LEGISLATIVE COUNCIL

Wednesday 31 October 2012

The PRESIDENT (Hon. J.M. Gazzola) took the chair at 11:01 and read prayers.

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) (11:02): 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) (11:02): 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) (11:03): I move:

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

Motion carried.

SITTINGS AND BUSINESS

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

That standing orders be so far suspended as to enable petitions, the tabling of papers, question time, statements on matters of interest, notices of motion and orders of the day, private business, to be taken into consideration at 2.15pm.

Motion carried.

MEMBER'S LEAVE

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

That five days' leave of absence be granted to the Hon. K.L. Vincent on account of illness.

Motion carried.

WORK HEALTH AND SAFETY BILL

In committee.

(Continued from 30 October 2012.)

Clause 13.

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

Page 21, lines 4 to 6—Delete clause 13 and substitute:

13—Principles that apply to duties

It is the intention of the Parliament that in the administration of this Act regard must be had to the principles set out in this Subdivision.

I suspect that it would be more sensible if we have the substantive debate on the issue of control on my next amendment. Mr Darley has an amendment on the same clause, which is clause 17. They are obviously related issues, but the legal advice provided to me is that, whilst obviously the Liberal Party will be strongly urging support for the amendment drafted in my name, should the majority of the committee support the amendment drafted in the Hon. Mr Darley's name, this particular amendment could, if the committee so chose, be supported as well.

Put simply, all this amendment is seeking to do is to replicate what already exists in section 2(2) of the Victorian Occupational Health and Safety Act. It hinges, in part, on the view of trying to provide some guidance to the courts as to what the intention of the parliament was in relation to this controversial issue of control. Whilst the substantive debate on control will be under clause 17, clearly, it has been a prominent part of this whole debate with industry associations and the government. The government position has been that it did not want reference to the issue of control in the legislation at all. When one looks at the guiding principles of the officers who drafted the legislation for the government, it was a conscious decision to remove the notion of control from the legislation, contrary to the existing Occupational Health and Safety Act we have in South Australia.

Whatever the decision that is taken on the issue of control, it is going to controversial. The legal advice provided to the Liberal Party is that, as occurs in Victoria, an amendment along the lines of this amendment to clause 13, which simply says that it is the intention of the parliament that in the administration of this act regard must be had to the principles as set out in part 2, division 1, subdivision 1, further reinforces the importance of what the intentions of the parliament were in relation to these issues.

As I think I highlighted last evening when we were debating other clauses, it is my view that the true impact of this legislation will not be felt for five years or so. It will not be an issue on day one something happening or, indeed, month one or six months down the track because it will be established ultimately by court decisions and, as we have seen in this jurisdiction, it will be a period of years that courts and tribunals will interpret their view of what the legislation says, which may or may not be consistent with the views of the majority of people in the parliament that passed the legislation.

As one amendment to try to, I guess, assist the courts in their process of making sensible decisions in relation to what will be difficult legislation to interpret, the suggestion is that the Victorian provision has been useful according to lawyers practising in the Victorian jurisdiction and in the South Australian jurisdiction, and it is for those reasons that I move the amendment standing in my name.

The Hon. R.P. WORTLEY: We oppose this amendment. The existing subdivision sets out the principles that apply to all duties that persons have under the act as parliament intends. Therefore the amendment adds no value to the bill, so we oppose it.

The Hon. D.G.E. HOOD: I would like to put on the record that Family First supports the amendment. This is really one of the key issues in this bill that has been expressed with great concern to me by various industry sectors over many, many months that this bill has been in the public arena for debate.

There is genuine concern in the community, amongst business in particular, about exactly how this will be interpreted in the years ahead; and I think that the Hon. Mr Lucas makes the salient point to this particular amendment and clause in the bill, that is, quite simply it is not really expected that what will unfold in the next few weeks or months could be the great danger but how it will be interpreted in the years ahead. What is being moved here simply serves to tighten that up, and for that reason we strongly support it.

The Hon. B.V. FINNIGAN: I oppose this amendment. I understand what the Hon. Mr Lucas is trying to do but I think that what he would be doing is opening up a lawyers' picnic because the wording of his amendment is 'in the administration of this act regard must be had to the principles set out in this subdivision'. So, 'administration' is going to be taken as a pretty wide term; and to say 'regard must be had', well, by whom, in what circumstances and how did they have regard?

One could imagine the sorts of cases that would end up being run asking what was meant by 'administration' and what was meant by 'regard must be had'. In what specific way was regard given to the principles in this subdivision and what does 'administration of this act' mean? Obviously, as in any issue about what a statute means, there is going to be the common law and

various understandings coming to it, but I really think that this wording proposed here would open up a much wider front rather than constricting it as the honourable member intends.

The Hon. T.A. FRANKS: Given that we have noted that the substantive debate on this issue will occur with future amendments, I indicate that the Greens will oppose this amendment.

The Hon. J.A. DARLEY: I will be opposing this amendment.

The committee divided on the amendment:

AYES (9)

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

NOES (10)

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

PAIRS (2)

Lee, J.S.	Vincent, K.L.

Majority of 1 for the ayes.

Amendment thus negatived; clause passed.

Clause 14.

The Hon. R.I. LUCAS: Clause 14 provides that 'a duty cannot be transferred to another person'. The government deal with the Hon. Mr Darley is that a new clause 17, which we will come to in a moment, is to be inserted. It provides:

> A person must comply with subsection (1) to the extent to which the person has the capacity to influence and control the matter or would have that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

Can the minister explain to the committee how the amendment he proposes to support, which states 'or would have that capacity but for an agreement or arrangement purporting to limit or remove that capacity', is consistent with clause 14, which provides that the duties are not transferrable? Can he explain that to the committee?

The Hon. R.P. WORTLEY: There is a basic principle that applies within all occupational health and safety laws, and that is that duties are not transferred to another person. I will be talking about this later on in clause 17, I believe, so if we need any substantial debate we can have it then. The underlying basic principle of all occupational health and safety laws is that duties cannot be transferred to another person.

The Hon. R.I. LUCAS: I understand that is what this particular clause says, but I am asking the minister how that is to be read and how that is consistent with the amendment the minister is going to support in clause 17, which says:

> ...or would have that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

My question to the minister is: how is that clause which he is going to support consistent with this provision which he says is a long-held one: that is, you cannot transfer a duty to another person?

The Hon. R.P. WORTLEY: If more than one person holds the duty, then each person retains responsibilities for their duty and they must, in accordance with clause 16, discharge their duty to the extent that they influence and control the matter and must consult, cooperate and coordinate with other duty holders.

The Hon. R.I. LUCAS: I understand that, but that is not the question that I have asked the minister. Clause 14 says you cannot transfer a duty. I am just asking the minister about the amendment that he is going to support in clause 17 which says:

> ...or would have that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

What you are talking about there is entering into an agreement or an arrangement which limits or removes a capacity of a person to comply with subsection (1) of 17.

I am seeking clarification from the minister as to how that is to be read in the context of this clause which we are about to pass which says that you cannot transfer a duty, you cannot come to an agreement or an arrangement with anybody else to transfer a duty away. That is what clause 14 is saying. What I am saying is: is the amendment that he is supporting in clause 17 consistent with that?

The Hon. R.P. WORTLEY: Supporting the amendment would mean that we are actually confirming that you cannot enter into an agreement to transfer your duty. It is as simple as that. You will have no right to transfer your obligations or your duties by entering into an agreement.

Clause passed.

Clause 15 passed.

Clause 16.

The Hon. R.I. LUCAS: I think the minister just obliquely referred to this particular provision. Does the minister accept that, in relation to a particular worksite, a number of people can have either a similar or a same duty in terms of the safety towards a worker or a number of workers?

The Hon. R.P. WORTLEY: Yes, that is right.

The Hon. R.I. LUCAS: Does the minister therefore accept, if that is the case, that each one of those PCBUs, for example, that might have a duty towards a worker or a group of workers has to go through the processes that satisfy this legislation in terms of their own occ health and safety policy and whatever the other requirements in the legislation are, so that each of the separate and multiple PCBUs will have to go through that process in accordance with the provisions of the legislation?

The Hon. R.P. WORTLEY: That is right, but we will have a table when we get to clause 17 which will set out some examples on that.

The Hon. R.I. LUCAS: I thank the minister for clarifying that, because one of the criticisms the minister has made of the consultants who put work together for the industry associations was that:

> ...it is clear that what they have done here is replicate the figures for the same risk controls for each and every separate trade on site. This is ludicrous and suggests on-site inefficiencies in the planning and management of the work to the utmost limit.

What the minister is there complaining about is that the consultants have actually said that each of the separate PCBUs in relation to the separate trades on site has gone through an estimate of what risk controls they have to enter into and has put a cost on that particular occ health and safety assessment and risk control. What the minister has just confirmed is that under this particular clause multiple PCBUs have responsibilities. What he has just confirmed is that multiple PCBUs each have to comply with the act and, even though their risk controls may well be the same or similar, they nevertheless have to comply with the legislation.

So, if you are on a work site and, for example, you have employed a plumber to come in and do the plumbing work, a carpenter and a landscape gardener, or whatever else it might happen to be—completely separate tasks and completely separate subcontractors—these people are self-employed contractors and are coming on to those sites. The contractors or subcontractors will have to ensure, in terms of their safe work method statements or their occ health and safety policies, or whatever else it is, that they go through the assessments in accordance with the legislation for that particular work site.

The carpenter, the plumber, the trencher, or whatever it happens to be, will all have to do it. They may all end up with very similar (not exactly the same but very similar, because it is the same work site) occupational health and safety policies, or whatever else it is, but they are separate

PCBUs. The minister seems to have the view that, because you might have a project manager or something like that, that absolves the individual contractors from any requirements under the legislation.

The legal advice makes clear that that is not the case. As the minister just acknowledged, multiple PCBUs can have the responsibility for the same work, the same work site or the same duties under these provisions. So, whilst the project manager off-site may well have responsibilities, and directors of the company may well have responsibilities as well under the legislation, as these individual operators come and go from the site they will have to do their own assessments as well.

I wanted to place on the record that the minister has now confirmed, in response to his answers earlier, the reasons why the consultants and others, when they have done these assessments may well have replicated risk controls for a number of different people on the same site because that is the requirement of the legislation.

The Hon. R.P. WORTLEY: There are fundamental principles with regard to this issue. You can have a thousand different examples, but the principles are the same. More than one person can have a duty. If duties are held concurrently, each person retains responsibility for their duty in relation to the matter and must discharge that duty to the extent to which the person has the capacity to influence or control the matter. The capacity to control includes actual or practical control. Where a duty holder has a very limited capacity to control or influence that factor, this will assist in determining what is reasonably practical.

Clause passed.

Clause 17.

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

Page 21, after line 29—Insert:

(2) However, a person who does not have direct control of a particular risk to health or safety does not have a responsibility for eliminating or minimising that risk so far as is reasonably practicable.

There are a number of issues to raise under this clause. I intend at the outset to address the general issue of control, which the Hon. Mr Hood has indicated has been one of the most controversial issues in the legislation. The minister indicated last night that issues in relation to the Salvemini case are appropriately raised under this clause. So, after everyone has had a general discussion, I did want to raise the Salvemini case before we vote on the various amendments. I think there was one other issue, I am just checking the *Hansard.* The minister indicated last night that clause 17 was the appropriate clause to raise another issue as well, and I am just checking the *Hansard* because I have forgotten exactly what that issue was.

The Hon. R.P. Wortley: Safe work method statements.

The Hon. R.I. LUCAS: Method statements; that is right. I have raised that issue as well, and I think that has been the subject of some discussion between the government and the Hon. Mr Darley in terms of how that was to operate. Having moved my amendment, I wanted to make some general comments based on legal advice that has been provided to the Liberal Party, and others, in relation to the control issue. In introducing some of these comments and commentary from people who have been following this debate closely, the first point I note is that, as I said, this issue has been one of the most controversial aspects of the legislation.

The government's position has been, until the last couple of weeks, that the bill could not be amended, would not be amended. The government has now moved from that position to say, 'Okay, it's okay to amend it. The government amendments are okay, they don't offend against the principle of harmonisation. Any Liberal Party amendments are not okay because they would offend the principle of harmonisation.' It is an interesting characterisation of amendments: Labor amendments (or the ones they support) are goodies, Liberal amendments are baddies because they would offend against the principle of harmonisation.

So, control is a critical issue. There have been a number of commentators, and I want to put on the record some commentary. First, some legal opinion from a barrister, Rick Manuel, from Wright Chambers, dated June of this year, relating to the control issue. I will refer to some advice from Dick Whitington QC, who featured prominently, in terms of his advice, yesterday and last evening. I will refer also to some commentary from the Independent Contractors Australia in

relation to this whole control issue. I refer, firstly, to the Independent Contractors Australia view expressed under the heading, 'Harmonisation of Australia's OHS Laws'. The first section is: 'Control' is the key:

The international principle for OHS legislation is that all parties at work are held responsible for what they 'reasonably and practicably control'. The concept was developed in Britain in the 1970s (it is typically referred to as 'the Robens principles') and has since been formalised in International Labor Organization Conventions to which Australia became a signatory in 2004.

The existing SA Act was conceived during the 1980s and applied the principles of 'reasonable, practicable control' in a particular way. The legislators who framed the SA Act did what was normal at the time in Australia (and the developed world) and used the employer-employee relationship to identify 'control'—that is, under common law the employer has the 'right to control' the employee. Therefore, the employment relationship conveniently identified 'control' for the purposes of OHS. The Act inserts the terms 'reasonably, practicable' alongside 'control', therefore making the Act consistent with the Robens principles.

It then quotes section 19: Duties of employers. It then states:

The Act further allocates obligations to employees. The Act does not qualify the employees' duties with 'control', presumably because it's assumed that employees exercise direct control over the work they are doing at any time.

The advice then refers to section 21: Duties of workers, and I will not repeat that. It then comments:

The Act also allocates obligations to self-employed people, but then makes specific reference again to employers and their obligations to people who are not employees. This is because employers do not have a 'right to control' people who are not their employees. The Act inserts the term 'under the management and control of' specifically to identify that obligations apply to people who have control of the work.

It then refers to clause 22: Duties of employers and self-employed persons. I will not read that out. It then comments:

This is the status quo of the SA OHS Act. People are held responsible for matters they control:

- Employers: to employees because common law under the employment relationship denotes 'control';
- Workers: to themselves and others because they personally 'control' their work;
- Self-employed people: to themselves; and
- Self-employed people and employers: to anyone else where the self-employed person or the employer has 'control'.

Suppliers and others also have responsibilities over matters they control where they supply equipment for example, and so on. This is specifically referred to in the SA act.

Allocating responsibility for work safety according to what people 'control' is common sense, but it's also a matter of criminal law.

- 'Control' being central to OHS responsibilities under law has more than two decades of legal certainty behind it, having been repeatedly tested in the courts. It is known and it is certain.
- 'Control' means people understand when they are responsible. If they control something, then they are responsible. This is how it should be. 'Control' directs and motivates their behaviours toward being safe. There is no confusion.

What happens when the term 'control' is removed?

What has driven the OHS harmonisation push across Australia is that, around 2001, NSW amended its OHS laws, effectively removing 'reasonable, practicable control' as the identifier of responsibility. The result was that, over a decade, many people in NSW were prosecuted and convicted for matters over which they had no control.

I note here the advice is that over 10 years these court decisions established the problems in New South Wales. One example is as follows:

One example was that of a NSW plumber who installed a hot water safety valve in a nursing home. The valve failed and an elderly woman was badly scalded and died. It was found that the valve failed due to a microscopic, hairline fracture in the internal sealed workings of the valve. However, the plumber was prosecuted and convicted.

I interpose there to state that this is a valve that a New South Wales plumber had used, properly authorised and approved, but ultimately it had tragic consequences. However, the cause of the tragic consequence was a microscopic hairline fracture in the internal sealed workings of the valve and yet the plumber who installed it was prosecuted under occ health and safety laws by the equivalent of SafeWork SA in New South Wales, and convicted under those laws. The court found that the plumber had installed and maintained the valve correctly. The court did not find that the plumber had installed the valve incorrectly at all.

The court found that the plumber had done everything right and had installed and maintained the valve correctly and had done everything possible that was within his control and stated that:

> ...he had done everything possible that was within his control. He was blameless. Yet the court said that the wording of the NSW OHS Act required the court to convict the plumber.

There were many other examples but I will not waste the time of the committee in relation to the problems that eventuated in some jurisdictions when governments moved away from this issue of control, which has been a central feature of the legislation in South Australia for decades. No wonder there was major concern when premier Rann and then Premier Weatherill and minister Wortley and previous ministers decided all of a sudden that they were going to throw out decades of precedent and law in relation to this issue and go down the path of convicting plumbers who install valves that result in tragic circumstances which are clearly beyond their control.

This is why the central feature of control is such an important matter. It is of great concern that this minister (and previous ministers) have just been unable to grasp the concept that control is a critical issue. If someone has control of a safety issue then they should be held responsible and accountable. However, like the poor old New South Wales plumber in the nursing home, if you are not actually in control why should you be held responsible; why should you be prosecuted and why should you be convicted? That is what has driven this whole debate in relation to the control issue.

The Liberal Party is obviously moving its amendment but the government, the Hon. Mr Darley and others may well be supporting a different amendment in relation to these issues. I address my comments to both amendments. The very strong advice from Dick Whitington QC, and a number of other legal authorities (supported also by legal officers working for various industry associations), is that the clearest and best amendment in this particular area, now that there is to be some amendment, is the amendment that has been drafted by Dick Whitington QC and which has been endorsed by virtually all of the industry associations and others who have been lobbying on this particular issue.

I have outlined the importance of this control issue being in the bill, but at the outset I outline that the Liberal Party's position is that we very strongly support the amendment and will seek to have it included. Should we be unsuccessful, the view of the industry associations is that the amendment moved by the Hon. Mr Darley is at least a marginal improvement on the bill. It certainly does not resolve the issues for the industry associations and other legal authorities that have advised on the bill, but they believe it is at least a step forward from the government's original position. So from our viewpoint, if the numbers are there we will not oppose the amendment supported by the government and being moved by the Hon. Mr Darley. As I said, we intend to test the parliamentary vote in relation to our amendment.

The advice from Rick Manuel, a barrister in the industrial jurisdiction, goes for eight pages. I do not intend to read all eight pages of the opinion but, if I can summarise, Rick Manuel's position is that he supports, for similar reasons as those I have already put on the record from the Independent Contractors Association, the historical importance of control as an issue in this area. He quotes various cases, and supports the Whitington-drafted amendment as being the most appropriate amendment. He then makes some other comments (which I do want to put on the record) in relation to the control issue and these amendments. He says:

> You have requested whether I had any other views as to the issue of control in the legislation. I think it is appropriate for some form of control to be established before establishing criminal responsibility regarding safety matters. Under the new legislation there will remain some level of uncertainty as the existing body of precedent is unsettled and in the case of influence until such time as a new body of precedent is developed—

I interpose there that influence is now no longer an issue, given the most recent amendments. His advice continues:

> My first comment is to query why the new test is necessary. There is little argument that current legislation works effectively with the occasional level of disagreement between defence and prosecution. Part of the reason for this is that despite some drafting problems with the current legislation there is a significant amount of jurisprudence which can be relied upon by interested parties to determine their obligations. It would be unfortunate if, as a result of using fundamentally different wording, this jurisprudence was lost. It would then be a matter of waiting for the almost certain increase in litigation to re-establish a jurisprudential foothold. The increase in litigation will be to no-one's benefit.

I interpose here that this is a point that has been made earlier; that is, it will be a number of years. We have had years of industrial precedent in this jurisdiction under the existing act; because that is all being turned on its head by the new act, those who practise in the field say that it will take some

years to establish the new jurisprudence precedence, as highlighted by Rick Manuel's opinion, to help guide both the prosecution and defence in relation to potential offences under the legislation. His second comment is as follows:

> My second comment raises the first: it is intended that state courts will apply jurisprudence created in other states. Although the new legislation is intended to be cohesive amongst the states, the plain fact of the matter is that it is not. This makes it far more difficult to argue for the adoption of decisions from other states.

Again, I interpose to say that what Mr Manuel is pointing out there is that, contrary to the claims of the minister, this was to be harmonised legislation across all the jurisdictions. It is not. Victoria has not introduced the bill, Western Australia has not introduced the bill, South Australia is now amending the bill, New South Wales has amended the bill, and Queensland and the Northern Territory are flagging that they potentially are amending the bills as well. Mr Manuel's third and final comment is as follows:

> My third comment, and it is not intended to be controversial, is that there seems to have been a general failure to appreciate the purpose of safety. In colloquial terms, everyone wants a worker who goes to work in the morning to come home safe and well in the evening. The best way to achieve this is education, but the major focus in this state is on prosecution. As a consequence, perhaps the best option is to include a provision that requires a focus on training, auditing of machinery and systems, and the situation where an employer can feel free to contact the authorities without the fear of being prosecuted.

I guess that is a comment not directly related to any particular amendment or provision in the bill. For those general reasons, as I have said, later on in this debate and before we vote on these amendments, I do want to raise the Salvemini case and also the safe work method statements, but at this stage I will conclude my comments.

The Hon. J.A. DARLEY: I have some questions for the minister. Members would know by now that my support for this bill has, in part, been based on certain undertakings by the government with respect to various aspects of this bill. In particular, the government has agreed to provide clarity around the issue of safe work method statements and regulations concerning high-risk construction work.

In relation to the safe work method statements, I understand that the government is willing to accept pro forma documents, with provision for addendum. This will extend to, for instance, employer groups being able to provide their members with a template that may be used by and adapted to suit the individual needs of a business. Can the minister provide confirmation of this, and can the minister also provide details of any other requirements with respect to safe work method statements?

In particular, can the minister confirm the intent of clause 301 of the model regulations? I understand that some sectors of the building industry are concerned that each time a change is made to a safe work method statement, they will effectively have to stop work on a project in order to have the principal sign the relevant safe work method statement.

On the second issue, can the minister confirm that the government has agreed to amend clause 291(a) of the model regulations so that high-risk construction work is defined as involving a risk of a person falling more than three metres, as opposed to two metres, as originally proposed?

The CHAIR: The Hon. Mr Darley, will you be moving your amendment? The Hon. Mr Lucas has moved his amendment; you have an amendment.

The Hon. J.A. DARLEY: Yes, I will be moving my amendment.

The CHAIR: Would you like to do that now, just to assist the committee, especially the Chair?

The Hon. J.A. DARLEY: I move:

Page 21, after line 29—Insert:

> (2) A person must comply with subsection (1) to the extent to which the person has the capacity to influence and control the matter or would have that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

This amendment relates to the issue of control. Clause 17 of the bill provides that a duty imposed on a person to ensure health and safety requires the person to eliminate or, if it is not reasonable to eliminate, to minimise risk to health and safety so far as reasonably practicable. What is meant by 'reasonably practicable' is defined in clause 18.

This amendment is intended to make it clear that a person is required to comply with these provisions to the extent to which the person has the capacity to influence and control the matter (that being the risk), or would have the capacity but for an agreement purporting to limit or remove that capacity. The amendment is intended to address concerns raised by industry groups regarding the absence of any direct reference to the issue of control in the bill without deviating from the current understanding and judicial interpretation of that term.

The question of whether or not it should be explicitly referred to in this bill is addressed extensively as part of the national review into model occupational health and safety laws. That review, as we know, arose as a result of the then minister for employment and workplace relations, the Hon. Julia Gillard MP, convening a panel to report to the Workplace Relations Ministers Council on the optimal structure and content of a model OH&S act that would be capable of being adopted in all jurisdictions.

