KANDELAARS: We have all been aware of the recent, very unfortunate news that has shocked the world of cycling. However, it would be remiss of us to allow the Tour Down Under to be tarnished because of this. Can the minister tell the chamber about the new Detours initiative that has been developed for the 2013 Santos Tour Down Under?

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) (14:53): I thank the honourable member for his most important question. I know that many people have indeed been extremely shocked, as I have, by the recent revelations which have

rocked the cycling community and the broader public. As the honourable member says, the Tour Down Under is an iconic South Australian event and one which we should all be proud of.

This is a major event which is has been repeatedly singled out for awards and accolades. For example, the event won the Best Major Event or Festival at the Australian Tourism Awards in 2009 and 2010, and in 2011 was runner-up. In 2011, the tour was Australian Event of the Year at the Australian Event Awards 2011 and Best Tourism Event at the Australian Event Awards 2010, 2011 and 2012. The tour was also recognised as the Best Sporting Event at the Australian Event Awards 2012.

So, it is obvious that this is an event that we should continue to support and promote. The economic impact alone is a significant one for this state, and I have mentioned in this place that the economic benefit in 2012 of this event was $42 million, and it saw around 760 hundred thousand attendees—

The Hon. T.J. Stephens: '760 hundred thousand' is a lot of people.

The Hon. G.E. GAGO: I can see how impressed members are with these figures, figures that include more than 36,000 people who visited South Australia specifically for the tour. As wonderful as the tour is, it is important that events continue to grow and change and make sure they keep a high degree of interest, and that is why I am so delighted to be able to announce the new Detours initiative.

Detours is a new guide, aimed at promoting South Australia's regions and locations at each stage of the Santos Tour Down Under, and it will be released today in time for visitors to be able to plan their time around the race. Detours gives race fans—and those simply keen to embrace all that South Australia has to offer at this international event—the chance to explore a range of diverse attractions around each stage of the route.

As members would know, the Santos Tour Down Under takes in some of our state's most spectacular regions, each of which has an array of things to see and do, in particular the state's premier food and wine. The World Detours Down Under highlights key food and wine experiences along each race route stage. This new program plans to act as an incentive to entice all family members—there will be something there for everyone—to accompany the cycling fan and to bring their family and attract a much broader audience.

As an example, World Detours Down Under attractions selected for the People's Choice Classic in Adelaide's East End include the Adelaide Central Market, JamFactory studios, the River Torrens, the Adelaide Botanic Gardens and our wonderful museum. During race stages in the Adelaide Hills, the Barossa and Fleurieu Peninsula, cycling supporters will be encouraged to discover the region's fantastic wineries and artisan products, and there are also some lovely galleries there.

The World Detours Down Under program will be available online at the event website and is being promoted through a series of advertisements and editorial within non-traditional cycling media publications such as *Rolling Stone*, *My Money*, *Australian Gourmet Traveller* and the *Australian Financial Review*, to name just a few. The award-winning Santos Tour Down Under will be held from 20 to 27 January and next year celebrates its 15th year anniversary.

LABOR PARTY SENATE TICKET

The Hon. R.L. BROKENSHIRE (14:58): I seek leave to make a brief explanation before asking the Leader of Government Business in the Legislative Council a question regarding the South Australian Labor Senate's ticket for the forthcoming Senate legislation.

Leave granted.

The Hon. R.L. BROKENSHIRE: The federal member for Grayndler and Minister for Transport and Infrastructure, the Hon. Anthony Albanese MHR, has been quoted as describing his own party as 'grubby and self-indulgent' after it gave No.1 billing on its Senate ticket for the next South Australian Senate election to Parliamentary Secretary for Sustainability and Urban Water, Senator the Hon. Don Farrell, and not to the Minister for Finance and Deregulation, the Hon. Penny Wong.

I note that a state minister tweeted in the last 24 hours about his vote for Senator Farrell, 'Top Labor's Senate ticket' and 'continue his great work for South Australia & Labor', a vote I understand Senator Farrell won 112-83. Minister Albanese said, and I quote:

Penny Wong is obviously our most talented senator from South Australia. Full stop. End of story. Full stop.

Yet Senator Wong had issued a statement saying she was 'honoured to have been endorsed in a winnable position on the South Australian Labor Senate ticket,' and recognised the democratic decision of the party. I note that research suggests that the Australian Labor Party has won two Senate seats in every Senate election since federation. My questions to the minister are:

1. Does the minister support federal minister Albanese's view that the federal Labor Party was wrong in not preselecting minister and Senator Wong as number one on the Senate ticket?

2. Alternatively, does the minister believe Parliamentary Secretary and Senator Farrell deserves recognition for his hard work behind the scenes securing re-election of the Gillard government and the change of premier 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) (15:00): I thank the member for his question. Quite simply, these are internal matters for the party which are based on democratic principles and are dealt with by the party. While I am on my feet I table a—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: While I am on my feet, I table—

Members interjecting:

The PRESIDENT: Hang on a sec.

Members interjecting:

The Hon. G.E. GAGO: You have a deputy who doesn't support your leader, for God's sake. A deputy that doesn't support their own leader; what a disgrace! Absolute disgrace.

The PRESIDENT: Minister.

MURRAY-DARLING BASIN PLAN

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:01): What a pack of absolute rabble. They don't know what they're doing. I table a ministerial statement made by the Premier, Jay Weatherill, on a better Murray-Darling Basin plan.

Members interjecting:

The PRESIDENT: Order! This is question time, not gossip time, not rumour time: it's question time.

QUESTION TIME

WORK HEALTH AND SAFETY INNOVATIVE PRACTICE GRANTS

The Hon. K.J. MAHER (15:02): My question is to the Minister for Industrial Relations. Can the minister advise the chamber about the recent recipient of the Work Health and Safety Innovative Practice Grants?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:02): I thank the honourable member for his question and acknowledge his long history of caring about injured workers and the likes. The Work Health and Safety Innovative Practice Grants Program is administered by the research committee of the SafeWork SA Advisory Committee.

The program aims to fund projects that develop and promote innovative safety practices to help reduce work-related injuries, diseases and fatalities. I am pleased to advise that the committee has recently awarded the Housing Industry Association a grant of $35,500 to conduct a specific project on managing risks associated with working at heights.

The dangers of working at heights are well known and it is particularly pleasing that the HIA acknowledges this issue by seeking funding to improve its safety performance in this area. The Falls in Housing Construction—A Risk Management Approach project targets small businesses

and sole traders and demonstrates practical and safe ways to work for those operating in residential construction.

The project aims to equip workers with the necessary skills in risk management and control strategies associated with working at heights. Areas of high risk to be covered by this project include scaffolding, safe use of ladders, floor voids, excavations, roof and truss erection, elevated floors, and wall framing and cladding.

The government recognises that the construction industry is identified in both the National Occupational Health and Safety Strategy 2002-12 and the Occupational Health and Safety Strategic Framework for South Australia as a high priority industry for occupational health and safety. In fact, according to statistics from WorkCover SA, 84 falls occurred in the housing industry over the past five years.

These 84 falls from heights claims resulted in more than 5,100 working days lost at a cost of more than $1.5 million in workers compensation claims. As one would realise, 5,100 working days lost for 84 falls is a considerable amount of time off per fall. Each one of those falls could just as well have been a death as a serious injury.

I am very pleased that the HIA and SafeWork SA through its advisory committee are working together to look at reducing injuries from falls in the residential housing sector. As Australia's largest residential building organisation, the Housing Industry Association's members include builders, trade contractors, design professionals, kitchen and bathroom specialists, manufacturers and suppliers. The HIA is, therefore, well placed to deliver such a project to residential construction workers.

In order to successfully deliver this message to the target group, the HIA will develop a range of products, such as presentations and fact sheets, to meet a variety of different learning styles. Several delivery strategies, including site days, membership meetings and online training, will also be developed in order to maximise participation and address the difficulties faced by the target group in attending fixed sessions.

Workers will be kept informed about the project via the HIA's electronic newsletter and through its website. A survey of participants to assess the impact of the program will also be undertaken within 12 months after the project has been completed. I look forward to hearing about the outcomes of the HIA's Falls in Construction—A Risk Management Approach project and how it has helped to reduce height-related injuries and incidents from occurring on residential construction sites.

CHILDCARE CENTRES

The Hon. J.A. DARLEY (15:06): I seek leave to make a brief explanation before asking the Minister for Communities and Social Inclusion, representing the Minister for Education and Child Development, questions regarding staffing at childcare centres.

Leave granted.

The Hon. J.A. DARLEY: Late last year the minister entered into discussions with Childcare South Australia to come to a compromise position with regard to the ratio of staff required when supervising two to three year olds. This was surrounding consultation regarding the Education and Early Childhood Services (Registration and Standards) Bill. I understand that the minister agreed to stepping the ratio down to 1:8 in 2016, and then reducing it further to 1:5 in 2020.

This unequivocal and unqualified agreement was made with Childcare South Australia at a meeting on 4 November and was confirmed again unequivocally by the minister on radio and in a media release. I understand the minister has recently contacted Childcare SA indicating that this gradual step down will only apply if it is ratified at the national council of ministers. Understandably, Childcare SA is alarmed at this, as no mention of the ratification was made during negotiations and, had it been made clear to it, it would not have been of a mind to agree to the proposal. My questions are:

1. Was the minister aware at the time that ratification by the national council of ministers would be required before South Australia could adopt this step down?

2. If so, why was it not mentioned to Childcare SA?

3. Can the minister advise whether South Australia is able to adopt the step down without the agreement of the national council of ministers?

4. Will the minister give a commitment to continue discussions with Childcare SA about this issue?

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 most important questions on future staffing levels at childcare centres. I undertake to take that question to the Minister for Education and Child Development in the other place and seek a response on his behalf.

POTATO INDUSTRY

The Hon. J.S.L. DAWKINS (15:09): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the South Australian potato industry.

Leave granted.

The Hon. J.S.L. DAWKINS: The Australian potato industry is currently under threat from a federal government proposal that will result in the importation of fresh potatoes from New Zealand into Australia, subject to quarantine conditions. This proposal is another federal government backflip on the import ban on New Zealand potatoes, and growers are fearful that the imported potatoes could carry the devastating tomato-potato psyllid disease. This disease is a vector for the complex condition known as zebra chip. Zebra chip is destructive. Following an accidental incursion into New Zealand in 2006 the tomato-potato psyllid had spread across the country by 2009 and caused an estimated loss of $120 million in 2011.

South Australia produces over 385,000 tonnes of potatoes per year and is the nation's largest producer of fresh potatoes, with 80 per cent of the nation's total production. This equates to a farm gate production worth $206 million. The South Australian industry is also a significant contributor to the processed market, employing over 2,000 people. Consequently, the local industry has the most to lose if the importation of potatoes from New Zealand does not remain suspended.

I might add that I grew up in an area where there were many potato growers and processors, and of course most members in this chamber would know that the potato industry has now spread from being centred on the northern Adelaide plains and the South-East and is in many parts of the Riverland and the Mallee. It is a significant employer in many regions of the state. My questions are:

1. What is the South Australian government's position on the Australian government's proposal to reverse the import ban on New Zealand potatoes?

2. Is the minister aware of the devastating impact a tomato-potato psyllid infection would have on the South Australian potato industry?

3. What, if any, biosecurity risk management plan is in place in this state to protect the local potato industry if an outbreak were to occur?

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) (15:11): I thank the honourable member for his important question. Indeed, it might be the humble chip, but it has very significant economic ramifications in relation to surrounding biosecurity issues.

I can assure honourable members that this matter has been considered very carefully. The commonwealth released a draft report earlier this year, entitled 'Draft report for the review of import conditions of fresh potatoes for processing from New Zealand'. The Department of Agriculture, Fisheries and Forestry's draft report proposed that the importation of fresh potatoes for processing from New Zealand be permitted subject to a range of very strict quarantine conditions.

The quarantine conditions recommended are that the potatoes have been washed and/or brushed to remove soil and trash, and have been subjected to quarantine inspection by both New Zealand and Australian officers. The potatoes must come only from farms free from the potato cyst nematode and potato black wart. I am advised that it is the soil and other organic matter around potatoes that this particular disease travels in, rather than the potato itself.

Transport in Australia will be in secure containers, and all potatoes must be sent for processing under quarantine control. All waste must be disposed of under quarantine approved treatment, that is, incineration or deep burial and, again, there are conditions around that. Fresh, whole potatoes from New Zealand will not be available for retail sale in Australia. I repeat: fresh, whole potatoes from New Zealand will not be available for retail sale in Australia.

Zebra chip-infected potatoes are not commercially acceptable and traded, as I understand that the processed product tastes burnt and is discoloured. Thus there is a commercial imperative to source zebra chip-free potatoes for processing.

Zebra chip can only be spread by a small insect and the tomato-potato psyllid insect lives and feeds on leaves and stems, not the potato tuber itself. That was the distinction I was trying to make earlier on. Given the proposed zero tolerance for trash, there is no viable pathway for this insect to enter Australia. That is what I have been advised.

A second safety net exists because the only New Zealand potato available to Australian consumers will be processed into fries or crisps. This measure removes the pathway for the actual zebra chip bacteria to enter Australia in any viable state. The SARDI scientists have examined the DAFF biosecurity risk assessment process and support the proposed risk management procedures and systems.

The importation of potatoes into Australia is obviously a commonwealth government responsibility, and the final decision will be based on the best available science and will be consistent with international trade rules. The potato industry is, I agree with the Hon. John Dawkins, a very important industry here in South Australia with a farm gate value of around $102 million in 2010-11, and South Australia is the nation's largest potato-producing state.

There was a 60-day stakeholder consultation period which closed on 3 December. It provided stakeholders with an opportunity to identify any deficiencies in that risk management process I have outlined. All submissions received will be analysed in full and taken into consideration before the policy will be finalised on import conditions. The Australian Senate, I understand, has referred the matter to the Rural and Regional Affairs and Transport References Committee for consideration and report by 21 November 2012.

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

POTATO INDUSTRY

The Hon. J.S.L. DAWKINS (15:16): To what extent has the local potato industry been informed of the proposed quarantine measures that the minister has just outlined?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:17): My understanding is that that information has been circulated. I mentioned the 60-day consultation period where the risk management plan was outlined and members of the public were invited to make comment and raise any issues of concern around that plan.

MELROSE PARK AGED HOMELESS ASSISTANCE PROGRAM

The Hon. CARMEL ZOLLO (15:17): My question is to the Minster for Social Housing. Will the minister inform the chamber about last week's official opening of an aged homeless assistance program in Melrose Park?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:17): I thank the honourable member for her very important question. Last Friday, I attended the official opening of the Melrose Park Aged Homeless Assistance Program. That was last week, when members of the opposition were in 'turmoil', using the language the Hon. Mr Ridgway flung across the chamber a little earlier. They were in turmoil fighting over their internal leadership.

While they were fighting over their internal leadership, this government was busy getting on with the business of governing the state, and I commend to the opposition this approach to being in this place: stop fighting amongst yourselves and get on with representing the interests of the voters who put you there. As I said, last week I attended the official opening—

Members interjecting:

The PRESIDENT: Order!

The Hon. I.K. HUNTER: Mr President, they can't help themselves.

Members interjecting:

The PRESIDENT: Order!

The Hon. I.K. HUNTER: The turmoil present in their ranks—

Members interjecting:

The PRESIDENT: Order! The gallery is full and you should be on your best behaviour. The honourable minister.

The Hon. I.K. HUNTER: Last Friday, I did attend the official opening of the Melrose Park Aged Homeless Assistance Program with my federal colleague the Hon. Brendan O'Connor, Minister for Housing and Homelessness, and minister Patrick Conlon, who is the local member.

The investment of around $200 million in homelessness support services in South Australia for the period 2009-2013, as well as an additional 635 new houses for those who are homeless, provided the opportunity to implement a number of highly innovative housing and support models within the specialist homelessness service sector to respond to people who in the past may have fallen through the gaps.

One of these innovations is the Aged Homeless Assistance Program (known as AHAP), which provides an opportunity for aged people who are 50 years or older and are homeless or at risk of homelessness to have stable housing and integration within the community through the provision of intensive support. Older people who are homeless have a significantly different profile from other older Australians, and breaking the cycle of their homelessness often requires regular support which is tailored to their individual unique needs.

AHAP clients are more likely to have experienced mental illness or have cognitive impairments, which is often the result of alcohol or substance abuse. They are also more likely to have complex health issues requiring support, and most of them have little or no family support. The clients in the program are supported by a social work team, and their focus is on reducing isolation, sustaining stable housing, providing integration with the community and connecting clients with health and other relevant service providers in the aged sector.

Support services for clients in this program are a long-term commitment. AHAP offers 48 sustainable housing and independent living support options across Adelaide. This includes the Melrose Park complex, comprising 18 one and two-bedroom units in a purpose-built complex, which is highly accessible to public transport, a major shopping centre and other community facilities. The program also has access to 15 properties in the northern metropolitan area and a further 15 properties in the south. More than half of these properties have two bedrooms.

The Melrose Park complex I visited and opened is managed by Helping Hand. The properties in the north and south metropolitan areas are managed by a number of organisations, including Housing SA, Unity Housing, Junction Housing and Anglicare. The program is currently operating at its capacity, and it has 53 clients who are receiving housing and their concomitant support. Many success stories have been achieved for clients who have been a part of this program since its inception in August 2011.

At the opening, those attending heard from Glynnis and Kevin, who reside at the Melrose Park units. Their stories told of a journey prior to finding an affordable and safe place to live at Melrose Park. Both had been marginalised by others in the community, and both had spent time living with family and friends but with really no permanent place to call home. Since coming to their current accommodation, they have been able to settle into a property they can both call home rather than simply a roof over their head. They have taken on a computer course, and they swim twice a week at a nearby pool, as well as taking advantage of the community bus to go grocery shopping for themselves.

I visited some of the units at the request of several of the tenants, and I had a chance to hear their stories and view the pride they have in their new homes. They have had the opportunity to put down roots and furnish their units with a significant degree of certainty, a certainty they have not had before coming to Melrose Park. The partnership between the commonwealth and the state, as well as partnerships with the not-for-profit sector and community service providers, has been crucial in achieving these excellent results at Melrose Park. This type of program and target population are a first for South Australia, and its success is likely to see more partnered projects of this type replicated in the future.

This is the business the government is getting on with, instead of playing pass the parcel of the leadership team, which the Liberal opposition is doing with their leadership positions. The music stopped, of course, when poor old Mitch Williams did not have the parcel and Steve Marshall came through and grabbed the parcel just in the nick of time. Long may it last! Long may the Liberal opposition be consumed with turmoil—Mr Ridgway has left now; I do not have to use his words—so that we can get on the business of governing this state.

OLYMPIC DAM EXPANSION

The Hon. M. PARNELL (15:24): I seek leave to make a brief explanation before asking the Minister for Regional Development, as Leader of the Government, questions in relation to the Olympic Dam expansion.

Leave granted.

The Hon. M. PARNELL: As all members know, under section 13 of the Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Act 2011, BHP has only 12 months after the act came into operation to commit to the Olympic Dam expansion project or lose its approval; that period expires on 15 December this year. The act provides that any extension granted by the government has to be tabled in parliament, where either house can disallow it.

Last month, soon after BHP Billiton announced that it was not going ahead with the project, the Premier advised parliament that he anticipated BHP Billiton's seeking an extension. The Premier said:

> Obviously, in the event that it seeks an extension, BHP Billiton will need to satisfy the government that the circumstances in which it has found itself are sufficient to enable the government to lawfully consider an extension. It will also need to explain the way in which it intends to proceed on the expansion and how this differs from the original proposal, so that we can properly consider the request.

It is, however, becoming increasingly apparent that the project is now very far off. Commentators are now starting to use the word 'cancelled' rather than 'deferred'. I note reports from Marius Kloppers (the CEO of BHP Billiton) last week in London, where he is reported to have said:

> We've been very clear that on Olympic Dam we're not in a position to take any decision for years.

Yet, on the other hand, according to an article by Kevin Naughton in *InDaily* last Friday:

> Paul Heithersay, CEO of the state government's Olympic Dam Task Force, has told several industry forums the project is 'deferred' and could very quickly come back onto the table.

What is now clear is that the approvals that had been given will not match any likely reincarnation of the project. The proposed open-cut project is off and the only proposal being talked about by BHP Billiton is some sort of chemical leaching process. Marius Kloppers again in London last week said:

> Time is needed to allow for the results of new leaching technologies that facilitate extraction of minerals from ore.

My questions to the minister are:

1. Is it true that the government has granted to BHP Billiton an extension of time in which to commit to the expansion project as reported in *InDaily* and, if so, when can we expect this extension to be tabled in parliament?

2. Whether or not a decision has been made, why on earth would the government consider granting an extension when it is clear that the project will never go ahead in its currently approved form, or indeed in any form, in the foreseeable future when the option exists to go back to the drawing board and negotiate a better outcome for the people of South Australia and for our environment?

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) (15:27): I thank the member for his question. The Premier has made his position on this matter quite clear: that he will not be approving an extension if there is no benefit to South Australia. To the best of my knowledge, no decision has been made in relation to the several criteria the honourable member has outlined, which would underpin the considerations of any potential for an extension. As I said, he has been completely transparent about that.

The Greens must be celebrating this setback with joy; they have never supported this project. We know that this is an important project for South Australia that has been delayed. I have

outlined in this place before that, in terms of mining developments in this place, many other mining developments are occurring that are not reliant on the Olympic Dam project. There are many developments currently under way and in the pipeline that show a great deal of promise and prosperity for this state.

We have a commitment to our advanced manufacturing agenda, our premium food and wine from a clean environment. We have a number of key planks to serve as an economic plan for this state, and we are getting on with that plan. While the opposition is in complete disarray, fighting over the spoils of leadership, we are out there getting on with the job.

I have said in this place time and time again that all the opposition, and the Greens on this occasion, want to do is talk down the state, bag South Australia, bag initiatives. These are about jobs. These projects are about the future prosperity of this state. Rather than fight about our leadership and elect a deputy leader who does not even support the current leader—it is unbelievable; I think there have been four or five different leaders since we came into government and more challenges than I have had hot dinners. We know there is going to be at least one more leadership challenge before the next election. We know that is going to happen. We know the opposition has no plans, no policies, no ideas and, clearly, no discipline.

PUBLIC SERVICE EMPLOYEES

The Hon. R.I. LUCAS (15:31): I seek leave to make a brief explanation before asking the Leader of the Government a question on the subject of public service numbers.

Leave granted.

The Hon. R.I. LUCAS: On 18 September, I asked the leader the following question: how many public servants have been cut from her portfolio over the last three years and how many more public servants have to be cut from her portfolio over the forward estimates under the current budget parameters? The minister said, in part:

> All of these figures have been tabled in our budget document.

It was open and transparent. She then went on to say:

> I reiterate that the cuts this government has made and has planned to make are nowhere near the one in four that this Liberal opposition intends to make if it gets into government.

It has now been revealed that over the last two budget years, in the minister's portfolio, 158 full-time equivalents have been cut, or the equivalent of 13.5 per cent, of PIRSA's then workforce. It has also been revealed that over the forward estimates period a further 133 full-time equivalents, or another 12.9 per cent, of PIRSA's workforce is to be cut, giving a total of approximately 25 per cent of the workforce that has been cut or will be cut over the forward estimates period. My questions to the minister are:

1. Does the minister now acknowledge that over the last two financial years 13.5 per cent of PIRSA's workforce, or 158 full-time equivalents, have been cut?

2. Does the minister acknowledge that over the forward estimates period a further 133 full-time equivalents, or 12.9 per cent, of PIRSA's workforce are to be cut?

3. Does the minister acknowledge that approximately 25 per cent, or one in four, of PIRSA's workforce has been cut in the last two years or will be cut over the forward estimates period?

4. Does the minister accept that she misled the council when she said on 18 September, 'I reiterate that the cuts this government has made and has planned to make are nowhere near the one in four'?

5. Will the minister now apologise to the council for misleading it?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:33): I have made the figures and numbers available to the council. I have put them on the public record. I am not going to waste the time of this chamber doing that again. This government has been open and transparent in what we do, and all of that is on the public record. We know the opposition's intention, if they come into government, is somewhere between 25,000 to 30,000 cuts in the public sector. We know that is what they intend to do. We also know

that the Hon. Rob Lucas is notorious for coming into this chamber time and time again with incorrect and inaccurate information that is taken out of context.

We know that he comes into this place time and again and misrepresents the facts over and over. So, I will not accept anything he says in this place. I will not accept anything he says or any of the assumptions he makes because we know he is notorious for coming into this place and misrepresenting the facts and distorting the truth time and again.

ANSWERS TO QUESTIONS

SANTOS STADIUM

In reply to the **Hon. T.J. STEPHENS** (15 September 2011) (First Session).

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations): The Minister for Recreation and Sport has provided the following information:

The recent $2.3 million capital development project at the Santos Stadium delivered a new world class track including additional lanes and upgraded the lights and public address system.

This project has ensured that Santos Stadium continues to be an International Association of Athletics Federations certified facility.

The Minister for Recreation and Sport is aware that additional works are required at the facility to further enhance its capacity to attract events including the development of additional change rooms.

To that end the government has provided funding to SA Little Athletics in order to develop a design for new change rooms.

The Office for Recreation and Sport will be working closely with Little Athletics and Athletics SA to deliver on this project.

CAVAN TRAINING CENTRE

In reply to the **Hon. J.S. LEE** (15 March 2012).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Police has advised:

1. The actions taken by SAPOL in relation to this matter are considered to be operational in nature and part of SAPOL's core business. On that basis, the individual component costs are not identified.

I am advised:

2. Issues raised by the Public Service Association since 2009 until the escape which have been implemented, amounted to $289,669. The PSA has not formally raised any issues relating to security measures at Cavan Training Centre since the escape.

APY LANDS, FOOD SECURITY

In reply to the **Hon. T.J. STEPHENS** (2 May 2012).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Aboriginal Affairs and Reconciliation has advised:

1. The APY Lands Food Security Strategy includes store management supports as one of seven priority action areas. The Australian Government has the lead on this action area and will continue to work with stores to develop a sustainable and transparent model of store management. While this work has the potential to impact upon affordability, it is important to note that community stores on the APY Lands are private entities independently managed as commercial, for profit businesses.

2. Store management supports is one of seven priority action areas under the APY Lands Food Security Strategy. It is well accepted that improving food security on the APY Lands will require a sustained, long term effort from the range of stakeholders across a range

of action areas. We will continue to monitor the impact of the Strategy by way of an annual evaluation report.

CHILD HARBOURING

In reply to the **Hon. A. BRESSINGTON** (15 May 2012).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Education and Child Development has been advised:

Since the enactment of section 52AAB of the *Children's Protection Act 1993*, a total of 30 Written Directives have been issued.

Two of these were directed at a parent of a child under the Guardianship of the Minister and a further three, were directed at a sibling of a child under the Guardianship of the Minister.

The Minister for Police has been advised that since commencement of this section on 31 December 2009, to 30 June 2012, SA Police has launched 14 prosecutions for the offence of failure to comply with the direction not to harbour, conceal or communicate with the child under Section 52AAB. SAPOL records indicate that:

- 1 was against a parent/guardian of the child;
- 1 was against a brother/sister of the child; and
- 2 were against an uncle/aunt of the child.

From 31 December 2009 to 30 June 2012 SAPOL has launched 13 prosecutions under Section 52AAC. SAPOL records indicate that 3 prosecutions involved a parent, sibling or external family member of a child in State care.

OUTBACK ROADS

In reply to the **Hon. J.S.L. DAWKINS** (29 May 2012).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Transport and Infrastructure has been advised:

The Australian Government and the State Government jointly funded a project with a total allocation of $13.73 million to address issues with the condition of the Strzelecki Track, with the project completed in December 2010.

The Strzelecki Track Upgrade works included:

- constructing six sealed overtaking opportunities, each approximately seven kilometres in length, significantly reducing the risks associated with vehicles overtaking slower heavy vehicles using the track
- constructing or upgrading of three rest areas and three truck parking bays
- re-sheeting of four sections of road, with a total length of 54 kilometres, to improve the condition of the road surface
- upgrading and stabilisation of three major floodways; and
- upgrading of thirty minor floodways.

There are no plans to seal any additional sections of the Strzelecki Track at this time.

SHACK LEASES

In reply to the **Hon. J.A. DARLEY** (18 July 2012).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Sustainability, Environment and Conservation has been advised:

1. A request for advice has been sent to the South Australian Valuer-General by the Department of Environment, Water and Natural Resources.

2. The request was sent on the 21 August 2012. To date, no response has been received.

CHILD HARBOURING

In reply to the **Hon. A. BRESSINGTON** (19 July 2012).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Education and Child Development has been advised:

Section 52AAC of the *Children's Protection Act 1993* makes it an offence for a person to harbour or conceal, or assist another person to harbour or conceal, a child; and to prevent, or assist another person to prevent, the return of a child to a State care placement, if it is known that the child is absent from a State care placement without lawful authority.

Families SA utilises the power of a Written Directive in a manner which is in keeping with the intent of the Written Directive which is to prevent the exploitation and harm caused by adults to children and young people in care.

The legal authority to charge a person with harbouring or concealing a child rests with the Police, and matters are heard in the Magistrates Court. Should a person be convicted of such an offence, the judicial officer may impose a $12,000 fine or imprison the defendant for one year.

It is appropriate for Families SA to issue a Written Directive relating to a child or young person who is under Custody or Guardianship of the Minister as they are best placed to be informed when a child or young person is being targeted and encouraged by an adult to abscond from their placement or to engage in behaviours that are harmful to their wellbeing.

SAFEWORK SA INSPECTORS

In reply to the **Hon. J.A. DARLEY** (20 July 2012).

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations): I am advised:

1. The complement of staff within SafeWork SA, excluding the 94 Full Time Equivalent (FTE) inspectors, (89 Occupational Health and Safety and 5 Industrial Relations) totals 175 FTE. The Policy and Strategy Group, which has a critical role in the development of occupational health and safety (OHS), industrial relations and work life balance policy and legislative reform in this State, consists of 12 FTE fully budgeted positions.

2. SafeWork SA regularly reviews its motor vehicle fleet in line with its service delivery requirements to provide OHS compliance, enforcement and prevention functions to the South Australian community. I am advised that SafeWork SA has reduced its motor vehicle fleet by 11 per cent in 2011-12 and a further 5 per cent is planned in 2012-13, not the 30 per cent as claimed by the honourable member. However, I can assure the honourable member that these reductions will not negatively impact on SafeWork SA's ability to deliver its core business functions.

3. SafeWork SA's reduction of its motor vehicle fleet does not impact on the inspectors of the Investigation Team or Response Team. SafeWork SA has reviewed its motor vehicle fleet and I once again assure the honourable member that the reductions will not negatively impact on SafeWork SA's inspectorate functions.

4. Yes, vehicles leased via salary sacrifice by SafeWork SA executive level staff as part of their salary package are available for use by staff where alternatives are not available and when the vehicle is not required by the executive.

5. SafeWork SA's budgetary savings will not impact on the number of inspectorial staff. SafeWork SA's priorities in managing its savings requirements focus on maintaining front line services in the field, ensuring the continuation of the level of service required by industry in South Australia and the continued fulfilment of statutory responsibilities.

6. There is no budget to increase inspectorate numbers in 2012-13. Using the current complement of inspectors, an extensive programme of educational visits is planned to assist businesses with the transition to the new laws. SafeWork SA is ready to progress this programme of visits.

JAMES NASH HOUSE REDEVELOPMENT

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:35): I table a ministerial statement made today by the Hon. John Hill MP, Minister for Health and Ageing, regarding the James Nash redevelopment.

VISITORS

The PRESIDENT: Before calling on the business of the day, I draw to the attention of honourable members the presence of former Labor government minister, the Hon. Frank Blevins, in the gallery and also the many family members and friends of the Hon. Mr Maher. You came in on a perfect day: we were very well behaved today. I remind honourable members that soon we will been hearing the Hon. Mr Maher's first speech—

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: —and that he should be heard in silence, Mr Ridgway.

MAHER, HON. K.J.

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 council welcomes the Hon. K.J. Maher as a member.

I congratulate the honourable member on his election to this place. This motion is to enable him to deliver his inaugural address, which we are all looking forward to with great anticipation. I have known Kyam for many years. I am very confident that we will hear much more—

Members interjecting:

The Hon. G.E. GAGO: It is incredibly rude of the opposition. We are speaking about the membership of a new member to this chamber, and I think the opposition is being incredibly rude in their attitude.

The Hon. R.I. Lucas: At least we pronounce his surname correctly. We don't call him Kyam Mayher—

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Minister, just ignore the banality of the interjections, please.

The Hon. G.E. GAGO: Thank you, Mr President. We see that there are considerable family and friends in the chamber, and I would like to think that honourable members could conduct themselves with some sort of decorum, at least in respect to the Hon. Kyam Maher and those present in the gallery.

I am very confident that we will be hearing much more of him over the coming years on a wide range of different issues. He has very deep Labor roots, His parents, Viv and Jim, both of whom I know very well, have also been very active in the Labor Party for Kyam's entire life; in fact, Kyam claims he was campaigning for Gough Whitlam when he was five months old, so quite a credential. It is no surprise to those who know Kyam that he brings to this parliament sustained commitment on social justice.

He has quite a well-demonstrated track record in relation to that, those that underpin the sort of values that he was no doubt taught by his parents and family, and these are the values that have underpinned him in his working life and no doubt will underpin his political life as well. They are certainly the values I have known of Kyam for as long as I have known him. I am sure also that he will bring with him a great commitment to the importance of regional communities, given his upbringing. I acknowledge his impeccable record and welcome him to the chamber and look forward to his inaugural address.

Honourable members: Hear, hear!

The Hon. K.J. MAHER (15:39): Thank you, Mr President. I am proud and honoured to be standing here today representing the Australian Labor Party in the South Australian parliament. Firstly, I would like to congratulate you, Mr President, on your recent elevation to the role, replacing the Hon. Bob Sneath in the chair; you have big shoes to fill—literally, as I think his are about five sizes bigger than yours. But, having known you for many years, your fairness, good humour

and virtually unlimited patience will see you preside over this chamber with distinction and wisdom per se.

One of the questions I am most frequently asked, and one of the most difficult to answer simply and concisely, is why I am involved in politics. For me, the answer boils down to a desire to see everyone in our community having the opportunity to share in the benefits of living in South Australia—the belief that we should be doing all that we can to make sure nobody gets left behind. Like everyone, my beliefs and world view have been heavily shaped by the environment I grew up in. My formative years were spent growing up in country South Australia, firstly in Littlehampton in the Adelaide Hills and then in Mount Gambier.

Life growing up in country SA was good. It revolved mainly around sports, family activities and involvement in the local community. As kids, the whole neighbourhood was our backyard and, although the streets were free and safe to roam, you could not get away with much because everyone would tell your parents what you were up to—mostly before you got back home for the day. Growing up, there was a real sense of community, but not everyone was so fortunate.

When I was young, my mum was a social worker helping others with the problems in their lives. For a time, she also ran the local women's shelter, helping victims of domestic violence who, especially in small country towns, would have nowhere else to go if it were not for people like her. The work she did literally turned lives around. She enabled people who otherwise would not be involved to share in and be a part of our community. She has dedicated her working life to doing what she can to help some of the most marginalised in our society.

My mum held viewpoints that seemed at the time, and still do today, as rational common sense but would have likely been regarded a few generations ago as very strident feminism. It came as a surprise when I was young to hear others refer to God as 'he' because, although the argument about her existence was far from settled in our house, growing up we had always referred to God as 'she'.

My parents recently told me a story of when I was very young and the family lived for a few months in the southern suburbs at Darlington. One of the neighbours came to see my dad asking if there was any way that the street could help the family out and wondering what was wrong with my mum. It transpired that this concern was based on the fact that the neighbours had seen my dad hanging out washing for the last week and assumed my mum was gravely ill.

For as long as I can remember, my dad has largely done all the washing, ironing and washing-up, which means my mum has been very ill for a very long time or there has just been a reasonable division of household chores. As well as the example set by my mother, equally the values and guidance of my father have played a massive role in leading me to where I find myself now. My dad worked in IT most of his life, much of it for the timber company that was then called Softwoods in Mount Gambier, but computers were not his first calling.

In what must seem almost like another lifetime away for him, he was an ordained Catholic priest, having spent some time in the monastery here in Glen Osmond. Although he saw the light (or the dark, depending on your perspective) and left the church in his 20s, I think he, and in turn myself and my brothers, Cam and Gib, grew up influenced by some of the better aspects of Christianity: notions such as a deep and real sense of social justice, a commitment to service and a dedication to the welfare of others. However, the monastic tendency towards long periods of silence does not seem to have been an inherited trait for any of us.

One of the most indelible impressions that has been left on me growing up is the need to contribute and put back into your community. Through school involvement, service clubs, running local sports organisations or the local council, I can never remember a time when my parents were not doing something for their local area.

Involvement in progressive politics through the Labor Party has been a family tradition. As the Hon. Gail Gago pointed out, my first recorded campaign experience is a photo I have—so I actually have proof—that shows me as a five-month-old baby wearing a re-elect Gough Whitlam t-shirt at an ex-pat polling booth in Port Moresby. Like me, my three kids have had little choice in their political influences.

The younger of my boys, Jai, is three years old and he has already been to ALP meetings in Port Augusta, Berri, Mount Gambier and many places in between; the other two have endured even more. Four-year-old Flynn (whose middle name is Terance in honour of our late colleague, Terry Roberts) was almost certainly the only one at his childcare centre at the last federal election

who could name nearly every candidate on election posters as we went past. Poor six-year-old Marley has appeared on national TV with least two prime ministers and a premier as a prop for various events.

There is an even longer, deeper and proud involvement with Labor politics on my dad's side of the family. His ancestors have been in Australia for some six generations and have been involved with the Labor Party right from its inception in Queensland more than 120 years ago. Today, many of my relatives on that side of the family are still heavily involved in Labor Party sub-branches in New South Wales and, over the years, I have heard stories about some of the Labor identities (such as Paul Keating) who were very close family friends.

I am honoured that Chris and Paul have journeyed from Sydney and Wollongong to be here today. As they reminded me a couple of nights ago, even though the Labor Party is part of the family's DNA, it has taken four generations of continuous membership before someone from the family entered a parliament.

My mother's side of the family have been in Australia for a similar 150 years or so, mainly in regional Victoria, particularly West Gippsland, and probably—not unlike many families who go back some generations in regional Australia—that side of my family has makeup that includes Aboriginal ancestry. In different times, a couple of generations ago, this was not something that was discussed widely outside the family but, in more recent times, I am very proud that my mum has become an active and accepted member of the Aboriginal community in Mount Gambier.

Although it has not played an active role in my life, I am extremely proud that there is a family history that links me to the oldest living culture in the world—but it is a culture that faces significant challenges in today's Australia. Aboriginal disadvantage is amongst the most pressing of issues facing Australia today. It makes us less of a nation when the traditional owners of this country endure some of the worst levels of disadvantage, poverty and dislocation that occurs today.

I first visited the APY lands about a decade ago as the chief of staff to the then minister, Terry Roberts and, as I am sure is the case with many other first-time visitors, I was struck by the rugged ancient beauty of the land set against the reality of the very tough life faced by those living in remote Aboriginal communities. There is a level of disadvantage that would be confronting for most people to experience. Communities, families, children and even the wandering packs of desert dogs struggle in these remote and isolated areas.

Working in Aboriginal Affairs affected me deeply. I remember in 2004 there had been a number of tragic deaths with young men committing suicide in the APY lands. Many of these young men were chronic petrol sniffers and, at the same time, there were very significant and ongoing problems with governance structures in the APY lands. Late one sitting day back then, a cross-bencher in the upper house informed me that the opposition planned to move a censure motion against the government and my minister the next day.

As you would expect a chief of staff to do, I spent most of that night researching and writing a speech for Terry, defending the government's record and action in Aboriginal affairs. After working very late into the night and getting about two hours sleep on the office couch, I woke up early the next morning to take a fresh look at and edit the speech. Soon after that I received an early morning phone call from the head of the department informing me that they had just discovered another young man who had committed suicide on the lands.

I can distinctly remember that moment early that morning and being profoundly distraught by the fact that I had spent the entire night writing a speech as part of a partisan political process that would make absolutely no real impact in the area in which I worked, and the problems were so immense that I was really moved by that experience. Although sometimes challenges in this area and the correct policy responses can seem almost insurmountable, it is an area that is so important that we need to make every effort to keep making a difference.

In an effort to heal deep wounds the apology to the stolen generations delivered in 2008 by the prime minister was a significant step. I was proud to share that moment, watching it on the big screen in Elder Park with so many who were personally affected by forced removals, and holding my then three-month-old son that day made it a little easier to try to imagine the distress that would have been faced by many Aboriginal parents for much of the last century—but there is still a long way to go.

A few years ago I attended an exhibition of artworks created by members of the stolen generations. Wrapped around a concrete pole in the centre of the room was a sheet of butcher's paper where people had written a brief message of their experiences, a little bit about where they were taken from and what institutions they had grown up in as members of the stolen generations. One message simply said, 'It all happened.' The fact that there are those who deny such historical realities that forces its victims to justify what happened is a shameful thing.

I was very fortunate to work in this area, spending four years working for Terry Roberts. I know Terry would have been very happy to be remembered for his dedication and contribution to Aboriginal affairs. Terry gave me my first job in politics and provided a great deal of advice and mentoring. Although he very frequently infuriated his staff due to his complete lack of a desire to stick to a script or stay on message, and to talk for much longer than anyone expected he might, the years working for Terry were exceptionally rewarding and a huge amount of fun. I am sure if Terry was still around today he would be stoked to see me following in his footsteps in this place. I also wish to acknowledge the friendship and support of many of Terry's old staff, some of whom are here today: Josie, David, Claire, John, Richard, Leigh, Gillian, Jodie, Artie and Shorty.

Terry Roberts was a proud unionist, having come up through the ranks of the manufacturing unions in Millicent. Recently, we have seen a great deal of demonisation of trade unions and the role of trade unionists. No doubt there have been a couple of bad apples who should face the full force of the law for anything they have done wrong, but to tarnish all unionists because of the rogue behaviour of a couple of individuals would be like condemning all business owners because of Christopher Skase or Alan Bond.

Trade unionists and trade unions fight for the better working lives of millions of Australians, often the most disadvantaged workers. There is no shame in that. It is not just individual workers who are positively affected by the roles of unions; unions have played pivotal roles in helping shape industries and lead policy change. For example, today the union representing early childhood educators, United Voice, is leading reform in this sector for the benefit of millions of children and parents. Unions have been at the forefront of some of the major reforms we have seen in Australian society over the last few decades. The union movement's role as a party to the Prices and Incomes Accord in the 1980s allowed for a modernisation of our economy and massive reforms to the social fabric of Australia.

An occasional criticism of the ALP is that unions and unionists have too much say in our party. Frankly, I would prefer to be taking advice on strategy and policy from people who, as part of their job, deal with dozens of working Australians every day as opposed to relying on advice from special-interest groups or the top end of town. I would particularly like to thank some of the trade union leaders who have shown me the importance of their work and who have helped provide the South Australian Labor Party with a stable political environment in which to operate. Such people include Dave Di Troia, Dave Gray, Wayne Hanson, Katrine Hildyard and Pete Malinauskas, to name a few.

Marriage equality has become a defining issue of the moment. It is not a social issue, it is not a moral issue: it is a basic human rights issue. In many people's lifetime there were bans on various forms of interracial marriages in places around the world including, back in our history, Australia. In the United States, it was not until 1967 that the Supreme Court rejected as unconstitutional state bans on interracial marriage. These historic denials of marriage to entire groups of fellow citizens based entirely on their biological make-up are and will continue to be seen in history as plain and simple, mean-spirited bigotry. Future generations will no doubt judge current opponents of same-sex marriage just as harshly.

All of us in this place will have a family member, a close friend or even a colleague in this chamber who suffers as a result of this unjust discrimination. My cousin Andrea would like nothing more than to marry her fiancée Stacy but, solely on the basis of their gender, she is not allowed to. We have the power to change these laws and we should. Marriage equality is occurring in many jurisdictions around the world and it will happen in Australia. We should get on the correct side of history and make it happen now.

At the time of my appointment last sitting week, and also today, a number of speakers helpfully informed the chamber of my views on the importance of the regions and regional development. It is a real issue. The prosperity of our state is linked to the economic and social wellbeing of our regions. As I have already spoken about, I grew up in regional South Australia and my wife, Carmel, was raised on a 1,600-acre farm north of Nhill in regional Victoria—not quite as good farming country as the Upper South-East, Hon. David Ridgway, but not bad country.

We regularly spend a lot of time with our parents in the South-East and also with my wife's parents, who are now in Horsham, which helps my understanding of some of the unique challenges facing regional areas. My wife's parents, John and Janice Evans, who are here today, like my own parents contribute heavily through service clubs, volunteer organisations and their church and are integral to the fabric of their community.

Some of our more traditional regional sectors, such as agriculture and wine, will benefit from South Australia's increasingly clean and green food producing status, but regional economies are also being transformed by the energy and mining sectors. Since Labor came to office in South Australia, the number of operating mines has increased from four to 20 and the number of people employed in the mining sector has more than tripled. This has not happened by accident; it is under the careful planning and stewardship of the Labor government.

The more I have been involved with the Labor Party the more I have come to appreciate that one of the central purposes and missions of the Labor movement is jobs. Good jobs are absolutely at the core of what we do. Jobs are at the heart of prosperity, and prosperity underpins many of our greater aspirations. If there is a hierarchy of social needs in modern society, then jobs sit near its summit and from that height, from up there, we see all those other challenges, all those social justice and environmental imperatives which demand our dedication and attention. But without jobs, without good jobs, without dignified jobs, without safe jobs, and without jobs for all, our hope of lifting our aspirations and attention to meet those demands is hamstrung.