The panel considered the issue of control in at least three different contexts relevant to this discussion. Firstly, it considered whether control should be a consideration in determining what is reasonably practicable; secondly, whether control should be included in the definition of 'reasonably practicable'; and, thirdly, whether control should be defined as a separate issue.

In relation to the first two considerations, the panel determined that 'reasonably practicable' represents what can reasonably be done in the circumstances and that an inability to control relevant matters must necessarily imply that it is either not possible for duty holders to do anything or it is not reasonable to expect them to do so. This view is consistent with authoritative appeal court decisions that have ruled that control is relevant in determining what is reasonably practicable.

For the benefit of members, the court decisions I refer to are: High Court of Australia in Baiada Poultry Pty Ltd versus the Queen 2012; Supreme Court of Western Australia in Kirwin versus The Pilbara Infrastructure Pty Ltd 2012; Supreme Court of South Australia in Complete Scaffold Services Pty Ltd versus Adelaide Brighton Cement & Anor 2001; Supreme Court of South Australia in Candetti Constructions Pty Ltd versus Fonteyn 2012; High Court of Australia in Articulate Restorations and Developments Pty Ltd versus Crawford 1994; and Victorian Supreme Court in R versus ACR Roofing Pty Ltd 2004.

The panel raised concerns about the possibility of an express reference to control in a definition of 'reasonably practicable' leading to a focus on that particular issue ahead of all other factors noted in the definition and the possibility of duty holders attempting to avoid their duties by artificial arrangements. It is on these bases that the panel recommended that control not be included in the definition of 'reasonably practicable'.

In relation to the question of whether control should be defined as an entirely separate concept, the panel explored five different options. They were:

- that the term be underlined and therefore very broad subject to the interpretation of the courts;
- that the term be defined in the model act by stipulating the characteristics that together represent control;
- that the term in the model act be very wide but with specific exclusions;
- that the term be very wide but with specific characteristics of elements included; and
- that the term be defined in the model act by what it excludes and what is excluded.

The panel ultimately recommended that the term 'control' not be defined in the model act for the following reasons, and I quote:

1. While there has been inconsistency in the interpretations by the courts of the term, we consider this has to a significant degree arisen from the numerous uses to which the term has been put in OH&S legislation. The approach that we have recommended be taken to the duties of care has limited the uses to which the term is to be put. This should allow the courts to define and apply the term consistently under the model act.

2. The courts have been sufficiently consistent in their interpretations of the term in the contexts in which it would be used in the model act for duty holders to have confidence in how it will be interpreted and applied. We expect that it would be applied consistently with our conclusions...in our discussion of the case law.

3. There is considerable force in the concerns raised with us about the difficulty in providing a definition that would be sufficiently clear and applicable to all circumstances, while not narrowing what should be the wide scope of 'control'.

The panel considered the following elements to be clear from the case law and applicable to the uses that it proposed for 'control' in the model act:

- 'control'...must it seems to us, have about it the sense of not mere 'sway', 'checking' or 'restraint' but rather controlling in the sense of 'directing action' or 'command'—the ability of the person to compel corrective action to secure safety... control may be present where the person has an exercisable legal ability or the practical ability to direct the conduct of another;
- control may be found not to exist where the person has an exercisable legal ability or the practical ability to direct the conduct of another;
- control may be found not to exist in a principle over the expert activities of a contractor where the principle does not possess the necessary expertise to exert influence, and;
- more than one person may have control over the relevant matter at the same time.

As I mentioned earlier, the absence of any direct reference to the issue of control has been one of the most contentious issues surrounding this debate. There has been a lot of toing and froing in terms of coming up with a position that addresses the concerns of industry without significantly narrowing or restricting the scope of duty holders and compromising the core provisions of the bill. I believe the proposed amendment achieves this. It provides clarity; however, it is not intended to derogate from the current judicial interpretation of control. It is, if you like, an avoidance of doubt clause.

In recent weeks there has been a lot of discussion around the issue of control in the context of the recent decision of the Full Court of the Supreme Court of South Australia in Baker v Markellos, now often referred to as the Salvemini case. For those members who are not aware, Jack Salvemini died tragically while working as a deckhand on a fishing vessel owned by Jean Bryant Fisheries Pty Ltd. Both Mr Markellos, in his capacity as a self-employed skipper, and Jean Bryant Fisheries were prosecuted for and found guilty of breaching their respective duties under the Occupational Health, Safety and Welfare Act.

Mr Markellos appealed against the decision on the basis that he was an employee of the company and not self-employed, as argued by the Crown, and his conviction was quashed. That decision was the subject of appeal before the Full Court. Without going into too much detail, the court held that the essential element of the offence, that the defendant was a self-employed person, was not proven beyond reasonable doubt. As such it was open to judges of the Industrial Relations Court to conclude that Mr Markellos was engaged by Jean Bryant Fisheries under a contract of employment.

The Salvemini case is a good illustration of the fact that we have moved away from the traditional employer-employee relationship and that our current laws, to some extent, are inadequate in dealing with more complicated working arrangements. Indeed, I have continued to raise this case as an example of the need for legislative reform on behalf of Jack's parents, Mr Lee and Mrs Carol Salvemini, for some time now. That said, this case was far from straightforward and the question of whether or not a prosecution against Mr Markellos either in his capacity as a self-employed person or as an employee would have resulted any differently under this bill is open to debate.

There is no question that the Crown may have tackled the charges differently under this legislation or that they would still need to prove beyond reasonable doubt each element of the charge against an individual in their capacity either as a PCBU or as a worker. However, my advice is that many of the technicalities that currently exist in our laws could be overcome under the proposed bill. I would be interested to hear any comments that the government may have to make on this matter, particularly if they have sought advice on the Salvemini case.

Before finishing, I think it would be useful to refer to another recent South Australian decision of the Full Court of the Industrial Relations Court: Candetti Constructions Pty Ltd v Fonteyn, which deals more directly with the sorts of concerns that have been raised regarding the issue of control where principles and subcontractors are involved. Candetti Constructions was convicted and fined for failing to safeguard an opening in a ceiling through which an employee fell. The Full Court dismissed the appeal against the conviction relating to a single judge's decision upholding the ruling of an industrial magistrate.

In a 2-1 majority, the court accepted that a principal's obligation to take reasonably practicable steps to ensure the safety of a contractor's employee does not extend to a general obligation to supervise the manner in which a specialist contractor goes about the performance of the work it has been contracted to do.

Further and importantly, a principal does not have an obligation to ensure the safety of a contractor's employees where the matter in issue is associated with the function of a specialist contractor of which the principal has no expertise. Rather, the principal is only responsible for ensuring the safety of such employees in respect of matters over which it has actual control in the sense that it is managing and organising those matters.

These findings are consistent with the recommendations of the OHS Review Panel and the policy of Safe Work Australia in that the bill is not intended to hold individuals accountable for matters which are beyond their control, nor does it impose an absolute duty on a PCBU to ensure that no harm is caused to another individual. The issue of control must be considered in light of what is reasonably practicable in the circumstances.

Businesses will be able to achieve compliance by taking reasonable steps that other businesses in their position would take. However, this does not extend to taking every possible step that could be taken. As stated in Safe Work Australia's interpretive guidelines, it is a matter of weighing up all the relevant factors and reaching a balance that will provide the highest level of protection against injury. I think this is a very important point in terms of clarifying what is expected of businesses. With that, I urge all honourable members to support this amendment.

The Hon. R.P. WORTLEY: I would like to thank the honourable member for his amendment and also a number of questions he has asked which I will start to answer right now. In relation to the issue of control, there has been considerable debate and misinformation about the use of safe work method statements, and I thank the honourable member for raising this issue.

A safe work method statement is simply a work plan that is used to identify hazards and risks involved in the work and the control measures that need to be put in place to ensure that work is undertaken safely. These are not complicated documents, and there are no issues or concerns in workplaces using a template document which is freely available either through SafeWork SA or employer associations.

Typically, many employer associations provide template documents to their members. This is certainly the case with the Master Builders Association in South Australia, which provides template documents and guidance on how to use safe work method statements to its members now. Similarly, the Housing Industry Association of Australia is working with Safe Work Australia to prepare a work method statement with specific application in residential construction.

A safe work method statement is required for high-risk construction work such as working from heights. Importantly, I acknowledge the concerns that have been raised by industry groups in South Australia and agree that the height threshold for safe work method statements in the South Australian work health and safety regulations will be raised from two metres to three metres. This will obviously limit the work situations where safe work method statements are required.

I should also add that a new safe work method statement is only required when the risk to workers changes. In other words, if the work activity is repeated and the risks are the same for similar situations, the control measures outlined in the safe work method statement will not change, and there is no need for the PCBU to prepare a new safe work method statement every time the work activity is repeated. Indeed, if circumstances change and additional risks are encountered, these can be accommodated by way of an addendum to the safe work method statement without the need to produce an entirely new document.

I would like to thank the honourable member for the proposed amendment to clause 17. I acknowledge that the proposed amendment will provide greater clarity and certainty to the extent of the clause and as such I support the proposed amendment. Members of this committee will agree that it is important to assist duty holders in understanding their legal obligations and that the duty is qualified to the extent that they have the capacity to influence and control the matter. The proposed amendment provides the certainty that businesses in South Australia have been asking for and it is for this reason that the government supports the proposed amendment.

To further help businesses in regard to this, I have asked SafeWork SA to prepare an example of how the principle of control might apply in practice. SafeWork SA has developed a hypothetical example of a workplace with multiple duty holders, and I will table that shortly. This document is not a legal interpretation but rather provides a simplified representation of interrelationships that may occur in certain work situations. It provides a helpful example that reflects the intent of the proposed amendment. I table that document.

The Hon. R.P. WORTLEY: With the Markellos prosecution, would the work health and safety laws have assisted in this issue? The Crown Solicitor's Office is of the view that the bill closes a loophole. The definition of a person conducting a business or undertaking is much clearer than the narrow options in the current act of 'employer' and 'self-employed person'. The term 'self-employed person' is not even defined in the current Occupational Health, Safety and Welfare Act 1986.

In addition the Work Health and Safety Bill makes it far easier to prove someone is a worker, a far broader concept than in the 1986 act definition of 'employee'. It is not necessary to prove what type of worker is someone, only that he or she is a worker. Finally, clause 29 of the bill, other persons at the workplace could be charged as an alternative if there was doubt about someone's status either as a person conducting a business or undertaking or as a worker. The bill's definition arises from the workplace economic arrangements that are common today and not those in 1986.

With regard to the Hon. Mr Lucas: his amendment seeks to include a control test. The bill does not contain any specific definition of 'control'. It establishes a primary duty of care, which requires the duty holder to ensure, so far as reasonably practical, the health and safety of any workers that they have the capacity to influence or direct in carrying out work. The incorporation of the standard of 'reasonably practical' in the duty will provide a consideration of control in relation to compliance. If a duty holder does not have control over an activity or a matter relevant to health and safety, then it cannot be reasonably practical for the duty holder to do anything in relation to it.

If the control able to be exercised by the duty holder is limited, then that limitation will be relevant to determining what is reasonably practical for that duty holder in the circumstances. An advantage to this approach is that any focus on control occurs when considering compliance, at which time the focus is on effective management of risk rather than on whether a duty of care exists and the parameters of it.

The substantive provisions of the bill include the duties of care, which have been the subject of extensive consultation at both local and national levels, and the primary duty, as currently drafted, has formed part of the model Work Health and Safety Act since its early drafting. The Workplace Relations Ministers Council agreed that should not be a control test in the model Work Health and Safety Act. Those who argue against including control as a determinant of the duty holder or the extent of their duty assert that existing duties of care that include reference to control that can encourage a focus of avoidance of control to avoid the duty rather than on the practical compliance measures taken to meet the relevant duty.

I undertook quite considerable consultation with the business sector. I had a meeting of all business organisations in my office during our negotiations, and they were satisfied with a clarifying clause, 17(2), in regard to the control. This is what Mr Darley's amendment is doing. The business sector at no time during our meeting insisted on a control test. They were quite happy with a section there which clarified the issue of control. The Hon. Mr Darley during negotiations came up with a form of words that the government was quite happy to accept, and this provides clarity in regard to control. So, there is a big difference between what the Mr Lucas is putting to us with regard to introducing a control test and the clarifying amendment we are going to support.

The Hon. R.I. LUCAS: I never cease to be amazed. That has to be, and there are many contenders, the most unbelievable convoluted explanation of the government's change of position that I have ever heard from this particular minister. I will just clarify, so that I and all other members can actually understand what we think we have just heard. Is the minister saying that this amendment being introduced as supported by the minister is not a control test?

The Hon. R.P. WORTLEY: It is a clarification. It is as simple as that: it is a clarification.

The Hon. R.I. LUCAS: I heard those words. The minister is saying it is a clarification. He does not want to say that this is a version of a control test. The Dick Whitington QC version of a control test is the version that the industry associations, the Liberal Party and others will be supporting. As I have said earlier, we do not believe the version of the control test being moved by the Hon. Mr Darley is the one that should be endorsed by the parliament, but ultimately the numbers will determine that, or not.

For the minister to stand up in this council and say that the amendment he is now going to support is not a form of a control test, and the reason why he is trying to say that is because so far he has been going to select councils of ministers arguing, 'We won't support a control test' and now

he is saying, 'Well, this is not a control test.' He is saying that the amendment which the Hon. Mr Darley has moved, which states:

> A person must comply with subsection (1) to the extent to which the person has the capacity to influence and control the matter or would have that capacity...

etc., is a clear indication, albeit we do not believe as good as the Whitington control test, of the introduction of control into the bill. The existing clause 4(2) of the Occupational, Health and Safety Act—I will not read the first four lines of that subclause—which is the governing control test in the existing act, provides:

> ...but the principal's duties under this Act in relation to them extend only to matters over which the principal has control or would have control but for some agreement to the contrary between the principal and the contractor.

That is the control test under the occupational, health and safety legislation referred to by Dick Whitington, Rick Manuel and all of the other legal commentators and experts in relation to this as the control test, with decades of precedent as the control test. We have moved our particular amendment which Dick Whitington drafted, which states:

> However, a person who does not have direct control of a particular risk to health or safety does not have a responsibility for eliminating or minimising that risk so far as is reasonably practicable.

We have included both elements of the essential control test; that is, control and the reasonably practicable element, which is consistent with the existing position. The Hon. Mr Darley's amendment also refers to the control. Yet, what the minister is trying to have us believe is that this is not a version of a control test, it is a clarification of the issue of control. The absurdity of the minister's argument in relation to this particular issue is there for all to see. There would not be a practitioner in the field who, when the minister's comments will be circulated in the coming hours, will agree with what the minister has just claimed, on behalf of himself and the government, in relation to this issue.

This is a central feature. What the minister is trying to get around is this issue that Labor amendments are good and Liberal amendments are bad for the bill; that is, Labor amendments are consistent with the core principles of harmonisation. One of the core principles of harmonisation was that there was not going to be a control test, as the minister and the Hon. Mr Darley read out from the officers who reviewed all of this. They decided, for whatever bizarre reasons they had, that they believed you should get rid of the control test. You should end up in a situation such as in New South Wales where a poor hardworking plumber was prosecuted because a valve was faulty.

He had no control, no responsibility, but the occ health and safety law found him legally liable and prosecuted him because that is what the occ health and safety law said—it did not have this control test or issue in it. As I said, for some bizarre reason, officers (the equivalent of SafeWork SA) and others around Australia believed that this was a good test, a good principle to be followed, and that we should incorporate it into the national harmonised occ health and safety laws.

The minister is running around everywhere saying, 'We're amending the bill but we're not really offending against harmonisation. It's only Liberal amendments which offend against harmonisation; Labor amendments (or ones that we support) don't offend against harmonisation.' Then he moves on and says that it does not offend the core principles of the bill, so in some unbelievably intricate act of sophistry he has to somehow argue that this amendment which includes control is not some measure of a control test that is to be incorporated into the legislation.

As I said, when the minister's comments are circulated in the coming hours to practitioners in the field, I am sure they will have a good hearty laugh not only at the minister but at the government's position in relation to this issue. There will be no court decision, I am comfortable in predicting (and I am not a lawyer), over the coming years that will agree with the minister's interpretation of what he has just said.

A number of issues have been raised by the Hon. Mr Darley and the Hon. Mr Wortley, and I want to pursue those. In relation to the safe work method statement commitment, my understanding from industry associations is that those templates already exist, and I think the minister, in part, acknowledged that. Certainly, the MBA and others have indicated to me that these templates are already available via their own websites to their own members. I do not detract from their importance, and the only point I make to the Hon. Mr Darley about seeking a commitment from the government is that the government can happily give that commitment because it is already occurring and industry associations are doing it.

My understanding is that SafeWork SA was going to provide those templates to industry associations as well, and if it was not it will now, evidently. That is a good thing and we do not have a problem with that. However, that is not the problem that the subbies and industry associations have. It is not the issue of whether they can get a template, it is the fact that they actually have to complete one of these things every time there is a judgement under the legislation that there is a change in the risk profile of the job or work that they are undertaking.

There are any number of other forms people have to fill in. It is not the fact that you either get a template or you do not; it is the fact that people do have an objection to, in their view, unnecessarily fill out too many forms—whether they are templates or a blank piece of paper. Sure, it is better to have a template, but they still have to fill in the form and they have to do it whenever there is a change in the risk profile.

The minister's comments highlighted that as well. He said that if the circumstances are exactly the same you do not have to keep filling out a new risk statement or safe work method statement (and that is correct), but risk profiles change, as SafeWork SA has acknowledged to industry associations, with changes in weather conditions—for example, a clear, sunny day with no wind as opposed to exactly the same day that is windy. That affects and impacts the risk profile and there will have to be changes. Even though you are doing exactly the same job, the risk profile changes; if it rains, you will have a different risk profile for the same job.

That is what people are complaining about in relation to their tasks—and these are some particular stubbies who have been lobbying furiously in relation to this. I know the Hon. Ann Bressington has already had feedback from members of her extended family who used to work in the subcontracting industry in Queensland under this legislation in the first 12 months. I do not know whether the Hon. Ms Bressington's voice will allow it, but I think she indicated at the second reading (if I can refer to her second reading contribution) the experiences of members of her family in this area.

Some of them are just shaking their heads and saying that it is all too much in terms of the paperwork and these requirements. Some are either getting out of the industry or are joining a bigger firm and becoming an employee, where the firm does all the work. Of course, the unions love that, because there is a much greater chance for them to unionise the bigger employer worksites, as opposed to the subcontracting industry. That is one of the reasons this Labor government and its cheer-chasers in the union movement are delighted with the legislation before the parliament.

However, putting that to one side, the issue in relation to the safe work method statements is not going to be resolved by what already occurs, that is, the provision of template report forms. That is great, fine, already being done, and maybe SafeWork SA does it. It is the issue of the repetitiveness and the necessity to continue to make those changes when there are profile changes that is grinding on the subbies, in particular, and those who work within the industry. I do not see that as any great concession from the government.

I do acknowledge the change from two metres to three metres that has been achieved by negotiations between the Hon. Mr Darley and the government, and we congratulate the Hon. Mr Darley. I know that many within the industry are strong supporters of that. The government started off with a position that it would not be amended, it would have to be agreed at the national level, that this has to be harmonised. Now the government still claims that it is harmonised, but is prepared to amend the provision from two metres to three metres.

We see that as being sensible but, again, it highlights the fact that the claimed savings that the minister uses, the billions and hundreds of millions that are going to be saved in reductions in red tape and productivity because of harmonised laws between the states, can no longer be used truthfully by the minister. I know he continues to use them, but they can no longer be used truthfully by the minister because they were done on the basis of completely harmonised laws and, as I have indicated before, we now see significant changes right across the nation. In two jurisdictions we do not even have legislation; it is still the existing legislation in Victoria and Western Australia.

To highlight this particular issue, I would like to quote from a story in March this year under heading of 'OHS setback for Gillard'. It said:

> Gillard is under increasing pressure to abandon her flagship reform to workplace safety despite claiming it would deliver billions in economic gains, with one of her top advisers concluding [the plan] should be scrapped.
>
> COAG Reform Council chair Paul McClintock has issued a damning verdict on the workplace changes ahead of a crucial meeting this Wednesday to negotiate COAG deals; the conclusions are a blow to [the] PM's

ambition to create a 'seamless national economy' by ending state differences on OH&S rules, a policy she has cited as one of her proudest achievements. McClintock—

and this bloke is the COAG Reform Council chair appointed by the Prime Minister—

warned the changes would do 'more harm than good' in their existing form given moves by state governments to modify or reject the original blueprint.

He then goes on to highlight how you can no longer claim these billions of dollars in savings that the minister continues to proclaim wherever he goes.

This is the COAG Reform Council chair who is saying that ministers and governments are amending the harmonised bill, that Victoria and Western Australia have refused to introduce it so you can no longer make these claims in relation to massive savings in terms of red tape as well as huge improvements in terms of economic productivity. Again, that is not something being claimed by the Liberal party, that is the Prime Minister's own COAG council chair who was indicating concerns about that particular issue.

So, as I said, on the two metres to three metres we congratulate the Hon. Mr Darley for that particular amendment, or commitment from the government to amend the regulations (we do not amend it here). I know that industry associations are also appreciative of the backdown from the government on that issue.

As we know, the minister was running around everywhere on radio—and I will not quote them all back to him because it will only further embarrass him—making claims that there were no changes in relation to height issues; it was exactly the same under the bill as it was under the existing act.

The MBA and others produced evidence and documentation to demonstrate again that the minister's claims were just not true. There were clearly new requirements under the legislation which had not existed under the existing arrangements and conventions in terms of prosecution by SafeWork SA. The fact that the minister has now agreed to Mr Darley's deal in relation to three metres is an acknowledgement that there are massive changes, and the minister has had to acknowledge those with his backdown in relation to the issue.

On this particular aspect, we welcome the minister's backdown, a recognition that all that he had been saying on this issue was wrong, untrue, incorrect—and any other word or phrase that you would like to insert—and now it is to be corrected by the commitment to amend the regulation that the Hon. Mr Darley has pointed out.

The next issue is the Markellos case, or the issue in relation to Mr Salvemini. At the outset, can I say that all members in this chamber are sympathetic to the tragic circumstances that appertain to this case. Over the years, many of us have met with the Salvemini family in relation to the issue.

I know many other members continue to provide support and comfort to the family. It would not have been my wish to raise this issue in this debate, other than the government, the minister and SafeWork SA, in a very public way, sought to take advantage of the recent decision to garner support for the legislation that is before the parliament at the moment. The Hon. Mr Darley has made his contribution in relation to the case and put it on the public record just this morning. When that decision came down in early October, the following was reported:

A fishing boat skipper has escaped penalty over a deckhand's death on a technicality, South Australian Premier Jay Weatherill says. Mr Weatherill said he shared the anger of Jack Salvemini's family following the death of the 36-year-old in a workplace incident in 2005.

'I believe that a legal technicality of this sort should not permit somebody to escape responsibility for what otherwise would be regarded as a breach of occupational health and safety legislation,' the Premier told reporters…'If you go to work you should be expecting come home safe and whole.'...Mr Weatherill said, 'legislation currently before the South Australian parliament would close the loophole used in the Salvemini case, but was being held up by the Liberal opposition.'