It is a central belief in fairness and a commitment to raising our expectations and aspirations which sit at the heart of the Labor Party and at the heart of the Weatherill government. I am proud to be a part of a government that recognises the central importance of dignity at work and dignity of work. While jobs are central to our mission, it has always fallen to the Labor Party to bring about progressive social change. That change runs deeply in the South Australian tradition. We have led the nation on many fronts—progressive reform in political representation and participation and civil rights.

Labor leaders have always held a progressive vision for this state—a vision to make this state fairer and better. This belief lies at the heart of much of what the Weatherill government does, not just in social policy areas, but in visions like revitalising the city, creating family-friendly suburbs and some of the major projects that will benefit the state for years to come, projects like a new world-class hospital and a redeveloped Adelaide Oval.

I am proud to be a part of a government that uses the best available evidence to implement policy, that listens to the best ideas from all around the world and acts on good advice. That evidence-based approach to policy is at the heart of programs such as Every Chance for Every Child where the transformative nature of education guides government programs for the crucial first years of the child's life. I am proud to be part of a Labor government that, at its core, is focused on ensuring that everyone in our community has the opportunity to share in the benefits of being a South Australian and that nobody should be left behind.

Of course, one does not simply decide to go into parliament and do it all by themselves. I would like to thank a few very old friends who have a diverse range of political inclinations, but nonetheless have supported me in my political endeavours over many years—Marty, Tim, Anthony, Michael, Cam and Gib. And those in the ALP who have had a massive impact on where I am today who have been mentors or co-conspirators or, on a lot of occasions, both; I will name just a few: Terry Roberts, Frank Blevins, Mark Butler, Susan Close, Dave Gray, Jay Weatherill, Steve Georganas, and Steven May. I also thank people I have worked with very closely with: Reggie, Justin, Anton, Matt, Nigel, Tim, Roger, Jill, Jo, Mandy, Cheyne and Cam.

Most of all, thanks to my family—on a daily basis, seeing my kids reminds me that trying to shape a state with a better future is a worthwhile career choice, although it would be better if the first reminder of this was later than 5:30 every morning—and to my exceptionally understanding and supportive wife. Carmel balances running two small businesses working as an elite sports podiatrist, teaching at uni, managing a household with three small children and suffering a frequently absent and often hyperactive husband.

One of the great joys of our life together has been sharing in each other's successes and I am so glad to have you along the way. Now, as a member of the Legislative Council, I look forward to doing good things and receiving plenty of advice from members on both sides about how to go about my job for years to come. Thank you, Mr President.

Honourable members: Hear, hear!

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:57): It gives me a great deal of pleasure to speak to this motion welcoming the Hon. Kyam Maher on behalf of members opposite. It is always an exciting time when a new member joins this chamber. We are only a chamber of 22 and, while sometimes our differences are quite great, there are a range of times when we work together.

Most of us on this side of the chamber first met Kyam Maher when he was working for the Hon. Terry Roberts, and I think none of us are surprised that we now see him sitting on the red leather benches opposite us, because he demonstrated quite a significant amount of ability and capacity for that job working for Terry Roberts. It only seemed a natural progression that we would see him sitting on the red leather benches of the Legislative Council.

Of course, he joins a large number of people who have spent a large portion of their life in the South-East. I was just doing a quick count and in my lifetime I think there are nine starting with Ren De Garis, Martin Cameron, Terry Roberts, of course, Jamie Irwin, Bob Sneath, Rob Lucas, myself, Bernard Finnigan and now, of course, Kyam Maher. If you look at the credentials of those people, Kyam is the only one who has not been either a leader, a minister or president, so you do have some reasonably large shoes to fill.

I am confident that Kyam will rise to the top when we look at the lack of talent that sits in front of him and that it will not be long before we see him taking a step further forward, but it is refreshing to know that he has spent most of his life growing up in regional South Australia. I remember Dale Baker years ago asking me if I knew Bill Hender well. I did know him quite well and I said, 'Why?' and he said, 'Well, you should encourage him because that bunch of idiots needs good people in responsible positions on the front bench.'

I accept that Kyam one day will take an opportunity to serve his party on the front bench and I think that, while we might not always agree, the fact that he grew up in regional South Australia and has some understanding of the needs of regional communities means he will serve his party well and serve the Parliament of South Australia well.

Honourable members: Hear, hear!

Motion carried.

WORK HEALTH AND SAFETY BILL

In committee.

(Continued from 18 September 2012.)

Clause 1.

The Hon. R.I. LUCAS: In terms of trying to assist the committee, I wonder whether the minister can outline the nature of the government's latest position. I noticed that the government amendments, as of yesterday, were still on file. In terms of processing the legislation through the committee stage, I wonder whether the minister can outline what his intentions are in relation to the amendments in his name that are still on file: whether or not he intends to withdraw them. If the minister can do that first, there are a number of other aspects which relate to what might be the government's most recent position, which I would like to raise with the minister on clause 1.

The Hon. R.P. WORTLEY: It is the government's intention to move only one amendment, and that is to clause 2, the commencement date.

The Hon. R.I. LUCAS: Can I clarify that the minister is indicating that he is withdrawing all other amendments standing in his name?

The Hon. R.P. WORTLEY: Yes.

The Hon. R.I. LUCAS: Can either the minister or perhaps the Hon. Mr Darley indicate at this stage the other aspects of the negotiated package between the government and the Hon. Mr Darley? There are issues that do not impact directly on the legislation but may well, as we understand it, relate to commitments to change regulations and/or codes of practices and, potentially, transitional arrangements.

It would assist the committee, I think, if the government can indicate its position because, Mr Chairman, as I think you and the minister would know, the minister's position up until now has been that this bill cannot be amended because it was part of harmonised legislation. Indeed, he told a number of industry groups that it was impossible to change the legislation in South Australia;

he was not going to do so. They would have to take—and he would have to take—the issue back to the national level for meetings of ministers before there could be changes in the legislation. So it is clear from public announcements that the government has changed its position. Can the minister outline to the committee what the government's latest position is; that is, clearly the bill can be amended, at least from the minister's viewpoint, without harming the proposal for uniform harmonised legislation in all jurisdictions in Australia?

The Hon. R.P. WORTLEY: It has always been the government's position that, this being harmonised legislation, we prefer not to make any changes. However, as we know the dynamics of this chamber, we have been involved in a very prolonged round of negotiations and, as a result, we are supporting a number of changes to the legislation. We do not believe that this actually attacks the very pillars of this legislation and we will be supporting a clarifying amendment on the control to be moved by Mr Darley, some procedural amendments on the right of entry and a review of the legislation.

The Hon. R.I. LUCAS: The government will not then be accepting amendments in relation to self-incrimination, about which there has been much criticism?

The Hon. R.P. WORTLEY: Yes, we will be supporting the reintroduction of the right to silence.

The Hon. R.I. LUCAS: Has the government also announced any agreements in relation to changes in regulations or codes of practice as part of the negotiated deal?

The Hon. R.P. WORTLEY: The government has agreed to raise the height threshold from two metres to three metres.

The Hon. J.A. DARLEY: In answer to the Hon. Rob Lucas's questions, I have a number of questions that I will be raising with the minister at clause 2, which will probably clarify a number of those issues.

The Hon. R.I. LUCAS: I am happy to wait for clause 2 regarding those particular issues, but there are a number of other issues that could be raised in either clause 1 or clause 2. In relation to his last response, the minister said he would agree to increase something from two metres to three metres. Is the minister saying that the agreement he has entered into is generally or is it only in relation to high-risk industries?

The Hon. R.P. WORTLEY: That's right, yes.

The Hon. R.I. LUCAS: Is the minister indicating that there are no other proposed changes to regulations or codes of practice?

The Hon. R.P. WORTLEY: We agreed on an exemption for strata corporations, where premises are used solely for residential purposes, and addressed the issue of mixed-use premises. We have also agreed that, in the code of practice, instead of disallowance or cost-benefit analysis, parliamentary counsel will draft an amendment to provide for the Small Business Commissioner to be consulted on the effects on small businesses before new codes are declared and the safe work method statements to be pro forma, with provision for addendum.

I will detail in the debate that this will be the case, and have provided this to Mr Darley in advance. We have also agreed that the act will commence on 1 January 2013. The government will agree to an amendment which requires a review of the act to occur one year after the commencement date. We are also supporting the current amendments proposed by the Hon. Mr Darley regarding the right of entry, self-incrimination and the high risk construction code.

The Hon. R.I. LUCAS: The minister indicated that he was going to outline, during the committee stages, the government's proposal in relation to safe work method statements. Can he indicate if he is intending to do that under clause 1 or 2, or is there a particular clause where he is intending to raise that particular issue so that other members can be prepared for that particular debate?

The Hon. R.P. WORTLEY: Yes; we will be dealing with safe work method statements in clause 17.

The Hon. R.I. LUCAS: When we last debated this, on 18 September, I asked a series of questions in relation to the regulations. My question was:

Can [the minister] now repeat which aspects of the regulations are not intended to be proclaimed for 1 January 2013 but will be delayed, and for each of those, what is the particular date that the government intends for them to be proclaimed?

The minister replied:

Yes, there is a number of new provisions and responsibilities in the regulations. They will be phased in and they will be given 12 months. Three of them I have already mentioned, but there is a number, so what we will do is we will seek to get those regulations to you and let you know which ones they are.

I can indicate to the minister that in the month or so since that debate his office has not provided that information to me or, I suspect, to other members either. When will the minister provide that information so that before this bill passes through the committee stages members such as myself, who are interested in the answer to the question, will be properly informed about the government and the minister's position?

The Hon. R.P. WORTLEY: We will be detailing that in clause 2.

The Hon. R.I. LUCAS: I thank the minister for that but it will make that difficult, I think, for some members. I would imagine the committee stages will be unable to be completed in one session today so hopefully that will give members like myself, who are interested in what the minister is going to outline, the opportunity to have a look at that and then compare them with the national regulations, which are not immediately available. The minister also indicated, on 18 September, in response to the following question:

Can the minister take on notice or through his adviser indicate which particular section of the proposed regulations in South Australia are different in this respect to the national regulations?

So, a comparison of where the differences were between the proposed South Australian regulations and the national regulations. The minister's response was that he would take that on notice. Is the minister intending to provide that answer to members so that we can be properly informed before the conclusion of the committee stage of the debate?

The Hon. R.P. WORTLEY: I understand that discussion was in the context of asbestos; is that right?

The Hon. R.I. LUCAS: That is what the debate started on but then it extended beyond that to: what other differences are there between the South Australian regulations and the national regulations? The minister outlined there were some jurisdictional differences, together with asbestos and, we now hear, possibly in relation to high-risk industries as well. So, we are looking for all of the differences between the South Australian regulations and the model regulations as previously agreed.

The Hon. R.P. WORTLEY: The South Australian regulations are the model regulations, and there are some transitional regulations which we will be tabling, as we discussed, in clause 2.

The Hon. R.I. LUCAS: The question I put, and which the minister took on notice, was whether he would assist members of the committee by outlining where were the differences. The regulations are 500 or 600 pages. The request to the minister was whether he would provide, through his officers, the list of where are the changes in the South Australian regulations compared with the model regulations.

The Hon. R.P. WORTLEY: Predominantly, the changes are in regulation 2, the transitional regulations, and we will be tabling them in clause 2.

The Hon. R.I. LUCAS: Is the minister going to provide to the committee a list of the differences between the state regulations and the federal regulations? I know he will outline some in the clause 2 debate we are about to have, but will the minister provide, as he indicated on 18 September, a list of the differences in the state regulations to the federal regulations?

The Hon. R.P. WORTLEY: As I stated, the South Australian regulations are the model regulations. There will be changes in regard to asbestos and to the two to three metre high-risk work.

The Hon. R.I. LUCAS: And jurisdictional ones, you said.

The Hon. R.P. WORTLEY: The jurisdictional ones are just references to local bodies. SafeWork SA will be different from WorkSafe Victoria. That is all that involves.

The Hon. R.I. LUCAS: My understanding from the minister on 18 September—and I accept there might be name changes and I am not looking for such examples—was that there

advisory bodies that existed in South Australia, which we were allowed in the agreement, evidently, to continue to include in our regulations, but they will be different.

I am not looking for name changes between SafeWork SA and whatever is the equivalent body in Victoria. However, my understanding from what the minister said previously, which I understood completely, was that there were some jurisdictional issues in relation to advisory arrangements that existed in South Australia, but did not exist in other states, and that we had been allowed, through the arrangement, to draft our regulations differently to recognise that.

I accept that the minister does not have it with him at the moment, by the sound of it, but is he prepared to provide to members of the committee who are interested a list of those differences between the state regulations and the federal regulations? That was my question on 18 September.

The Hon. R.P. WORTLEY: Yes, we are prepared, if there are any changes, to provide them to the opposition member.

The Hon. R.I. LUCAS: Thank you; that was all I was seeking. One of the issues in relation to this bill has been the government's announcement that up to $33 million of COAG payments or federal payments to the states were at risk if we amended the model bill. So in the stages when the government said the bill could not be amended, one of the arguments that the minister used was that there was $33 million at risk and a portion of that would not be paid to the states if there were amendments.

The government has changed its position and is amending the bill along the lines that the minister has just outlined. Can the minister indicate to the house the Treasurer's latest advice to him, that whether or not what he outlined earlier, that is, some portion of that $33 million, is at risk if the South Australian parliament is to amend the model bill?

The Hon. R.P. WORTLEY: None of the key elements have been changed and COAG has recently assessed that South Australian laws are highly consistent with the agreement.

The Hon. R.I. LUCAS: Who said that?

The Hon. R.P. WORTLEY: COAG.

The Hon. R.I. LUCAS: I am not sure how COAG has made that judgement; we have not actually passed them. Can you indicate when COAG made that judgement, particularly as members in this chamber have not passed any amendments to the legislation? Is the minister saying that COAG has met in the last two or three weeks since the announced deal with the Hon. Mr Darley? I am not familiar with COAG actually having met during that particular period.

The Hon. R.P. WORTLEY: COAG had a recent review and only recently, within the last few weeks, they handed down their report, and that indicated that the current bill is highly consistent with the agreement. The changes we are going to make do not change the pillars of this legislation, so we are quite sure that there will be no penalty for us when this is changed and this legislation is introduced.

The Hon. R.I. LUCAS: The minister indicated that the current bill is consistent and, in fact, that is correct: it is the model bill; that was the government's position, but the government is about to make and agree to significant amendments to the legislation. So is the minister saying that the Treasurer has been advised that there will be no penalty in relation to payments from the federal government to the state government should this bill be amended along the lines that the government is now outlining?

The Hon. R.P. WORTLEY: COAG will make that assessment in the reading of that, but this legislation before us today—this bill here—is highly consistent with what we are looking at, the model legislation, and we would not anticipate, if this is passed in the way we anticipate, there being a penalty.

The Hon. R.I. LUCAS: Can the minister indicate on what date the recent COAG summary of the legislation in South Australia was made?

The Hon. R.P. WORTLEY: I can provide the honourable member with that information.

The Hon. R.I. LUCAS: I thank the minister for that, if he could provide the date and exactly what COAG said in relation to the compliance with the model bill. In relation to the total package, which we members are going to have to debate over in the coming period, the minster

has made a number of public statements, and a number of these have been made on radio which he would be familiar with, but on FIVEaa he said in relation to this total bill:

> I don't think anything is going to change under the new act. Whatever applies at the moment under the occ. health and safety act, will apply under the new Work Health and Safety Act and this is where the confusion is coming in. Everyone seems to think there's going to be a massive change for the worse but it's not the case.

Does the minister stand by that particular statement that he made publicly?

The Hon. R.P. WORTLEY: The general thrust of this bill is that if people are complying with the current legislation they will have nothing to fear with regards to the new legislation, and I stand by that principle.

The Hon. R.I. LUCAS: The minister is not prepared to stand by the statement he made publicly to FIVEaa and a number of media outlets, when he said:

> I don't think anything is going to change under the new act. Whatever applies at the moment under the Occ Health and Safety Act will apply under the new Work Health and Safety Act and this is where the confusion is coming in. Everyone seems to think there's going to be a massive change for the worse but it's not the case.

The minister is refusing to stand by a statement that he gave on radio FIVEaa during that particular Sunday night interview which I am sure he would recall.

The Hon. R.P. WORTLEY: I spoke a number of times on FIVEaa, normally trying to refute some of the disgraceful scaremongering which was put there by a number of the opposition and Independents. I stand by my statements that if people and businesses are complying with the current legislation they have nothing to fear in the new legislation.

The Hon. A. BRESSINGTON: Given the minister's response, can he explain why I have received a letter from the Civil Contractors Federation (which claims a membership of 500 companies employing over 18,000 South Australians) that has concerns about the proposed legislation? The first concern is the significant increases in monitoring, compliance, record-keeping costs (especially for small to medium-sized employers which account for over 80 per cent of employers in South Australia), and that the legislation is overly complex and difficult to interpret, which is likely to result in poor levels of compliance or even noncompliance, albeit unintentional. How can the minister stand by the statement that very little is going to change for business owners in this state?

The Hon. R.P. WORTLEY: During the whole debate on this issue over the last 12 months, I have heard various business associations make all sorts of claims. There were claims that there was going to be up to a $30,000 increase on a two-storey house and that the whole world was going to fall in. I will make it quite clear that I do not agree with that; I do not support that, and this is all part of a good campaign to oppose this legislation—it is as clear as that.

The Hon. R.I. LUCAS: I will not proceed with my previous questions, other than to note that, having been invited twice to stand by his public statements, the minister refused to do so. I note that the minister spoke with a forked tongue publicly because, when he was being attacked in relation to the changes under the legislation, he regularly made statements along the lines that I quoted (and I will not read it again); that is, there are no changes really under the proposed bill compared with the current act.

However, when he was speaking to different audiences, he spoke expansively about the major changes in terms of the need to modernise and make changes to work health safety laws in South Australia. So, when the audience required it and supported changes to work health safety, he said that these were major changes being held up by the Legislative Council, etc., but when he was being criticised for the detail he, turtle-like, ducked his head into his shell and said, 'Well, look, there are not really any major changes in this legislation at all.' Let the record show that, having been invited to stand by that statement twice in the chamber today, the minister refused to stand by the statements he made publicly.

Can I ask the minister if he can outline whereabouts in the committee stage and at which particular clause or clauses will the issues that were raised by SafeWork SA representatives publicly and the Premier, in relation to what is known as the Salvemini case, be canvassed and resolved? In which particular clause or clauses will those issues be canvassed and resolved?

The Hon. R.P. WORTLEY: Clause 17. Just in relation to the previous comments about not standing by my statements, I made it clear all the way along, and I stated on numerous occasions, that there would be changes to the legislation. Of course there are changes; that is why we want it

to go through. There will be costs, and I have never shied away from the fact that there will be costs, but those costs will be minimal for people complying with the current legislation. I cannot be much more honest than that.

The Hon. R.I. LUCAS: I will not judge the minister's honesty completely, but he can be a lot more honest than the particular statements because, contrary to what the minister said—that he always said there would be changes—the actual quote I just gave, from the minister's own words on FIVEaa, was him denying that was the case. He was indicating that there were not going to be major changes in the legislation; basically this bill was the same as the current act. I think the record shows pretty clearly that the minister has not been prepared, in this house, to stand by his public statements.

In the minister's response to the second reading, but also briefly in clause 1 of the committee stage, he referred to some criticisms he made of the Housing Industry Association and other industry associations in South Australia—or I guess, more particularly, the consultants they employed. In the second reading I did list that the South Australian government actually employs the very same consultants for a number of projects it utilises. Putting that to the side for the moment, I think the minister's position is clearly that when those consultants work for the government they do good work and when they work for the Housing Industry Association they do bad work. I guess that is probably the minister's summary of the consultants' work.

His criticism, in part, hinged on the caveats that consultants give in terms of coming up with cost estimates. He read, for the public record, I think in the response to the second reading, a number of the caveats that those consultants put on the record. I want to put on the public record some of the statements by the minister's consultants, whom he says are truly independent and can be believed whereas the consultants employed the industry associations cannot be believed. Deloitte Access Economics was used by the government in a letter to Marie Boland, Director of Policy and Strategy, dated 3 February. They said:

> We would caution, however, that estimates provided by businesses and organisations on the expected costs and benefits should be interpreted as indicative, given uncertainties involved in the estimation process.

The report of Paul Ogden Services Pty Ltd of February 2010 (one of the independent reports that the minister has quoted) said:

> However, in the absence of good data on the level of compliance with current legislation separating out the cost of the old versus the new is very difficult if at all possible. This makes it difficult to estimate the cost impact, the consultant produces a range of estimates for certain items based on assumptions regarding compliance.

In Mr Ogden's firm's conclusion it states:

> Estimating the costs of the introduction of the National Standard is a particularly difficult exercise given the dearth of industry wide statistical information available on current construction practice.

Further on they say:

> ...the introduction of the National Standard should not have a major impact on overall residential construction costs and housing affordability...

So in the work done by Paul Ogden and other consultants advising the government they also caution in relation to the accuracy of the work that they did for the government but they were also, of course, indirectly cautioning in relation to work done by consultants for any other industry organisation.

I want to put on the public record that, whilst the minister has referred to the caveats of consultants working for the industry associations, the consultants working for the government upon which the minister prefers to base his advice also issued similar warnings in relation to the difficulty, the accuracy and the caution that the minister and government would need to take into account in interpreting the results of the consultants employed by the government. They are the questions I have for clause 1.

Clause passed.

Clause 2.

The ACTING CHAIR (Hon. J.S.L. Dawkins): The first indicated amendment is [Lucas-1] 1 and I understand there is also an amendment from the government, and they cover each other.

The Hon. R.P. WORTLEY: I am not going to move that amendment.

The Hon. R.I. LUCAS: I move:

Page 13, line 6—Delete 'This' and substitute:

(1) Subject to subsection (2), this

I understand the Hon. Mr Darley wants to speak on this clause first.

The Hon. J.A. DARLEY: I will not be supporting the Hon. Rob Lucas's amendment.

The Hon. R.I. LUCAS: I thought the Hon. Mr Darley was going to outline the nature of the arrangements or deal that he had entered into with the government. I thought that was what he was about to do. I will speak to my amendment, even though the honourable member has indicated his position.

The Hon. J.A. DARLEY: I have two questions in relation to the model regulations relevant to this clause. Firstly, can the minister provide details of the transitional arrangements that are being proposed, especially as they relate to the model regulations and codes of practice? My second question relates to clause 292 of the model regulations which deal with the meaning of 'construction project'.

The construction industry has raised concerns about the assigned value of $250,000 for construction projects, pursuant to clause 292 of the model regulations. I am particularly concerned that the nominated figure is not subject to CPI, particularly given that, as I understand it, that figure was initially proposed some 13 years ago. If this is the case, it certainly would not reflect today's building costs. My advice is that, if the $250,000 figure had been indexed annually since the time it was initially proposed, it would amount to approximately $400,000 today.