I interpose there, when these comments were being made, the Liberal Party's position from early this year was that we delayed it until the start of this year, with the support of the majority of members in this chamber, but our position has been broadly established for some period of time. The government has been negotiating with the Hon. Mr Darley to try to get the critical 11th vote to get the legislation through.

So, the delay for the bulk of this year has been a product of the government not being prepared to put it to the parliament because the government did not believe it had the numbers to

get it through. For Mr Weatherill, in a very tragic set of circumstances, to seek to make political capital out of this issue, I think, says more about the Premier than anything else. Anyway, so, that was just not correct. He said that he was also willing to meet with the Salvemini family. 'I'm just so distraught that they've had to have this experience,' the Premier said; and we would share all those particular comments, as I said earlier. But then, also, in the press reports, there is a quote and reference to an employee of SafeWork SA:

> Ms Juanita Lovatt, a director of strategic interventions at SafeWork SA, said her team would review the judgement and the Crown Solicitor's Office would consider if there were any further avenues of appeal. She became emotional during media interviews as she spoke of ongoing tragedy for the victim's family. 'Whilst this is about legal aspects of the laws as they stand, what it's really about is a son who never came home from work', she said. 'In this day and age nobody should get killed at their work.'

And certainly we agree with all those comments and the emotions that Ms Lovatt would have felt as a senior officer in SafeWork SA. The article went on to say:

> She said the current laws were written in the mid-80s but had become in desperate need of review. The South Australian Premier Jay Weatherill said he sympathised with the victim's family.

Then there are further quotes in relation to Premier Weatherill's position. Again, another article referring to Ms Lovatt states:

> The decision reduced SafeWork SA investigator Juanita Lovatt—who handled the case—to tears. She said she hoped revised workplace safety laws [that's this bill], currently before parliament, would be enacted soon. The revised laws close the self-employed person loophole. 'Courts obviously do their job with the laws that they have got', she said.

I think that when the deal was actually announced by the Premier and the Hon. Mr Darley, again, the Premier referred to what he refers to as the 'Salvemini case' as justification for the laws that are currently before the parliament. As I said, it would have been my preference not to have canvassed this particular issue given the circumstances for the family, but the position adopted by the Premier in a very political way on this issue necessitates a response on behalf of the Liberal Party and many others who take a contrary view as to the reasons why the Salvemini case was unsuccessful.

I have had three separate pieces of legal advice in relation to this case, and I want to share some of the legal advice from one of them and put it on the public record. One of those pieces of legal advice to me summarises as follows:

> Markellos was a decision of the Full Court of the Supreme Court of South Australia. Without reiterating the facts of the matter, Mr Markellos was the captain of a fishing ship when a person on the ship, Mr Salvemini, tragically died. The owner of the fishing boat...Jean Bryant Fisheries Pty Ltd. Jean Bryant, who also employed Mr Salvemini, and Mr Markellos were both prosecuted. Both were found guilty of a breach of their respective duties under section 19 and section 22 of the Health, Safety and Welfare Act 1986. Hardy I.M., the magistrate at first instance, noted that the culpability for the incident lay predominantly with Jean Bryant, that is, the company.

I interpose there that the decision of the magistrate (Hardy IM), having heard the evidence, was that the culpability lay predominantly with Jean Bryant. I continue:

> Mr Markellos argued successfully on appeal that the court could not be satisfied to the requisite standard that he was self-employed, and as a result the Crown had not proved an essential element of the case.

What I intend to highlight—as I am going to continue to read from this one particular legal opinion—is that there is significant criticism of SafeWork SA's prosecution of this particular case from lawyers experienced in the field; and, of course, it is not convenient for the Premier or for those who support the legislation to highlight criticisms of the prosecution of the case through SafeWork SA. However, the advice, as I said, that has been provided to me highlights significant criticisms of SafeWork SA's handling of the case.

I do note that there is a parliamentary committee to look at the efficiency and effectiveness of SafeWork SA. As a member of that particular committee I know one of the issues that I would be hoping to explore in terms of its efficiency and effectiveness is to look at its success or otherwise of its prosecution, such as this particular case, and the cost of those prosecutions, but its success or otherwise in terms of prosecuting the case. Ultimately, if you have legislation, that is one thing, but successful prosecutions will be significantly impacted by decisions taken in terms of what particular charges you bring against individuals, what particular cases you choose to pursue in what particular way and manner and what evidence you produce to support your case.

That is how you get successful prosecutions in our judicial system in South Australia. That is the way you are meant to, and not by running to the media and saying there was a loophole and that will be conveniently fixed by new bills coming through in the parliament. The view of a number

of lawyers who practise in the jurisdiction is that that is just, in this particular case, a cop out, and there is significant criticism of the way SafeWork SA handled this particular prosecution.

I continue with this one piece of advice that has been provided. As I said, there are two others that I have received expressing very similar views as well. It states:

> The laws relating to a person being engaged as a contractor/employee involves assessing various indicia of the relationship to determine whether a person is in fact a contractor or an employee. It is usually reasonably clear as to whether a person is that employee or a contractor. The facts surrounding Mr Markellos's engagement were quite exceptional and caution should be exercised in applying this principle to future cases. Despite my misgivings—

that is, the lawyer's—

> as to the present value of this case, advice below proceeds to examine the case and what differences would have arisen were it prosecuted under the bill. Before doing so I note that this prosecution failed because the Crown did not prove its case. I can see nothing in this decision that, were the correct charges laid, and the case run appropriately—

I interpose there—

> were the correct charges laid and the case run appropriately, would inherently lead to this prosecution failing. Caution should be exercised when criticising legislation as being inadequate before casting one's mind to the adequacy of the prosecution. It was open for the Crown to leave further evidence in support of its case or to run its case differently or to charge the person differently. None of these took place and it is all too common for prosecutors in safety matters to complain that the laws are inadequate when it is the inadequacy of the regulator which is at issue.

That is the fundamental basis of all three legal views that I have had, that SafeWork SA chose to prosecute Mr Markellos and to pursue it on the basis that he was self-employed. Lawyers who have looked at it at least accept there was an argument in relation to the employment status of Mr Markellos. SafeWork SA made the decision to pursue the prosecution under those particular grounds, and they were wrong; the magistrate found that they were wrong.

The magistrate also said the main culpability in this is actually the company. They have been pinged, prosecuted, under the terms of the act and they, on my understanding, did not appeal. It was not as if someone got off. There was a tragic death, two entities were being charged—an individual and the company. The company got pinged but SafeWork SA laid the wrong charges. SafeWork SA laid a charge on the basis that Mr Markellos was self-employed and the magistrate said, 'Well, no, you're wrong, that's not the case.'

The legal advice says that SafeWork SA could have charged Mr Markellos under other provisions in the act. They may or may not have been successful. The lawyers ask who would know what evidence there is that SafeWork SA would have had in relation to that, what they were led, how they would have prosecuted the case and whether they would have been successful or not, but at least they would have met the minimum test in terms of being able to argue their particular case.

Ultimately, as I said, the magistrate said that the chief culpability in relation to all of this was not with Mr Markellos. The magistrate's view was that it was with the company and that was the magistrate's decision. It is not a view that I am expressing; I am just recounting the magistrate's assessment and that of the legal people who have had a look at that. That conviction stood.

The legal advice is actually saying that SafeWork SA made the mistake and they are the ones who issued the wrong charges and in the wrong way and did not run their case appropriately, to use the legal understatement of this particular legal officer. From the viewpoint of the Salvemini family and others, they will obviously be disappointed that somebody else was not to be punished or penalised as a result of that.

In particular, my criticism is directed towards the Premier who is the one who sought to make political capital out of all this. The criticism of the Premier and the minister is: have a look in your own backyard. It is always convenient to pitch a tent over your own backyard and point the finger somewhere else and blame somebody else for your own inadequacies but you are the minister, the Premier is your boss, the agency reports to you. You are the one who ought to be asking the questions based on the legal advice that has been put around as to why SafeWork SA made the mistakes that it did in terms of running this particular case.

I have said it before and I want to say it again, so I repeat: even if they had run the case in a different way, it is still unclear as to whether or not there would have been a successful prosecution because, as I say, the magistrate's view was that the major culpability for this was not with the individual. It was the company that had been successfully prosecuted.

The minister argues, 'Well, we're going to close this loophole because we've now got much clearer concepts.' I will not read Whitington's opinion again, but I will refer to it again from last night. Whitington says that we are not going to clearer concepts. We are going to something which in South Australian occ health and safety law is completely unfamiliar. It is this new concept of 'a person conducting a business or an undertaking'.

The minister is saying that this loophole is going to be closed because we are now moving to much clearer concepts. We have had 20 or 30 years of industrial law and precedent in relation to employers and employees, businesses and trades and all those sorts of things under the existing act and SafeWork SA still stuffs up the prosecution in relation to this issue. The minister says, 'Well, we're now going to close a loophole.' It is convenient for him to say that because that puts political pressure to support the legislation, but when you ask for the evidence of it, he says, 'Well, we're introducing concepts which will be clearer.'

The concepts are not clearer. I am sure you will find a lawyer but you have not yet found a lawyer and put him or her on the public record whereas we have. Dick Whitington, Rick Manuel and a number of others have been prepared to be identified in relation to this issue of 'a person conducting a business or an undertaking' to say, 'We understand what a business is and there are court precedents etc. for that, but this whole notion within this occ health and safety context of what on earth an undertaking is is a new concept.'

As I said (and I read it last night), Dick Whitington is clear that something as simple as a homeowner employing a tradesperson for home renovations is a PCBU. The minister is still running around saying, 'We've got our lawyers'—unnamed, anonymous—'who tell us that that's not the case,' and therefore Dick Whitington, in essence by inference, does not know what he is talking about.

With the greatest respect to the minister, as I said on radio this morning—when he eventually got flushed out, having used the novel excuse on ABC radio at 7.15 that he could not comment on these issues because it was before the parliament, and then obviously two hours later when someone gave him something to say, he was commenting on the issue on FIVEaa at 9.45, so I am not sure of the minister's consistency on this particular issue—we have the position where it is a completely new concept, so for the minister to be holding out false hope to the Salvemini family and others to say, 'Hey, you beaut, we've solved the issue; this bill resolves all those sorts of circumstances,' is just a nonsense.

I am sure he probably knows that it is a nonsense, but it is convenient for him and the Premier to make these sorts of claims publicly and in the house today, to say 'We're closing a loophole, we're introducing new concepts which are clearer than the old concepts and therefore SafeWork SA,' and he does not say this of course, 'will not stuff up the prosecution by laying the wrong charges in relation to this particular case'.

The summary of one of these pieces of legal advice to me is as follows:

> Given his above views, it is in my view inappropriate to suggest that Mr Markellos would have been found guilty under the new laws—

'Inappropriate to suggest that Mr Markellos would have been found guilty under the new laws,' and that is clearly the inference that the Premier and the minister have been given, that is, 'Hey, there's a loophole, we're going to close the loopholes, and by inference if this bill had been in place that particular decision would not have occurred.' That is the inference, the impression they have sought to give to the Salvemini family and to anyone else in relation to this issue, and the legal advice says that it is inappropriate to suggest that that be the case. The legal advice goes on:

> or that he escaped liability through a loophole or that the bill would fix any perceived deficiency if made law.
>
> This case highlights the failing of the prosecutorial authority [that is, SafeWork SA] to conduct thorough investigations and to run its cases properly.

That is the legal advice to me. I repeat:

> This case highlights the failing of the prosecutorial authority to conduct thorough investigations and to run its cases properly.

It continues:

> As the personal and financial consequences of safety prosecutions increase, defendants will more likely defend these matters and hold SafeWork SA to the same standards of accountability that the police and the DPP are held to. Nothing in this legislation will change the fundamental obligation on the crown to properly prosecute its case. Put simply, one cannot legislate for incompetence.

I note public comments made by SafeWork SA about this matter. These comments by SafeWork SA are at best misguided. This is regrettable, particularly in light of the grieving family, who have suffered terribly through this tragic accident. Hardy IM went to great lengths to describe the terrible effect that this tragedy has had on Mr Salvemini's family.

I wanted to place on the record in some detail the legal advice we have received in relation to the claims being made by the Premier and the minister in relation to the Salvemini case. Because of its proximity to this debate, it has taken on some significance not only in terms of determining views in relation to the amendment but, as the Hon. Mr Darley has indicated, in terms of determining or influencing views in relation to the need for the legislation.

It would have been my preference not to have raised these issues, given the grieving that the Salvemini family is going through. I am, however, required to provide some response on behalf of my party to reject what I believe are unacceptably grotesque suggestions and inferences by the Premier in relation to this particular issue.

The Hon. B.V. FINNIGAN: Moving away from some of the issues the Hon. Mr Lucas is raising on the wording of the amendment, would the Hon. Mr Darley or the minister address the latter part of the amendment, which says 'or would have that capacity but for an agreement or arrangement purporting to limit or remove that capacity'? I have a concern about that and about how it might potentially be used to suggest that people are not bearing the responsibility or not having the duty when in fact they should have. I wonder whether either the mover or the minister has some information about how that particular section of the clause would apply.

The Hon. J.A. DARLEY: Section 272 concerns no contracting out. There is a provision there that contracting out is not allowed, and that was the whole essence of the exercise.

The Hon. R.P. WORTLEY: I agree with the response from the Hon. Mr Darley.

The Hon. D.G.E. HOOD: I would like to place on the record that, on this occasion, Family First prefers the Liberal amendment. As I said in a contribution I made earlier, this is, in many ways, the nub of the bill for a large section of industry. All of us have been lobbied quite extensively across the various industry sectors on this particular bill and all who have done so have raised this issue that we are now focusing on with great concern. The problem is how this issue of control is precisely defined. The bill goes into great detail about what it may or may not mean, but ultimately that will be decided by a court.

As the Hon. Mr Lucas pointed out a little while ago, it will be decided by a court several years (I suspect) down the track. Until then, it is going to be very difficult for industry to know exactly what it is dealing with. One thing we do know with certainty is that there are 20 pages (or thereabouts) of this particular bill dealing with duties or expectations on PCBUs. The reality is that that is a great deal of expectation on industries, whatever type they are, to undertake and adapt to in a particularly difficult time, as we see in the economic environment at the moment, particularly the building sector, which is struggling at this moment.

One thing that was said to me that makes absolute sense, despite the claims that this bill would lead to great savings in its harmonisation aims, if you like, is that more paperwork does not equal savings. I think that is one of the key issues. In Queensland we have seen examples of people getting to building sites and spending 30 minutes plus filling out paperwork for each particular site. So, I think there are real problems with this issue. I think Dick Whitington QC has outlined those for all to see, and we share his concerns.

I raise the issue of the so-called two to three metre change that we are all familiar with. We support that. Family First thinks that is a step in the right direction, but—and I think this is the key issue—we cannot really see on what basis we should be changing from how it is at the moment. It works well. We have a very good safety record in that regard. Whilst there is a risk, there are always risks. There are risks in everything we do. We would prefer to see the status quo. That being said, Family First supports the Liberal amendment and we will see how it unfolds from there.

The Hon. A. BRESSINGTON: I also indicate that I will be supporting the Liberal party amendment, but I do want to make a couple of comments, because by the end of the day I will probably not have a voice left to speak. I am absolutely horrified that in South Australia we are introducing legislation ignoring the legal opinions of people qualified in the field to make judgements on this, that this government, namely the minister and the Premier, have used a very sensitive case in the courts (almost that ambulance chaser mentality) to try to convince people that this bill is going to be the saviour of people who are victims of deaths in the workplace.

The Hon. Rob Lucas was right to use members of my family in Queensland as an example of what happened: one was a plumber and the other was a plasterer. They had to work under this legislation and their businesses have gone—literally gone. They were self-employed subcontractors but it did not even take 12 months before they were not able to comply with the regulations under this so-called harmonised legislation.

This is what we are delivering to the people of this state: pigheadedness by the government to forge on regardless to keep the unions happy—that is what this is about. I see this as a full-on, frontal attack on subcontractors in this state, as it was in New South Wales and Queensland. For the minister to ignore letters from Self Insurers of South Australian (SISA), the Civil Contractors Federation and Business SA, and to ignore their concerns outright and for him to say, 'Well, people have gone out there during the course of this consultation and created all of this drama and chaos and have just blown it out of proportion,' is an absurd statement.

Business SA, at the beginning of this, supported this legislation. When it suited the minister and the government to listen to Business SA it was all well and good but now that it has looked into it and changed its mind, and have actually done the consultation that the government should have done, now it is said they are just fearmongering.

I find this whole thing an absolute disgrace. As I said, it is unionism by force. We will see the consequences of this legislation three or four years down the track—not now. Some of us probably will not even be here when the consequences of this will start to be felt by the industry, subcontractors and workers. I just hope that all of those who have gone into this without listening to both sides, with a pigheaded view of it, when those consequences unravel, take some responsibility for it at that time.

The Hon. B.V. FINNIGAN: I thank the Hon. Mr Darley for responding to my question. I understand the application of section 272 but often acts will include a kind of catch-all clause like that that says, 'Anywhere else in the bill where a particular consequence might arise, this clause is to cover that.' However, that does not always work because it may be that people will go back to the section (in this case 17) and say, 'Well, with regard to management of risks this is what it says, so that is the most compelling clause to consider.'

I am still wondering about this 'would have that capacity but for an agreement or arrangement purporting to limit or remove that capacity'. Is it going to be possible for someone to say, 'Well, I didn't have a duty because I've got this agreement or arrangement which limits or removes that.' I am just not sure about this wording.

The Hon. R.P. WORTLEY: I thank the Hon. Mr Finnigan for his question but the honourable Mr Darley did answer that to the government's satisfaction. With regard to Mr Lucas' amendment, to me the very concept that you exclude any person, any employer or any PCBU that does not have direct control is totally unacceptable. Many employers have an influence—not a direct control but an influence—over their workplace and the ability to provide a safe and healthy workplace.

The whole concept of this legislation is about making workplaces safe. I hope that employers and anyone who has an influence in their workplace will exercise that to ensure that their workplace is safe and healthy. So, we totally oppose the concept of the Hon. Mr Lucas' amendment.

We do support the Hon. Mr Darley's amendment. What is important in all this is to remember that all the clauses from 13 to 17 will be read together, and we have had advice from Safe Work Australia which has made it quite clear to us that the amendment proposed by the Hon. Mr Darley does not undermine the fundamental principles of the model act. Hopefully, we will go to a vote now, and we do support the Hon. Mr Darley's amendment.

The ACTING CHAIR (Hon. J.S.L. Dawkins): The Hon. Mr Lucas is indicating that he has other issues.

Progress reported; committee to sit again.

[Sitting suspended from 13:01 to 14:15]

PAPERS

The following papers were laid on the table:

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

Reports, 2011-12—
Director of Public Prosecutions
Legal Practitioners Disciplinary Tribunal
Legal Services Commission of South Australia
Public Trustee
West Beach Trust
Report pursuant to Section 9A of the Mining Act 1971, Declaration of a Special Declared Area over the Woomera Prohibited Area—Red Zone

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

South Australian Institute of Medical Education and Training Health Advisory Council—Report, 2011-12

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

Report on Public Transport Strategies for Adelaide Oval Events, dated October 2012

LEGISLATIVE REVIEW COMMITTEE

The Hon. G.A. KANDELAARS (14:19): I bring up the 16th report of the committee.

Report received.

QUESTION TIME

MINISTERIAL CONDUCT

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:19): I seek leave to make a brief explanation before asking the Minister for Industrial Relations questions regarding democracy.

Leave granted.

The Hon. D.W. RIDGWAY: In the words of respected British journalist Kate Adie:

The better the information it has, the better democracy works. Silence and secrecy are never good for it.

But to paraphrase the Minister for Industrial Relations today, in response to a request for an interview from ABC891 morning presenters David Bevan and Matthew Abraham, he said, 'I cannot talk publicly about something that is before parliament.' I list the following members of the current parliament in the House of Assembly who have talked at forums, on radio, on television, in newspaper interviews, in letters and correspondence, at public meetings, at private functions, while doorknocking, in brochures, pamphlets and missives about the legislation which was at the same time—that is, simultaneously and concurrently—before the parliament.

They are: the Hon. Michael Atkinson, Frances Bedford, Zoe Bettison, Leon Bignell, Lyn Breuer, Geoff Brock, Paul Caica, Vickie Chapman, Susan Close, Patrick Conlon, Iain Evans, Chloe Fox, John Gardner, Robyn Geraghty, Mark Goldsworthy, Steven Griffiths, Martin Hamilton-Smith, John Hill, Tom Kenyon, Stephanie Key, Tom Koutsantonis, Duncan McFetridge, Steven Marshall, Michael O'Brien, Lee Odenwalder, Adrian Pederick, Don Pegler, Michael Pengilly, Tony Piccolo, David Pisoni, Grace Portolesi, Jennifer Rankine, John Rau, Isobel Redmond, Rachel Sanderson, Alan Sibbons, Jack Snelling, Bob Such, Gay Thompson, Peter Treloar, Dan van Holst Pellekaan, Ivan Venning, Leesa Vlahos, Tim Whetstone, Mitch Williams, Michael Wright and, of course, Jay Weatherill.

I list the following members of this current parliament in the Legislative Council who have talked to forums, on radio, on television, in newspaper interviews, in letters and correspondence, at public meetings and private functions, while doorknocking, in brochures, pamphlets and missives about legislation which was at the same time—that is, simultaneously and concurrently—before the parliament: the Hons Ann Bressington, Robert Brokenshire, John Darley, John Dawkins, Bernard Finnigan, Tammy Franks, Gail Gago, Dennis Hood, Ian Hunter, Jing Lee, Michelle Lensink, Rob Lucas, Mark Parnell, Terry Stephens, Kelly Vincent, Stephen Wade, David Ridgway and, of course, Russell Wortley. I am sorry, Mr President, that my research so far has been unable to uncover evidence in support of the inclusion of your name in that list. Nobel prize winner Niels Bohr said:

The best weapon of a dictatorship is secrecy, but the best weapon of democracy should be the weapon of openness.

My questions to the minister are:

1. Where, according to his definition of 'democracy' in his list of ministerial responsibilities, code of conduct, standing orders, Erskine May and parliamentary procedures, has he discovered that he cannot do an interview?

2. Will he rebuke the Premier, the Deputy Premier and every other minister for ignoring this new-found discovery about democracy?

3. Is the minister's definition of democracy two wolves and a sheep voting on what to have for dinner?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:21): I do honestly thank the honourable member for giving me an opportunity of actually putting my side of the story on the public record. ABC radio 891 contacted my office—not me but my media adviser—today asking me to go on in response to a tweet by the Hon. Mr Lucas—at probably 1 o'clock in the morning.

Now, the reality is that Mr Lucas will be tweeting for days and days and days, all times of the day, until this legislation is through. As a minister, I will not put myself up to a situation where I am constantly on the radio defending myself from a tweet from Rob Lucas. What we—

The PRESIDENT: The Hon. Rob Lucas.

The Hon. R.P. WORTLEY: The Hon. Rob Lucas. What my media adviser told them was that I will come onto their program once the legislation is through and I will answer all the questions. I am a strong believer in openness and accountability. I was on the radio this morning with Leon Byner talking about the Work Health and Safety Act.

If they still want me, of course, I am happy to go onto the radio program, on 891, in the morning, but I will do it when all the information is out there. When the legislation has been passed, I will then go there and I will answer any question that they or Mr Lucas want to put to me.

The PRESIDENT: The Hon. Mr Lucas.

The Hon. R.P. WORTLEY: The Hon. Mr Lucas.