I understand that the government is willing to give some consideration to this issue, especially since the clause in question does not become operational until after the transitionary period. Can the minister provide confirmation that this clause will be reviewed both at the state and federal level and that South Australia will, at the very least, consider moving towards indexing the figure?

The Hon. R.P. WORTLEY: I thank the Hon. Mr Darley for this question. The transitional regulations are found in regulation 2—Commencement, which I will table for ease of reference. They have been developed based on nationally agreed transitional principles. These principles are that if a regulation is the same or substantially the same as the current regulations, they will begin immediately. If there is a new obligation in the regulations, there is a transitional period of between six months and five years.

Those regulations which are transitioning relate to diving work, noise, high-risk construction work and safe work method statements, duties of principal contractors in high-risk construction work, the use, notification of the handling and storage of hazardous chemicals, work related to restricted and prohibited carcinogens, lead-risk work, and some asbestos regulations.

Where a code of practice refers to a regulation which is transitioning, that part of the code will not be relevant until the regulation comes into operation. I table various lists of regulations. I thank the honourable member for raising the issue of the meaning of 'construction project'. The regulations currently define a 'construction project' as a project that involves construction work where the cost of the construction work is $250,000 or more.

I accept that the intention of classifying construction projects is to ensure that attention is given to work activity that carries a high level of risk; however, I am of the view that the threshold of $250,000 needs to be reconsidered. Accordingly, I have instructed SafeWork SA to raise this issue in national forums involved in monitoring the application of the regulations.

Furthermore, I have directed that this matter is specifically flagged for the national review, when the work health and safety legislation is reviewed in 2014 and that any revised figure is set against changes to the consumer price index that have occurred since the definition was adopted and that figure be indexed annually against future price changes registered by the CPI. I will give serious consideration to adopting this at the state level should this not receive satisfaction at the national level.

I know that this provision is new in South Australia and as such will be subject to transitional arrangements. The regulation will not commence in South Australia until 1 January 2014, but in advance of that commencement date, I have requested that this be considered at the national level as a matter of priority.

The Hon. R.I. LUCAS: My question is essentially to the Hon. Mr Darley, whether or not he is prepared to answer. I ask whether he at this stage, on clause 2, is in a position to outline to the committee what is the nature of the agreements outside the legislation (and we will obviously go through that during the committee stage) in terms of anything that relates to regulations or red tape reductions or transitional arrangements, etc.—any understandings or agreements that he has entered into with the government which might be important to those members in this chamber who are considering aspects of the legislation.

The Hon. J.A. DARLEY: Those questions probably would be more appropriately dealt with at the introduction of other clauses, and I will be outlining those at that point.

The Hon. R.I. LUCAS: Obviously, no member of the committee can compel any other member of the committee to answer a question—I accept that reality—but I note that it does make it difficult for some members of the committee to know what understandings and agreements have been entered into. We may well pass over a particular clause expecting that there might be something—that, as we read from press and media reports, there have been understandings entered into.

I will give one example. Two industry associations indicated to me, after discussions with the Hon. Mr Darley and his staff, that, in relation to transitional arrangements, the honourable member had talked about not just regulations and codes of practice but issues in relation to penalties. I was not clear when I asked the industry associations, 'What does that mean?' To be fair to the industry associations, they did not say that there had been a deal done on that, other than that was an issue that you had been raising evidently with government negotiators in relation to the transitional arrangements.

I give that as an example that, given that we have literally pages and pages of amendments in relation to penalties, it would have been of use to me and perhaps to some other members of the committee if we were aware that the member was going to pursue that issue on a particular clause or whether there had been any arrangement entered into.

As I have said, I was not privy to the discussions; they were relayed to me by two industry associations, which outlined their understanding in relation to what the member was talking about in terms of transitional issues. This comes back to the amendment that I have moved, and that is, we are moving for the start-up date for the legislation, if it passes the parliament, to be 1 July, as opposed to 1 January.

Industry associations have pointed out to me that they have indicated in discussions with the Hon. Mr Darley that, if it was to be agreed that there be a six-month delay in the start-up date, the transitional arrangements would only be for six-months. If the start-up date was to be 1 January, then there would be a 12-month transitional arrangement. As I said, there were then issues in relation to what was intended by the government and the honourable member in relation to the transitional arrangements. I accept what the Hon. Mr Darley says, that he will raise the issues when we get to whatever the clauses are. As I said, I am not in a position to direct or compel the Hon. Mr Darley, or indeed any member, to respond any differently, obviously.

My question to the minister is: can he outline to the committee in relation to the transitional arrangements whether it is just the regulations or the codes of practice that are to be delayed? If the bill starts on 1 January 2013, is it just the regulations or the codes of practice that will be delayed by 12 months?

The Hon. R.P. WORTLEY: Yes, it is just the regulations.

The Hon. R.I. LUCAS: Not the codes of practice?

The Hon. R.P. WORTLEY: Not the codes of practice, unless there is a regulation that is delayed, of course, and then the code of practice will be accordingly.

The Hon. R.I. LUCAS: So is the minister saying to the committee that the codes of practice will be operational from 1 January next year?

The Hon. R.P. WORTLEY: Yes.

The Hon. R.I. LUCAS: This is ridiculous. There has been debate about a bullying code of practice being conducted nationally. I asked my office yesterday—and I will raise this at some later stage—to get a copy of this code of practice. SafeWork SA and Safe Work Australia cannot provide a copy of this code of practice, which you say is going to be operational from 1 January next year.

There is a significant national debate going on about this particular issue. I think the Australian Industry Group is now really the only industry association left supporting the government's position. I think every other industry group, including Business SA, is now opposing the government's position on this bill. It was reported:

> The Australian Industry Group's representative on the board of Safe Work Australia, Mark Goodsell, yesterday said employers would start paying 'go-away money' to avoid court cases. 'Bullying is the new black,' he said. Every time something happens that an employee doesn't like—including reasonable and necessary and constructive criticism and performance management—they will say they feel bullied...The code lists 'not providing enough work' as a form of 'indirect bullying', along with constantly changing deadlines or setting timelines that are difficult to achieve. It advises employers to ban pranks and to discourage 'exclusive clubs or cliques' so workers are not 'ostracised' by colleagues.
>
> The national code reflects the spirit of the federal Public Service policy on bullying, which even prohibits 'eye-rolling responses' that might 'diminish a person's dignity'.

Evidently, under this code of practice, which is going to be operational from 1 January, you are going to be in trouble if you roll your eyes in a workplace, because it might diminish a person's dignity and you are going to be in trouble if you do not provide enough work to a worker, because that is a form of indirect bullying.

There are any number of criticisms of many of the other codes of practice, and the minister is saying to this chamber that they are all going to be operational from 1 January. How is it that these things are going to be operational from 1 January? You and others are going to be voting for this legislation, the regulations and the codes of practice. They are going to be operational from 1 January next year and we cannot get copies of them.

The Hon. R.P. WORTLEY: The codes of practice that are going to be operational from 1 January 2013 are those that have already been approved. The bullying codes of practice are still in the process of being negotiated, and I imagine the honourable member would know that, so hopefully we are not going to go through this game all the way through with every single issue.

I would like to table a list of the following: model codes of practice which have been approved by Safe Work Australia members and the Select Council on Workplace Relations; the draft codes of practice being further refined by Safe Work Australia, which include managing the risk of workplace bullying; public comment, third set of codes of practice; public comment, fourth set of codes of practice; codes of practice under development by Safe Work Australia; and public comment, draft model work health and safety regulations and codes of practice for mining.

The Hon. R.I. LUCAS: Can the minister indicate on that, he said that the bullying code of practice, for example, was for public consultation. How can the public be consulted if the public cannot get a copy of the code of practice? How can it be consulted on if the shadow minister handling the bill in this place cannot get a copy of the code of practice from the Safe Work Australia or SafeWork SA websites?

The Hon. R.P. WORTLEY: All the codes which I have tabled just a second ago have all been approved. The workplace bullying is in the process and is not due for release until after 2014. They are waiting for the review.

The Hon. R.I. LUCAS: That is all very nice but that is not the answer to the question. I asked the question: how can the public or, indeed, a member of parliament provide input, in terms of the public consultation the minister promised or indicated, if you cannot get a copy of the draft code of practice on bullying?

The Hon. R.P. WORTLEY: All codes which have been endorsed are on the website. Because of the fact that the workplace bullying issue will not be completed or considered until after the review in 2014, the final copy is not on the website, but when they do put it up for public consultation it will be on the website.

The Hon. R.I. LUCAS: Is the minister then in a position to provide to members of the committee the current draft of the code of practice which has been criticised by the Australian Industry Group at the national level?

The Hon. T.A. FRANKS: It may assist the minister to direct the honourable member to the website. I can certainly see a draft code 'Preventing and responding to workplace bullying' currently on the Safe Work Australia website.

The Hon. R.P. WORTLEY: I suggest that the member brush up on his computer skills so that we do not have to waste so much time on clause 2.

The Hon. R.I. LUCAS: My office checked yesterday the website of Safe Work Australia and it was not on the website as of yesterday. I thank the Hon. Ms Franks. If that is the case, we will look at it. Will the minister indicate, in the list he has now tabled in relation to the endorsed model codes of practice, what is the process that approves the code of practice? That is, is it at officer level that those codes of practice are approved, or have ministers signed off on all those codes of practice that the minister has now tabled?

The Hon. R.P. WORTLEY: It is done on a tripartite basis where there are government unions who employ employees. Once it has reached a certain stage it then goes out to the public arena.

The Hon. R.I. LUCAS: I understand the point the minister is making, that is, that they are worked up on a tripartite basis and then they go to public consultation, but I wanted to know how they are ultimately approved. Is there a national meeting of officers equivalent to SafeWork SA that approve them, and do ministers like minister Wortley, at a ministerial council meeting (or whatever they are called now—select councils) approve each of these, and have you approved each of these endorsed model codes of practice on the list you have just provided?

The Hon. R.P. WORTLEY: Yes, they are endorsed by Safe Work Australia and then endorsed by the select council.

The Hon. R.I. LUCAS: So the minister is saying that he and other ministers have all endorsed those particular codes of practice that have been listed on this particular tabled document?

The Hon. R.P. WORTLEY: Only the top ones that have been approved.

The Hon. R.I. LUCAS: The endorsed model code?

The Hon. R.P. WORTLEY: Yes.

The Hon. R.I. LUCAS: I will obviously have my office check, but in the document that has just been tabled by the minister he says:

> The following codes of practice are currently being revised and it is envisaged materials in these matters will be finalised later in the year.

One is managing the risk of workplace bullying. So for the benefit of the Hon. Ms Franks, it is possible that what is on the Safe Work Australia website is the previous one, which is now being revised and it is not the draft. My office has advised me that, on being asked where was the latest draft when they checked yesterday, they were told that the latest draft is not currently available and we were unable to get it.

It is possible that what is on the website is the old or existing bullying code of practice and not the one being revised and which is the subject of criticism from the Australian Industry Group and others at the national level. I am not in a position to say which of the two scenarios is correct, but I am saying that it is possible that what is on the website is the older existing one and not the one that is creating the controversy with the Australian Industry Group and some other national bodies as well.

The Hon. T.A. FRANKS: I realise I do not have to respond to the question from the honourable member; however, that is the draft that went out for public comment. It currently says that, in response to the public comment on that draft, there is a revised version being prepared. However, the text he read out is in the current draft that is available on the Safe Work Australia website.

The Hon. R.I. LUCAS: In relation to the process, the minister has indicated that the select council of ministers will approve each of the codes of practice. Is the minister indicating, therefore, that all the preparatory work that is required to be done by SafeWork SA has been done for those 20 or so endorsed model codes of practice, to be operational in their entirety from 1 January next year?

The Hon. R.P. WORTLEY: My advice is yes.

The Hon. R.I. LUCAS: In relation to the regulations, with the jurisdictional changes and the other changes being agreed with the Hon. Mr Darley, is the minister indicating that all those regulations will be operational from 1 January 2013 except for, as I understand the minister's advice, the new ones which will be delayed by 12 months?

The Hon. R.P. WORTLEY: There is a range of transitional periods for the various changes and new regulations. It goes from one to—

The Hon. R.I. LUCAS: Can the minister indicate who makes the judgement? Is it SafeWork SA who makes the judgement? The minister read out earlier that if it is an existing regulation it will continue, obviously, and if it is a new one it is going to be delayed. I think that that is a shorthand version of what I understood the minister to say. Is it SafeWork SA that makes that judgement and do they have delegated power to do that, or does the minister have to sign off on the operational dates for each of the regulations, whether it be 1 January or whether it is going to be delayed?

The Hon. R.P. WORTLEY: The transitional principles were agreed at a national level, at Safe Work Australia.

The Hon. R.I. LUCAS: I understand that, but I am asking what they are; that is, who has the delegated power to make the decision? The minister is saying that some of these regulations will continue and that some are going to be delayed. Who makes the decision as to which regulation starts on 1 January and which regulation starts on 1 January 2014?

The Hon. R.P. WORTLEY: My advice is that the decision is made by SafeWork SA in consultation with the SafeWork SA Advisory Committee, which is a tripartite committee.

The Hon. R.I. LUCAS: Has SafeWork SA, together with that advisory committee, made that decision, and are members of parliament in a position, either on the website or through tabling, to know which of the regulations will be starting if the bill passes on 1 January 2013 and which will be delayed and by what period of time? If that decision has already been taken by SafeWork SA based on advice from the advisory committee, can he indicate where we can get a copy of that document?

The Hon. R.P. WORTLEY: My advice is that that information is in the material we just provided. I tabled two documents: one was a list of regulations and one was a list of what you want. I tabled some regulations and responses. They took my only copy, so I would not mind a copy myself.

The Hon. R.I. LUCAS: Whilst the minister retrieves his copy of the document, the minister is saying that the document that he has tabled—that is, a draft of the regulations—has been approved by the advisory committee and SafeWork SA and that that document outlines which regulations will be delayed and which ones will be operational from 1 January 2013?

The Hon. R.P. WORTLEY: Yes. My advice is that they have all gone through the advisory committee and the drafting instructions all go through the subcommittee of the SafeWork SA Advisory Committee.

The Hon. R.I. LUCAS: In response to the earlier question, the minister said that the delegated responsibility rested with SafeWork SA but, if the minister's answer is now that it is by way of regulations, I am assuming that he as minister has to approve the decisions of SafeWork SA and take them through cabinet and Executive Council so that it is not a delegated responsibility to SafeWork SA. They might do all the work, but ultimately is it not correct that he and Executive Council have to sign off on all of the agreements or proposals from SafeWork SA?

The Hon. R.P. WORTLEY: Yes; before they are even drafted they go through cabinet.

The Hon. R.I. LUCAS: So it's your responsibility?

The Hon. R.P. WORTLEY: Yes.

The Hon. R.I. LUCAS: I am, in part at least, comforted by that because I do not believe that these sorts of decisions should be left in a delegated fashion to SafeWork SA, with the greatest of respect to SafeWork SA in relation to those issues. In relation to the legislation, on 18 September the minister indicated that if the parliament was to pass the legislation it was the government's intention that the whole of the act would be proclaimed and operational from 1 January and that there was no intention to delay operation of any particular clauses or sections of the bill. Is that still the government's position?

The Hon. R.P. WORTLEY: Yes, it is.

The Hon. R.I. LUCAS: I thank the minister for the answers to those questions. In speaking to the amendment that I have moved—and has the minister moved one as well?

The Hon. R.P. WORTLEY: No.

The Hon. R.I. LUCAS: He is not going to move it. Can I ask the minister if there is to be an amendment moved at some stage? The minister had previously filed an amendment in relation to 1 January 2013. Is the minister not intending at any stage to move that amendment?

The Hon. R.P. WORTLEY: No, I am not. We are going to do it by proclamation.

The Hon. R.I. LUCAS: Is the minister indicating—if he is now withdrawing that particular amendment—that the government intends to proclaim the whole of the act by 1 January 2013?

The Hon. R.P. WORTLEY: That is right.

The Hon. R.I. LUCAS: If that is the minister's case, why is he not moving the amendment that he had already on file to require that to occur by 1 January 2013?

The Hon. R.P. WORTLEY: Because we are just going to do it by proclamation.

The Hon. R.I. LUCAS: I had not realised that was going to be the government's position. The amendment, therefore, that I have moved is that it be delayed until 1 July 2013. However, in speaking to my amendment, it is clear now that the government has backed away from its amendment for 1 January, and that it is obviously leaving open the possibility for delay in the proclamation of the legislation, because its amendment on file, which will not now be moved, was for it to be proclaimed on 1 January next year.

The government has now backed out of that and indicated that it is now not going to require that in the legislation. It is basically saying, 'Well, you can trust us. We're going to proclaim it for 1 January next year.' As one member in this chamber I do not trust (a) the minister or (b) this government in relation to the legislation, and that is fair enough. We can all have our positions as to whether or not the minister and the government merit trust in relation to the commitments they give.

The reason we have moved the amendment for 1 July 2013 is the significant response from every industry group in South Australia now, with the exception of the Australian Industry Group. Previously, the minister had laid claim to the fact that the pre-eminent business association, Business SA, was supporting the government's position; as the minister knows, that is no longer the case. All the other industry groups, with the exception of the Australian Industry Group, have now indicated to the government, to the minor parties, the Independent members, and to the opposition, that they have significant concerns with the government bill.

The vast bulk of those who have corresponded with me in the last couple of weeks have also indicated their concern that they, as businesses, are just not in a position to be ready by 1 January next year. A number of individual businesses, not just the associations, have spoken to me in the last week or so to indicate that many of them had prepared manuals, processes, procedures, training programs, in relation to preparing their directors, managers and staff for the operation of the model bill. Whilst in many cases they opposed it, they recognised that ultimately it might come to fruition, so they needed to prepare for it, and many of them have done the preparatory work.

What they have indicated in a couple of these businesses, those I have characterised as medium-sized businesses in South Australia, is that they have employed consultants to put together their training manuals and those sorts of things. They are saying that when this bill passes the parliament, and given that the government has now changed its position—that is, that the bill is going to be amended—they will now have to rewrite significant sections of those training programs and manuals.

There are a number of examples, but let me give a couple; one is that the government is now, for the first time, agreeing to introduce a version of a control amendment, an amendment that has been championed by the Liberal Party for 12 to 18 months in South Australia. All through that period, the government has trenchantly opposed that amendment—and we will come to that in clauses 13 to 17 later in the committee stage.

A number of these businesses, together with business associations, say 'Well, we will now need to get legal advice in relation to what the position will be,' if it will be significantly different from some other aspects of their training programs and things they have prepared for. In relation to union right of entry, a number of businesses have said that the Hon. Mr Darley, supported by the government, is introducing a number of amendments in relation to union right of entry.

I will not go through the whole list of the other amendments that are going to be there, but the bottom line is that these individual industries, as well as industry groups, have said, 'We've been preparing for the model bill, but there are now going to be changes as a result of the parliamentary process.' They are now going to have to go back not to square one, because they have done a lot of work, but they will have to revisit a number of aspects of what they had been doing, and were intending to do, all to be ready because people can be prosecuted from 1 January next year.

The minister is saying that, bang, from 1 January next year the legislation is there and with these regulations, with the exception of a small number that are delayed by transitional provisions, and these 20 or so codes of practice that have been endorsed, as from 1 January next year you are on your own. From day one next year, SafeWork SA can be sending out its inspectors and pinging people left, right and centre in relation to breaches of the new legislation, the new regulations and the new codes of practice.

It just seems sensible that, if the government ultimately is to have its way, at least there be an appropriate period for businesses and industry and other stakeholders to prepare for the impact of the amendments that are going to be made to the model bill and the changes to the regulations, obviously, because in a limited number of cases they have agreed to some amendments there that will impact on high-risk industries in relation to falls and that important part of the construction industry regime and also the codes of practice will be operational from 1 January under the government's model from next year.

It is for those reasons that the Liberal Party is moving that, if this bill is to pass the parliament, it would make sense to give industry an appropriate period of breathing space to prepare for what will be potentially significant new imposts and risks and responsibilities that all will have in relation to work, health and safety once the bill, the regs and the codes of practice are operational.

The Hon. R.P. WORTLEY: I just want to make a bit of a contribution. First of all, the changes that are anticipated are not widespread. There will not need to be significant changes to any manuals or procedures which employers have embarked upon. Just remember that we originally wanted this legislation on 1 January 2012. We then were hoping for 1 July 2012 and each time we believe it has been unnecessarily opposed and stalled by the Hon. Mr Lucas. It is very hard to cry tears when we believe that every day we postpone this gives cause for the possibility of a worker being very seriously injured or killed in the workplace.

The CHAIR: The Hon. Mr Lucas, you have not moved your amendment No. 2 which I understand is contingent upon amendment No. 1. Are you prepared to move Nos 1 and 2 together?

The Hon. R.I. LUCAS: I am happy to move them as a block.

The Hon. R.P. WORTLEY: There has been a change, I understand. The Hon. Mr Lucas had such a powerful argument that we want to put our amendment back on the table and move our amendment with a commencement date of 1 January.

The CHAIR: We have to try to get the sequence right. Dealing with the Hon. Mr Lucas's amendment No. 1, he is re-inserting his original amendment. I am dealing only with amendment No. 1.

The Hon. R.P. WORTLEY: If the Hon. Mr Lucas' amendment does not succeed, we will then move our amendment.

The Hon. R.I. LUCAS: Mr Chairman, all of a sudden, the minister has changed his position; I just want to know what he has changed it to. I had moved my amendments en bloc, so I will have to seek leave to withdraw that, I assume. Can the minister indicate exactly which amendment he is re-inserting and what it will actually do so that the rest of us can understand what it is the minister is now asking us potentially to vote for or against?

The CHAIR: The Hon. Mr Lucas has moved amendment No. 1.

The Hon. R.I. LUCAS: En bloc.

The CHAIR: Yes, we were going to do that. Now the minister has advised that he will move his amendment No. 1—delete 'a day to be fixed by proclamation'—which was the second amendment received, and then there is the Hon. Mr Lucas' third amendment, which is amendment No. 2. I am proposing to put the first amendment—

The Hon. R.P. WORTLEY: The amendment I will be moving fixes a date of commencement of the legislation of 1 January 2013.

The Hon. B.V. FINNIGAN: Mr Chair, you are proposing that we vote now on the Hon. Mr Lucas' amendment—

The CHAIR: Amendment No. 1, yes.

The Hon. B.V. FINNIGAN: —the effect of which would make the proclamation date not earlier than 1 July 2013?

The CHAIR: Correct.

The Hon. B.V. FINNIGAN: I advise the committee that I support the proclamation being 1 January, or at least I do not support it being held off until 1 July. I appreciate that businesses have concerns about the implementation of this bill—it is a very significant change in workplace regulations—but it is certainly not as if this bill appeared on the *Notice Paper* last week.

Even after getting to the point of having a bill introduced in South Australia, there will be years of consultation and talking at a national level, through COAG, and many other fora. It has always been the dream of business not to have six different health and safety regimes, one operating in each state, and, in fact, to have a nationally consistent system, and that is what the federal government worked towards, particularly in the wake of the WorkChoices legislation and the High Court decision upholding that.

Since we virtually have moved, in effect, to a national industrial relations system, it seemed logical to do the same for health and safety. The genesis of this bill is very long, and businesses, unions and workers have had a long time to digest its contents and to think about what impact it is going to have. I imagine that the Hon. Mr Lucas will say, 'Well, that was before agreements being made with members of this house.' But if we are to accept the logic that businesses or employers are not ready, you could effectively delay the bill indefinitely on that basis. So, I support an earlier proclamation date.

The Hon. T.A. FRANKS: For the benefit of possibly not having as many divisions as I suspect we will have on this bill, I indicate that the Greens will oppose the Lucas amendments Nos. 1 and 2; we will support the government amendment to delete 'a day to be fixed by proclamation' and substitute '1 January 2013'. Of course, should that also fail, we will be comfortable with 'a day to be fixed by proclamation'.

The committee divided on the amendment:

AYES (8)

Bressington, A.	Brokenshire, R.L.	Dawkins, J.S.L.
Lensink, J.M.A.	Lucas, R.I. (teller)	Ridgway, D.W.
Stephens, T.J.	Wade, S.G.	

NOES (9)

Darley, J.A.	Finnigan, B.V.	Franks, T.A.
Gago, G.E.	Kandelaars, G.A.	Maher, K.J.
Parnell, M.	Wortley, R.P. (teller)	Zollo, C.

PAIRS (4)

Lee, J.S.	Hunter, I.K.
Hood, D.G.E.	Vincent, K.L.

Majority of 1 for the noes.

Amendment thus negatived.

The Hon. R.P. WORTLEY: I move:

Page 13, line 6—Delete 'a day to be fixed by proclamation' and substitute:

1 January 2013

Amendment carried.

The CHAIR: The Hon. Mr Lucas, you have a question?

The Hon. R.I. LUCAS: There are no more amendments you want to pass, Mr Chairman?

The CHAIR: Normally I would call you to order, but I will not this time.

The Hon. R.I. LUCAS: Now that the committee has endorsed a 1 January 2013 start-up date, can I just clarify that all of those codes of practice listed on the endorsed model codes of practice list the minister tabled are currently available on SafeWork SA's website and are available to industry?

The Hon. R.P. WORTLEY: Yes; they are available on the Safe Work Australia website and SafeWork SA is linked to that.

The Hon. R.I. LUCAS: As the minister has outlined in relation to the regulations there were differences in South Australia to some of the other jurisdictions. In relation to the endorsed model codes of practice, were there any changes in any of those codes of practice for South Australia as opposed to the model codes of practice?

The Hon. R.P. WORTLEY: My advice is, no.

The Hon. R.I. LUCAS: In relation to the process for the future codes of practice, such as the workplace bullying codes of practice and others, is there the capacity for jurisdictions like South Australia to endorse a code of practice which is different to a code of practice that exists in other states, as South Australia intends to do with the regulations? For example, it is going to have a three metre height limit for high-risk industries when everybody else, evidently, is going to have two metres. Is there the capacity for the South Australian jurisdiction to endorse codes of practice which are different from the model codes of practice?

The Hon. R.P. WORTLEY: No; we are committed to, where possible, principles of harmonisation. So, when this legislation is over I will not have to say it anymore.

The Hon. R.I. LUCAS: There is no point in saying it now because you are no longer committed because you are changing it, but that is not my question. As I understand it, the minister is saying, 'Look, your current commitment is that', but what I am asking is what the legal position is. That is, legally, should this government want to—and I accept that your current policy position is that you do not want to, but if you wanted to, as you did with the regs and you, as a result of needing to do a deal, changed two metres to three metres—do you have the legal authority to approve a code of practice in South Australia on workplace bullying which is different to the national code?

The Hon. R.P. WORTLEY: Clause 274 states:

(2) The Minister may only approve, vary or revoke a code of practice...if that code of practice, variation or revocation was developed by a process that involved consultation between—

(a) the Governments of the Commonwealth and each State and Territory; and

(b) unions; and

(c) employer organisations.

The Hon. R.I. LUCAS: So, you can change it, if you go through that process?

The Hon. R.P. WORTLEY: No; you have to go through the national—

The Hon. R.I. LUCAS: The minister quoted clause 274. As I read 274, it says:

(1) The Minister may approve a code of practice...and may vary or revoke an approved code of practice.

(2) The Minister may only approve, vary or revoke a code of practice under subsection (1) if that code of practice...was developed by a process that involved consultation—

I am not sure what the minister is saying to us. It would appear that, as long as you go through the process of consultation, you might have the legal authority. Is the minister saying that his legal advice is that he does not have the legal authority, after going through a process of consultation, to adopt a code of practice in South Australia that is different from the code of practice nationally?

The Hon. R.P. WORTLEY: We actually have agreed with a process by which there will only be changes or revoking if it went through that process. Legally, within the law I suppose there is a position where that can be done.

The Hon. R.I. LUCAS: That answer now, on my reading of 274 to which the minister referred, is different from what he was saying to us only a couple of minutes ago. I do note I think—and I assume the minister is supporting this—that in relation to one of Mr Darley's amendments, which I think the minister is indicating he is supporting, that 274 will be varied. When we get to that, the Hon. Mr Darley will obviously outline the details, so we do not need to debate it now. He is flagging that the minister may go through a particular process of varying a code if it goes through this process.

Can I ask the minister at this stage (and we will need to go through the detail in 274): where the Small Business Commissioner must be consulted before a code of practice is submitted to the minister, has the minister entered into any arrangement with the Hon. Mr Darley for these 20 or so codes of practice that are already to be operational from 1 January 2013?

Business and industry have lobbied me, the Hon. Mr Darley and all members complaining about the 40 or so codes of practice and the 90 pages or so in some of them. I know they have put details to members like the Hon. Mr Darley and others. When we come to the later parts of the committee stage, I will be moving amendments that will allow the parliament to disallow codes of practice and to require a process to go through the advisory committee.

The Hon. Mr Darley has negotiated an alternative process, which he says is that the Small Business Commissioner will look at those codes of practice. but if the minister is saying that all these codes of practice which have already been approved will not be referred to the Small Business Commissioner, there will be very strong opposition raised by the construction industry and others because I think they have been led to believe that they prefer the amendments the Liberal Party is moving, but I think the Hon. Mr Darley has put the position that the alternative process is that these will go to the Small Business Commissioner.

If what the minister is saying in relation to this and to subsequent clauses in committee is that, with all of these codes of practice that have been and done, none will be referred to the Small Business Commissioner, there will be very significant concern raised by the construction industry, the housing industry and others who have grave concerns about some of the detail of the codes of practice, which have been endorsed, in their view, with little thought about practical reality in their industries.

The Hon. R.P. WORTLEY: I do not accept that. The fact is, though, that all those that have been already endorsed by Safe Work Australia have already gone through a tripartite process and have been endorsed at the ministerial select council. There is no arrangement to forward any of the current ones that have been endorsed but the Small Business Commissioner will be consulting with all future ones.

The Hon. R.I. LUCAS: I think industry is being dudded by this process that you have just outlined. You are saying that you are going to refuse to have any of these codes of practice go through the Hon. Mr Darley's Small Business Commissioner process, and that is not what industry has been led to believe. Industry has been led to believe that the deal was not to support the Liberal Party amendments because they were going to go through the Small Business Commissioner to look at the impact on small business. You are saying that you are going to rush as many of these codes of practice through before the Small Business Commissioner process is set up, so the Hon. Mr Darley's amendment will be for whatever remaining codes of practice that have not been completed by 1 January next year.

As I said, there will be very significant opposition from the construction industry in particular to them being sold a pup by you and others who support you in relation to the supposed protection of the Small Business Commissioner looking at these codes of practice, because a lot of the concern from industry has been about the bill, I accept, and then the regulations, but a lot of it has been in relation to the details of the codes of practice. You are being refreshingly honest, for once, in relation to your understanding of the deal that you have done with Hon. Mr Darley but, clearly, now that this has been revealed, there is going to be very strong opposition to what the minister has just outlined to the committee on behalf of the government.

The Hon. R.P. WORTLEY: What we are seeing here is another classic example of the boy who cried wolf. Over the last 12 months I have heard the Hon. Mr Lucas spread fear and concern amongst the volunteers of this state saying the world was going to collapse underneath

their feet when actually all the volunteer associations supported this legislation. I then heard Mr Lucas spread fear and loathing to the new home buyers because he was saying that house prices were going to increase by $20,000 to $30,000. I have heard all of this before from Mr Lucas. He will go down fighting and I admire that, but the fact is that he is the boy who cried wolf. We will discuss with Mr Darley the intention of his amendment.

The Hon. J.A. DARLEY: Just to clarify, my amendment concerning the Small Business Commissioner applies to new codes.

The Hon. R.I. LUCAS: Indeed, and that is just what I read out. It does apply to new codes, which means all of the codes that are going through—which are of grave concern to the construction industry and the housing industry and related industries in South Australia who believed that they were going to have a process of the Small Business Commissioner to vet them in terms of their reality and practicality, and what the cost impacts would be and, potentially, having the Small Business Commissioner protecting their interests—have all been sold down the drain because the minister is saying, and the Hon. Mr Darley is saying, 'Hey, if you get them in before 1 January, go your hardest. They are not going to apply; they are not going to go to the Small Business Commissioner.'

Some that are listed on that one—as the Hon. Mr Darley and the minister will know—are the ones that the Housing Industry Association and others have been trenchantly concerned about, and they have shown the minister, the Hon. Mr Darley and myself the impractical detail of some of the drafting of the current codes of practice. One only has to look through that list, and I will not read all 20 of them—actually, I will put them on the public record because it has only been tabled.

They are: how to manage work health and safety risk; hazardous manual tasks; managing the risk of falls at workplaces; labelling of workplace hazardous chemicals; preparation of safety data sheets for hazardous chemicals; confined spaces; managing noise and preventing hearing loss at work; managing the work environment facilities; work health and safety consultation, cooperation and coordination; how to safely remove asbestos; how to manage and control asbestos in the workplace; first aid in the workplace; construction work; preventing falls in housing construction; managing electrical risks at the workplace; managing risks of hazardous chemicals in the workplace; managing risks of plant in the workplace; safe designer structures; excavation work; demolition work; welding processes; spray-painting and powder coating; and abrasive blasting.

They are the endorsed model codes of practice the minister has tabled today (or the list of them) that he says are done and dusted and will not go through this process of the Small Business Commissioner that we will debate in the committee stage. There will be others that potentially, if they are approved between now and 1 January 2013, similarly will not have to go through the Small Business Commissioner's process.

Mark my words, SafeWork SA and the minister will be hightailing it over the coming two months to get as many of these codes of practice through before the Small Business Commissioner has an opportunity to look at them. It will not just be new ones from today, it will be new ones from 1 January 2013 in the amendments. Any new codes of practice between now, in October, through to 1 January the minister can get up and through the process will not have to go through the Small Business Commissioner process that is going to be debated in the committee stage.

The Hon. J.A. DARLEY: When I put forward the idea of the Small Business Commissioner, I spoke to the industry groups and made it clear that I would make representations to the government about the existing 40 codes of practice, but I also made it quite clear afterwards that the government did not agree.

Amendment carried.

The CHAIR: Mr Lucas, I am advised that your amendment No. 2 cannot sit with the one we have passed, so you not proceeding with it?

The Hon. R.I. LUCAS: No, we would have two dates if we did that.

Clause as amended passed.

Clause 3 passed.

Clause 4.

The Hon. R.I. LUCAS: Clause 4 is the definitional clause, which is the foundation upon which the new bill is based. On page 14 under corresponding WHS law, there is reference to the Mines and Works Inspection Act. There are different arrangements, as I understand it, in relation to the regulation of the mining industry nationally as part of this supposed harmonisation of occ health and safety laws. Can the minister outline to the committee what the current understanding is in relation to mining regulation and where South Australia sits in relation to being in the majority position, or the minority position in terms of the way we are approaching the regulation of the mining industry?

The Hon. R.P. WORTLEY: They will be ready for 1 January 2013. We will be adopting them, and there will be a 12 month transition period.

The Hon. R.I. LUCAS: I understand that, but I also understand that there is a different position being adopted in some other jurisdictions. That is, some jurisdictions are not including the mining industry within the work health safety legislation. What I am trying to ascertain is whether the position we are adopting, where we are saying that the mining industry is covered by work health and safety is, I guess, the majority position. That is, are all other jurisdictions, with the exception of one or two, going down that path or are we in the minority position in relation to regulation of the mining industry?

The Hon. R.P. WORTLEY: Western Australia, Queensland and New South Wales have developed mine-specific regs, but they are also adopting the national model regs. We are just adopting the national model regs.

The Hon. R.I. LUCAS: Can I clarify that? Is the minister saying that in New South Wales, Western Australia and Queensland all the national regulations for the mining industry are being applied and they have added some additional ones, or have some of those jurisdictions refused to implement some of the national regulations for the mining industry and have substituted some of their own?

The Hon. R.P. WORTLEY: They are taking all the national models and are developing a few additional ones for themselves.

The Hon. R.I. LUCAS: Given the importance, we hope, at some stage in the future, of the mining industry to South Australia, did the mining industry put a position to the government and/or SafeWork SA in relation to mining-specific regulations that it wanted to see, as has occurred in New South Wales, Queensland and Western Australia?

The Hon. R.P. WORTLEY: My advice is no.

The Hon. R.I. LUCAS: I move:

Page 17, after line 32—Insert:

> 'volunteer association' means a group of volunteers working together for one or more community purposes;

This is the first of two amendments from me on clause 4. It is in relation to a series of amendments we propose to move in relation to volunteers. I noticed that the minister engaged in a vicious attack on my integrity and position with regard to this bill as it relates to volunteers. I reeled as I felt the full force and full brunt of that vicious assault from the minister. However, having recovered from that vicious assault, I wanted to say that the minister has himself been making a number of claims in relation to the issue of volunteers. In part the minister said 'Hey, Volunteering SA and other volunteer associations are supporting the government's position.'

As I said in the second reading, that is not surprising because the government and government advisers have assured the volunteers that there is no change, as it impacts on volunteers in South Australia, from the new bill. That is, the government has been making a number of claims to volunteers, which I intend to outline, that I believe are false. They have been given assurances by the minister and by the government, and by officers working on behalf of the minister and the government, in relation to the impact on volunteers. On 14 February, the minister said:

> A volunteer cannot be charged for a breach of the Occupational Health and Safety Act. They can only be charged if they cause injury or death through reckless or negligent behaviour. If they weren't charged under the Occ Health and Safety Act, there would be some other act they would be charged under if they caused a death under those circumstances.

The key part of that is that the minister has told volunteers—and told anyone who listened to him on the media, as he criticised both the opposition and Mr Ralph Bonig, the then president of the Law Society—that a volunteer cannot be charged with 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. Can the minister indicate where in the bill he can substantiate that extraordinary claim that he has made in relation to the impact of the bill on volunteers?

The Hon. R.P. WORTLEY: Volunteer SA and Volunteer Australia have not come out in support of this bill based on my conversation on FIVEaa. They undertake significant legal advice, and the legal advice is consistent with our legal advice in regard to volunteers which is totally contrary to the hysteria caused by the Hon. Mr Lucas.

Volunteer officers of a PCBU cannot be prosecuted for breaching officer duties under the bill. Volunteers at a PCBU can only be liable for breaching their duties as workers or other persons at the workplace, which is to take reasonable care of their own health and safety, and that is the same as currently applies.

The Hon. R.I. LUCAS: That is not what the minister has been saying publicly. Let me repeat what the minister has been saying publicly:

> A volunteer cannot be charged for a breach of the Occupational Health and Safety Act.

That is just palpable nonsense. Safe Work Australia's website and SafeWork SA's website both acknowledge that, in certain circumstances, volunteers can be prosecuted for breaches of the Occupational Health and Safety Act, so does the minister acknowledge that what he was telling volunteers (and anyone else who would listen) was wrong when he said that a volunteer cannot be charged for a breach of the Occupational Health and Safety Act?

The Hon. R.P. WORTLEY: The volunteer associations, who very strongly support this legislation, have done so after extensive legal advice. I would also reiterate the comment I have just read—that they cannot be prosecuted under the bill as an officer, only as a worker.

The Hon. R.I. LUCAS: That is going to be a huge comfort to the thousands of volunteers who are not officers in South Australia, who happen to be volunteers working. I am not sure what the minister's experience with volunteer organisations has been. I think he has indicated previously that, before he became a member of parliament, he did have experience in volunteer organisations, but most of the volunteers are not officers. They are not the president, the secretary or the treasurer.

They are just volunteers who work for good causes, as I am sure the minister would have done prior to becoming a member of parliament, and he has continued with some other causes as well since he has become a minister. That is to his credit, but what the minister is saying is that there is a position if you are the president or the secretary, if you are an officer, but what he is saying is, 'If you are a volunteer, don't believe what I was saying before,' because what he said before and what he has been saying publicly and telling volunteers is that a volunteer cannot be charged for a breach of the Occupational Health and Safety Act.

He did not say, 'If you happen to hold office in a volunteer association or organisation, in those particular circumstances you cannot be prosecuted.' He went out there publicly and did not tell the truth in relation to the legislation. What he said was that a volunteer cannot be charged for a breach of the Occupational Health and Safety Act. He went further and said that you can only be charged if you cause injury or death through reckless or negligent behaviour. That is just palpably untrue.

As the minister has read his advice from his adviser, there is a range of offences—and the legal advice provided to the opposition makes it quite clear that there are a range of offences—for which volunteers can be prosecuted under the proposed bill, and some of those offences they could not be prosecuted for under the existing act, contrary to the assertion the minister has been giving publicly and has just given again to the committee. Further on, on the same day, 14 February, on the Bevan and Abraham breakfast radio program, the minister went on to say:

> 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'd have obligations under the new act.

I know we are about to break for dinner, but this is an important issue. I indicate to the minister that that, too, is palpably untrue. He has been misleading volunteers and anyone who will listen to him in relation to the implications of this act for volunteers on a serial basis during public debate on this issue. It is no wonder that volunteers are saying, 'We're quite comfortable with the legislation,'

because they have had assurances from someone whose position they thought they could trust, and that was the minister in charge of the legislation.

The Hon. R.P. WORTLEY: I am aware of the time, but this is just another case of the Hon. Mr Lucas taking out of context my conversation on radio. For many years, volunteer organisations have been telling us that the duties they have under the Occupational Health and Safety Act are onerous and that, really, they would like to be excluded. So, what this government is doing with this legislation is to exclude from the act any volunteer organisation that is 100 per cent volunteer, and this is the context of my conversation.

Many thousands of volunteers—by far the vast majority of volunteers—work in organisations that do not hire someone, and they now have no obligation under the act, so they cannot be prosecuted under this act. I must say that I was quite horrified by the terror of some of these volunteers—these decent people who volunteer day to day at the local schools, etc.—that they would be prosecuted and fined many thousands of dollars, which was reported by that person over there.

The fact is, though, that the volunteers are very happy with the provisions we have in this bill. No longer will the vast majority of volunteers who work for purely volunteer organisations come under the act, but those who do come under the act cannot be prosecuted as an officer, but they can be prosecuted as a worker. At the moment, that is how it is under the current act.

[Sitting suspended from 18:04 to 19:49]

The Hon. R.I. LUCAS: In addressing the arguments for this package of amendments on volunteers, I have reminded the minister about a number of guarantees and undertakings that he had given publicly to volunteers and to anyone who would listen that 'a volunteer cannot be charged for a breach of the Occupational Health and Safety Act, they can only be charged if they cause injury or death through reckless or negligent behaviour,' and various other guarantees and undertakings that the minister has been giving volunteers and others incorrectly, given the legislation that is before us.

I refer to the Safe Work Australia website under the heading 'Frequently Asked Questions: Volunteers, Volunteer Organisations and the model Work Health and Safety (WHS) Act'. This is Safe Work Australia, which is championing this particular legislation. The question is, 'As a volunteer, can I be prosecuted under the Work Health and Safety Act?' The answer is:

> Volunteers who carry out work for persons conducting a business or undertaking (PCBUs) are required to take reasonable care for their own health and safety and not to create risks to others. Like any other duty holders who do not comply with their duties under the Work Health and Safety Act, workers, including volunteer workers, can be prosecuted for failing to comply with their duties.

That is straight from the horse's mouth; that is from Safe Work Australia. It is replicated on the SafeWork SA website. It makes it quite clear that volunteers can be prosecuted under the model WHS act, and that is contrary to the assurances that the minister has given, as I said—and I have quoted a number of them. There were any number of others that I could have quoted, but I am not going to delay the proceedings of the council any more than I need to.

Those two or three that I have already quoted make it quite clear that volunteers in those circumstances can be prosecuted under the legislation. Even in the minister's second reading explanation, he sought Crown Solicitor's advice in relation to the position of volunteers. There were a number of leading questions that were put forward by the minister and his officers to crown law, but that is fair enough. One question was: can you confirm that a volunteer can only be liable under the Work Health and Safety Bill for a breach in the circumstances as discussed above? The answer was:

> In so far as the health and safety duties established under clauses 19 and 29 are concerned, a volunteer will not have committed an offence in connection with a failure to comply with such duties, except the duties in clauses 28 and 29...

I mean, it is quite clear, even from crown law's advice, that the volunteers can be prosecuted for breaches under the duties required under clauses 28 and 29. Another question was: can you confirm that a volunteer cannot be prosecuted for a breach of officer duties under the Work Health and Safety Act? The answer was:

Clause 27 of the bill imposes a duty on officers to use due diligence to ensure that a person conducting a business or undertaking complies with its health and safety duties. Clause 34 provides that volunteers do not commit an offence for a failure to fulfil this duty. Volunteers will only commit an offence if they fail to fulfil their duties in clauses 28 and 29.

It is quite clear from Safe Work Australia's website, SafeWork SA's website, and even from crown law's advice, that volunteers can be prosecuted for breaches of duties required under clauses 28 and 29. This is contrary to the minister's assertion that, essentially, volunteers would only be charged for breaches if they caused injury or death through reckless or negligent behaviour. That is what he said publicly on ABC and FIVEaa: volunteers have got nothing to worry about. It is only in the grossest circumstances; that is, it is only if a volunteer has caused injury or death through reckless or negligent behaviour that they would be prosecuted. They are comforting words for volunteers because they are going to say, 'Okay if I'm going about my normal business and I make a mistake or I breach something here or there, but I haven't been reckless or negligent and caused injury or death'. Most volunteers would not assume that they would be doing that.