STAMP DUTY

The Hon. J.M.A. LENSINK (14:23): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about stamp duty for regional properties.

Leave granted.

The Hon. J.M.A. LENSINK: In May this year, the state government announced that it would be abolishing stamp duty for two years followed by a partial stamp duty concession for a further two years on eligible apartments within Adelaide's CBD with a view to assisting more people into the area.

In regional areas across South Australia, however, the ABS has recorded declines in the majority of South Australia's population until the period of June this year, which includes declines in the outback, Mid North and the South-East. My question for the minister is: has the government considered abolishing stamp duty in regional areas of the state to assist growth; and, if not, why not?

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) (14:25): I thank the honourable member for her most important question. The initiative that the Hon. Michelle Lensink outlined in relation to stamp duty incentives in the CBD relates to our 30-year plan. We have a plan to develop the CBD to increase occupancy and residency in the CBD. We have a vibrant city priority, part 1 of the Jay Weatherill government's seven priority planks in terms of an economic plan for this state.

That vibrant city also reiterates the priority of this government to increase participation in the CBD. We want more people to live here, to work here and to play here, and that is about improving the efficiency of our infrastructure. We know that it is completely inefficient to allow urban sprawl to keep moving our suburbs further and further out. The costs of that are prohibitive on ordinary ratepayers, as roads, power lines and other infrastructure need to be rolled out, and it is also bad environmentally.

We have a strategy where we have lined up main arterial routes into the city, with a plan to increase the number of residents living along those transport routes. We have a plan to increase public transport and a plan to enable people to move in and out of the city in a much more efficient and effective way and, hopefully, with a much smaller environmental footprint. So the initiative that was put forward was a strategy in relation to those plans. That does not extend to regional areas. It was quite specific to the plans that I have outlined.

However, I have certainly outlined in this place on numerous occasions this government's and the commonwealth government's commitment to our regions and the degree of regional spending. Just recently, the federal government announced rounds 3 and 4 of the regional development fund, and the federal government has also recently announced our next round for the T-QUAL grants to help particularly tourism in the regions. Of course, in our last budget I talked in this place about both our state and commonwealth budgets and about the sorts of initiatives where we have indicated spending to assist the prosperity of our regions.

CARERS' WAGES

The Hon. S.G. WADE (14:28): I seek leave to make a brief explanation before asking the Minister for Disabilities a question relating to carers' wages.

Leave granted.

The Hon. S.G. WADE: The opposition has recently been approached by a constituent who highlights that the cost of her autistic daughter's day options has increased by $6,912 due to the decision made by Fair Work Australia in February this year to increase the wages of carers. I understand the family wrote to the minister on 21 September and again yesterday to outline its concerns. My questions to the minister are:

1. How much does the government estimate the Fair Work Australia decision will add to the cost of state government funded services?

2. Will the government provide additional funding to people with disability or service providers to cover the cost of the Fair Work Australia decision so the level of services provided to people with disability does not diminish?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:29): I thank the honourable member for his most important question and his ongoing interest in this area. I will take the questions to the minister responsible for these issues, which is the Treasurer, and bring back a response.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. CARMEL ZOLLO (14:29): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about a Riverland Sustainable Futures Fund grant.

Leave granted.

The Hon. CARMEL ZOLLO: Members in this place will share with me an enthusiasm for the renaissance that is underway in the Riverland following the beneficial effects of the breaking of the drought and the greening of this important food bowl. In addition to these changes, I understand that changes are apparent following expenditure arising from a state government grant. My question is: can the minister update the chamber on the progress of a grant made to encourage growing a wider range of fruit and vegetables in the Riverland?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:30): I thank the honourable member for her important question and her ongoing interest in this important policy area. Indeed, a particular grant was recently made under the Riverland Sustainable Futures Fund to a Loxton horticulture company. That was some time ago and I am happy to give an update on this.

Members may recall that Wild 'n' Fresh, a business run by a husband-and-wife team, was awarded just under $500,000 from the Riverland Sustainable Futures Fund, and I think that was back in May 2011, to produce and market a range of chemical and insecticide-free fruit and vegetables previously not grown in South Australia.

The business, which began as a roadside stall, had ambitions to expand its offering to the public of South Australia and saw that by upgrading their growing facilities, including their irrigation system, warehouse, shed and packing facility, it could take advantage of the Riverland's benign climate to grow premium produce.

One of the most important areas of economic activity for the Riverland region is obviously agriculture where there are many small holdings and small-scale primary producers. The Scholefield Robinson report, which was commissioned by the Riverland Futures TaskForce, identified one potential area for economic development—the diversification into crops other than grapes or citrus—and also in particular highlighted the opportunities presented by covered or greenhouse production.

This is precisely the area that was chosen by Wild 'n' Fresh as they expand production using a new 2,400 square metre greenhouse with climate and water control systems. The business recently delivered its stage 3 progress report for the project, confirming that the construction phase of the project is now complete. The progress report indicates that the company is already reaping rewards from the project, and local businesses are being supported, with approximately 30 other businesses being supplied with specialty horticulture products, such as gem squash and rainbow silverbeet.

The upgrade helped Wild 'n' Fresh increase their harvest last year. I am advised that the company is growing three varieties of chemical-free strawberries this season and the first batch of these is already in the market. I understand that the company is making strides towards its goal of being as environmentally sustainable as possible, and it is pleasing to see that the potential of the Riverland to provide new products to market is beginning to be realised.

The progress to date I think demonstrates why this government has chosen as one of its seven priorities premium food and wine from a clean environment. We have the opportunity to improve the profile and position of South Australian agrifood products as well as meeting the consumer demand for local natural products. Through the Wild 'n' Fresh project, the local business community has benefited through maintenance and building contracts, and the local community has also obviously received delicious produce.

Jobs in regional communities are, as we know, extremely important. In this case, I am advised that Wild 'n' Fresh has been able to increase hours for permanent staff while employing 216 additional casual staff to assist in the most recent harvest, which is a phenomenal achievement, considering that it had just four casual staff for the previous harvest year.

The work done to improve sustainability by Wild 'n' Fresh has also been noticed in the recent 2012 Advantage SA awards, taking out the Intercontinental Sustainability Award at the Murraylands and Riverland regional awards presented in Renmark in October. Obviously, I congratulate Mandi and Alex Wild on their progress and I very much look forward to the completion of this project in the coming months.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. J.S.L. DAWKINS (14:35): As a supplementary question, will the minister indicate the level of funding that remains in the Riverland Sustainable Futures Fund Program?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:35): Yes, around $10 million, so almost half has been committed and agreed to in terms of project funding—either spent or committed to—and half remains in the fund. As the honourable member would be aware, as I have spoken about it in this place before and I know he has a keen interest in this area—he is one of the few opposite me who actually listens to my answers—that process of expressions of interest went out, and those applications are still being considered in terms of how the remaining funds will be allocated.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. J.S.L. DAWKINS (14:36): By way of further supplementary, is it true that no initial applications to the fund have been accepted since 30 April this year, with full details of those proposals to be supplied no later than 22 June this year?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of

Women) (14:36): I do not carry around the dates in my head. I have been very clear about the process for the remaining funds. All that information is on the website and it is all very transparent.

Members interjecting:

The Hon. G.E. GAGO: I have just said that I do not carry around those dates in my head—they are operational matters—but it is all out there. It is public knowledge. There was a process of expressions of interest that went out, and they were then shortlisted and those applicants were then advised. Those applicants who had suitable proposals were then invited to work up the details to their grant proposals and to submit them. That is what is being gone through at the moment. For some of them, further detail was needed, and some agencies have gone back and requested some of that information, so those matters are in the process of being finalised.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. J.S.L. DAWKINS (14:37): By way of further supplementary question, will the minister indicate whether further applications will be sought?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:37): Again, I have made this very clear so I am disappointed; after saying that I believe he did listen to my previous answers, I have to take it back. I believe I may have misled parliament. He is not listening at all, because I have said in this place before very clearly (and it is there in *Hansard* and he can go back and check it) that, in relation to the outcome of this grant round, if all the funds were fully expended there would be no further calls for any further grant proposals.

If the funds were not fully expended after this process, then further rounds would be put out publicly. The other thing I have raised in this place before is that sometimes a proposal might be put forward and it might be agreed to, and then for some reason the recipient is not able to proceed with their grant and they might withdraw from that, and those moneys then become available back to the grant.

The Hon. J.S.L. Dawkins interjecting:

The Hon. G.E. GAGO: This is not confusing; this is not rocket science. This is common sense, and any moneys that are not fully expended from this particular grant round will continue in the fund and another round will be made available for grant applications to be made. It is not rocket science—it is really d'oh head sort of stuff.

SENTENCING

The Hon. D.G.E. HOOD (14:40): I seek leave to make a brief explanation before asking the minister representing the Attorney-General a question concerning the rate at which the courts enforce sentencing of imprisonment where a breach of bond has occurred.

Leave granted.

The Hon. D.G.E. HOOD: During the six months of April to September (inclusive) of this year, I conducted a survey of cases before the Supreme and District courts where it was alleged that an offender previously given a suspended sentence of imprisonment had breached the bond and an application was therefore made for the prison sentence to be served. Of 81 such cases, the sentence of imprisonment was required to be served in just 27 cases, that is, one-third. The other 54 offenders were released with yet another warning and the terms of suspension were then not enforced, in many cases. My questions are:

1. Does the government accept that it is inappropriate for courts to use a suspended sentence as a final warning to offenders but then not enforce the terms of the suspension in two-thirds of the cases where the bond is actually breached?

2. Is the government considering any steps to ensure that it is only in exceptional circumstances where a bond is actually breached that a further suspended sentence may be issued?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:41): I thank the honourable member for his important questions and will refer them to the Attorney-General in another place and bring back a response.

WIND FARMS

The Hon. G.A. KANDELAARS (14:41): My question is to the Minister for Industrial Relations. Can the minister inform the chamber about the start of the Snowtown Stage 2 wind farm project, which will keep South Australia at the forefront of renewable energy?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:41): I thank the honourable member for his very important question and I acknowledge his keen interest in renewable energy. Just last week, I represented the Premier at Snowtown, turning the first sod for the second stage of one of the most advanced wind farm developments in Australia. I was joined by TrustPower CEO Vince Hawkesworth, Siemens Australia CEO Jeff Connolly, the Danish Ambassador to Australia the Hon. Børge Petersen and Wakefield Council Mayor James Maitland.

TrustPower has invested $465 million in the Snowtown Stage 2, with around $75 million to be spent with local contractors and consultants. Combined with the $220 million in Snowtown Stage 1, TrustPower's total investment will rise to nearly $700 million. With around 150 to 200 staff employed during the construction stage, and about 15 permanent site staff post construction, the project provides significant regional employment. It also keeps South Australia at the forefront of global renewable energy generation and reinforces the government's assertion that investment in renewable energy makes good business sense.

The 90 turbine, 270 megawatt facility will generate enough electricity to power about 170,000 homes. This type of investment will also put long-term downward pressure on electricity prices while ensuring South Australia is playing its part in tackling global climate change. Once complete, Snowtown wind farm will be the largest operating wind farm in South Australia and the second largest in Australia.

I take this opportunity to commend TrustPower and Wind Prospect for their commitment to renewable energy in this state. I particularly commend the way they have worked with the community to ensure everyone in the region benefits from the project. The government is extremely pleased that TrustPower is also examining other potential locations for wind farm investment. I acknowledge too the input of Siemens Energy, which will provide the gearless turbine technology to generate power at this site. I understand that this will be the first wind farm development in South Australia to use technology of this nature.

I note that Siemens Energy is also a very important partner in our redevelopment of Tonsley Park as a hub of sustainable industry and manufacturing. Such collaboration between the manufacturing industry and the renewable energy sector will open up new opportunities for both city and regional jobs and business growth in South Australia.

Wind power has a huge role in providing South Australia's future power needs. We are already the leading state for wind energy investment with 1,203 megawatts, or 48 per cent of Australia's installed capacity, provided by 15 operational wind farms and underpinned by $3 billion in capital investment. The sector is supporting our clean, green economy with this project alone forecast to offset 700,000 tonnes of greenhouse gas emissions.

Wind power was the main contributor to South Australia meeting its 20 per cent renewable energy generation target three years early. As a result, the government has set a new target of 33 per cent of the state's electricity generation to come from renewable energy sources by 2020.

May I say how disappointing it is that the state and federal Liberal oppositions do not share this government's and the community's appetite and vision for renewable energy. In fact, in a newspaper article in January this year, the Leader of the Opposition, Isobel Redmond, said, 'Wind is probably the least efficient and most unreliable of all the green energy sources.' She then went on to say that she would not be fazed if the Liberal Party policy on wind farms caused a drop in turbine investment.

The mind boggles that the opposition leader can blatantly and recklessly talk down and threaten this key sector particularly, as I have just explained, that one project alone is investing $700 million into the state. In closing, I would like to take the opportunity to thank TrustPower, Wind Prospect, Siemens Australia, the Wakefield Regional Council, and the Snowtown community and associated contractors for their combined contribution to this important project.

APY LANDS, ELECTRICITY INFRASTRUCTURE

The Hon. T.J. STEPHENS (14:46): I seek leave to make a brief explanation before asking the Minister for Communities and Social Inclusion, representing the Minister for Aboriginal Affairs and Reconciliation, questions about the poor upkeep of electricity infrastructure on the APY lands.

Leave granted.

The Hon. T.J. STEPHENS: Recently, my office was contacted by a concerned resident on the APY lands who was concerned about her brother, a community constable living on the Centre Bore homeland. In June 2012, the constable informed the Regional Anangu Services Aboriginal Corporation, which is in charge of the upkeep of public housing, that the bore and tank water, solar panels and batteries all required urgent maintenance, particularly as the panels were the sole energy source for hot water, air conditioning and lights. The tank needed replacing and, as of 19 October, the new tank is sitting there waiting to be put into the ground.

He contacted RASAC about the hot water and was told that it was a Housing SA issue. He was then referred back to RASAC when it became known that it was solar powered. RASAC then informed the gentleman that he would have to wait for an electrician to come out to the homeland. A generator was put in as a stopgap but it is not big enough to power everything and another battery must now be put in. The electrician cannot make it back until at least after Christmas.

The community constable was without hot water and heating in winter and it now appears that he will be without air conditioning for a large part of summer, all the while trying to do a job on behalf of the South Australia Police for the betterment of Aboriginal communities. In the meantime, gas stoves have been looked at as an alternative; however, gas bottles can cost up to $300 on the lands. I have been informed that access to services was reduced significantly after FAHCSIA pulled their funding from RASAC. I do not think this is a coincidence. My questions are:

1. How is this community constable expected to do his job effectively under these conditions—and perhaps the Minister for Police can take an interest in this question?

2. Why has the government failed to correct this problem after numerous opportunities to do so?

3. Will the government pick up the slack left after the commonwealth funding was pulled or can the people living on the APY lands expect this sort of shoddy treatment in the long term?

4. Will the minister correct this problem as soon as possible?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:48): I thank the honourable member for his most important questions and his ongoing interest in these very important matters. I will take his questions on electricity infrastructure on the APY lands to the Minister for Aboriginal Affairs and Reconciliation in the other place and seek a response on his behalf.

DISABILITY CHOICES

The Hon. K.J. MAHER (14:48): My question is to the Minister for Disabilities. Will the minister please provide information about a new service offered by Minda called Disability Choices?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:49): I thank the honourable member for his most excellent question and for his certain interest in the major reforms taking place in the disability sector. Earlier this year I was delighted to attend the launch of Minda's new service known as Disability Choices. Minda is SA's largest disability service provider and has been supporting people with intellectual disability for over 100 years.

I would like to highlight the innovative work being done at Minda to better support people with disabilities in South Australia. Just like this government, Minda recognises the need to renew and reform its support services to reflect best practice. Rather than sitting around waiting for change to come to it, Minda has taken a leadership role and has demonstrated great initiative and enthusiasm with regard to meeting the challenges in disability reform.

I have spoken before in this place about the significant reforms taking place in the disability sector, both at a state and national level. What is very encouraging to me at the moment is that we

are seeing the non-government sector respond to this new environment by taking positive steps towards putting people with disability in charge of their own affairs. This is a time of great change in the sector, a move away from a bureaucratic style of welfare model support, the one-size-fits-all model, to a rights-based system, where individual needs and aspirations, choice and control are the focus.

While the opposition has been caught up in the last few weeks with internal party matters, this government was getting on with the job of governing and managing change in this very important sector. We are getting on with once-in-a-generation reforms in disabilities, and we are getting on with individualising self-managed funding.

I am encouraged that Minda is also getting on with things and introducing this new service called Disability Choices. It is a 24-hour advisory, advocacy and consultancy scheme. Disability Choices provides valuable advice to individuals, their families, and also their carers, about the options that are available to them from government, from Minda, from other NGOs and other support services.

Disability Choices is a valuable tool for people with disabilities and their families to use as they discover the benefits of the new, individualised funding system. For instance, families may want to talk to someone about respite options or allied health support, such as physiotherapy, hydrotherapy or podiatry, domestic assistance or even holiday accommodation options. Disability Choices offers a one-stop advisory service on the different services that are available. This new service will be accessed by a Freecall 1800 number, will be available 24 hours a day, and will provide the first initial consultation hour for free.

Disability Choices not only offers practical advice, it also offers people with disabilities and their families the option of creating a specialised plan that discovers personal aspirations, acknowledges the importance of them, and helps families establish a pathway to those dreams. For people who are non-verbal, this can be done by using image cards, choice boards and other visual resources to support them in making decisions and setting their own goals.

It is encouraging to see the disability sector getting ready for the new, individualised funding system and, ultimately, the introduction of a national disability insurance scheme. These are exciting times for disability organisations and, while there is a lot of work still to be done, I am proud of the reforms that this government has introduced and will be shepherding through the coming months. I am proud that this Labor government is still delivering important social reform for the benefit of all South Australians, including some of our most vulnerable citizens.

The truth is that we cannot deliver this reform on our own. I want to congratulate and thank, in particular, Tony Harrison, President of Minda, and Cathy Miller, Chief Executive of Minda, for having the vision to establish this important service so early on in the reform process. I have no doubt that people with disabilities and their families will find Disability Choices immensely valuable during this transition towards a very different model of disability support over the coming years.

SAME-SEX YOUTH SERVICES

The Hon. T.A. FRANKS (14:53): I seek leave to make a brief explanation before asking the Minister for Youth a question about the Inside Out and Evolve programs for same-sex attracted youth.

Leave granted.

The Hon. T.A. FRANKS: As the minister is keenly aware, suicide is a major issue for same-sex attracted youth. In fact, according to Suicide Prevention Australia 38 per cent of gay people have experienced discrimination, 50 per cent have experienced verbal abuse and, shockingly, 74 per cent of this abuse has happened while they were at school. It is little wonder then that about 30 per cent of Australia's same-sex attracted teenagers will attempt suicide, and it is estimated that as much as 30 per cent of completed youth suicides are completed by same-sex attracted youth. In fact, gay teens are 14 times more likely to attempt suicide than their straight peers.

Given these concerning statistics, I note that I have previously asked questions in this place of the Minister for Health and Ageing about the Inside Out and Evolve programs: I first asked in 2011 on 17 May, then again on 4 April 2012, and then again on 17 May (which happens to be IDAHO Day, the International Day against Homophobia) in 2012.

In 2012, I actually got an answer to my questions. It was a one-paragraph answer to my questions, which had specifically asked whether or not the Inside Out and Evolve programs would continue to offer both peer education and ongoing group work. I received the following answer from the Minister for Health and Ageing:

> I can reassure the honourable member that the Inside Out and Evolve projects for same sex attracted and gender questioning young people will continue to be provided and funded to the same level by The Second Story youth health service.

This, of course, was not an answer to my question of whether or not peer education and group work would continue. I draw the Minister for Youth's attention to the fact that, while it is purported that the Inside Out and Evolve groups continue to be run, I have recently been approached by a young man who identifies as same-sex attracted and who also has a physical disability and significant barriers to mobility. He certainly has some grave concerns.

He recently tried to attend the Inside Out group information session advertised by The Second Story as being held on Thursday 13 September between 6pm and 8pm. He turned up to that a few minutes late to find that there was no-one there—there was no Second Story worker, and there was no sign indicating that perhaps the group had been postponed or cancelled. Certainly, in the advertising it says that refreshments would be provided, but there was no sign of that.

He has concerns as to whether or not there is a serious commitment to supporting the Inside Out and Evolve groups, and I certainly share those concerns, given his experience. He has also indicated to me that it was groups like this and their availability that, in fact, had saved his life. To paraphrase his own words, services like this have saved his life. Yet, at the moment, he believes—and I think he speaks for many other young people—that there is no serious commitment by Second Story to same-sex attracted youth.

I draw the minister's attention to the fact that this was offered on a Thursday night for a target group that is quite young. Also, I understand that previous groups had been offered on Tuesday nights, which are, in colloquial terms, school nights. Same-sex attracted youth, perhaps not wanting to tell their parents or peers where they were going, would prefer the traditional night, Friday night, that same-sex services group nights had been offered. Given all of this, I ask the Minister for Youth:

1. What literature supports the conduct of groups aimed at a cohort living either at home with parents or of school age to be offered on a school night, be that a Monday, Tuesday, Wednesday or Thursday, rather than a Friday night or a weekend, where they have more ability to attend them?

2. How many Inside Out and Evolve groups have been conducted in the past year for same-sex attracted youth? How many young people have attended these groups and for what duration: how many hours, how many individual contacts and how many repeat attendances?

3. What services does this government provide with a specific focus on lowering incidence of self-harm and suicide for LGBTIQ youth?

4. What government funding goes to NGOs which provide this same service?

5. Does this government continue to receive funding from another body to run these same-sex attracted services—in fact, I think that the level of state government funding is irrelevant to the question—and are they acquitting adequately that funding to the funding body for these same-sex attracted youth services currently?

The PRESIDENT: Minister, you have only 20 minutes to answer!

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:59): I shan't take quite all that time. I thank the honourable member for her very important questions and, indeed, for her persistent questioning on this topic of Inside Out and Second Story. I think that in my notations I recorded about nine separate questions in her explanation and then questions. I will take those questions to the Minister for Health and Ageing in another place and seek a response on her behalf.

APY LANDS, EXPENDITURE

The Hon. R.I. LUCAS (14:59): I seek leave to make a explanation before asking the Minister for Communities and Social Inclusion questions on the subject of departmental staff on APY lands.

Leave granted.

The Hon. R.I. LUCAS: Almost three months ago, at the Budget and Finance Committee I directed a series of questions to departmental staff raising concerns about wastage of public moneys by departmental staff on the APY lands, especially at the end of the last two financial years. I note that, whilst the minister says that the government is still getting on with the business of governing, it has not got on with the business of actually providing answers to questions asked three months ago at a parliamentary committee inquiry.

Six weeks ago, approximately, I put a question to the minister in relation to whether there had been any allegations of abuse of locality and other allowances by departmental staff on the APY lands, and, if so, what disciplinary action had been taken against departmental staff. I do note that, whilst the minister says that he and the government are getting on with governing, six weeks later we still have not received a response to that particular question as well.

One of the allegations being made by whistleblowers within the minister's department is in relation to significant wastage of public moneys on the APY lands in that a significant number of motorcycles—up to 30 motorcycles—purchased by the department were being stored, unused in a shed at Marla. A series of questions was directed to the minister's officers in relation to the expenditure of moneys, the approvals, whether they were being sold and what authorities, etc., as I said, almost three months ago. My questions are:

1. Has the minister been briefed by his department on issues of unused motorcycles being stored in a shed at Marla on the APY lands; and, if so, can he outline what information he has been provided with and what action, if any, he has taken in relation to this particular issue?