They were comforting words from the minister, but those words were wrong, they were untrue. They bore no resemblance to what will apply to volunteers in the bill we are being asked to pass. That is in essence what Ralph Bonig, the former president of the Law Society, was saying in a number of articles and in a number of interviews that he conducted. He has no political axe to grind; he just represented—as the name suggests—the lawyers in South Australia on this particular issue. I have quoted before the concerns he expressed in relation to the impact on volunteers. Further legal advice that I have been provided with is as follows:

Volunteers do not have duties under the current act and therefore cannot as a matter of law be subject to prosecution for breach of an OHS responsibility. Under the proposed work health and safety laws, a volunteer will be a worker under the laws and, as such, have the duties set out in clause 28 of the WHS bill. Those duties require that a worker, including a volunteer, take reasonable care for his or her own health and safety, take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons—

so that is anybody else—

and complies so far as the worker is reasonably able with any reasonable instruction as given by the person conducting the business or undertaking to allow the person to comply with this act and cooperate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

The legal advice concludes to me that nowhere in the WHS bill does it say that a volunteer would only be prosecuted if they cause injury through reckless or negligent behaviour. That is the legal advice to me. The Crown Law advice to the government says, in essence, the same thing. Safe Work Australia and SafeWork SA say the same thing, yet the minister stands up whenever he is interviewed and says, 'Don't worry, volunteers, the only time you'll be prosecuted is if you cause injury or death through reckless or negligent behaviour.' I again ask the minister how he justifies making those statements when they bear no resemblance to the facts or to the bill that we are being asked to support.

The Hon. R.P. WORTLEY: I think I clarified this before the break, but I will just say it one more time. The context in which I made it clear that volunteers could not be prosecuted for issues under the Work Health and Safety Act is in volunteer organisations that have 100 per cent volunteers and do not employ people. They have now been excluded from the act. They cannot be prosecuted for any reason because they are no longer part of the act. Volunteer organisations have been asking for years for something like that to happen. We have done it. They have had all their legal advice and they are very supportive of this bill.

Under the current law, it is unlikely that a volunteer would ever be prosecuted under occupational health and safety laws unless their actions were reckless or negligent. Under the new law, it is unlikely that a volunteer would ever be prosecuted under work health and safety laws unless their actions were reckless and negligent. If a volunteer gets prosecuted as a worker, they have to have done something serious—either caused a death or an injury.

A volunteer is classed as a worker under a volunteer organisation that employs somebody, so they are a PCBU. So once again the member is misleading the chamber. He is deliberately misleading people in this chamber in the desperate hope that he will be able to change the voting patterns in this room. I think he should be ashamed of himself.

I can remember the time when he was on the radio, and there was also the Hon. Mr Robert Brokenshire, out there screaming out that volunteers are all going to be prosecuted, they will lose their homes, they will do all sorts of things. It was absolute nonsense. One hundred per cent

volunteer organisations are now excluded. In any volunteer organisations that employ somebody, the volunteers will have obligations as workers under the act, just as it is now. There is no change.

The Hon. R.I. LUCAS: The minister lives in a delusional world. I challenge the minister at any stage to find any statement where I have indicated that volunteers would lose their houses, and I know he will not be able to find any such statement. The difference between his assertions and mine is that I can directly quote, and have done, from what the minister said on FIVEaa and ABC radio. The minister cannot refer to direct quotes because he just makes these things up.

Secondly, the minister, in addition to making things up, is also unable to provide any evidence for his assertion that a volunteer will not be prosecuted unless they have been negligent or reckless. I challenged him by way of interjection and I do so again to show me anywhere in the legislation where it says that.

The Hon. T.J. Stephens: Which section?

The Hon. R.I. LUCAS: There is no section. I challenge the minister: show me the section where it says a volunteer will not be prosecuted unless there is reckless or negligent behaviour.

The Hon. R.P. WORTLEY: Under the act, it is a duty of a worker to take reasonable care of not only himself but others. I know Mr Lucas has problems connecting the dots, but the logical conclusion of that is, if a worker caused the death of somebody through neglect or negligence, they would be liable for prosecution; that is the current law at the moment. I will state this: I do not think it has ever happened. It has never happened and I doubt it ever will happen, but it is in the act.

The Hon. R.I. LUCAS: The minister and his response are a joke. Can I interpret from that that, given the minister is saying that a volunteer is a worker and therefore cannot be prosecuted unless they are reckless or negligent, the minister is saying the same thing to all workers in worksites; that is, no worker is going to be prosecuted unless they are reckless or negligent?

The Hon. R.P. WORTLEY: Prosecutions would also be considered in the broader public context. An assessment would be made as to whether it is in the public interest to prosecute a volunteer.

The Hon. R.I. Lucas: No, I am asking about a worker.

The Hon. R.P. WORTLEY: A volunteer—

The Hon. R.I. Lucas: No, a worker.

The Hon. R.P. WORTLEY: We are talking about volunteers.

The Hon. R.I. Lucas: You said a volunteer is a worker.

The Hon. R.P. WORTLEY: A volunteer is a worker. If they are working for a volunteer organisation that employs a person, they are classed as workers.

The Hon. R.I. LUCAS: Yes, and that is exactly the point that I am making. The minister is saying a volunteer is a worker, and he is saying that volunteers will not be prosecuted unless they have reckless or negligent behaviour which results in death or injury. His argument, therefore, is the same for workers; that is, workers will not be prosecuted unless they cause death or injury through reckless or negligent behaviour.

Now, that is just nonsensical. That is the minister's argument stripped bare for all to see and it is a terrible sight. The minister is saying a volunteer is a worker; volunteers will not be prosecuted unless they cause death or injury by reckless or negligent behaviour; workers, therefore, will be in exactly the same position; they will not be prosecuted unless they cause death or injury through reckless or negligent behaviour.

It is a nonsense. The act makes it clear that workers can be prosecuted for breaches of duties required under sections 28 and 29, and volunteers are workers and they can also be prosecuted. There is nothing in the legislation which says volunteers can only be prosecuted for causing death or injury through reckless or negligent behaviour. The minister really has nowhere to go in relation to that. He is just not going to acknowledge, in essence, that what he has been saying publicly and again in this council is untrue and is not a reflection of what the legislation requires. He knows that. The advice he has been given indicates that that is the case as well.

I ask the minister, in relation to these definitions of volunteer associations: is it correct that under the government's legislation a suburban football club which is almost 100 per cent comprised

of volunteers but employs a groundsperson for three hours a week to look after the football club grounds is not a volunteer association under the terms of the minister's bill?

The Hon. R.P. WORTLEY: That is quite obvious. That is exactly what it says. The honourable member is trying to act like he has found something untoward. The fact is, it has always been that way. A volunteer organisation, under this legislation, who employs anybody becomes a PCBU.

The Hon. R.I. LUCAS: That is not correct because a PCBU has only been introduced under the new act. It has never been always the case because a PCBU has only been introduced under the terms of this particular legislation. The minister was saying earlier, 'Hey, all of these volunteer associations are not going to be covered by the legislation', but the reality is, as anybody who has been associated with a volunteer group such as a football club or a netball club would know, they are virtually 100 per cent comprised of volunteers, they do not have any full-time executive officers but most of them, or many of them, employ either a coach part time to coach their elite groups or part-time grounds staff to look after the grounds, or they may well employ part-time bar staff for two or three hours on a Saturday afternoon if it is a football game, or netball, or whatever it might happen to be.

Under the government's legislation all of those volunteer associations, as I would call it, are no longer volunteer associations. They will be bound up by the legislation and the volunteers will be caught up by the requirements because they will be classified as a person conducting a business or an undertaking. When we come to the discussion about what a PCBU is, this is one of the major changes in the legislation. The existing act talks about employers, employees and businesses and the new legislation talks about undertakings. I will quote the advice of Dick Whitington QC in relation to that: an undertaking is clearly a much broader concept than a business in the traditional sense that we would all know a business to be. An undertaking is clearly much wider than that.

So, what we are going to have, and the legal advice provided to me, and I highlighted some of this in the second reading, is that if you look at the football club which is virtually 100 per cent comprised of volunteers, they have employed a coach for three hours a week to coach their elite team and that is the only paid employee they have, they lose the volunteer association exemption under the legislation and they are therefore 100 per cent incorporated within the terms of the Work Health and Safety Bill. So, all the volunteers are caught up.

If a volunteer, under the government's legislation, breaks a leg as a result of fluid being spilt on the club room floors or falls into a pothole or however it might occur through some sort of safety breach, then if a volunteer can be shown to have been guilty under the provisions of sections 28 or 29 where you are required to take reasonable care not to adversely affect the health and safety of another person (a volunteer in this case), they can be prosecuted under the terms of the new work health safety legislation.

The legal advice provided to me is that in exactly those circumstances under a football club arrangement under the existing act, that volunteer cannot be prosecuted. Contrary to the minister's assurances that volunteers will only be prosecuted under the new legislation if they could be prosecuted under the existing act, the legal advice provided to the Liberal Party is that that claim, again, is untrue, that in those circumstances I have outlined a volunteer could be prosecuted for a breach of duty under section 28 of the Work Health Safety Bill when they could not be prosecuted under the existing provisions of the occupational health and safety act. My question to the minister is: does the minister concede in the circumstances that I have outlined that a volunteer could be prosecuted?

The Hon. R.P. WORTLEY: What a lot of nonsense you speak. If a volunteer is working for a volunteer organisation that employs somebody and they spill something on the floor by accident—where are you coming from? What goes on in your head? I just cannot fathom it. If an employee spilt something and deliberately through negligence, they may have to be examined first. They could be in trouble; of course they could.

To say that if a worker spills something and someone injures themselves they are going to be prosecuted is absolute nonsense. Under the current laws a volunteer can be prosecuted, but there has not been a prosecution ever. There has never been a prosecution. I would expect that to be the same under the new work health and safety laws.

Under the current law, for the purposes of the act, 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. That is what happens now. Unfortunately we

are going to have to put up with this clause by clause, and I must apologise to everyone here for having to listen to nonsense from the other side. I think I have explained it quite clearly. The employer associations, after looking at this meticulously and getting legal advice, unanimously support this legislation. It is just unfortunate—

Members interjecting:

The Hon. R.P. WORTLEY: Volunteer organisations—

An honourable member interjecting:

The Hon. R.P. WORTLEY: Well, I am sorry—volunteer organisations unanimously support this legislation. So, when the volunteer organisations have supported it, why would anyone in this chamber take the word of the person opposite who really should be ashamed of himself and the way he has misled and misrepresented this legislation for volunteers themselves? I think I have answered as much I can. That will be the last time I speak in regard to that issue.

The Hon. B.V. FINNIGAN: Regarding subsection (8) of this clause and the definition of 'volunteer association', the way it is worded is that essentially a volunteer association will not come under the act if none of the volunteers alone or jointly employ any person to carry out work. In a situation where it may be that people who are employed by the organisation who are doing the employing, I assume that then they will be considered a person conducting a business or undertaking in the other clauses. In a sense I am asking that there is not a situation there where if volunteers employ people, then it comes under the act but if paid people employ people in the voluntary association that would mean that they were not covered by the act.

The Hon. R.P. WORTLEY: I will get some advice for the honourable member.

The Hon. T.A. FRANKS: While the advice is being obtained, I would like to put on record the Greens' position specifically on the amendment before us. As I understand it, it inserts the definition of 'volunteer association', which means 'a group of volunteers working together for one or more community purposes;' whereas the current definition actually continues that sentence with 'whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association'. Can I clarify with the mover that the intention is to truncate that sentence and remove 'employs any person to carry out work for the volunteer association'.

The Hon. R.I. LUCAS: Yes.

The Hon. T.A. FRANKS: It will come as no surprise to the Hon. Mr Lucas that the Greens will then oppose this amendment, and we do so having consulted with Volunteering SA and NT. Certainly, I have in writing from the CEO a media release and also an email sent to us on 13 March 2012, after we had met with that organisation, their statement on this, that new WHS laws will increase protections for volunteers in South Australia; certainly, the headline indicates that they support this.

They go on to note that there has been a number of inquiries and concerns from both volunteers and organisations who rely on volunteers, but they actually welcome the following changes and note:

> There were some negotiated changes specifically that volunteer associations, whether they be incorporated or unincorporated, which are wholly made up of volunteers working for a community purpose, where none of the volunteers employ any workers, will not fall within the scope of the WHS law. Therefore, volunteer directors, officers and workers of these associations cannot be prosecuted under the model WHS laws.

However, it goes on to say:

> If a volunteer association, incorporated or unincorporated, employs any person to carry out work for the association, that association will owe health and safety duties to workers, including volunteers. A volunteer director/officer cannot be prosecuted for failing to comply with their officer duties under the WHS laws. This immunity from prosecution is designed to ensure that voluntary participation at the officer level is not discouraged.
>
> A volunteer officer can, however, be prosecuted in their capacity as a worker if they fail to meet their duties as a worker to take reasonable care.

They note that Safe Work Australia's guidance notes, dedicated website, email and telephone helpline (called the 'volunteer assistance line') enable volunteers and representatives of volunteer organisations to ask questions they may have about how they will be affected by the new WHS laws, and they also commend that further practical and executive resources are needed. I understand that they have been working closely with not only Safe Work Australia but also SafeWork SA on this.

I have understood from my conversations with the CEO that in fact they did seek their own independent legal advice and that they are quite confident with that advice and quite comfortable with this bill and certainly welcome it. They note that volunteers who are workers under the new WHS laws have a duty to take reasonable care. This is the case for all workers and visitors to a workplace, that the new work, health and safety laws do not apply to every volunteer activity like some of those mentioned in the debate. For example, they note that it would not apply to all sporting, social, domestic and recreational activities.

They also welcome that the new WHS laws will mean that volunteers will receive the highest level of protection whenever they carry out their work. They also note that there are about 6.4 million volunteers in Australia overall and that the Productivity Commission has estimated that, of around 600,000 not-for-profit organisations, only 60,000 employ staff, so it is clearly quite a small proportion that this affects over the whole volunteering industry. They conclude with:

> A volunteer officer cannot be prosecuted for failure to comply with their officer duties under WHS laws. The immunity from prosecution is designed to ensure that voluntary participation at the officer level is not discouraged.

However, I would note that the media release of David Pisoni, issued on 13 February 2012, headlined 'Parents on school councils now risk their house' probably did serve to discourage some volunteers from taking on those important roles in school governing councils. I certainly do not attribute that media release to the Hon. Rob Lucas, but I do note that it was in fact the shadow minister for education who issued that release, so I would have thought he would be aware of it.

I note that there is also quite a lot of information on the Safe Work Australia website which acknowledges that volunteers can be prosecuted under the act in certain situations but also clarifies that a volunteer officer cannot. Volunteers will not only be able to be prosecuted by this particular act when it comes into law but, of course, they will be protected, and that is why, overwhelmingly, volunteers have welcomed this bill. With that, I note again, that the Greens will be opposing this amendment, and we look forward to the further passage of future clauses.

The Hon. R.P. WORTLEY: I would like to thank the honourable member for her quite valuable contribution to this debate on volunteers. In answer to the Hon. Mr Finnigan, there is no loophole.

The Hon. R.I. LUCAS: In concluding my contribution on this amendment, I want to reject claims made by the minister in the second reading in relation to this package of amendments and let me quote, again, the minister. As I said, I rely on actual quotes of the minister, I do not make them up and attribute them to me when clearly they were not made by me, and I thank the Hon. Ms Franks for highlighting that. The minister said, and I quote directly:

> These amendments would relieve business including significant businesses like Anglicare, The Salvation Army and the Red Cross of any responsibility for looking after the health and safety of their volunteers.

That is, again, untrue. The package of amendments that I have filed, the first of which has just been moved, do not have that implication or effect on volunteers for organisations such as The Salvation Army and Red Cross because they would not be volunteer associations under the package of amendments that I have moved. I wanted to place on the record that another claim made by the minister, which I know he has provided to other members and to representatives of volunteer associations etc., is untrue. I have taken legal advice on that issue and that has confirmed that it is untrue.

I again conclude by indicating that in all cases in relation to this I have not resorted to making up statements: I have quoted the minister's own statements, which he has not challenged; I have quoted the Safe Work Australia website; the SafeWork SA website; the minister's own legal advice which he quoted in the second reading; and the legal advice provided to me, which all make it clear that the minister's statements are untrue.

The committee divided on the amendment:

AYES (7)

Brokenshire, R.L.	Dawkins, J.S.L.	Lensink, J.M.A.
Lucas, R.I. (teller)	Ridgway, D.W.	Stephens, T.J.
Wade, S.G.		

NOES (8)

Darley, J.A.	Finnigan, B.V.	Franks, T.A.
Hunter, I.K.	Maher, K.J.	Parnell, M.
Wortley, R.P. (teller)	Zollo, C.	

PAIRS (6)

Lee, J.S.	Vincent, K.L.
Hood, D.G.E.	Kandelaars, G.A.
Bressington, A.	Gago, G.E.

Majority of 1 for the noes.

Amendment thus negatived.

The Hon. R.I. LUCAS: I move:

Page 17, lines 33 and 34—Delete the definitions of *WHS entry permit* and *WHS entry permit holder*

This raises for the first time in the committee stage the critical issue which I am sure will fire up the Labor members and their supporters in the chamber, which is to provide for union right of entry into work sites. If anything is going to fire up your colleagues on the backbench, Mr Chairman, indeed this should.

South Australia and, I think, Tasmania—I think there is one other jurisdiction—have fought for many years to have a point of difference in terms of our industrial relations and our worksites in South Australia. That has been that, unlike the Eastern States and other jurisdictions, unions have not had an automatic right of entry onto worksites on occupational health and safety grounds.

I think all members have been lobbied on this issue—other than the government members—so the Liberal Party members and the minor party and Independent members will have been lobbied and lobbied strongly, in particular by the construction industry in South Australia in relation to these particular provisions.

The reason why is that they meet on a regular basis with their colleagues, in particular in the Eastern States, and they are informed on a regular basis of the activities of union officials and representatives, ostensibly on the grounds of occupational health and safety, of entering worksites and causing industrial disruption on those worksites.

I know I continue to pick on the minister but he is such an easy target for me to quote back what he says publicly and compare it with the facts. The minister, in defending the indefensible on this position, again in the public arena, makes untrue claims. Let me just highlight one on FIVEaa. When he was asked about union right of entry he said:

So there are protections there but there's no evidence anywhere in the country to show that this right has been abused.

An extraordinary claim from an extraordinary minister—no evidence anywhere in Australia to show that right of entry by union leaders and representatives has been abused. That has been the minister's position and the government's position. I suspect that in the privacy of the smoke-filled rooms of the Labor Party (if they are still smoke-filled) even they would not make that claim—

The Hon. K.J. Maher interjecting:

The Hon. R.I. LUCAS: —and I think the Hon. Mr Maher would acknowledge that. In his inaugural contribution today he stoutly defended, as you would expect him to, the union movement but he conceded that, as with any occupation (I suspect even including the occupation he has now joined) there are people who do not behave themselves or who bring no glory to the occupation of being a member of parliament or, indeed, the occupation of being a union leader or representative.

The Hon. J.S.L. Dawkins: He has just made his inaugural interjection.

The Hon. R.I. LUCAS: That's very good. So even the Hon. Mr Maher acknowledged the reality. However, the reality the Hon. Mr Maher indicates is not the reality according to the minister; the minister will not even concede that. He says—and wherever he was going this is what he was

saying—'There's no evidence anywhere in the country to show that union right of entry has been abused.'

Let me put on the public record some examples around the country. I hasten to add that I join with a fellow product of Mount Gambier in the South-East in acknowledging that the majority of unions and union leaders are there representing workers as they should. My father proudly represented the Printing & Kindred Industries Union and I acknowledge his work before me and the work of many other union leaders and representatives. However, as the Hon. Mr Maher has conceded, and as I am about to demonstrate, there are some bad eggs, in particular in the construction industry in terms of their potential impact on the construction industry.

Let me quote from the Cole royal commission—nothing less than a royal commission into this particular area. The royal commission noted:

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

Many participants who gave evidence to that royal commission noted:

> Safety matters are frequently raised by union officials whenever an industrial issue arises on a site. When the industrial relations processes have been exhausted in trying to resolve a dispute, safety issues are raised by the union.

One reason for this, it was suggested, is that safety stoppages provide paid strike time whereas industrial strikes do not. One participant noted:

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

Yet another participant in the Cole royal commission commented that safety issues would often evaporate when other industrial issues were resolved. There are many other examples given to the Cole royal commission. As I said, this is not a fly-by-night inquiry or investigation. It was a properly constituted royal commission into the activities of the construction unions in the construction industry highlighting the abuses of OH&S laws to settle industrial relations disputes in those work sites.

Recent evidence in relation to a major construction dispute in Queensland under the new laws demonstrates further the problems that exist for the construction industry. For one major builder in Queensland involved in a recent dispute, the key union on that site had a particular problem with an existing enterprise agreement. It still had two years to run, so it was a legal contract, an enterprise agreement between the union and the builder. For whatever reasons, the leadership of the union took strong exception to one of the provisions which had been previously agreed within that enterprise agreement and sought to have that particular aspect of the agreement changed. The builder refused on the ground they had a legally binding enterprise agreement which still had another two years to last.

What occurred then was that on one particular day the union representatives came into that work site, on four separate occasions during the one day, on the pretext of four separate or different occupational health and safety issues, to disrupt the operations of the business, all the while maintaining pressure on the builder to give ground on amending the enterprise agreement. That intimidation, that misuse of the OH&S powers, continued for a significant period of time, resulting in industrial disruption to the builder and that building project.

There are similar stories, for those who follow proceedings, such as the Grocon proceedings in Victoria, where the Fair Work Building and Construction inspectorate took proceedings against the CFMEU and 10 individuals in relation to their activities during the Grocon dispute. One union representative said to one of the builders, 'We'll just smash them.' They were going to smash all of them all the time. 'I'll be back with a barbecue,' said another one. 'I hope you die from your cancer,' said another one to a manager. The details of the ongoing disruption and disputation, the numbers of people preventing, hindering or interfering with free access to that building site, the abuses of processes, the name-calling, etc., are all documented in documentation which is publicly available.

I have about 12 pages of it here, but I am not going to read those and delay the committee stage of the debate with all that detail. However, it is another example of the concerns that the

MBA and the construction industry in South Australia, in particular, have about the introduction of the union right of entry to worksites in South Australia.

The amendments I am moving do allow union right of entry, contrary to what the government and others have maintained, but it would be on the basis, first, that if the workers wanted to be represented by the union, they could elect to become members of the union and elect a union representative as their health and safety representative. Of course, if they do not and would prefer to do it themselves it is our view that they should be entitled to do that.

Equally, if they want to choose a union member to be their health and safety representative they are entitled to do so. We support that free will and choice by workers on the worksite. However, if they choose not to have a union representative come in and cause grief on the worksite then, in our view, they should be entitled to make that choice. This is the first instance, where we make it quite clear that if the workers want a union representative to represent them they can do so.

As you know, Mr Acting Chair, under this legislation the health and safety representative is extraordinarily powerful; he or she has the capacity to shut down the worksite if there is any danger to a worker, and, of course, under the legislation workers can also refuse to work, as indeed they should be able to. The health and safety representative has the power to shut down the worksite, or that particular part of the worksite, if there is danger to the workers, and if the workers decide they want a union representative to be the health and safety representative that is terrific, they can do so.