2. Have draft answers to the questions asked of departmental staff of the Budget and Finance Committee three months ago been provided to the minister or the minister's officers in his ministerial office; and, if so, did he or his ministerial staff suggest any changes to the proposed answers from departmental staff?

3. When will the minister, given that he is getting on with the business of governing, so he claims, ensure that answers are provided to the Budget and Finance Committee to questions that were asked three months ago and the question he was asked in this chamber on a very important issue approximately six weeks ago?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:02): I thank the honourable member for his most important questions. Let me say at the outset that, of course, as a government, we treat parliamentary questions as a very important part of the parliamentary process and direct significant resources towards answering those questions in a timely manner.

Of course, they are not the only aspects of governing. There are many other aspects of governing that we are getting on with whilst members opposite spend all their time squabbling amongst themselves, playing pass the parcel with the Liberal Party leadership, dropping the parcel when the music stops and watching the honourable member for Norwood drop in and pick up the parcel that no-one else wanted.

We get on with the business of governing. We put very good resources into answering the questions; and, as honourable members would note, over recent months the number of questions that are coming back to this place are coming back in a very timely fashion.

APY LANDS, EXPENDITURE

The Hon. R.I. LUCAS (15:03): I have a supplementary question arising out of the minister's answer. Is the minister refusing to answer the question as to whether he has been provided with any information in relation to the concerns that were raised about financial wastage or wastage of financial moneys towards the end of the financial year by his departmental staff on the APY lands?

The PRESIDENT: The Hon. Mrs Zollo.

GRAIN INDUSTRY

The Hon. CARMEL ZOLLO (15:04): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the grain industry.

Leave granted.

The Hon. CARMEL ZOLLO: Driving through South Australia at this time of the year one becomes aware that harvest is getting underway for our cereal crops. The minister has spoken previously in this place on the grains industry and arrangements made to support it. Can the minister please update the chamber on the grains management 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) (15:05): I thank the honourable member for her most important question. She indeed demonstrates a great deal of interest in these very important policy areas. The member is correct that it is coming to the business end of the season. It is a very busy time for our grain growers as the harvest began in October in the Port Pirie area followed soon after in the west near Wudinna.

Members may know that the pattern of grain harvest is that it begins in those early ripening districts in the north and west and then spreads south-east across to and over cereal zones through Eyre Peninsula, the northern Murray Mallee and the agricultural districts of the Mid North and Yorke Peninsula before finishing, usually during January, in the South-East. I am advised that the timing of the start to this year's harvest is about average and reflects the season we are having, unlike past years with the hotter and drier September, which has seen harvest start two to three weeks earlier in late September.

Members may also recall the following period of disunity in the grain industry. I have spoken about it before in this place in consultation with the South Australia Farmers Federation (SAFF) and Grain Producers SA (GPSA). I announced that I would establish a new primary industries fund (PIF) under the Primary Industries Funding Schemes Act for grains to replace the levy under the Wheat Marketing Act and that the new PIF would operate from 1 March this year. The 5¢ per tonne contribution to the grains fund is collected by the purchaser of the grain as a deduction from the payment due to the grower.

To ensure that this voluntary levy is used for the benefit of grain growers a management plan has been developed. The plan was drafted by an independent consultant, independent of both government and key grain industry stakeholders. It followed a very extensive consultation process with relevant and extensive stakeholder organisations and there was a series of public meetings. The consultant also garnered information from grain growers using an online survey which was posted on the PIRSA website. All of this information was used in putting this plan together. This plan is an industry plan; it belongs to the grain industry. Following this wide ranging canvassing of views, a plan for the grains fund has been provided by me for the industry to approve.

I am pleased to advise the chamber that I released that five-year plan at a public meeting on Monday. The plan covers things like the types of activities which may be funded, how organisations may access the fund, how applications for projects will be assessed, management contingencies (including the grain grower refunds), reporting requirements for projects funded under the scheme, and the level and format of consultation the grain growers consider appropriate for required annual revisions of the management plan. So, even though it is a five-year management plan it will be reviewed every 12 months through a process of consultation to ensure that we reflect any changing developments and priorities that occur in the industry.

A wide range of activities has been identified by the industry for potential funding. They include but are not limited to things like advocacy, policy setting, decision-making for the grain industry, fees for affiliation of the applicant organisation, grain industry promotional activities (including things like industry field days, conferences and other relevant events, and associated support and development costs can be included), and projects aimed at achieving improvements across the grain industry such as improving port access, improving access to markets and access to value adding opportunities in the value chain.

Another area is reasonable operating and management expenses, representing the grain growers at regional, state and national grain or agricultural industry forums and suchlike, and research to assist the applicant organisations' understanding of issues affecting industry development that is not the domain of the research funding organisations, for example, SA Grains Industry Trust or Grains Research and Development Corporation.

Applications for payments from the fund will be called for in March each year when the size of the fund will be able to be estimated, and for those organisations interested in the fund the management plan can be found at the PIRSA website, so people can access that readily. I can absolutely assure people that those funds will only be spent on those things that have been identified by the industry as being in the interests of the SA grains industry.

I think this is a real opportunity for a new page, a fresh start, for us to move forward. The grain industry is very important to the economy of South Australia, and it is important that it has a strong representative body and a strong industry fund for it to continue developments to enable it to remain viable and prosperous.

VICTIM SUPPORT SERVICES

The Hon. R.L. BROKENSHIRE (15:11): I seek leave to direct a question to the Leader of Government Business.

Leave granted.

The Hon. R.L. BROKENSHIRE: My questions in relation to victim support services are:

1. Did the minister make a request to the Attorney-General for an increase in the budget for victim support services for the last budget period?

2. If she did, was she successful in that bid?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:12): In relation to the victim support services fund, I did have discussions with the Attorney-General and we were successful in achieving moneys to assist us—I am just trying to remember the details of this—I think in relation to our domestic violence—

The Hon. S.G. Wade: The Coroner's Court.

The Hon. G.E. GAGO: No, it wasn't the Coroner's Court. It was in relation to domestic violence and, if I recall correctly, it was to assist in the payment of the administrative costs of our Family Safety Framework, and we were successful in achieving that. I could not tell you the exact amount but it was a sum of money to cover those administrative costs, which we were very pleased to do because our Family Safety Framework has been demonstrated to be a highly successful strategy in helping to protect women who are at high risk—or any victim at high risk of domestic violence, but we know that most of those are women.

It has been a very successful strategy, and we have rolled that Family Safety Framework out to all the metropolitan regions and to several regional centres. We rolled the framework out to particularly those centres where there was already DV service infrastructure available to help us build the framework on. However, we have now completed most of those and we are now going into those regions that do not quite have the same infrastructure, so we needed additional administrative support to help us reach those centres. That is why we needed the funds at that particular time and we were very grateful to receive them, and we think also that it is extremely good use of those funds.

INDIA ENGAGEMENT STRATEGY

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:14): I table a copy of a ministerial statement relating to a new South Australian strategy for India made earlier today in another place by my colleague the Premier, Jay Weatherill.

STATUTES AMENDMENT (PENALTY ENFORCEMENT) 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) (15:14): I table a copy of a ministerial statement relating to the Statutes Amendment (Penalty Enforcement) Bill made earlier today in another place by my colleague the Deputy Premier, John Rau.

QUESTION TIME

LIVE ANIMAL EXPORTS

The Hon. J.S.L. DAWKINS (15:15): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question regarding livestock exports.

Leave granted.

The Hon. J.S.L. DAWKINS: The federal Labor member for Makin, Mr Tony Zappia MP, recently wrote an opinion piece in the *Advertiser* criticising live cattle exports and those involved in the industry. He stated in his article:

> What is clear is the live export trade has been driven by industry self-interest and self-regulation.

Further on he said, 'the live export trade is solely profit motivated'. These comments have been made about one of the most important agricultural sectors, not only in this state but throughout our country. Knowing a large number of individuals involved in this industry, I can say categorically that the respect and care they pay to the animals they farm in Australia is truly remarkable, which makes the following comment from the Labor member for Makin an even bigger slap in the face to them:

> ...the live export trade is sustainable only if it can demonstrate animal welfare outcomes acceptable to the Australian community.

The live export trade is inescapably dependent on animal welfare. Every sick, dead or dying animal costs the industry money. Accordingly, exporters invest massively in the health and wellbeing of animals in transit. Furthermore, animals that suffer cruel drawn-out deaths produce inferior meat, which makes for an unsatisfactory eating experience. This has always acted as the most powerful safety net in the protection of animals from inhumane livestock practices, even in slaughter. My questions to the minister are:

1. Does the Weatherill Labor government support the continuation and prosperity of the live cattle and sheep export industry?

2. As the Minister for Agriculture, will she confirm that the vast majority of sheep and cattle producers and exporters in South Australia uphold high standards of animal health and welfare?

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): I thank the honourable member for his most important question and I absolutely concur that the majority of our livestock industry is absolutely committed to the current standards, and in fact many of them operate in a way that far exceeds those standards, and that is because the livestock are their life, their future.

Many of them involve families and they want to establish their properties and farms to be able to hand on to their children and grandchildren, so they are there for the long haul. They are not there just to make a quick buck, and therefore most look after their livestock extremely well. It is most unfortunate that recently in the press we have seen some graphic media coverage and footage of some horrific things occurring in some other countries. I think every Australian was appalled watching that film footage, and it caused a huge national—in fact, international—reaction.

Those animal welfare issues continue to cause concern. Although I am advised that no cattle are exported from South Australian ports to Indonesia, there were obviously economic and supply chain impacts from the response, particularly of Indonesia, as a result of the suspension of trade. It has now resumed, but at a much slower rate. The commonwealth government has accepted all the farmer review recommendations for the future regulation of Australia's livestock export industry. The government has also accepted all recommendations made in the reports of the cattle and sheep industry government working groups on live exports.

The new regulatory framework is being implemented in stages, with 100 per cent of the trade to be covered by the end of 2012. Under the framework, Australian exporters will need to ensure that animals will be handled and processed at or better than the internationally accepted standards for animal welfare established by the OIE, that they have control of the movement of animals within their supply chain, that they can trace or account for animals through the supply chain and that they can conduct independent verification and performance audits of their supply chains against these new requirements.

It should be noted that South Australian livestock, sheep and goats are all tagged with property of origin and SA meets the Australian government standards for live export. The next major steps in the review of the livestock export industry are reviews, now underway, of the Australian standards for the export of livestock and the role and function of the Livestock Export Standards Advisory Group. These reviews will be overseen by a national steering committee and are to include participants from the commonwealth, state and territory governments, the veterinary profession and animal welfare groups. As I said, a thriving livestock industry in South Australia uses—

The Hon. J.S.L. Dawkins: So, you disagree with Mr Zappia then?

The Hon. G.E. GAGO: What I am outlining are the standards that are the response to the problems that have been identified. The Jay Weatherill government accepts that these are appropriate responses and we are pleased to participate in the forums and at the levels that I have outlined to help ensure that we have a more rigorous animal welfare system in place and to ensure greater adherence to that. That is what the Jay Weatherill government supports.

MATTERS OF INTEREST

PUBLIC SERVICE EMPLOYMENT POLICY

The Hon. K.J. MAHER (15:22): I rise to speak on a matter of great importance. Recently, the Liberal Party announced its policy to sack 35,000 South Australian workers. When the Labor Party produced a brochure highlighting this policy to the good people of South Australia, the Liberal Party, showing its usual poor political judgement, complained to the Electoral Commissioner that the brochure was inaccurate or misleading. This strategy backfired spectacularly. In the end, the Electoral Commissioner found no case to answer. An independent umpire had a look at it and judged that the ALP brochure stacked up.

Why might an independent umpire find it is fair to say, 'The Liberal Party wants you sacked'? Quite simply, because that is what the Liberal leader said. She tried to get out of it straight away though, that afternoon. Unbelievably, what the leader of the Liberal Party tried to say was, 'Oops, I didn't mean to reveal the policy. Didn't mean to scare people. Better try and hide it. Now we'll have an audit commission. And by the way, maybe I was incompetent and used the wrong figures.'

Somewhat ironically, this disingenuous tactic of trying to hide the policy was apparently the idea of the member for Waite. What did the media make of these tactics? Frankly, like most South Australians, they did not believe it. They just did not believe it. Mike Smithson on FIVEaa said:

> She's let the cat out of the bag. Clearly that is going to become Liberal Party policy.

On the Liberal leader's attempts to rewrite the history of what happened earlier that day and claim that somehow she confused herself and used the wrong figures, again, the media did not believe her. They did not believe her. Angelique Johnson from ABC radio said:

> I'd have to say the questions were black and white...There were no confusing questions...No trickery by journalists.

Ms Johnson went on to say:

> But it doesn't really wash this...'I was quoting from the Liberal government'...as Simon Royal pointed out she was very accurate on how many staff were in the Public Service currently.

The Hon. J.S.L. Dawkins: Liberal government?

The Hon. K.J. MAHER: Liberal opposition. This attempt to try to make up excuses and deceive the people made the Liberal leader look even worse. They looked sneaky, deceitful, grossly incompetent, or all of the above. It got even worse for the opposition. While the Liberal leader was trying to back away from her gaffe, the former and occasionally loyal deputy was out there being his usual helpful self. He gave an interview to *The Australian* that afternoon, and what did he say about the Liberal Party policy to slash 35,000 jobs? Let me quote *The Australian*:

> Mr Williams said the Liberal Party was 'of one mind' on cutting the Public Service. 'I think this is very consistent with the views of everybody in the party room' Mr Williams said.

Yes, the genius and very former deputy leader of the Liberal Party dropped you all in it. He let the whole world know that each and every member of the Liberal Party wants to sack 35,000 South Australian workers. The next day, on radio the Leader of the Opposition, in effect, admitting to wanting to smash the Public Service, foolishly said that her job cuts could be achieved by natural

attrition and not affect front-line services. However, in a press release, dated 24 October 2006, the Hon. Rob Lucas said of the Rann government's announcement to cut 1,600 public servants, 'It is naive to think that all of these public servants will leave through natural attrition.'

So the Hon. Rob Lucas, a former treasurer, does not think you can reduce the Public Service by 1,600 through natural attrition, but the Liberal leader is out there trying to fool the good people of South Australia into believing that you can reduce it by 35,000 through natural attrition. It is little wonder, when considering this evidence, that the Electoral Commissioner found no case to answer in the Labor Party's brochure and found the truthfulness of the statement, 'The Liberal Party wants you sacked.'

The Liberal Party had its chance to change leaders recently and try to repudiate this. Many unnamed Liberal MPs were quoted in the media as saying that releasing this policy and the gaffe had just cost the opposition the next election, but 13 members of the Liberal Party decided that the party was firmly committed to this policy, and they probably realised that voters just would not believe that a change of leader would mean a change of policy.

Given the Electoral Commissioner's findings, and in an effort to help inform the good people of this state about the dangers of a divided, incompetent opposition, the Labor Party is now continuing to distribute these brochures. The Labor Party has now had printed tens of thousands more of these brochures. If any honourable members are interested in helping to distribute some of these brochures—I think the Deputy Leader of the Opposition has an interest in these matters—I am more than happy to give them some if they call by my office.

FRONTIER SERVICES

The Hon. S.G. WADE (15:25): The year 2012 marks the centenary of Frontier Services, a service which provides community and health care to outback Australia. The story of Frontier Services began with the vision of one man—John Flynn. During his theological training in Victoria in the early 1900s, John Flynn became interested in working with the people of inland Australia, even writing a handbook called *The Bushman's Companion*.

Upon graduation at the end of 1910, Flynn accepted a two-year placement at the Smith of Dunesk Mission in Beltana, South Australia. There he worked with Sister Latto Bett and was there when the hospital opened in 1911. In 1912, Flynn was commissioned by the Victorian Home Mission Committee and the Australian Board of Missions to do a survey of Aboriginal welfare and the needs of European settlers in the Northern Territory. A year earlier, the Territory had separated from South Australia and transferred to commonwealth control.

Flynn looked at the hardships the people faced and their spiritual needs and, in response to the report, on 26 December 1912, the Presbyterian Church appointed Flynn as a superintendent and the Australian Inland Mission was born. By the end of World War I, the mission was running five nursing hostels and four patrols. By 1928, the mission had set up an aerial ambulance service based out of Cloncurry in Queensland. This work became the Royal Flying Doctor Service.

The mission's work in communications opened up the outback. The mission indeed became a much-needed mantle of safety for the isolated outback communities. Today, the Australian Inland Mission has become Frontier Services, the largest provider of remote ministry and of aged and community care in remote Australia, and delivers a wide range of other services including health care, children's services, community support and volunteer assistance. Nearly 1,000 staff provide approximately 120 services across 85 per cent of the continent.

The Reverend John Flynn's outback work started in South Australia, and South Australia continues to benefit from his legacy. Frontier Services provide health care from Andamooka and Marla. The Andamooka Centre was opened in 1965 and Marla in 1995; both centres are staffed by two remote area nurses. Along with general pastoral care, patrol ministers conduct funerals, weddings, baptisms and town celebrations in a variety of contexts. The South Australian patrol minister is based in Port Augusta and covers an area including the Flinders and Gammon ranges and the Lake Eyre Basin.

Within this region are the communities of Hawker, Leigh Creek, Nepabunna, Marree, Coober Pedy, Iga Warta, Marla and Oodnadatta. The focus of the ministry in this patrol is the Aboriginal communities spread throughout the region. The Parkin patrol based in Hawker, South Australia, covers the north-east and north-central areas of South Australia to the Queensland and Northern Territory borders.

This includes the communities of Andamooka, Leigh Creek, Marree, the Moomba gas fields, Innamincka, Mintabie and Marla. The Sturt patrol based in Orroroo covers an area of 150 kilometres either side of the Barrier Highway, from Peterborough to Cockburn. It includes the settlements of Yunta, Mannahill, Olary, and Cockburn along with the ranges of the Danggali Conservation Park and the Gawler Ranges.

South Australians also benefit from the Outback Links program, which links appropriately skilled and gifted volunteers with outback Australians who are in need of assistance. Frontier Services has been celebrating its 100th birthday throughout 2012, and it was my privilege to represent the Leader of the Opposition at the centenary of Frontier Services at the Adelaide West Uniting Church on Sunday, 29 July 2012.

The National Library of Australia is holding a photographic display called 'Beyond the furthest fences: the Australian Inland Mission'. The exhibition will be open until 2013. This is particularly appropriate because John Flynn was an avid amateur photographer, and the exhibition draws from over 4,400 images in the Frontier Services collection held by the National Library. Frontier Services also published a centenary coffee table-style book called *At the Very Heart,* written by Storry Walton and published by Wakefield Press. It is full of rare photographs.

I thank God, John Flynn, and the countless band of workers and volunteers for the work that Frontier Services has done over the past century. I congratulate Frontier Services on its centenary and look forward to the work that will be done in the future to provide physical, medical and spiritual support to isolated inland communities around Australia.

PARKINSON'S SA

The Hon. CARMEL ZOLLO (15:31): I would like to take this opportunity to place on record the good work of Parkinson's SA. Recently I had the privilege of attending and participating in the annual Parkinson's SA Unity Walk, which takes place in September each year along the River Torrens. This year's walk was the third staging of the event in South Australia, with over 360 participants completing the 4.5 kilometre walk. I should add that I was not able to take part in the full walk. The event was held in partnership with the inaugural Unity Walk that also took place in Clare last Sunday, 28 October.

The purpose of the Unity Walk event is to help raise the profile of the often misunderstood disease that is Parkinson's, as well as to help raise funds to assist in the ongoing fight against the disease. It also allows Parkinson's SA to continue its support programs, services and advocacy for those South Australians living with Parkinson's. I am advised that around $20,000 has been raised as a direct result of this year's event, which is certainly a wonderful achievement by all involved, including the many who donated their time to making this day happen.

Since its incorporation in 1983 Parkinson's SA has been working tirelessly to both advocate and provide support for those living with Parkinson's, including their carers and families. It also, through its research fund, provides partial scholarships to honours students undertaking research into the condition. It is this research that is vital to gaining a better understanding of the condition.

Parkinson's is a neurological condition that affects movement, meaning that people living with it are unable to properly control muscles within their body, as messages from the brain are not effectively communicated throughout the body. There are some 6,500 South Australians and over 80,000 people across Australia who have the condition.

Little is known about what causes the disease. As a result, the process of diagnosis is quite difficult and time-consuming, as there is no effective test for the disease. I understand the diagnosis is often achieved through a process of gradual elimination, which is certainly not ideal. Whilst there are medications available to assist those living with the condition and help them to control the symptoms—such as the severe tremors in the legs, arms and face, loss of balance and stiffness in the limbs—there is still no known cure for Parkinson's. It means that those living with the condition are faced with the gradual but inevitable loss of mobility.

The lack of understanding of the disease is one of the key reasons why fundraising events held by Parkinson's SA and its sister organisations across Australia, such as the Unity Walk, are vitally important. They will help provide the much needed funding to further the research that is being undertaken into Parkinson's disease. It will ensure that the quality of life of those living with the disease will continue to improve.

Since the inception of Parkinson's SA both staff and volunteers have worked extremely hard to help raise the profile of Parkinson's disease in the community and also provide support

services to those with the condition, allowing them to continue living their lives to the fullest. Parkinson's SA raises 75 per cent of its income itself from events, donations and sponsorship.

I also make special mention of those who made Unity Walk a success, including the President, Professor John Power; the event organiser, Lee Scammell; walk logistics organiser, Stanley Miller OAM; as well as volunteers from the Port Adelaide Athletics Club and the Masters Athletics Club. The volunteer coordinators for the day were Simon Pilley and Olivia Makrid, and the City of Adelaide Lions Club ran the barbecue.

I also thank the sponsors who supported the event—Medtronic, St Jude Medical, and Memorial Hospital—and all of those who assisted with all the fundraising. The patron, His Excellency Rear Admiral Kevin Scarce and Mrs Scarce also joined the walk, albeit for a shorter distance because of their commitments. It was truly a great and very successful day, and I urge everyone to continue to support this wonderful organisation.

GOVERNMENT PERFORMANCE

The Hon. R.I. LUCAS (15:36): I rise again, sadly, to have to raise further examples of ministerial and government incompetence, negligence or both. Sadly, these days, too often for the people of South Australia, they are confronted on a daily basis with examples. In May of this year, I asked some questions of the government in relation of whether or not Freddie Hansen, the new head of the Urban Renewal Authority, had actually commenced work prior to having a signed contract.

Of course, as is her wont, the Leader of the Government in this place led with her chin and made a series of allegations and claims that the opposition makes up these stories, she would not believe anything, etc. Embarrassingly for minister Gago, subsequent investigation of the actual contracts demonstrated that the claims made by the Liberal Party were accurate and, embarrassingly for the Leader of the Government, minister Gago, she was left with egg on her face in relation to that claim.

On 6 September of this year, I again asked some questions. One would have hoped that, having raised the issue and the minister having been embarrassed, the government might have done something about it. I asked some questions then in relation to the announcement made the previous month by the government that Tony Harrison had been appointed Director-General of Community Safety and whether or not it was correct that he, too, had commenced work without a signed contract with his minister.

These are simple things. If you are running a business, and you are going to employ a chief executive officer and you were going to pay them somewhere between $250,000 and $300,000, you would think that it is a simple matter of common sense that you would sign a contract offer and agree the terms and conditions before someone starts. But what do these Labor ministers do? No, nothing as simple as that; no common sense, having been warned in relation to Freddie Hansen, the Thinker in Residence.

Again, when Tony Harrison was appointed, I asked questions. Again, poor old minister Gago led with her chin and again said that she did not believe anything the Liberal Party said and again attacked the Liberal Party for its general approach in relation to these things. She stood by her previous assertions that the Liberal Party comes into this place with inaccurate information and assertions that are incorrect, even though she had been reminded that she had been wrong in relation to Freddie Hansen's contract.

My office, subsequent to that, had a look at the contracts for Tony Harrison and for David Place, who we assume will be the deputy of SAFECOM. Tony Harrison will also be the chief executive of SAFECOM. On 13 December, we were originally told copies were not available, and that was when we had asked a question the previous week. A week later, we were able to look at a contract, which had been signed quite clearly well after Tony Harrison had commenced work. Whilst all aspects of the contract were unsigned—and, for some reason, it is not particularly clear why the minister did not sign all the bits in the contract she was required to—there was at least one signature dated 11 September in relation to Tony Harrison's contract.

We were unable to get a copy of the contract for David Place, who was the former CEO of SAFECOM; he was holidaying overseas at the time. We were told that he had not signed his contract and, at that particular time, we were unable to have a look at his contract, either. We will subsequently, of course, follow up that issue.

What it demonstrates, as I said, is financial incompetence and/or negligence by ministers in terms of just simple issues of financial management, and I think that is why the people of South Australia are angry and are demonstrating that anger on a daily basis. It does not really matter what leaflets the spin doctors in party headquarters put out there, the people of South Australia demonstrate on a daily basis their anger at the incompetence and negligence of the Labor government and its ministers.

I have had further information which indicates that a cabinet-endorsed policy that CEOs can only be reappointed for a three-year term after a five-year term has now been regularly ignored by ministers, by the cabinet and by the government; and, on a subsequent occasion when time permits, I will take up that particular as well.

BAPTIST CARE (SA)

The Hon. D.G.E. HOOD (15:40): I rise today to contribute to Matters of Interest regarding Baptist Care in South Australia. Early South Australian Baptists founded the West End Baptist Mission in 1913 to provide a sanctuary for homeless people from the harsh realities of life in the streets. West End Baptist Mission became known as Westcare for many years, and it is now known as Baptist Care South Australia. Since those early days the work of Baptist Care has quietly expanded its range of services to assist those in need with problems in our community.

I will not have time to mention all the services provided by Baptist Care here today but I would like to highlight some. Amongst its services are those for Aboriginal people in need. There is an Aboriginal men's drug intervention program in the city and an Aboriginal parenting program which assists families that might be vulnerable to breaking up or experiencing more than normal stresses. The program assists families to improve family functions and to keep children safe.

There is also a program that assists Aboriginal women elders in meeting the needs of independent living at home. Baptist Care also runs a short-term centre for the homeless—homeless Aboriginals in particular—so that a more permanent residence can be found during their transition there. One important service provided to the community is emergency care for children and youth identified by Families SA as being at risk.

The out-of-home care provided to the children by staff is one underpinned by best practices to ensure the safety and wellbeing of the children. Baptist Care extensively trains its staff to understand the trauma that these vulnerable children experience to ensure the best outcomes for them. Over the past three years Baptist Care's employment services have assisted more than 4,300 people into jobs and full-time education, enabling them to find self-confidence, independence and social inclusion.

Baptist Care works with people referred to them by Centrelink from all backgrounds and cultures. A recent initiative is to create hubs to link its employment services and youth services in high schools to achieve better outcomes for young people. There are also programs based in Port Lincoln and the Riverland for psychological services and accommodation for those with mental illness—much needed.

Amongst Baptist Care's work with people with mental illness was the establishment of peer work training which enables people with personal experience of mental health issues to gain employment in the field of mental health itself. Yet another program assists asylum seekers and former refugees to settle into Adelaide through volunteers who provide support, advice and friendship. The practical help offered includes subsidised lessons to obtain a driving licence so they can gain access to education and employment, amongst many, many other things.

Another dimension of the Baptist Care work is a campsite at Mylor which runs youth adventure camps to build purpose and confidence through outdoor activities. Camps emphasise challenges to enable youth to discover aspects of their own personality and to develop an attitude of being a team player and of assisting others. One particular exercise involves the so-called high ropes course where teams of four participants take turns to climb up solid, hardwood poles and then cross gaps of some 10 metres spanned by an array of wires, ropes, stirrups and ladders to a pole on the other side. Every climber is strapped into a harness for safety, of course.

Another service that sprang from camping more recently was the Tumbelin Adventure Service. This service helps young people at risk who may have come into contact with the law. The program has been proven to reduce reoffending rates amongst young people. Baptist Care also provides chaplaincy services to residents in aged care, hospitals and community health centres, and recently funded a part-time prison chaplain. Chaplains and pastoral care workers are available

to respond to emotional and spiritual needs of all clients who seek this assistance. The Baptist Care website speaks of a vision to bring transformation based on client-centred care.

My own view is that it is important to recognise the valuable work done by non-profit organisations such as Baptist Care, many of which are church organisations, of course. They are providing work for some 600 South Australians (in the case of Baptist Care) and helping often the most vulnerable and at risk in our state.

Naturally, much of this vital work would not be possible without financial donations from the community and the work of volunteers to benefit those in our community who are disadvantaged or who have major issues in their lives. Of course, it is not just Baptist Care that does this great deal of work in our community. There are so many other organisations, but this is one which has had a long and proud history in South Australia and rarely, I think, gets the credit it deserves, hence my choosing to highlight them today.

WELCOME TO AUSTRALIA

The Hon. T.A. FRANKS (15:45): Today I rise to speak about asylum seekers, refugees and Welcome to Australia. It should not be necessary—but I believe it is—to define asylum seekers and refugees before I begin to commend the work of Welcome to Australia. An asylum seeker, according to the Australian Human Rights Commission, is a person who has fled their own country and applied for protection as a refugee.

According to the United Nations Convention Relating to the Status of Refugees, as amended by its 1967 protocol (the Refugee Convention), a refugee is a person who is outside their own country and unable or unwilling to return due to a well-founded fear of being persecuted because of their race, religion, nationality, membership of a particular social group, or political opinion. Asylum seekers and refugees have taken on a whole new meaning in the current political debate, and it is much, I think, to our shame.

One organisation that gives me hope is Welcome to Australia, which was founded in Adelaide. It is a not-for-profit organisation which believes there needs to be a positive voice in the public conversation around asylum seeking, refugees and multiculturalism. It is not politically aligned, and it is led by Adelaide pastor, Brad Chilcott, who I am sure many members would have met or seen in the media. It is run by a team of volunteers and has over 35 partner organisations. That team includes a range of people of cultures and faiths.

It has a range of programs designed to give a warm, positive and dignified welcome to asylum seekers, refugees and other new arrivals. These include Enhance Australia, which builds the capacity of international students to establish support networks in their local communities. It works with uni students and volunteers in regional areas and capital cities. It also exposes the broader community to the benefits of having international students living and working here.

The organisation has another project of mentoring new arrivals aged eight to 14 who are on humanitarian visas living here in Adelaide. It helps these young people learn about Australian culture and society through spending time together recreationally, helping with their schoolwork, practising English and also talking with their mentors about the life and culture they have previously experienced.

High school seminars are also undertaken by Welcome to Australia which educate South Australian high school children and, I am sure, staff about the facts, the real stories, the human stories and the history of asylum seekers and refugees in Australia. Students can ask questions and personally meet some of the people. Where asylum seekers and refugees have been particularly dehumanised and demonised in this culture, I think it is an incredibly important thing.

There is also a program called Welcome to My Place, which gives individuals and communities the opportunity to meet asylum seekers in a warm and dignified manner. They recently held an event called Walk Together. The Premier Jay Weatherill spoke at it and the Leader of the Opposition Isobel Redmond was also there. Certainly, myself and my colleague Mark Parnell I were there and, I believe, the Hon. Jennifer Rankine, the Hon. Jing Lee, Senator Penny Wright, Steve Georganas and Lieutenant-Governor Hieu Van Le. I apologise if I have missed anybody. For those of you who were not there, a wonderful speech was delivered by Pastor Brad Chilcott, which went along these lines:

> [Yes, we're here today because] we're asylum seekers, we're refugees, we're international students, we're recent migrants our ancestors were.

But beyond the labels and adjectives we're here today because we're people. We're people who recognise that although we each have our own story, our own culture, our own language we are now one community.

We're one community with a diversity of backgrounds but a united belief that a better future is possible than the one built by fear and negativity. We're one community united by our humanity.

We're united by the belief that the border you happened to be born behind should not determine the level of opportunity. Should not limit your ability to reach your potential.

We're one community united by the idea that walking together is better than walking apart. We believe that this nation will thrive and it will prosper when we walk side by side into our future.

We say today, as one community, that no matter who you are, where you've come from or how you arrived here—we are now in this together.

Together we hear the voices of those who seek to divide us for the sake of short-term political gain and together we say we will not be divided.

Together we have grown weary of the rhetoric of suspicion and prejudice—but we have not grown weary of compassion, we are not tired of generosity.

Brad Chilcott went on to say:

We have walked together today because we can imagine a future where prejudice is unpopular, where cruelty is punished at the polls instead of praised, where diversity is celebrated, not tolerated and where our leaders win by calling out the best in us—inspiring us to achieve our welcoming, inclusive, compassionate and generous best.

I cannot commend these words more to this chamber.

INTERNATIONAL YEAR OF THE COOPERATIVE

The Hon. M. PARNELL (15:50): The United Nations has designated 2012 as the International Year of the Cooperative. Since the formation of modern cooperatives in the mid-19th century in England, they now account for a significant amount of production globally and in Australia. Cooperatives take the form of credit unions, agricultural cooperatives and housing cooperatives, to name a few. They can be consumer or producer cooperatives. Co-ops differ from normal business organisations in that they have a democratic ethos without a single owner or large shareholders. Every member of a cooperative has an equal vote and share of dividends.

The South Australian history of co-ops goes back to 1864 when the British Industrial and Provident Societies Act was introduced into the colony. A Cooperative Association was formed in 1866 with early consumer cooperatives such as the Adelaide Cooperative Society being established. This co-op operated for nearly a century, providing cheaper household necessities for the residents of the new colony.

The Port Adelaide Cooperative Society was formed in 1897 by railway workers running a shop, hotel and bakery. By World War I there were seven consumer cooperatives at locations including Millicent, Wallaroo, Mount Gambier, Angaston and Eudunda. In fact, it was in rural South Australia that co-ops showed their success and diversity.

The Renmark Hotel is the oldest co-operatively owned hotel in the British commonwealth, established in 1897. It came out of a prohibition background when the town decided that if they were going to have a hotel, it should be community owned. I understand that it has remained community owned ever since and serves local produce and supports local community groups and initiatives.

An inspirational part of the cooperative story is the town of Nuriootpa which has been described as a cooperative township. Since 1925, the community has built a library, a cinema, a community centre and a community hotel. It established a cooperative store with a supermarket, hardware, furniture and electrical divisions, providing 250 jobs. Long regarded as the most cooperative town in Australia, Nuriootpa is a fine example of local self-government and regional development.

A recent study by The Australia Institute looked at the size and scope of co-ops in Australia and found that the community cooperative store in Nuriootpa is Australia's third-largest consumer cooperative. The Australia Institute also found that the cooperative model is still alive and well in Australia and we now have 1,600 across the country with an estimated 13.5 million members. In fact, whether they know it or not, eight out of every 10 Australians are members of a co-operatively owned or mutually-owned enterprise such as roadside assistance services or mutually-owned banks and financial institutions.

Co-operatively and mutually-owned enterprises typically invest the surplus they generate into the community or return it to their members so, even though Australians may take their co-ops for granted, it seems we are happy with the services we get from our co-ops even when faced with competition from corporate counterparts. Cooperatives often attract great loyalty and regularly provide better value. For example, the average industry superannuation fund delivered $1.50 in earnings for every dollar taken out in fees compared to an average of 40¢ in the dollar for retail super funds.

Since the global financial crisis, many Australians have lost confidence in the ability of profit-maximising firms to make decisions that are in society's interests as well as their own. In some ways it is surprising that there has been so little attention paid to emerging forms of economic structure such as co-ops and mutuals to challenge the greed and mismanagement that led to the GFC. It may well be that the answer has always been right in front of our eyes as well as in our history books.

Since 2005 in Australia, there has been a move towards the creation of a cooperatives national law to be established via mutual agreement between state and territory governments. The objective is to harmonise state and territory legislation. The cooperatives national law is designed to deliver a modern legislative environment that removes competitive barriers but continues to assure the unique nature of the cooperative structure. The aim was to have all legislation introduced in 2012—the UN International Year of the Cooperative. We may be dragging our feet in South Australia, but the Greens urge the government to bring on the legislation as soon as possible.

In conclusion, I acknowledge and applaud the contribution that cooperatives have made and continue to make in our economy and society. In the words of Wayne Elwood, writing in the July 2012 issue of *New Internationalist* magazine, which itself is run as a cooperative, he says:

> We can no longer afford the free market shenanigans of the last decade, the free-wheeling state capitalist Chinese model or the dead hand of traditional communism. We will have to do much better. Cooperatives can point the way towards a different kind of economic model, where people control capital and not the other way around. A little real democracy wouldn't hurt.

ABORIGINAL LANDS PARLIAMENTARY STANDING COMMITTEE: ANNUAL REPORT 2011-12

The Hon. T.J. STEPHENS (15:55): I move:

That the annual report of the committee, 2011-2012, be noted.

It is with pleasure that I speak on the eighth annual report of the Aboriginal Lands Parliamentary Standing Committee, which provides a summary of the committee's activities for the financial year ending 30 June 2012. Over the last year, the committee has met with a wide range of Aboriginal people and their communities. These meetings have given the committee and the South Australian parliament a better understanding of the issues that are important to Aboriginal South Australians.

During the year, the committee visited the APY lands and Oak Valley, Maralinga, as well as Nepabunna, the Gerard Aboriginal community, Winkie Primary School, the Port Lincoln Aboriginal Corporation, and other Aboriginal organisations and support organisations within Adelaide. The committee also visited Western Australia to gain insight into the initiatives that are working well in the resource sector, private and public, to skill, employ and retain Aboriginal employees in the workplace.

With the resources sector in South Australia seen as a potential growth area for employment, particularly for Aboriginal people, the committee perceived benefit in inquiring into and meeting with some of the key employers and service providers in the established resources sector in Western Australia. The committee would particularly like to thank Rio Tinto Australia for its generosity and time in assisting the committee with its visit.

In June 2011, the Legislative Council referred the Stolen Generations Reparations Tribunal Bill 2010 to the committee for inquiry. The inquiry has received a number of submissions and heard evidence from 12 witnesses from eight Aboriginal support agencies. The inquiry is due to finish hearing evidence later this year. During the year, the committee also heard evidence from witnesses from a number of state agencies and Aboriginal support organisations, and I thank the people who provided information to the committee.

I am also thankful to all members of the committee, past and present, for their dedication and hard work. I particularly thank previous members—the Hon. John Gazzola, who left us for

greener pastures, Mr Alan Sibbons, Mr Steven Marshall and Ms Frances Bedford—for their contributions to the committee. I also acknowledge the current members of the committee for their ongoing efforts—Ms Zoe Bettison, Dr Susan Close, Dr Duncan McFetridge and the Hon. Tammy Franks—and I particularly welcome our new member of the committee, the Hon. Kyam Maher. I noted in his maiden speech yesterday the obvious passion he has for Aboriginal affairs, and this is most welcome.

I thank all the Aboriginal people the committee has met over the past year. I appreciate their willingness to discuss their issues and share their stories and knowledge with the committee. In particular, I thank Jason Caire, our committee secretary, for his enthusiasm and genuine interest in supporting the committee in his tripartisan goal of improving the lives of all Aboriginal people.

Debate adjourned on motion of Hon. K.J. Maher.

BUDGET AND FINANCE COMMITTEE: ANNUAL REPORT 2011-12

The Hon. R.I. LUCAS (15:59): I move:

That the report be noted.

In speaking to this motion, I want to thank the members of the committee for the hard work they have engaged in over the past 12 months or so. I thank the hardworking and overworked staff member, Guy Dickson, for all the work that he has done. As I have noted previously in welcoming you to the chair, Mr President, I hope that you will show greater respect and regard for the views and decisions of this chamber that you are pledged to represent than your predecessor has done.

As you would be well aware, this chamber has passed a motion calling for the work of the Budget and Finance Committee to be assisted by a full time research officer. Mr President, I hope that you will place greater credence on the views expressed by this chamber in motions that have been passed indicating its desire for greater resourcing for the Budget and Finance Committee. I have put my views on that on the record previously and I will not repeat them again.

I think the work of the committee, as occurs in many other jurisdictions around the world with similar committees, can only be assisted by staff with expertise developing greater knowledge of the subject matter at hand in terms of departmental finances, public sector budgeting principles and policies, so that as new members come before the committee, perhaps not with the background in financial management that some other members might have had, the ongoing wisdom and expertise of the staff can assist those members of the committee in undertaking the role that this chamber has given that particular committee.

The only aspect I would say is disappointing is that there are still some members in this chamber who take the view that this is a bad committee in some way, because it actually works hard at getting to the bottom of financial management practices within government. Virtually every other jurisdiction in Australia has an equivalent body, or bodies, undertaking the same work and Labor and Liberal parties in most of those jurisdictions respect the work of those equivalent bodies, but for some reason the Labor Party in this state seems to have its head well and truly in the sand as it continues to take the view that there is something wrong with having a Budget and Finance Committee in the Legislative Council.

I think the Budget and Finance Committee, through its work, has demonstrated its importance and the need for it to continue, and whether it be under a Labor government or a Liberal government post the 2014 election I am on the record as supporting an ongoing role for the committee. I suspect that should the Labor Party be in opposition after the next election the hypocrisy of its current position in relation to the Budget and Finance Committee will be front and centre, they will become passionate advocates for the importance of a Budget and Finance Committee.

I think it is sad that members of parliament, political parties, only see (sometimes) in the important work of committees a partisan advantage for themselves; that is, when it suits them they think it is a good idea and when it might raise embarrassing and difficult questions for them it is a bad idea, it is not a good committee and not one that should be continued. As I said, time will tell, in relation to the Labor Party, should they find themselves in opposition post the 2014 election.

There are only two issues I want to raise from the work of the committee in particular. One is the issue of cartridgegate, first raised by the committee in September of last year and, of course, it has continued to be an important issue in terms of demonstration of poor financial management practices by the Labor government, its ministers and officers working for them.

I will not go through all the detail of it, other than to say that we are still in the position where the current minister cannot tell media interviewers the total number of public servants being investigated, and certainly the Budget and Finance Committee has still not received details from virtually any CEO (I think there might be one exception) in relation to a resolution of either disciplinary action or police action in terms of the poor management practices—or corruption in some cases—demonstrated by some public servants.

It is now more than 12 months since the Budget and Finance Committee first blew the whistle on this particular issue in terms of the public sector. If it had been left to this Labor government it probably would never have seen the light of day; it had kept it quiet for at least a couple of years. We know that Treasury was aware of it two years prior to the Budget and Finance Committee raising the issue, and there had been no reference.

I repeat also the concerns I put previously: again, in this year's Auditor-General's Report there is no reference to the issue of 'cartridgegate'. It was one of the more significant public sector financial management/corruption issues in the public sector but there is no reference to it in the financial watchdog's annual report to parliament. I have written to the Auditor-General in relation to the need for an independent inquiry and I have called on the government to establish an independent inquiry but that has been studiously ignored by both the government and, it would appear, the Auditor-General.

When we asked chief executive officers—and we had PIRSA there only 10 days ago—they had no recollection of any detailed investigations by the Auditor-General's staff. One officer said that they had been asked for copies of all documentation towards the end of the recent financial year but there was no primary intelligence or research-gathering by the Auditor-General in terms of going in and asking questions, using the powers of a royal commissioner that he has to demand answers, but basically doing a desk audit, collecting copies of documents that had already been collected by some departments.

We know that some departments have not pursued officers who no longer work in that particular department; they have either left the Public Service or they have moved to another government department. We know that some officers who were getting materials and benefits at home have not been queried in relation to those particular practices. The current process of inquiry and management, now under the management of minister O'Brien, has been entirely unsatisfactory, and that is why it is unsatisfactory: the Auditor-General has not adopted a more prominent role.

The second and final issue I want to raise relates to the issue of Public Service cutbacks because that has been an issue of some controversy in recent weeks. Yesterday I highlighted some of the work of the Budget and Finance Committee in relation to minister Gago's own department, PIRSA. Mr President, you will recall that the minister, again leading with her chin, sought to attack the Liberal Party and, in doing so, made the following statement to parliament:

> 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.

Embarrassingly for the minister, her own chief executive officer, in giving evidence to the Budget and Finance Committee, indicated that over the last two years 158 full-time equivalents or 13.5 per cent of PIRSA's workforce had already been cut. Even more embarrassingly for the minister, Mr Nightingale indicated that over the forward estimates this Labor government and this minister were going to take out another 133 full-time equivalents, or another 12.9 per cent of PIRSA's workforce. When you look at how many this minister has actually cut, or intends to cut, it is approximately 25 per cent, or one in four, of PIRSA's workforce, contrary to the statement she gave the parliament.

She was given the opportunity yesterday to apologise for misleading the council, to acknowledge she was wrong and to indicate to members in this chamber that she had misled the council but now wanted to clarify the record; it is to her shame that she did not take up that opportunity. In the typical fashion of the front bench in this chamber, all she sought to do was smear and attack the opposition, without looking at her own performance and the statements she had made and whether or not she had misled this Legislative Council on that particular occasion and that particular issue.

Given that our friends in the Labor Party—and I must use the word advisedly—believe that any reduction in the public sector means that that particular party is committed to sacking, we can now say that minister Gago is sacking 25 per cent of PIRSA's workforce. Let us be clear on that: if

we follow the language of the Labor Party, minister Gago is committed to sacking 25 per cent, or one in four, of her workforce.

We also know, from yesterday, that the Minister for Health, now using the language of the Labor Party, is committed to sacking 349 health workers from the health portfolio. It would appear from some debate today that it may well be (and we will be able to establish this through the Budget and Finance Committee) that minister Hill is actually committed to sacking up to 1,200 workers in the health portfolio over the last year or so and the next four years.

If that is the language for cuts in the public sector—that is, that a party is committed to sacking, a leader is committed to sacking—then Jay Weatherill is sacking one in four PIRSA workers—fact. And where do we get that from? We get that from the chief executive of minister Gago's own department. Jay Weatherill is sacking somewhere between 349 and 1,200—

The PRESIDENT: Premier Jay Weatherill.

The Hon. R.I. LUCAS: Premier Jay Weatherill, the member for Cheltenham, is committed to sacking between 350 and 1,200 health workers. In relation to these things, I have always been in the business of responding in kind when you need to and, if that is to be the language of the debate on public sector reductions, that any reduction is a sacking, with the leader of that party committed to sacking public servants, then let the games begin.

Of course, more sensible members of parliament and observers will know that reductions in the public sector can be achieved through a number of mechanisms: through attrition, through non-renewal of contracts, through targeted voluntary separation packages and, ultimately, through forced redundancies or sackings.