The second example—where, again, we are quite comfortable if the workers should decide to—is that there is the capacity of the health and safety rep to bring in what is known as a consultant to assist. If the workers, through their health and safety rep, want to bring in a union representative as the extra set of eyes, the safety net or the protection, as long as that union representative has the appropriate accreditation approvals under legislation, which is to be understood, then, under the package that we are quite happy to support, the workers are entitled to bring in a union representative to assist them.

So our position is quite clear. Workers are entitled to be represented by unions if they choose. The decision should be the workers'. Let us not hear any of this cant or hypocrisy that the Liberal Party is saying keep the unions out, full stop; that is not the position we are adopting. We are saying let the workers decide, let the workers choose, first, whether they want a union representative to be their health and safety representative—or whether they want to be a member of a union in the first instance—and, secondly, if, in circumstances such as a difficult issue with a difficult employer, they want to bring in a properly accredited and approved union representative as their consultant, they can do so.

We are prepared to support that package of arrangements, but what we are saying is that, where there is, for example, a small worksite of 20 people and those 20 people say that they do not want the union involved—and believe it or not, minister, and your colleagues, there are some people who do not like unions; there are some who say they do not want a union representing them—in our view they should be entitled to say that if they choose.

However, what the government and those who support the government are saying, and what this package of amendments is going to do, is that, even if all 20 workers feel strongly that they do not want to have anything to do with the union, if a union claims to have coverage of that particular worksite, even if those 20 do not want it, it can have automatic right of entry onto that worksite. That is what the government is saying. That is what those who support the government are saying.

So, you have got 20 workers who say, 'We don't want anything to do with the union. We're quite happy with the way we handle work, health and safety and how our employer is treating us,' but the CFMEU, or whatever the union happens to be, says that it has coverage of that particular work site—or there may well be a couple that claim coverage. As the minister would know, on some work sites a number of unions would claim coverage; and the industrial advice provided to me is that there are a number of examples where unions claim coverage of the same work site and have their own arguments about who should have coverage.

However, in the case that I have outlined, a union or unions, contrary to the wishes of everyone of those workers in that work site and the employer, can have automatic right of entry under the provisions of the legislation with some minor amendments that might be moved on behalf

of the Hon. Mr Darley. It is for those reasons that the construction industry associations in South Australia are saying, 'Why are we doing this?'

We have prided ourselves in South Australia on having a better industrial relations record than the Eastern States in particular, and that has occurred under both Liberal and Labor governments, I might say. When one looks at the working days lost under Liberal and Labor governments in South Australia compared to the Eastern States, we do proportionally much better than those other states.

Why is it that we need to move down this path, particularly in the construction industry, which on occasions can be a tinderbox because of pressure of deadlines, huge contracts, time delays, the importance of industrial action on the profitability of companies, and those sorts of things, which make it, obviously in industrial terms, a controversial area, if I can understate the case? Why is it that we are going down this particular path in South Australia?

It is the Liberal Party's view that we would be well advised to stick with what has been working in South Australia. We maintain our point of difference—as I said, I think that Tasmania also has that point of difference, or did have that point difference—in South Australia. For the life of me we cannot understand why we are in the circumstance where, in the circumstances that I have outlined where they have decided they do not want a union, the workers should be forced to have a union intervene in those circumstances.

At the very least the government ought to look at a set of circumstances where at least there was a member of a union on a particular work site to justify intervention by a union representative. Even that, as I understand it from the discussions the Hon. Mr Darley has had with the government negotiators and others, is not acceptable to the government in relation to this package of amendments. For those reasons, I move the amendment standing in the Liberal Party's name.

The Hon. R.P. WORTLEY: We oppose the amendment, and the reason is because this and the future amendments are purely driven by the pathological hatred of unions by the members on the opposite side. By the honourable member's own admission we have a very good industrial record here in this state with very few lost days as a result of industrial disputation, yet our unions have the right of entry to look at industrial issues.

They have a good relationship with their employers. There are very few days lost. Unions can enter a work site where they have eligible members for industrial issues, yet there is no evidence here, by the admission of the Hon. Mr Lucas, that that is being abused. We do not believe that that right will be abused when a work health and safety permit holder goes to a job at the request of an eligible member.

There will be a few changes to these clauses, through the Hon. Mr Darley, but this government would not stand for abuse of this section of the act. We support this section of the act strongly; we believe that unions have the right. In every other jurisdiction in the country, they have the right to enter a workplace for occupational health and safety reasons. We do not believe that workers in this state should have any fewer rights than those which apply in other states. To members of the committee I say, 'Please do not be fooled by the concern of the Hon. Mr Lucas for those poor old non-union people or whoever who do not want to be members. The fact is, though—

The Hon. R.I. Lucas: Bugger them; don't worry about them.

The Hon. R.P. WORTLEY: We do. We want them to be safe.

The Hon. R.I. Lucas: No you don't; you hate them.

The Hon. R.P. WORTLEY: We want them to be safe—

The Hon. R.I. Lucas: You hate them.

The Hon. R.P. WORTLEY: —you don't. By this amendment, the Hon. Mr Lucas wants to deny a large section of workers the right to call on an entry permit holder. They are specially trained; that is their job. They are skilled people who can identify and work through safety issues. If they abuse this right, there are provisions in the bill for the Industrial Relations Commission to take away their permit, and this government will take a very hard line on unions which abuse this right. We do not believe that it will be abused, mainly because the unions do not abuse their industrial right of entry. I ask the committee to oppose this amendment.

The Hon. B.V. FINNIGAN: My comments, I guess, like those of other honourable members, will be broadly about the issue of union officials having right of entry. I am sure that other honourable members remember a federal election (I think it was in 1993) where, as I recall, the Housing Industry Association or the Master Builders Association ran a very strong campaign in marginal seats saying that Labor was going to vastly increase the cost of a house and allow union thugs to ride roughshod over home improvements and house building.

There was a very famous leaflet, which I am pretty sure went out in some South Australian electorates and which had some beefy blokes in shorts and blue singlets saying 'We're here to build the barbeque.' The leaflet was designed to suggest that this union thuggery would be coming to your backyard any day under a Labor government. So, this notion of a bogeyman of union thugs, particularly in the building construction industry, is nothing new and we should not be surprised that it is being agitated with this bill.

Of course, we currently have the Australian Building and Construction Commission; I think it has a new name now. Against the wishes of many members of the Labor Party, it has continued under the federal government. It looks precisely at problems within the building industry which tend to be in large work sites.

The current powers for health and safety representatives are extensive. The Hon. Mr Lucas alluded to HSRs being able to do all sorts of things and their having wide powers. They already have those; that network is already in place and those powers are in place under the current act. Of course, there is no obligation on health and safety representatives to be union members or to be approved by the union or by union members. It would be a matter for the workers at a particular site whether they want the union to be part of the HSR process, in a sense.

There are certainly some health and safety representatives who identify as union members. Sometimes their union activity and their duties as a health and safety representative coexist—they are active as a union delegate or union member, as well as being a health and safety representative. But there are plenty of health and safety representatives who are not union members and who have no communication or contact with the union and in no way represent the union.

Secondly, there is no compulsion for workers to join a union or to have a union represent them. Contrary to what the Hon. Mr Lucas has said, this notion that union officials are going to come sweeping into workplaces and make the workers accept their representation is simply not correct.

Under these provisions, union officials will have a right of entry in relation to occupational health and safety matters. That right of entry is exercised under fairly stringent conditions, including things like a 24-hour minimum notice period, and so on, and it is very similar to the sorts of provisions that already exist in relation to permits under the Fair Work Act to enter workplaces.

It is important that union officials, who are generally widely experienced and knowledgeable about health and safety matters—and many of them may have worked for decades in the field—have the ability to enter workplaces on health and safety issues to inspect what is going on and to talk to the workers. If the workers are not interested in talking to the union representative or want to exclude the union from the workplace, this bill does not give the union official any powers to make them join the union or accept representation or whatever. That would be a matter for those particular workers.

I am pretty sure that most union officials do not devote a great deal of their time to representing non-members because it is the members who pay their dues for their representation and advocacy. Members would not be too happy if union officials instead spent their time going around sites where they did not have members. It is very unlikely that a union official is going to devote large amounts of their time to visiting non-members. Nonetheless, it is important that they have the ability to enter workplaces because there will be occasions when they are aware of health and safety problems and they want to be able to see for themselves and talk to people about what is going on.

Sometimes anonymity is very important in that regard because not every worker is going to want to jump up and down or will feel comfortable saying, 'Well, hey, I think there's a health and safety breach going on here,' particularly if it is a non-union workplace where an employer has a hostile attitude to unions, or where being an active union member may have repercussions and so the workers are silent members of their union. This is certainly a minority of workplaces, but it is important on occasion that a union official, in my view, should be able to enter that workplace

without the worker having to identify that they are the one who has suggested that there is a health and safety problem that needs to be checked out.

The powers that this bill gives union officials are not much different from those they already have under the Fair Work provisions. There are very stringent conditions on how they exercise the permits. There are significant penalties for breaches. There is the ability for employers or anyone else to challenge the permit or to suggest that that person has been in breach of the provisions. There is no obligation or compulsion for workers to be represented by unions or to have a union present on the work site as a regular representative of them. All this does is give the official the ability to enter a workplace under the conditions, which are quite strict, within the act.

If none of the workers there wants the union involved, it is nonetheless important that an official be able to establish whether or not there is a health and safety problem there because that is something that is going to be of concern broadly. This is so even if it is a workplace, such as in the Hon. Mr Lucas's example, where there are 20 people and they are all virulently non-union and do not want a union official to have any part.

We know that no workplace is an island so, even though one workplace may have no union members at all and no-one wanting to join a union, if there are practices going on that compromise safety in a way that might be of great financial advantage to an employer, obviously a union is going to be concerned about those practices and will want to make sure that they are not taken up in other workplaces as well as in that individual workplace. It is important that a union official is able to look at different workplaces across their particular industry and ensure that illegitimate practices or unsafe practices are not creeping in in particular areas.

This notion that union heavies are going to be gallivanting around workplaces, disrupting work and grinding the economy to a halt and so on, I think, is pretty fanciful. These are sensible provisions with important safeguards. They are simply aimed at ensuring that we have safe workplaces across the board as much as possible.

The Hon. T.A. FRANKS: I rise on behalf of the Greens to oppose this amendment in the name of the Hon. Mr Lucas. I do so because right of entry is an important feature of the nationally harmonised legislation, extending the opportunity for effective representation on workplace safety. In fact, union right of entry for occupational health and safety purposes has been in place in every other state and territory for many years. Certainly, in Tasmania, it has actually been in place since 2009, after a trail which was commenced in 2007.

So, every other state and territory have actually had these provisions for a significant period of time. When we are talking about harmonisations, this was one of the wins for South Australia, to increase our protections. The right of entry provisions contained in the Work Health and Safety Bill are actually consistent with the current right of entry provisions for industrial relations purposes under the commonwealth Fair Work Act 2009.

So, unions can already enter worksites for industrial relations reasons. It only makes sense to extend this to extend this to occupational health and safety reasons. Certainly, permitting another set of eyes—an experienced, trained and independent set of eyes—is a great reference point to assist not only workers but also businesses to meet their safety obligations.

Workers may or may not choose to join a union. Certainly, I do not think that is what the work health and safety provision of right of entry would be about. I doubt it would be a recruiting exercise. I imagine it would only be used to ensure that proper processes around work health and safety are actually being followed. I say that because there are actually provisions in this bill which are quite stringent.

According to the bill, before exercising a right of entry, a union official must have undergone the prescribed training and they must have a permit issued by the authorising authority (which, in this state, would be the Industrial Relations Commission of South Australia). Also, there are protections in place for the misuse of right of entry provisions, and disputes can be referred to an inspector or the authorising authority.

Contravention of the permit holder's permit conditions, improper behaviour and misuse of right of entry provisions would all likely result in the revocation of a work health and safety entry permit. It should not be regarded as a threat, but certainly as a positive and proactive safety measure, not only ensuring that workers are in safer environments but also assisting businesses to meet those obligations.

I would have thought it would have been welcomed as something that does work across the country. The Greens are disappointed that we will probably lose the strength of this particular provision, and we look forward to further debates on those clauses, with further amendments to be moved in this area.

On a final note, I will say that the Greens have been quite critical of the Cole royal commission, the ABCC, and the terms of reference of that particular royal commission. We do not subscribe to some of the assertions made about occupational health and safety being used as an industrial tool. We think that the provisions in this work health and safety permit legislation and the protections around that would ensure that that would not happen.

The Hon. R.I. LUCAS: One further comment I want to put on the record was regarding some advice provided in the last couple of weeks by one of the industry associations which highlighted the circumstances in New South Wales. An OHS alert entitled, 'Union inspectors to target New South Wales sites in response to WorkCover changes', stated:

> The CFMEU Forestry and Furnishing Products Division will conduct comprehensive safety inspections of major New South Wales worksites in response to what it calls the state government's decision to smash the rights of sick and injured workers.

I will not read all of the article, but it goes on to highlight that, because the unions took a position in political opposition to the government's decision in relation to legislation that went through the parliament, they were going to institute what they called in a nicely understated fashion comprehensive safety inspections of every major worksite and workplace in New South Wales as a result of that. Indeed, the advice from the construction industry is that they have commenced that particular process. I just highlight that I quoted Queensland, Victoria and New South Wales as well. I did have some information on Western Australia in terms of support for the proposition that I have moved, but I will leave that for the moment.

The committee divided on the amendment:

AYES (7)

Brokenshire, R.L.	Dawkins, J.S.L.	Lensink, J.M.A.
Lucas, R.I. (teller)	Ridgway, D.W.	Stephens, T.J.
Wade, S.G.		

NOES (8)

Darley, J.A.	Finnigan, B.V.	Franks, T.A.
Gago, G.E.	Kandelaars, G.A.	Maher, K.J.
Parnell, M.	Wortley, R.P. (teller)	

PAIRS (6)

Lee, J.S.	Vincent, K.L.
Hood, D.G.E.	Zollo, C.
Bressington, A.	Hunter, I.K.

Majority of 1 for the noes.

Amendment thus negatived.

The Hon. R.I. LUCAS: Could I ask the minister, based on his advice, on which particular clause, other than this one, would it be appropriate to ask questions in relation to the requirements on home duty; that is, a worker who spends part of their working day in their own home working? Can the minister just indicate, based on advice, on which particular clause—other than the definitional clauses which cover everything, obviously—would it be appropriate to put questions to the minister on that issue?

The Hon. R.P. WORTLEY: Clause 8.

Clause passed.

Clause 5.

The Hon. R.I. LUCAS: I move:

Page 18, lines 21 to 26—Delete subclauses (7) and (8) and substitute:

(7) A volunteer association does not conduct a business or undertaking for the purposes of this Act except to the extent (if any) that it employs a person to carry out work for the volunteer association (and, in such a case, a volunteer will not be taken to be a worker carrying out work for the purposes of the business or undertaking).

It is part of the package of amendments on volunteers. I do not propose to speak on the issue.

Amendment negatived.

The Hon. R.I. LUCAS: I have some questions. Under clause 5 is the introduction of, I guess, the controversial new element of the legislation in South Australia and a lot of other states, which is the notion of a person conducting a business or undertaking. As I said in the second reading and at the outset of the debate at the committee stage, the old notions under the Occupational Health and Safety Act of an employer and an employee and a business or a trade have been changed to this new notion of a person conducting a business or undertaking.

All of the legal advice that has been provided on this issue by a number of lawyers but, in particular, by Dick Whitington QC, says that one of the advantages of the existing law in South Australia, and one of the reasons why we have sought to amend the legislation back to the existing law, is that there are years and years of industrial precedents and court decisions in relation to what the various terms in the legislation mean. What Dick Whitington QC is saying to anyone who is prepared to look at his advice is that we are entering a whole new world in South Australia, in that it will take years and years of industrial decisions to understand the full implications of the legislation.

I suspect, when most in this chamber have left, the courts will still be determining these implications, and perhaps some of us in our dotage will be able to say, 'I told you so,' or some others might be able to say they told us so in relation to what the legislation really meant in terms of its implications. Certainly, on the advice that has been provided to me, I would hope from South Australia's economic viewpoint and industrial viewpoint that the warnings that have been given by people whose opinions I respect, such as Dick Whitington QC, do not come to fruition.

The warnings have been stark in terms of the problems that we are about to enter. As we get to clause 8 and others, we will start to see what some of the implications of the legislation will mean in worksites and industrial premises in the future. Dick Whitington QC asks the question and provides an opinion of what is a PCBU. One of his opinions is:

The 2011 Bill contains no comprehensive definition of 'a person conducting a business or undertaking'. Instead, there is a provision in s 5—

which is the section we are looking at—

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 (e.g., changing a light bulb) (and this appears to be confirmed by the terms of section 20). In this context, the word 'conducting' may not be a limiting expression.

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 actual control over the risk. 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.

Other provisions in the 2011 Bill create other duties overlain on or concurrent with the duties in section 19.

I hasten to add that aspects of that legal opinion were based on the government's bill, which was staunchly defended by the government before it agreed to support some amendments relating to introducing one version of a control amendment in the legislation, and we will debate that later on. The other elements of the legal advice, I am advised, still apply to the bill as it will be amended by the deal between the Hon. Mr Darley and the Labor government.

My question to the minister is, and I refer to the first aspect of the legal advice; that is, Dick Whitington QC is saying that a PCBU does cover such things as home renovations. Pardon me for my sins in that I continue to refer to the claims the minister makes on radio and in this parliament. I know he does not like me referring to what he has actually said but let me refresh his memory in relation to this. He has been challenged on a number of occasions on this issue that a home owner is a PCBU, a home owner who has engaged a tradesperson for home renovations, or something. On FIVEaa, in one of those infamous interviews he gave on a Sunday evening, the minister said:

> As a home owner, if you engage a tradesperson you are not responsible, you are not a person conducting a business or undertaking.

He is saying: if you are a home owner and you engage a tradesperson for home renovations you are not a PCBU, you are not a person conducting a business or undertaking. On the one hand, we have the minister making those claims, on the other hand, we have the eminent QC, Dick Whitington, who says:

> A PCBU does cover such things as home renovations, and possibly even a single task of work in a residence such as changing a light bulb.

My question to the minister is: given the advice from Dick Whitington QC on this issue, how does the minister justify the extraordinary claims he continued to make on FIVEaa and other sections of the media that a home owner engaging a tradesperson for home renovations was not a PCBU within the construct of the legislation?

The Hon. R.P. WORTLEY: Our advice from Safe Work Australia is that a home owner undertaking home renovations is not a PCBU. A home owner who engages a tradesperson is not a PCBU; the tradesperson is the PCBU. It is as simple as that. I know that those opposite struggle with this concept. Firstly, in this legislation a person can include a partnership or an unincorporated body, it can also be an individual but for this legislation only where the individual is conducting a business in their own right.

Secondly, a business is an enterprise that is usually conducted with a view to making a profit. It will have a degree of organisation system and continuity. Thirdly, the use of the term 'undertaking' recognises that there are some activities that do not have a commercial focus but that will employ workers and will potentially impact on the safety of others. An undertaking will have elements of organisations and systems. For example, a local council is not a not-for-profit organisation that employs administrative staff. I am sure that even those opposite can see that this concept recognises the range of work relationships where work occurs.

I also want to point out that the PCBU concept was recommended after a major review by expert occupational health and safety academics. It was headed by a number of eminent occupational health and safety practitioners, including Robin Stewart-Crompton and Barry Sheffield. The concept of a PCBU is already in place in Queensland, so there are precedents that are already in existence and there have been no major issues.

The Hon. R.I. LUCAS: So the minister's best response in response to Dick Whitington QC's legal opinion is to quote from the Safe Work Australia website. The last time I checked Safe Work Australia was not the source of legal advice to either the commonwealth government or the South Australian government. My question to the minister is: has he received legal advice in South Australia from crown law or any other legal entity which challenges Dick Whitington QC's legal opinion that a home owner conducting a home renovation is a PCBU?

The reason I ask the question is that this is not an insignificant issue because every one of us, I suspect, at some stage or another has been a home owner who has employed a tradesperson for home renovations. Every one of us has been in a position where we have had specialised tradespersons (electricians, plumbers or whatever) in our work premises or in our homes undertaking work. If we are, as Dick Whitington says, a PCBU—that is, a person conducting an undertaking, the undertaking being the employment of a specialist tradesperson—then we have occupational health and safety duties under the legislation.

So what the minister is guaranteeing to us tonight is that if there is ever a decision taken to a court or an action taken by SafeWork SA, and you end up in court, you will be able to quote minister Wortley in saying, 'I'm not a PCBU,' even though Dick Whitington QC has indicated that you are a PCBU, that you are subject to the duties, requirements and responsibilities of the work health and safety legislation and that you cannot just pretend otherwise. So, I am sure that will be great comfort to anyone who in the future is taken to court that they will be able to quote minister Russell Wortley as having, when asked the question as to whether Dick Whitington QC was

correct, said no, he was not. When he was asked whether he had any legal advice he could put on the table to challenge that, he refused to provide any legal advice that challenged that. He just baldly quoted from the Safe Work Australia website and said, 'There you go.'

So, as I said, if you end up in court you can quote the Hon. Russell Wortley and the Safe Work Australia website of the particular year in relation to this particular action. This is an important issue and it deserves to be treated seriously by the minister and clearly is not being treated seriously when someone of the eminence of Dick Whitington QC has indicated to all of us that what is a commonplace set of circumstances, which would place significant additional duties on many of us, the minister says, 'Well, Dick Whitington doesn't know what he's talking about.'

The Hon. R.P. WORTLEY: Safe Work Australia has provided advice that is consistent right across this country. It has its legal advice that it gets. Reviewers such as Barry Sherriff are respected occ health and safety legal practitioners in the area of this law. So we have confidence that the legal advice that Safe Work Australia has, and on which it has consistently given advice to the various states, can be relied upon and we look forward to the passage of this section of the bill.

The Hon. R.I. LUCAS: Is the minister claiming that Barry Sherriff and the other person he quoted actually gave legal advice on the specific question I put?

The Hon. R.P. WORTLEY: No, I am saying that in the review that developed this concept for the PCBU they are experts in their field. They are legal practitioners and experts in the field of occ health and safety.

The Hon. R.I. LUCAS: And that is exactly the situation, that is, they have not addressed this particular issue. They may well support the position that a home owner who employs a tradesperson should be treated as a PCBU. All the minister is saying is that those two legally-trained people were part of a group of people who advised officers, and ultimately governments, to agree to the concept of a person conducting a business or undertaking.

They certainly did not provide legal advice on the specific issue on which Dick Whitington has been asked to provide advice, that is: is a home owner who employs a skilled tradesperson for home renovations a PCBU within the context of this act? Dick Whitington QC says yes; the two gentlemen the Hon. Mr Wortley talked to have not even addressed the issue. They were part of a team that recommended the use of the term 'person conducting a business or undertaking'.