However, if all those are to be collapsed into one, then Premier Weatherill (although I am sure the leaflets will not be saying 'Premier', they will be saying 'Jay Weatherill', Mr President) wants to sack between 350 and 1,200 health workers and 25 per cent, or one in four, PIRSA workers. Let me assure you that every other department that has been through the Budget and Finance Committee has delivered equivalent numbers, and they can be put on the public record as well. The total number is about 4,500 I think, that evidently Premier Weatherill is sacking in the public sector as we speak.

Debate adjourned on motion of Hon. G.A. Kandelaars.

ELECTORAL FUNDING REFORM

The Hon. M. PARNELL (16:15): I move:

That this council—

1. Notes—

   (a) that the October 2012 South Australian ALP Convention has passed a motion calling on the state government to pursue electoral funding reform by severely restricting private, corporate and union donations to all political parties and increase the level of public electoral funding;

   (b) the motion acknowledged the need for support for electoral funding reform to come from all sides of politics; and

   (c) the opposition leader Isobel Redmond is also on public record backing the adoption of the 'Canadian model' of regulating political donations, including limiting individual donations to parties or candidates and prohibiting all corporate, union and organisation donations to political parties and candidates; and

2. Calls on the state government to introduce legislation for electoral funding reform during this term of parliament so that new rules can be placed for the 2014 state election.

The South Australian Labor Party changed its position on political donations at its recent state convention, on 27 October, voting unanimously, as I understand it, to ban or to severely restrict private donations, especially those from unions and corporations, to candidates and political parties. I will begin by commending the Labor Party for this development, and I offer my congratulations to the union officials who drove the motion through the convention.

The Greens have long been arguing for a new model for funding electoral campaigns such as this. It is an issue that I have raised on a number of occasions since joining this parliament. For example, I called for bans on corporate donations back in 2007 in light of the then forestry minister receiving campaign donations from companies in the forestry industry. In 2008, I introduced a private member's bill to force all applicants for large property developments to publicly disclose

their donations to political parties at the time they lodge their development application, and that was after the Rann government refused to consider changing the way in which political donations by property developers were handled.

Whether or not it is the Walker Corporation, Buckland Park or developers at Mount Barker, or any of the government's other financial backers in the property development industry, this issue of property developers making donations to political parties is where the current electoral funding system is brought into the greatest amount of disrepute or even disgrace. That is why, of course, the previous New South Wales government banned it, following a number of corruption scandals. Of course, it was too late to save the New South Wales government, but the lesson is still there for our government and for our parliament to learn.

I also introduced bills to parliament designed to end some of the dodgy practices of the Labor Party's fundraising arm, SA Progressive Business. In August 2009, the Greens launched the Democracy for Sale website to shine a light on fundraising practices. In July this year, I introduced a bill, the Constitution (Access to Ministers) Amendment Bill 2012, to ban the use of ministers as bait for party political fundraisers, and that bill will be voted on in two weeks' time.

The motion before us refers to the so-called Canadian model of electoral funding, and that is a model the Greens have long supported. Under that model, only individual citizens or permanent residents are allowed to make political donations. Corporations are not allowed to make donations; neither are trade unions. Donations are limited to around the $1,000 mark, although that is indexed to inflation. Also, spending limits apply to political parties and candidates in the conduct of election campaigns.

Under the Canadian model, public funding and broadcasting time on television and radio is provided by state, and it is divided up between parties, based on their level of support in previous elections and, importantly, there are limits on electoral spending by third parties who are not running in an election but who wish to advertise in support or against a candidate or party, the sort of restrictions, I guess, that we have not seen in the United States presidential election, where the super PACs have become the dominant force in political advertising.

The motion also refers to the support of the Leader of the Opposition, and I do need to put on the record why that is an appropriate part of this motion. In 2009, the Leader of the Opposition, Isobel Redmond, said that the Liberal Party would go to the 2010 state election with a policy that included limiting individual donations to parties or candidates to a maximum of $1,000, prohibiting all corporate, union and organisation donations to political parties and candidates and banning cash donations. In August 2009, Ms Redmond said the following on 891 to the breakfast audience:

> What we want to do is to move basically to the Canadian system, which basically says that you can make only personal donations—no corporate donations at all. The Canadian system has a limit of $1,100 a year. We're looking at maybe about $1,000, although that might be negotiable up to the current, I think, $1,500 before it becomes declarable. But basically a very severe cap on personal donations and no corporate donations whatsoever, and the receipting of everything in terms of cash—no passing through third parties and all those sorts of things.

That is the quote from the media monitoring service that all members have access to. In November 2009, Ms Redmond also was quoted as telling *The Advertiser*:

> There is growing concern in South Australia that favourable decisions about things such as development approvals or contracts or appointments can be bought, and that one of the ways to do this is via donations made to political parties.

The Greens welcome this support for an alternative model of election funding from the alternative premier. I would just briefly like to run through the situation as it applies elsewhere in Australia. In fact, all other states and territories, except for Tasmania and the Northern Territory, have a budget for funding parties and candidates that receive more than 4 per cent of the primary vote in an election. In other words, they have public funding of their election campaigns.

New South Wales and Queensland reimburse electoral expenditure on a sliding scale, Victoria, WA and the ACT have an indexed amount, and New South Wales also provides policy development support and administrative support that can be up to $2 million per party. In further reforms in New South Wales, now only individuals on the New South Wales' electoral roll can make political donations, and a number of jurisdictions—New South Wales, Queensland, WA, the ACT and the Northern Territory—all have strict rules on disclosing donations to political parties.

That leaves South Australia, Victoria and Tasmania in the shade, and I would say that South Australia has the least transparent system of all for political donations. The laws in our state are well behind best practice and even well behind changes that have been made in other states.

Nationally, we stand out for the laxity of our rules on election donations, and this is a chance, I believe, with the opposition supporting the move, for the South Australian Labor government to be proactive.

The membership of the Labor Party through its convention recently has spoken. As I have said, you have the opposition on side, you have the Greens on side and I have no doubt that, when this matter does come up eventually for a vote, we will find that other members of the crossbench are on side as well. The Greens believe that postponing a decision on this important reform is leaving our state open to corruption. I would therefore call on all members to support this motion which asks the government to get on with reform.

The planets are aligned. We have all the key players on board, including the rank and file of the ALP, and I think that now is the time to do it. If we were to legislate promptly, we could have the new rules in place by the 2014 state election and our democracy in this state would be the better for it. I commend the motion to the house.

Debate adjourned on motion of Hon. T.J. Stephens.

ADELAIDE METROPOLITAN TRAIN SYSTEM

The Hon. M. PARNELL (16:25): I move:

That this Council—

1. Notes—

   (a) the recent announcement that large parts of the Adelaide metropolitan train system will be closed for much of 2013, including the complete closure of the Belair line;

   (b) that no work will be undertaken on the Belair to Mitcham section of the Belair line, allowing trains to continue to operate on this section;

   (c) that a 'hybrid' replacement operation—with commuters travelling part of the way on the train before transferring to a bus—is already planned for the Outer Harbor and Grange lines;

   (d) that rail closures disproportionately affect rail commuters with disabilities and also commuters with bicycles and people with prams for children; and

   (e) that keeping train services on the outer section of the Belair line will ensure more wheelchair accessible buses can be focused on servicing Mitcham to the city, significantly decrease commuting times for many Mitcham Hills commuters and remove the need to provide alternative services for bike riders; and

2. Calls on the state government to keep the Belair train operating between Belair and Mitcham during the planned 2013 shutdown.

Next year, 2013, is a year that will involve major disruption to rail services. We will see the Adelaide Railway Station closed for at least one month and we will see the Noarlunga line and the Belair line closed for a much longer period, most likely at least six months and possibly much longer. A question that we could debate (but I am not proposing that we do that now) is whether or not that disruption is needed. Is it necessary; is it the right thing to do?

That would involve a debate about whether the government has made the right call in allowing the interstate freight line to continue to pass through the southern suburbs of Adelaide and through the Adelaide Hills rather than the proposal that was flagged by a number of community groups, and that is to reroute the freight line from Murray Bridge up around Truro and for it to come into Adelaide from the north. However, that debate is for another day. In fact, I think that debate now is for another generation, because with the expenditure of money on the overpassing facility at Goodwood we are now locked in this route as a major freight route for some time to come.

The Greens are disappointed that that is the outcome. We were behind the rerouting campaign to avoid unnecessary trains of up to two kilometres in length passing through the metropolitan area, especially in the southern suburbs where the alignment resulted in a great deal of noise and inconvenience, not to forget the danger that comes from the potential blocking of multiple level crossings at one time by trains of two kilometres in length, but I digress.

Given that we are having these works done at Goodwood station, there is going to be some disruption. Rail passengers are a pretty stoic bunch and that is because they have to be. Over the last few years there have been a number of disruptions where rail passengers have just had to learn to cope. Whilst passengers accept that there will be inconvenience when railway lines are closed, they do expect the government to minimise the inconvenience as much is possible.

The expectation of the community is that when a rail line is closed alternative arrangements will be put in place. Certainly the government is planning to put alternative arrangements in place, as it has during previous line closures. However, I was drawn to a letter to the editor in last week's issue of the *Hills and Valley Messenger* which had within it, I think, the seeds of an excellent proposal. The letter from one R.E. Richardson of Eden Hills basically says, in relation to the closure of the Belair line and its replacement with buses:

> The last closure for the line upgrade was a disaster as the bus route weaved in and out of the hills' stations and took twice as long to get to Adelaide as the train.
>
> The numbers catching the bus dropped off dramatically over time. An alternative would be to run the train from Belair to Mitcham and a bus from Mitcham down Belair/Unley Rd to the city. This may reduce the drop-off of patronage which occurred previously. Increasing a 25 minute trip from Eden Hills to an hour plus is unlikely to recover passenger numbers.

That idea expressed in the pages of the *Hills and Valley Messenger* is not an original one. In fact, a number of people have put this to me, that it is unnecessary to close an entire line when only a small section of the line is going to be subject to major works. The idea put forward in that letter is, I think, a viable solution to minimising the inconvenience when it comes to the Belair line in particular.

I should say that the purpose of this motion is not to embarrass the government or to criticise the government because I think this time they have expressed an intention to consult with consumers more than they have in the past, and I will say that minister Chloe Fox has always made herself available, and I am looking forward to discussing this with her hopefully tomorrow. So, that is the Belair line.

The Noarlunga line will be similarly affected by closure, but my understanding is that in addition to the closure that is brought about primarily by the works to be conducted at Goodwood, where the freight line will be grade separated from the passenger line, there will be electrification works along the whole length of the line. Whilst the line upgrade itself will only occur on the Oaklands Park to city section, I still think there is some scope for the government to consider timing their electrification works to enable at least the Noarlunga to Oaklands Park section to be serviced by train for as much of 2013 as possible.

I should also point out that this notion of a hybrid solution—in other words, rather than closing a rail line completely, closing just part of it and replacing part of it with buses—is already in place for the Outer Harbor and Grange lines and the changeover point for those lines is at Woodville.

Another issue, of course, in relation to the inconvenience caused by the closure of rail lines is some classes of customer who are particularly disadvantaged. At the top of that list, I think, would be people in wheelchairs. We know that there are not enough wheelchair accessible buses to ensure that every bus is available to someone who is in a wheelchair. That is what makes buses different from trains: every train is accessible to people in wheelchairs.

The Hon. R.L. Brokenshire: Especially when they are going to bring out the old silver buses from the cobwebs.

The Hon. M. PARNELL: The Hon. Robert Brokenshire interjects with some local knowledge of the types of buses he believes will be brought out to service this task. The Greens' alternative—having the trains run at least from Belair down to Mitcham—will make it easier to ensure that wheelchair accessible buses can be prioritised on that shorter section of bus route from Mitcham to the city. This is an issue that I know our colleague the Hon. Kelly Vincent has raised a number of times, and I know, through my discussions with her and her office, that they are very concerned about the impact of these closures on people with disabilities.

The Belair line has two unique geographic circumstances that make it more important perhaps than ever to at least keep part of that line operating; one of them is the topography—the fact that the line rises fairly quickly from the Adelaide Plains up into the Hills. There is another category of passengers that is affected by the topography and that is bike riders.

What you find on that line is that on any weekend day, for example, there can be up to 40 bike riders at Mitcham station trying to get their bikes onto the train for the ride up the hill. During weekdays, you do find a number of commuters and students who might ride their bike down the hill into the city but, for whatever reason, are not able to or are not comfortable with riding it all the way up.

The Hon. Rob Lucas, while he is not interjecting, is scowling. I think he cannot understand why people would not ride the whole way up to the 200 or 300-metre elevation to get up to Blackwood. This means that these people who like to combine two environmentally-friendly forms of transport will find it difficult when the train line is out because there will not be a train up the hill. That is why it makes sense to at least try to keep the train running to Mitcham so that the hilly section of that route is available to bike riders.

The other aspect of the Belair line is that the layout of the line and the location of the stations make it very difficult to provide a parallel alternative service. It is not as if it is a straight line of track with a parallel straight road running alongside it. It is a fairly easy task to replicate the train with a bus, but that is not possible on the Belair line. There is no straight road between Eden Hills and Lynton station, for example, and they are two adjoining stations on the line.

So, that means that any bus going between the two has to travel backwards away from the city first before coming around and then heading back in towards the city. What is a seven-minute journey on the train is something like a 45-minute journey by bus, and that is a massive disruption to commuters if they have to put up with that. When the Belair line was last closed for resleepering work the length of time the bus took to reach the city from many of the stations on that line was more than twice as long as the train takes.

Passengers are prepared to put up with a certain amount of inconvenience, but their patience is not unlimited and the government will freely admit that a large number of passengers simply disappear. They vote with their feet and they drive. A big part of the public transport task must be to encourage what we call discretionary passengers out of their cars and on to public transport for environmental reasons. Of course, you will always have those who have no choice—the elderly, the young, people with disabilities—who are left with whatever service the government deems fit to provide.

Back on the issue of bicycles on the train, when the Belair line last closed the government contracted Bicycle SA to provide a handy little service. It was a mini-bus that towed a trailer and it ran between Mitcham station and Blackwood. The idea was that passengers who would normally put their bike on the train with them would instead ride to Mitcham station, load their bike on the trailer and hop into the minibus. That service was by no means as frequent as the train service and it certainly did not run all the time.

It was provided during the evening peak, a number of trips, and I think there were a number of trips on the weekend as well. Whilst that is better than nothing, it would be far better if we could simply keep the existing train line running between Belair and Mitcham. You would not then need to provide the alternative, and you could still have passengers with wheelchairs and bikes at least being accommodated for that part of the route.

The idea of keeping the train services going for part of this line will provide a better service to rail consumers during this period of line closure. It is likely to result in fewer passengers abandoning the system completely and it will thereby decrease traffic congestion on those arterial roads, especially heading into town. It would also provide a great service for cyclists.

So, this motion is designed to get members thinking about the way we manage infrastructure and the way we provide alternative services to deal with the disruption that major infrastructure works cause. It is not designed to be critical of government, although of course we reserve the right to do that when the government does not get it right.

I dearly hope that the government will not do what it did last time and try to pretend that a bus can be a train and follow the same or very similar route. It just does not work on that alignment, and I hope the government listens to the community and to rail commuters and does put in place a system that minimises the inconvenience that will otherwise be caused to passengers during the 2013 shutdown. I commend the motion to the house.

Debate adjourned on motion of the Hon. Carmel Zollo.

VICTIMS OF CRIME (MISCELLANEOUS) AMENDMENT BILL

The Hon. R.L. BROKENSHIRE (16:39): Obtained leave and introduced a bill for an act to amend the Victims of Crime Act 2001. Read a first time.

The Hon. R.L. BROKENSHIRE (16:40): I move:

That this bill be now read a second time.

I rise to introduce this bill and encourage my colleagues to have a look at it, as I know that all my colleagues have an interest in fairness for victims of crime. The bill seeks to amend the Victims of Crime Act 2001 in a number of ways, some of which I acknowledge have been debated in this place before and passed, and I will come to that later in my second reading explanation.

First, I want to go through some history of what was once known as criminal injuries compensation legislation and then victims of crime legislation. There has been criminal injuries compensation legislation in South Australia since 1969. However, after a few decades that act and the general approach to looking after victims of crime was reviewed from 1999, under the former government, and was changed to be the Victims of Crime Act as we now know it.

The landmark legislation reformed the former act in creating a number of principles on how victims were treated by the justice system and creating what was then a victims of crime coordinator. That role has since been changed to a Commissioner for Victims' Rights, a job I believe very ably filled in an extremely dedicated way by commissioner Michael O'Connell, whom I will come back to a little later in my remarks.

The history I have just outlined in brief has, at its base, the question of compensation. We all know that compensation is not the only way to bring about healing and restoration for the harm caused by criminal offending, however, it has been a longstanding principle as a means of rectifying the harm suffered by others, particularly so when there are limited opportunities for civil remedies against offenders as (a) the victim might not be able to afford legal representation to pursue compensation, and (b) perhaps more to the point the offender might not be able to pay or, indeed, be able to be identified or located.

For this reason, a fund has existed for decades to provide money for compensation for victims. It seems to be generally accepted by those who have had dealings with victims of crime compensation that it was very conservatively managed by the government of the day to ensure the fund had money to cover future claims. The levy for criminal injuries and now victims of crime has steadily risen, but never so much as it did in 2011 when it was doubled from $30 to $60.

We have seen in recent years two things: that significant increase but also the continued flat line in the maximum compensation available to victims. The flat line on that maximum means that compensation levels down the chain remain flat and not keeping pace with the cost of living. It is sad that some other things in this place are rectified swiftly to ensure revenue keeps coming in and people get paid a fair wage and yet compensation for victims has lagged.

The Hon. Stephen Wade has told this place, as have others but he in a longer historical analysis, that the maximum payable under either act has been $1,000 in 1970, $2,000 in 1974, $10,000 in 1978, $20,000 in 1987 and $50,000 since 1990. It is quite simply long overdue that this maximum be further reviewed, given that $50,000 in 1990 terms is worth approximately $90,000 in 2012. As the Hon. Mr Wade said, Queensland and Western Australia have limits of $75,000, Victoria has $60,000 and we are ranking equal fourth with other jurisdictions.

Having gone over the history of this, I note that the former attorney-general, the Hon. Chris Sumner, observed in 1987 that 'lifting the maximum to $10,000 in 1978 made South Australia the highest in the country'. In 1987, he observed that 'lifting the limit to $20,000 was bringing South Australia into line with the majority of jurisdictions in the country'.

The former Labor attorney-general was proud to say his government was taking us to the front of the pack, or at least in the lead pack, with the maximum, but under Labor in South Australia today we have sadly fallen well behind the peloton. So proud in fact was former attorney-general Sumner in 1987-88 that he sent copies of the bill to the United Nations, New Zealand, New South Wales and Victoria, as they had expressed an interest in copying the legislation.

I acknowledge that the former attorney-general, the Hon. Trevor Griffin, in a cabinet submission in March 2001 advised against lifting the maximum at that time. He said, rightly, that it would lift the point scale generally. I think that is understood by everyone involved in this debate from all sides of politics. We are going into that issue specifically and, again, I will get to that shortly. However, the key point the former attorney-general made in 2001, in declining to lift the limit, was that the consultation did not ask for that change at that time.

The Law Society told the consultation they wanted a CPI increase to the $50,000 maximum going forward, and we are trying to do that today. The Victim Support Service said at the time that its main concern was the generally low level of awards due to a legal precedent—and, again, I will come back to that issue during the course of my remarks. However, calls to lift the maximum are

now coming loud and clear from the community and are reflected in this place, and the time has come for change.

Before moving on to the important contributions of others in this debate, I acknowledge what the Hon. Mr Wade also highlighted recently on Adelaide radio, that the government's moves on criminal asset confiscation presently before this place do potentially threaten the inputs for the Victims of Crime Fund by diverting asset seizures to the work of the courts rather than to victims. He has a valid point. Figures I will give the council later show that recoveries from offenders comprised about 20 per cent of revenue in 2011-12.

The levy stands to potentially help the fund stand on its feet without criminal assets confiscation. Perhaps that is the government's true agenda—to set this fund up to no longer be reliant on the variable results of assets confiscation, stand on its own on levies alone—and yet whatever moneys, windfalls, you could argue, come spasmodically through assets confiscation for courts funding purposes. This is debate for another day, but it does relate to the fund we are talking about in this bill.

I acknowledge at this point the good work of the Hon. Ann Bressington MLC on the Victims of Crime (Compensation Limits) Amendment Bill that she had moved. We were not clear about the fate of that legislation when we moved this bill and apologise if we are at cross-purposes with what the Hon. Ann Bressington might have been intending with her bill. Our bill is similar to hers in respect of what she was pursuing, and there is likely majority support in this place for the principle of doubling the maximum compensation and indexing it into the future. That is positive.

However, this bill is a broader bill dealing with other matters that I will soon go into, and it is an opportunity for other honourable members to test the parliament on reforms they would like to see to the system. In fact, if the government does not like $100,000, give us another figure—go ahead; let's have a genuine debate. Here is the opportunity to reform a compensation system that most argue is overdue for reform.

That brings me to the victims of crime levy. The Rann and Weatherill Labor governments have stockpiled the levy, and never faster than since it doubled the levy from $30 to $60 in 2011, based on a recommendation of the Sustainable Budget Commission, commonly known as the 'razor gang'. It said of the opportunity created from an increased levy:

> The Fund can be used to provide payments to persons to recover from the effects of crime, assist in the prevention of crime or advance the interests of victims of crime.

That had a familiar ring to it, so we researched where we had heard it before. In 1987, former Labor attorney-general Chris Sumner increased the criminal injuries compensation levy, but not by as much as occurred in 2011, when it doubled. He said, when challenged by the then shadow attorney-general and later attorney-general, Trevor Griffin, on the breadth of offenders who would be hit with the expanded levy:

> ...in order to ensure there is sufficient money in the Criminal Injuries Compensation Fund so as to increase the amount of compensation available for victims and to provide money that can be used for other services to victims...

I emphasise that second point, and acknowledge that the government does make payments to the Victim Support Service, Yarrow Place and others. Here are some other relevant historical statements. Later that year, in April 1987, Mr Sumner told parliament that, by lifting levies, a bill amending the act would:

> ...overcome the most glaring anomaly and over time with the levy proposed that there should be more money available for criminal injuries compensation and other assistance to victims of crime...

Here is a case in point, a case that comes pretty close to home for members of the government. There are questions for the government arising from a chain of correspondence I have received under FOI laws between the Attorney-General and the Minister for the Status of Women. It seems clear that her advocacy during 2011-12 for the Victim Support Service to get more than their 2011-12 CPI increase paid off in the 2012-13 budget.

They did get an extension of services that they asked for in 2012 for 2012-13, even if the Attorney-General did tell the minister in writing in April 2011 that the tight budget meant there was no additional money to spend at that time, when the forward estimates actually showed an additional $15 million per annum in revenue to come in from the increased levy.

The Attorney-General told minister Gago in November 2011 that there was a budget of $27.7 million from the Victims of Crime Fund and that it was fully committed. He said, 'there are

restrictions relating to the amount of expenditure allowed from the fund each year.' My question to the government is: who sets those restrictions? It does not sound as if the Attorney-General does; is it another area of government, possibly Treasury?

The balance of the fund for 2011-12 stands, according to the Auditor-General in his recent report to parliament, with a balance of $104 million, having increased by $28 million, an increase of over one-quarter in just one year. We foresaw that this fund would grow to $116 million this financial year and, on trend, would get to $181 million by 2013-14. We were only 10 per cent out this year. The surplus in the fund will keep going right up, but by what degree will victims see any benefit?