The Hon. R.P. WORTLEY: The thing missing here is the fact that this legislation and the concept of PCBU now applies in Queensland, New South Wales, Tasmania, the commonwealth, the Northern Territory and the ACT. This debate has been had and probably done to death in all those states, and has been adopted in each jurisdiction. Again I make quite clear that Safe Work Australia has its legal advice and would make sure that this legal advice is in accordance with occ health and safety. So I look forward to the passage of this clause.

The Hon. R.I. LUCAS: Can I assure the minister that in all those jurisdictions where there was a debate through their parliaments in relation to it that not one had a comprehensive debate in relation to the committee stages of the legislation, and certainly not in relation to these specific aspects that Dick Whitington QC has highlighted in South Australia.

In fact, in some of the other jurisdictions such as Queensland and the Northern Territory, with the election of the CLP government in the Northern Territory and a LNP government in Queensland, both those incoming governments have indicated that they are currently reviewing the model bills in those jurisdictions and have, in Queensland's case, already flagged potential amendments to the legislation.

In the Northern Territory's case we understand that they have indicated a willingness to look at changes to the legislation there as well. Certainly the reality is going to be that the longer this legislation is in, the more it will be amended in other jurisdictions; let me make that prediction and I am happy to stand by it over the coming years.

It will not happen at once because, as I said, this will be the result of court decisions and precedents in the various jurisdictions, and governments will be horrified at what we are being asked to pass here and what has been passed in other states, and those who support it will be called to account in the future when those decisions are taken.

Clause passed.

Clause 6 passed.

Clause 7.

The Hon. R.I. LUCAS: I move:

Page 19, line 23—After 'volunteer' insert:

, other than where the volunteer is working as a member of, or assisting, a volunteer association

Amendment negatived.

The Hon. R.I. LUCAS: Can the minister outline to the committee the essential differences from the government's viewpoint in the definition of 'worker' in the proposed bill compared to the existing act?

The Hon. R.P. WORTLEY: The existing act relies on the definition of employee, where the Work Health and Safety Act recognises that there will be more working relationships than just employee. This would include a contractor or a subcontractor, an employee of a contractor or subcontractor, an employee of a labour hire company who has been assigned to work in a person's business or undertaking, an outworker, an apprentice or a trainee, a student gaining work experience, a volunteer or a person of a prescribed class. For the purposes of this act, a police officer is a worker, and at work throughout the time when the officer is on duty or lawfully performing the functions of a police officer. The person conducting the business or undertaking is also a worker if a person as an individual carries out work in that business or undertaking.

The Hon. R.I. LUCAS: In relation to that last provision, what the minister is saying to the committee is that an individual for the purposes of this act can be both the PCBU and have the duties and responsibilities of the PCBU, but can also be a worker and have the duties and responsibilities of a worker. Is that what the minister is saying?

The Hon. R.P. WORTLEY: That is right.

Clause passed.

Clause 8.

The Hon. R.I. LUCAS: This is the appropriate place, I am told, to raise questions in relation to work from home. I indicated earlier that one of the concerns I and many others have with the legislation is that we will not see the implications of this legislation until much further down the track, as a result of court decisions, etc. I want to refer to where occupational health and safety decisions have arrived at in the Eastern States to flag some of the concerns I and some other members have in relation to workers who work from home.

The first thing to note is that for work-life balance—and certainly there is provision provided for under the Fair Work Act—an increasing number of workers are working from home for part of the work week. They may well work for three or four days in the office environment and work for one or two days a week in the home environment. For work-life balance and a variety of other reasons, that has been supported by many employers and, obviously, many employees as well.

I want to refer to a couple of decisions which have been highlighted in the last 12 months, where lawyers and occ health and safety experts have started to issue some cautionary notes about, firstly, those decisions and, secondly, what the implications of this legislation may well entail, and the first one I want to refer to is the example of a Telstra worker who was working from home who successfully claimed work-related injury and workers compensation, having fallen downstairs on two occasions at home.

This was a Telstra employee who claimed compensation after being injured at home. This worker had twice slipped on the stairs whilst wearing socks, injured herself and claimed that it was a work-related injury because at the time of coming down the stairs in her socks it was related to her work that she was conducting from her home.

Subsequently, the worker indicated that she was suffering from other stress-related injuries in relation to the way the business or company managed her injury, her workers compensation claim and her return to work, and she was successful in her workers compensation claim in relation to that. This is already an important issue and it is going to be increasingly important under the legislation we are being asked to consider.

The government, for some reason, has agreed that a workplace is 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. In a moment I will be asking the minister why the government believes 'or is likely

to be' is important. It just seems common sense and logical that a worksite should be where you actually work and if you happen to go to lots of different places then you have lots of different places covered in a worksite. The notion of where you are likely to be, whether you actually are there or ever get there, does not appear to make much sense—at least to me.

That is, I guess, in the normal interpretation of these things in terms of the office environment, until you start talking about your work environment being your home and wherever it is at home that you are working, and where you are likely to be and what, first, can be claimed by the worker (which is a workers compensation issue, obviously) and, secondly, what an employer can be prosecuted for under the Work Health and Safety Bill in terms of duty of care for a worker working at a worksite which, in this case, happens to be the home environment.

Let me refer to the decision regarding the Telstra employee Dale Hargreaves in 2006. She fell down the stairs twice while on a break at home. The Administrative Appeals Tribunal found in June that Hargreaves' injuries had occurred in the course of employment and she was, therefore, eligible for compensation. The AAT also found that Hargreaves' psychiatric condition or ailment—she later developed depression and anxiety—was caused by issues involving her return-to-work plans and she was entitled to compensation under the act.

Telstra was the employer and was ordered to pay the costs of all medical and related treatment expenses and weekly compensation payments in respect of incapacity for work for all periods when Ms Hargreaves' ability to earn was less than the normal weekly earnings, as well as costs related to the action. Kate Jenkins, a partner at Freehills (one of the leading law firms in Australia), said:

> The Telstra decision is a pretty frightening one for employers. The line between personal and work has really become quite blurred. Twenty years ago it was quite clear—when you were at work you were at work. The lines didn't overlap like they do now.

Simon Dewberry, a partner at Allens Arthur Robinson (again, one of the leading law firms in Australia), said:

> There's always been a limit between what is considered an employer's responsibility versus an employee's responsibility but this case went beyond many people's expectations. It's just that somebody thought the limit was someone walking around in socks and falling down the stairs.

Mr Dewberry went on to say:

> ...the ruling is something employers should take into account while weighing up working from home requests, but it cannot be used as an excuse to reject them.

Kate Jenkins of Freehills says the issue came to prominence a couple of years ago when the Fair Work Act encouraged businesses to accept flexible working arrangement requests such as working part-time, job sharing and working from home unless there were reasonable business grounds to reject them. Further on in these articles Simon Dewberry (again from Allens Arthur Robinson) says:

> And the obligation to OH&S extends beyond employees. If you have contractors working from home or in a home office and one of them zaps themselves or gets their hand struck in the shredder, your obligation is no less.

One thing to keep in mind is that it is not just the working area that needs to be safe in a home office but also facilities such as the kitchen and the bathroom because the court decisions have ruled that if the home office worker is working from the living area and needs to go to the bathroom or to the toilet, then clearly that is related to business or work and the employer (or the PCBU, in this case) will have a duty of responsibility in relation to the occupational health and safety arrangements from the working area in your home to the bathroom, kitchen and toilet because they can be linked to the notion of working from home; that is, you as an employer have agreed to that employee working from home. When faced with a request to work from home, Kate Jenkins from Freehills said:

> ...business should start the process by thinking about the employee's role, the barriers to it being performed effectively from home, and how those can be overcome.

Allens Arthur Robinson partner, Simon Dewberry, says:

> In some circumstances it's possible that because of the nature of the work that the person is doing, the risk to health and safety is so high that you could justify rejecting the request on that particular basis.

The advice from Freehills solicitors is:

> Before you agree to home requests, consider a trial before making a commitment. Put your decision-making process and arrangements in writing, set up a broader policy to be used company wide.

Jessica Fletcher, a senior associate at Hall & Wilcox, says, 'It's more prudent for a company to do its own assessment.' These experts are saying what businesses may well have to do is conduct an occupational health and safety audit of a worker's home, and there are two options: you pay for an OH&S consultant to go into the person's home to do the audit and satisfy the PCBU that the work health and safety obligations under this legislation are going to be covered, or you can give the worker who wants to work from home a checklist to check off and indicate that these things have been looked at. Jessica Fletcher, a senior associate at Hall & Wilcox, says:

> It's more prudent for a company to do its own assessment and this should include the workplace layout, laptops, lighting, thermal, ergonomics, ventilation and electrical safety.
>
> Another issue to consider is whether an employee, feeling under the weather and therefore unable to head into the office, should be permitted to finish off a few things at home before going to the doctor or bed.

This is an even more common circumstance, where someone who is unwell takes work home to work from home whilst they are unwell. This advice says:

> There are obvious attractions to this practice. The employee avoids going into the office and gets key jobs out of the way so they don't have to play catch-up when they return. The employer isn't caught with one less worker and doesn't have somebody spreading germs around the office.

But Jenkins says companies should think twice about permitting an ill employee to do a little bit of work from home on their day off without considering the occupational health and safety ramifications under the legislation. Jenkins says:

> From an occupational health and safety point of view and from a workers compensation point of view, there is a risk, despite the pragmatic view that 30 minutes' work now can save hassle down the track.

There is another issue that Freehills have raised—they raised a number of issues. They say:

> Employers are increasingly implementing drug and alcohol policies which provide for random tests as part of a suite of measures to meet the duty of care obligations. These may need to take home-based work into account.

So Freehills are saying that under this legislation, if you are implementing random drug and alcohol policies and allowing someone to work at home, you may well need to take into account a random drug and alcohol test for your employee whilst he or she is working from home. Freehills also advise employers that, under this legislation:

> For example, employers may have to inquire whether there are pets at home. This will be a necessary and relevant risk to consider if a contractor or work colleague is required to deliver or service a printer or some other piece of equipment.

It raises the question of, if a dog injures a fellow worker or contractor who comes onto what is a worksite, under the provisions of this bill the PCBU has responsibilities (according to Freehills) in relation to not only the office work environment but also the home work environment.

When these issues were first raised, I know a number of people had a chuckle about them and thought, 'Let's talk about the real world.' Can I remind members in this chamber that this is the real world. This is a decision taken in relation to Telstra. It was a decision taken by the Administrative Appeals Tribunal. It has now been assessed by some of the leading legal firms and occupational health and safety consultants in the nation who are indicating that, under these new arrangements and these definitions, employers will need to start making these sorts of arrangements.

My first question to the minister is: have the minister and SafeWork SA taken advice in relation to the implications for workers who work from home with the agreement of employers under the provisions of the work health and safety legislation? If so, what has been the advice that SafeWork SA and the minister provides to persons who qualify as a PCBU?

The Hon. R.P. WORTLEY: Employers have health and safety responsibilities to their workers, no matter where they are working, under both the current and the proposed laws. If you run a business in your home your home is a workplace, and you have responsibilities under both the current and the proposed laws. If you allow your workers to work from home, you retain a health and safety responsibility for them under the current and the proposed laws.

The Hon. R.I. LUCAS: Does the minister concede that the definition of workplace in the new bill is significantly different to the definition of workplace, or the equivalent definition, under the existing legislation?

The Hon. R.P. WORTLEY: They are very similar. The meaning of 'workplace' under the proposed act is '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'. Under the Occupational Health, Safety and Welfare Act a workplace is 'any place (including any aircraft, ship or vehicle) where an employee or self-employed person works and includes any place where such a person goes while at work.'

The Hon. R.I. LUCAS: Can the minister indicate why, in the new act, the government has agreed to the inclusion of 'or is likely to be'? Why does the minister believe that the words 'or is likely to be' as opposed to actually attending or being at work is a useful part of a definition of a workplace?

The Hon. R.P. WORTLEY: The National Review into Model Occupational Health and Safety Laws noted, in its second report, that the definition of a workplace should state that a workplace may include not only where work is actually done but also where a worker may be expected to be during the course of work. This is based on consultations, where it was made clear that a workplace may include not only where work is actually done but also where a worker may be expected to be during the course of work. The inclusion of the term 'or is likely to be' in the definition ensures adequate coverage of workers wherever they are required to undertake legitimate work activities. That is similar to the current Western Australian act.

The Hon. R.I. LUCAS: In relation to the interpretation of 'or is likely to be', clearly the key part of the worksite of a salesperson who represents a company is their office, the particular business they operate from and where they spend a good amount of their time, but a salesperson would also spend a considerable portion of their time visiting work premises of other businesses throughout the state in the interests of cold calling, selling, delivering, or whatever it might happen to be.

Is the minister saying, in relation to the workplace of that particular employee or work of the PCBU, that that worker's workplace is every other worksite they visit, not ones controlled by the PCBU but ones that they visit to sell an item from that particular business, that in all those cases that is a workplace in relation to that particular worker?

The Hon. R.P. WORTLEY: With respect to the salesperson, yes, their employer would have responsibilities to ensure that they are safe wherever they are, but also when the salesperson is at another PCBU workplace that PCBU would have responsibilities for the salesperson to ensure that they are safe at the other PCBU's workplace.

The Hon. R.I. LUCAS: I accept the second notion. Clearly, if a salesperson visits your worksite of a PCBU you have responsibility, but what is the responsibility of the PCBU that employs the salesperson? The PCBU has responsibility for their worksite, that is clear. When the salesperson visits the worksite of someone else, what is the responsibility for the PCBU of the salesperson? How can they be expected either to impose conditions or requirements on the worksite of another PCBU completely unrelated to the PCBU who employs the salesperson?

The minister, I am sure from his pre-parliamentary experience, would be familiar with the circumstances of salespersons visiting other worksites. For the life of me I cannot understand how the government and the minister can be saying that the PCBU that employs a salesperson from a business at Port Adelaide is responsible when that salesperson is visiting a business in Mount Gambier. How can they have any influence or responsibility for a workplace about which the minister is saying, 'That's the workplace where work was carried out, because it's where your worker was likely to be.' They are likely to be at Mount Gambier, or Roxby or whatever it happens to be. How can the PCBU have any responsibility for the conditions of worksites which are really the responsibility of another PCBU?

The Hon. R.P. WORTLEY: The PCBU will have responsibilities as far as reasonably practicable. They would have responsibility to make sure that the salesperson has a car that works in a safe manner. They might have to have a phone, so if he or she breaks down somewhere they have access to a phone. It is as far as reasonably practicable.

The Hon. R.I. LUCAS: I accept the bit about a phone and a car—that is logical—but we are not talking about that. The minister is saying, 'Let's include in this definition that a workplace is going to be where work is carried out for a business and includes any place where the worker goes, or is likely to be, while at work.'

So, this worker, this salesperson, is likely to be in a lot of places; he will not perhaps attend all of them. It does not say that you have to be in all of these places; it just says where you are likely to be. So, if you are a sales representative for the whole of the southern area of South

Australia, it is likely that you could be at all of those worksites where anyone purchases those particular products.

For the life of me, I cannot understand why the minister would want to have in legislation something as indeterminate as that, yet, as the PCBU employs the salesperson, in some way I am going to have some responsibilities for anything that might happen to my worker on that particular worksite. If it is a car and phone, I can understand all of those issues but, in relation to let us say a neglect of duty in relation to a safety issue on a worksite in Mount Gambier, how I as the PCBU in Port Adelaide, when my staff member is headed down there, can be held responsible in some way under this bill, for me the life of me, the logic of that escapes me.

The Hon. R.P. WORTLEY: The employer or the PCBU will do what is reasonably practicable. In clause 16, it makes it clear that both PCBUs have the duty and must discharge the duty to the extent the extent that they have the capacity to control or influence the matter. So, if the particular PCBU provides their salesperson with a phone and a car and all that they have control or influence over, they would be exercising their responsibilities under the act. It is as simple as that.

The Hon. R.I. LUCAS: I will not pursue that. I intend to move my amendment because I have not heard anything from the minister that indicates why the words 'or is likely to be' serve any useful purpose in terms of the legislation. Clearly, to me a workplace should be what it is; that is, a workplace is where a worker is actually working, and you have some control and you can be held to account for that. Why you should be held to account for something you have no control over is beyond me.

Before I move the amendment, I want to return to this issue of working from home. I want to refer to 'the gift that keeps on giving', which is the minister's interview on FIVEaa. On this occasion, I want to quote from some advice Ms Boland gave in response to a question. A caller rang and said, 'What are your responsibilities if you employ at home a nanny?' Ms Boland said:

> Same thing, employers have responsibilities no matter where the workers are and you'll find that a lot of, particularly I guess bigger employers would already have working at home policies in place and then...the nanny example [which was the question]...if you directly employ a nanny on an ongoing regular basis well then you are the nanny's employer and your home is the nanny's workplace...the important thing to remember in all of these laws is that everything is based on what's reasonable so clearly, you're not going to go around putting up signs in your home, but you have to...

Then Ms Boland indicated what you are going to be required to do under the legislation. She said, '...if the driveway to your home has a drop you have to alert the nanny to don't walk out the door and fall down'. It seems extraordinary that the government's SafeWork SA advisers are saying—and I ask the minister whether that is his view of what the requirements are going to be—that, if you employ a nanny at home and the driveway to your home has a drop, under this legislation you have to alert the nanny to not walk out the door and fall down.

I guess to many of us that would appear to be self-evident—that is, the nanny has come into your place and, if there is a drop, you should necessarily have to tell them to not walk out the door and fall down. Is the minister indicating that it is a requirement on all of those families who employ nannies that they have to have a written or verbal policy to advise their nannies not to fall down steps, or whatever it might happen to be, in the home environment?

The Hon. R.P. WORTLEY: If you directly employ a nanny, you are the nanny's employer and your home is the nanny's workplace, and you have responsibilities under the current and the proposed laws. If you employ a nanny, who starts at 8.30 at night and it is raining and all sorts, and you know you have a ditch in your driveway, you have an obligation to let that nanny know, 'When you are walking up the driveway there's a ditch and you might fall and injure yourself.' It's only common sense. A lot of this is just common sense. If you employ a nanny through Angels or another organisation where you are not the PCBU, it is that organisation that is the PCBU.

The CHAIR: Hon. Mr Lucas, there is an amendment in your name.

The Hon. R.I. LUCAS: Indeed there is.

The CHAIR: We are just trying to work out if you have moved it.

The Hon. R.I. LUCAS: I have not moved it yet, but I will move it. To my knowledge, most parents probably do not employ their nannies through Angels or whatever it happens to be; they are domestic working arrangements with people they know, but put that to the side for the moment. The minister's advice is that, under this legislation, there will be a requirement that the person from home—the mum or the dad—will be a PCBU, because that is the advice from Ms Boland, it would

appear. If the driveway to your home has a drop, you have to alert the nanny to not walk out the door and fall down.

I am assuming the minister's advice is that the parent is a PCBU because they have employed the nanny, and that is the advice from Ms Boland. Given that the minister is saying that the parent is a PCBU, what is the requirement, given that you have an employee, in terms of occupational health and safety policy? As a PCBU, do you have to have all of the other requirements in the legislation for PCBUs; that is, do you have to have an occupational health and safety policy or work health and safety policy and guidelines which are available to all your employees?

The Hon. R.P. WORTLEY: The responsibilities under the proposed act are exactly the same as those under the old occupational health and safety act. If you employ someone, you have an occupational health and safety obligation to them. It is no different. I can understand you making points if there is a change or if there are some different responsibilities, but they have the same responsibilities. It is no different. They have an obligation—and quite rightly so—to ensure that they work in a safe and healthy environment.

The Hon. R.I. LUCAS: What the minister does not realise is that for the first time the legislation introduces an entirely new concept of a person conducting a business or an undertaking. As Dick Whitington QC has outlined, 'undertaking' is a much broader concept, still undefined in South Australian law, in terms of the employer-employee relationship. Contrary to what the minister has said, that this is exactly the same as the existing occupational health and safety act, that is not correct based on the advice of Dick Whitington QC. PCBU is a much wider concept than the current and old standards of employers and employees and businesses. The PCBU is a much broader concept.

I have to say, having followed this issue for 20 or 30 years, I have never seen a previous minister for industrial relations or occupational health and safety, or SafeWork SA, warn parents at home who employ nannies that they have to have occupational health and safety policies, because under the legislation the PCBU is required to have occupational health and safety policies and procedures to protect the workers that they employ. What the minister is saying is that the parent at home is a PCBU, is employing a worker, which is a nanny, and therefore all the other requirements in the legislation for PCBUs applies to the parent at home employing a nanny. That is what the minister has said tonight, backed up by SafeWork SA advisers.

The minister says that is unexceptional, of course it is common sense, and it needs to be followed. Let us see in the court of public opinion what people think of the minister's assessment that it is common practice, that everyone understands this, and there has been no change made in relation to the simple practice of a mum or a dad employing a nanny.

Minister Wortley, this government and SafeWork SA say they are a PCBU, and they have to have occ health and safety policies and guidelines. When the committee resumes, we will be able to go through all of the requirements that parents employing nannies are going to have to undertake as a result of the advice the minister has just given. Mr Chairman, I move:

Page 19, line 33—Delete ', or is likely to be,'

I move this amendment for the reasons I have outlined earlier, and I do not intend to repeat them. It makes no sense; the minister has not provided any rational explanation as to why it ought to be included. It does no useful work at all, and it ought to be deleted.

The committee divided on the amendment:

AYES (7)

Brokenshire, R.L.	Dawkins, J.S.L.	Lensink, J.M.A.
Lucas, R.I. (teller)	Ridgway, D.W.	Stephens, T.J.
Wade, S.G.		

NOES (8)

Darley, J.A.	Finnigan, B.V.	Franks, T.A.
Gago, G.E.	Hunter, I.K.	Maher, K.J.
Parnell, M.	Wortley, R.P. (teller)	

PAIRS (6)

Lee, J.S.	Vincent, K.L.
Hood, D.G.E.	Zollo, C.
Bressington, A.	Kandelaars, G.A.

Majority of 1 for the noes.

Amendment thus negatived.

Clause passed.

Clauses 9 to 12 passed.

Progress reported; committee to sit again.

CHARACTER PRESERVATION (BAROSSA VALLEY) BILL

The House of Assembly agreed to amendments Nos 1 to 11 and 13 to 29 made by the Legislative Council without any amendment and disagreed to amendment No 12.

INDEPENDENT COMMISSIONER AGAINST CORRUPTION BILL

The House of Assembly agreed to amendments Nos 1 to 2, 4 to 5, 7 to 23, 25 to 38, 41, and 44 to 47 made by the Legislative Council without any amendment and disagreed to amendments Nos 3, 6, 24, 39, 40, 42 and 43.

FIRST HOME OWNER GRANT (HOUSING GRANT REFORMS) AMENDMENT BILL

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

At 22:19 the council adjourned until Wednesday 31 October 2012 at 11:15.