It begs the question: why increase the fund by so much so quickly? The government gets a budget benefit of being in the black overall, but this is a fund dedicated to providing compensation and services to victims of crime, not the re-election prospects of the government. Historically payments have been made to road trauma victims, Yarrow Place for sexual assault services, and the majority to the Victim Support Service, but also occasional payments to the Victims of Crime Unit headed up by Commissioner O'Connell, installation of CCTV, I believe, in courts for vulnerable witnesses, and a child witness assistance program.

They still have a budget line for those in their financial tracking systems but the latest data I have to hand—which I will go into in a moment—shows that to March 2012 nothing had been paid during 2011-12 for those occasional purposes for the Victims of Crime Unit, CCTV or child witnesses. I believe there is a case for more money to be paid to victim support services of various kinds, and hopefully the increased budget funding this financial year does relate to support, particularly to vulnerable or marginalised victim groups.

I invite the government to explain the composition of that budget announcement, given that we have the correspondence under FOI from the Victim Support Service on what they were seeking this financial year. This is what the fund activity was as at March 2012. Revenue total was $40 million, comprising $13.8 million from courts levies, $8.7 million from police levies, $2.3 million in interest, $7.9 million in recoveries from offenders, $6.2 million in appropriations, and $1.6 million in confiscation of profits.

So as I said earlier, that is $9.5 million in recoveries and confiscation of profits, some of which would be criminal assets confiscation—well over 20 per cent, in fact approaching 25 per cent, of all revenue in the last financial year to March. On the expenses side of it, it totalled $15.9 million: $9.4 million in compensation to victims, $1.57 million in grants to the Victim Support Service (I suspect that that was all it received that year), $74,000 to road trauma victims, $100,000 for sexual assault victims, $50,000 for Catherine House, $1.7 million in legal and professional costs, and $558,000 in ex gratia payments.

That does sound promising, but to March 2012 there was a $25 million surplus, with $40 million in revenue to March but only $16 million in expenditure. I put it to members that there is little likelihood that expenditure would have grown by much in the last three months of last financial year. In fact, the Auditor-General said that surplus was $28 million by the end of 2011-12.

That brings me to two of those expense figures: $9.4 million in compensation to victims and $1.7 million in legal and professional costs. I cannot tell, but somewhere in there is the estimated $1 million that, according to court documents, was allegedly defrauded from the fund. So, arguably, on the allegations, something like 10 per cent, if not a lot more, of the 2011-12 payments purportedly paid to victims were not to victims but allegedly to others for an inappropriate benefit.

That is the situation we have under this government, a government in a previous era that was proud of its world-leading stance for victims of crime. In 2012, we now have the fund growing exponentially due to a government policy to collect money in the name of victims but, on present policy settings, not to increase the parameters for money to be paid out to victims of crime, victim support services or crime prevention services.

Before I turn to the other aspects of the bill, I acknowledge that the government wants to ensure that it has money in the fund for unexpected claims due to issues arising overseas. I am told that we are the only jurisdiction that pays compensation for South Australian victims of criminal acts overseas, including to Bali bombing victims and to one family who lost a loved one in the September 11 terrorist attacks on the World Trade Centre, and that is commendable of the government and something we should be proud of.

I acknowledge that it is a risk difficult to quantify in the budget but, on current trends, I do not think that a fund is likely to grow without reform of the legislation to a degree that we need $170 million to $180 million sitting in the fund in just a couple of years' time. Lines 1 to 23 of the bill relate to matters of the maximum compensation payable and the indexation of that maximum that will, in turn, flow through to increasing the amount available to all victims on an indexed basis, and that is only fair, so I will not speak further on that matter.

However, I will point out the injustice the Victim Support Service adverted to back in 2001 in its submission to the former government and what advocates for victims for crime have told me. Ever since cases such as Bole from 1995, you would see a rape victim generally unable to get more than 12 points on the 50-point scale or, basically, $12,000 for non-economic loss. To me that is terrible—that is not keeping up with indexation—but that precedent keeps being applied.

For that reason, clause 7(3) of the bill provides by regulation a mechanism for the government to set a points scale for different types of physical and psychological injury (something we have with motor vehicle accident and injured worker compensation); that is, if you can satisfy criteria that you have certain injury, you should get close to a set level that would be established by regulation. We firmly expect that, in consultation with victims and the legal profession which represent them and support workers, such as the Victim Support Service, Yarrow Place and others, in relation to what would be fair and reasonable.

It is very odd that you could suffer an injury inflicted by a criminal offender, face uncertainty and get a markedly different result from the result you would get if you suffered that injury in a motor vehicle accident or in the workplace. It is time that victim of crime compensation matured, and we believe that that is the mechanism to achieve it.

Clause 8 puts clearly in place a system that we know, in practice, is determined on a case-by-case basis, but we want it made clear to victims that they have a right to a maximum of $6,000 in funding on an immediate basis to enable the alleged victim of a major indictable offence to relocate if they feel that their safety is threatened. In effect, this is to cover removal costs. No-one is going to be able to claim that if they do not feel they need to move as the payment is for relocation expenses. We do not want to see victims of crime fearful or waiting with the invoice from the removalist to see whether an offender is convicted before they are reimbursed for the cost of moving to a safer, secret location.

Clause 9 codifies what we want to see from this government—a special report looking into whether this act is working for victims, looking at what is being done in other jurisdictions. I note, for instance, that historically the concept of a victims of crime levy on criminal offenders was inspired by what the former attorney-general saw in the United States and ways to assist victims or, indeed, prevent people becoming victims of crime.

In short, this provision creates a transparent process before parliament on the state of play around the nation and world best practice for victims, and looking at ways in which we can make use of what is a rapidly growing fund in a proactive cost-benefit analysis for victims.

Before I close, I want to say clearly on record that I expect that this review would also look at three issues: firstly and critically, under the first head of review we want to ensure that the Commissioner for Victims' Rights is adequately resourced. We know that he and his staff work very hard; we get that in information from constituents who seek support services from his office. What extra help do he and his staff need? We want that looked at.

Secondly, lawyers complain that the amount they are entitled to under the fund for their costs is restricted. Let them make representation to the review. However, I have heard from several quarters that this is a problem and an impediment to seeing the current points system and cases like Bole tested in the courts as lawyers have no guarantee of being paid their reasonable costs for work on testing the common law precedents for injuries for their clients.

Of course, if the government sets a point scale for injuries as we propose in this bill, the scope for legal interpretation and legal costs ought to be significantly reduced; and having met with a lawyer who does so much work of a pro bono nature to help victims because of the poor payment structure at the moment, I know that is a matter that needs to be looked at.

Thirdly, we want to be sure that medical and allied health professionals are getting paid adequate amounts for their professional services producing expert reports from the fund. We do not want a situation where professionals will not do victim of crime work because there is

uncertainty of payment or a poor payment for their reasonable costs for consulting with a victim and providing their opinion.

I hope it can be seen that this bill is an invitation to broadly review the Victims of Crime Act, focusing particularly on the question of compensation and expenditure from the Victims of Crime Fund. It is not just about lifting the compensation limit and thereby the awards to victims: it is about ensuring that we take a thorough review of the system for compensating victims, supporting them and funding services for them in the future.

It is a miscellaneous bill; it is open to reasonable amendment on any front within the act, and I again acknowledge that other colleagues are of a similar mind on issues with the legislation, particularly the maximum compensation payable. I commend the bill to the council.

Debate adjourned on motion of Hon. G.A. Kandelaars.

NATIONAL PARKS AND WILDLIFE (LIFE LEASE SITES) AMENDMENT BILL

The Hon. J.M.A. LENSINK (17:03): Obtained leave and introduced a bill for an act to amend the National Parks and Wildlife Act 1972. Read a first time.

The Hon. J.M.A. LENSINK (17:04): I move:

That this bill be now read a second time.

In May this year I introduced a bill known as the Crown Land Management (Life Lease) Amendment Bill 2012. Since then, through broader consultation with shack site lessees it has come to my attention that some of the shack sites, most notably Coorong, Pondalowie Bay and Little Dip, are in fact leased under the National Parks and Wildlife Act 1972 and require separate legislation to enable them to avail themselves of the same benefits in that bill.

This bill before us mirrors the provisions of the Crown Land Management (Life Lease) Amendment Bill 2012 except that it does not seek a subleasing arrangement with local council because of the difficulties local councils would have in taking daily care, control and management within a national park. This bill amends the National Parks and Wildlife Act to allow life lease holders to obtain renewable and transferable tenure.

The result will be to provide an incentive for lessees to upgrade and improve their shacks for the benefit of those facilities but also for the environment. Subclause 35A(2) provides the mechanism required for a lessee to apply to what is known as the relevant authority, which in most cases is the minister or, in the situation of co-managed parks, the co-management board, for a new renewable and transferable lease, which the authority must issue providing that clause 35A(4) is satisfied.

The conditions in new clause 35A are almost identical to the proposed new section 44A of the Crown Land Management (Life Lease Sites) Amendment Bill; that is, leases would be for five years with a subsequent right of renewal, leases will be transferable with the consent of the relevant authority, and the lease will contain details regarding all infrastructure, effluent and environmental upgrade requirements. The two-year time limit for application for the new type of lease would also apply.

I have had significant contact with national park shack site lessees who find themselves in the same position as other life tenure shack site lessees across the state. As there is no subleasing arrangement, I did not speak to local councils. I had discussions about the issue of national park shack sites with parliamentary counsel for a number of months before having the bill drafted. After they examined copies of the individual leases, they are confident this bill would provide similar secure renewable tenure for life leases under the National Parks and Wildlife Act as for those under the other Crown Land Management Act.

Like other shack lessees, those located in national parks hold memories for generations of families who have made at least annual pilgrimages to them. They also pay council rates for which they get little if no service, rates, for instance, on Yorke Peninsula being comparable to those paid in the City of Norwood, Payneham and St Peters. One shack at Robe, which has since been removed, was the princely sum of $575 per quarter for no service at all. Like other shack lessees, these lessees help look after the local environment through cleaning up rubbish left by others and reducing weeds and, at times, they can have difficulty getting hold of the duty rangers. There has been some difficulty because of the internal difficulties in DEWNR.

I will refer to each of the parks individually now. The Innes National Park, which has sites at Pondalowie Bay, was first claimed in 1970. Its name arises from the Innes family who gifted the park to the government. Mr William Innes discovered gypsum in the area, which has been mined and exported since the early 1900s. The town of Inneston has retained a number of heritage buildings which are available for hire as accommodation. I am told that Boral still holds the tenements, and the lakes where the gypsum is mined were excluded from the original proclamation so that that activity could continue.

Innes National Park has many beaches which also make it a renowned destination for surfing. The area has a number of shipwrecks, the best known being the *Ethel*, which can be partially viewed from the beach, as it is exposed. Pondalowie Bay within the Innes National Park is still an active fishing village. I am told that the Innes family gifted the park with the proviso that the village would always be allowed to remain; so, I take that to mean that the shacks were intended to remain there. There are about six cray fisherman, who are licensed within the northern zone rock lobster fishery, and from 1 November through to April they ply their craft. Their crays are exported exclusively to China by Ferguson Australia.

Innes National Park comprises some 9,232 hectares of remnant vegetation and is one of the jewels in the crown of our coastal parks. It is very popular for the varied recreational opportunities, and in a regional tourism survey undertaken in 2003 it was rated as the most visited attraction on Yorke Peninsula with 140,000 visitors or 27 per cent of all overnight visitors.

Lessees pay up to $4,000 per annum in lease fees alone to DEWNR and they are the only leaseholders in South Australia who, along with their guests, are also required to pay entrance fees. An annual pass is $55 and an overnight fee is $16. The leases have been rated based on equivalent shacks at Marion Bay which are freehold, so I am not sure how that comparison can be made. One such leaseholder has sent me a letter accompanying his lease agreement in which he says:

> I enclose a copy of our lease...
>
> You will see there is no restriction on the Department's ability to increase our annual rents, and we know this can be made unsustainable for us at any time. The lease and Council rates now cost us $2,800 per annum for which we get no services except the use of local roads and communal rubbish collection at Stenhouse Bay (15 km away). We provide all our own water and power.
>
> I also enclose a photo of the shack so you can see the site area (total about 100 sq m), that the Department and Yorke Council now value at $133,000! They have previously argued that this value is 'adequately' discounted for lease restriction when compared to nearby (!) Corny Point and Marion Bay freehold sites.

I understand that in his future contributions, the Hon. John Darley will have some comments to make about the valuation of the site leases, which he understands in great detail and on which he has some strong opinions.

I attended the inaugural meeting of the newly formed association over the October long weekend, and I would like to acknowledge its president, Mr Brenton Chivell, who is here to hear this address today. As well as lessees from the fishing village, there were lessees from nearby Shell Beach and Dolphin Beach. One lady has been coming to the shacks since 1952, which is well before the park was proclaimed.

Shackies told me that they provide emergency services and have prevented drownings in the area. On a semiregular basis they rescue other visitors' four wheel drives which become bogged on the beach and have removed a large amount of broken glass which was embedded in the dunes by camping groups. All rubbish is taken out of the park by the lessees themselves as they have no collection service, in spite of their council rates.

Shacks provide their own water through rainwater and electricity through solar. They have long-drop eco-friendly composting toilets and one of them who has been going as a child said that there were great lessons in conservation. He put it to me this way:

> We grew up with a single 12v car battery for our lighting and to power a tiny 12v b&w tv and gas for fridges and a secondary light for our dining area. We soon learned the importance of turning lights off to save energy, and short showers for conserving water. Items that still play a part there today, but also instilled important conservation habits on us as generations.
>
> The tv was only ever used to watch the Adelaide news if the wind was blowing the right way, and the rest of the night was playing cards and board games, or u simply went to bed and read a book with a torch. Many of today's generation never get to learn the importance of saving energy, nor the alternatives to watching tv all night.

I think these comments are really important for the parliament to hear because there is something that will be lost if we lose these shacks and I think it is very important for the parliament to understand the sorts of experiences that people have.

In order to gain a better understanding of how the leases currently operate and to assist parliamentary counsel with the drafting, I was provided with a number of leases and other documents and amongst that material is a document which appears to have come from the environment of days of yore which is entitled 'Shack site policy for national parks and reserves'. The opening paragraphs read as follows:

> The State Government has adopted a new policy on shacks located in parks reserves proclaimed under the National Parks and Wildlife Act. The following policy will be operative from 1st March 1984.

Under the heading 'Tenure', the document states:

> 1. Each shack owner will be issued with a lease and may retain their shacks until 31st December 1994 (except for those cases described in 2. Below.) The previous policy of lifetime tenure (with right to transfer) or 15 year lease will no longer apply.

Point 2 refers to serious breaches of conditions of those which would require substantial upgrading to reach a minimum standard.

I have read these details into the record because I think they demonstrate several things. First, there used to be a policy of transferability and leases were for 15 years. Secondly, there was a dramatic change in government policy in 1984 and I think we deserve to know why. Thirdly, prior to this shacks clearly were not viewed as dimly as they have been more recently. This same document also refers to the fact that some shacks had been purchased and that some are places of permanent residence. I note that there are still examples of permanent residents living at Pondalowie Bay and in the Coorong National Park. Fourthly, we do know that the shacks located in national parks were not able to be freeholded, as many were under the last Liberal administration, so they are part of a residual group that has remained in limbo.

The Innes National Park is one of the parks that the environment department intends to use for raising revenue as first flagged in its 2010-11 budget. As a result it commissioned a consultant to undertake an extensive review of all the facilities in the park entitled 'Innes National Park visitor experience plan', to which lessees were part of the consultation. Facilities under consideration include camping sites, road infrastructure, the DEWNR-run visitor centre, leases for the Innes Trading Post/Rhino's Tavern/Stenhouse Bay store, jetties, picnic areas, existing accommodation, beach access trails and heritage buildings of the Inneston township.

The purpose of the plan is 'to develop and manage visitor facilities and the visitor experience too,' with the following aims:

- maintain the high level of visitation experienced during the summer months, Easter and October long weekends;
- to enhance the quality of visitor experiences; and
- to increase visitor numbers during the cooler months of the year.

In relation to the shacks area known as Fishman's Village, the report states that it 'represents a living history within Innes National Park as a working settlement'. The report identifies problems with the area in relation to managing cars, as there is little space for turnaround, particularly towards the area of the access to boat launch facilities and the beach, and shack lessees themselves report that traffic calming interventions have been required, particularly for the safety of children in the area.

The report recommends that some improvement works take place to this effect and state that there are opportunities to form partnerships with the shack lessees. They are certainly supportive of this, and during their meeting with the local park ranger they expressed that they would be happy to assist with Friends of Parks activities, in addition to the general contract they have with the rangers to report incidents and other matters within the area.

On that October long weekend, at the meeting with the ranger, it emerged that campers who come to the park casually have taken the view that Innes National Park is a lovely place to visit, but you cannot camp there, which contradicts many of the government aims in terms of visitors. Clearly decisions have been made about removing facilities and changing camp grounds, which has led to a decline in visitor numbers and certainly will not support the government's aim of increasing revenue through the park.

I turn now to the Coorong National Park, which was first proclaimed in 1966 under the Walsh government. It is in the order of 47,000 hectares, covering the coast south of the Murray Mouth for approximately 130 kilometres. Members would be very familiar with this place—a Ramsar-listed wetland of international significance, part of the Murray-Darling system that has been under intense pressure from drought and overallocation. I do not intend to talk about that particular aspect of it as it gets plenty of air play in other forums.

One of the many stories I have had relayed to me about the Coorong National Park is how a significant part of crown land was added to it, and that some portion was leased as a farm to a gentleman by the name of Williams, who was a very good land manager. This Mr Williams sold that property to an individual named Potter, who not only did not have the same land management skills but also was not good at paying his bills, to the point that the authorities got tired of it and booted him off.

This property was then offered to three adjoining landholders, but they refused to pay the same lease fees because the land was so degraded that they said it would take a lot of time to restore it so they sought some lease fee relief. This was in the time of former premier Dunstan, and he has been referred to in previous speeches in both this place and the House of Assembly as being very against shacks. Apparently, he said no to a rate holiday and promptly added that additional land to the park.

Of note from the 1991 Coorong National Park Management Plan, there is no reference to the shacks, which I found bemusing. I am not sure how to interpret this, whether it is relevant or not. However, I do note that people had been able to purchase those leases and were then able to develop them in the late sixties. So, whether they have been viewed not quite so dimly by the department or not, I am not sure. That particular management plan refers to some points within the park which are marked as 'development zone' and the plan notes the potential for 'increased recreation and tourist use'. I will just read some of those comments from the management plan. It states:

> The potential for increased visitation lies in the rapid growth of tourism and in particular the increasing focus on natural areas and the demand for visitors to 'experience' rather than simply 'see' such areas. Natural beauty, wildlife and remote area experiences are the very essence of the Coorong which consequently is expected to become increasingly popular for visitors to the area. As visitor numbers increase it is important that proper management arrangements be in place to minimise the impact of visitors to the park and to ensure a proper standard of facility is available to enable the visitor to enjoy and understand the park. Visitor facilities can be in the form of accommodation, day use facilities, or education and interpretation faculties or a combination of these elements.

I note those comments because I think it is important in the context of the high value tourist clientele, who are indeed looking for those sorts of things. I think they would highly value having those sorts of high-end facilities in some of our beautiful remote areas. The management plan identifies development zones at Long Point, Parnka Point and Cantara, which is near 32 Mile Crossing. These, to me, indicate that the management plan, which was written in 1991, was not violently opposed to accommodation in the area.

I note that there has been some relatively new accommodation available for hire at the Coorong Wilderness Lodge, which is a service operated since 2000 by the Ngarrindjeri people at Hacks Point, halfway down the Coorong. There are also many popular camping spots throughout the park, although I note that some of the sites on the less accessible Younghusband Peninsula are no longer in use because the department has been unable to manage those sites.

Another tale relayed to me was that the minister at the time of the publication of the management plan, Susan Lenehan, visited some of these shacks and made it well known that she wanted them out post haste, and may well have made similar comments to other shack lessees, which led to the formation of the formidable South Australian Shack Owners Association, which went on to have many lessees freeholded in the 1990s under the former Liberal government.

The final comments from the management plan that I wish to comment on are under the title of, 'Administration'. The plan notes that traditional owners form part of the staffing, but that overall numbers of staff are not enough to protect natural values and provide for visitor needs. It then comments on the relevance of volunteers and leasing arrangements to boost the effort. This is directly relevant because the shacks are on leases and could be viewed as park income.

Unfortunately, I understand that funds from all leases go to assist the department's bottom line rather than assisting park efforts. Furthermore, the shack lessees do put in an effort to assist the park, and I am not sure whether this is recognised. Some of these efforts include: removal of

boxthorn, bindies and three corner jacks, planting of native shrubs to prevent erosion, retaining public access to the beaches and maintaining access to tracks, which would normally be the role of the department.

Furthermore, lessees have approached DEWNR or National Parks to assist with weed management but the department decided that this was too risky, so I am told that no weed management takes place at all in the Coorong National Park. In fact, on Easter Saturday this year I was invited by the Coorong Shacks Association to attend its AGM at Milang, and I visited a range of shacks. There were about 80 people at the AGM including local councillors from the Coorong District Council. Following the meeting, I had a guided tour of three separate areas. For the benefit of the council, the shacks are spread over a considerable distance along the Coorong and it would be difficult to visit them all in one day, particularly if you stop to talk to people, as we did.

We started at a place called 7 Mile which is south of Meningie. There are a number of shacks located close to a new subdevelopment and I make that comment because those places have proper bitumen roads, lighting and so forth, and several shacks had been removed from the site in the past year. We then went on to Williams Beach which includes the site of the original Strathalbyn Fishing Club. All of these shacks have power which was connected at lessees' expense. We then travelled along one of the dirt roads to drop into unpowered shacks, many of which are rudimentary. They have heating and cooking facilities which betray the age of the shacks, some going back as early as the 1940s or 1950s. Some contain asbestos.

Many have photos of previous generations on the beach, catching fish and enjoying good times with family. They all use rainwater, and showers are often taken under a bucket. Pictures are available from here and the Innes National Park on my Facebook page, Shacks in SA. On that particular afternoon in April I met many families gathered together, couples and parties of people. One of the lessees I spoke to had built the shack himself in 1969, when you could purchase a title from the Lands Department and be granted a 99-year lease at a rate of £50 per annum. His family use the shack regularly and are there for more than 50 per cent of weekends.

Another person has been going since 1976. He appreciates the natural scrub and was down there the weekend before last and spent several hours pulling out boxthorns. Some people have invested significantly in their shacks, if they are in a position where the youngest lessee is in good health and the family is likely to get value out of the upgrade.

Little Dip Conservation Park was proclaimed in 1975. It covers an area of 2,046 hectares and contains important Aboriginal and natural heritage associated with coastal dunal systems and small inland lakes. There are a number of tracks, some only accessible by four-wheel-drives. Locals I spoke to have been going there for a very long time, and the shacks were possibly there up to 100 years ago developing, as it was, from a popular camping and fishing spot. There were originally nine shacks and now there is only one.

The Little Dip Conservation Park Management Plan of 1992, which was, again, signed by minister Susan Lenehan (who is renowned for her derision of shacks), described them as 'alien tenures' and went on to say 'which have no significant historical or architectural merit'. I am not sure that anybody has ever tried to suggest that they do; most of them are made of galvanised iron. The plan then goes on to say:

> Shack sites in parks and reserves are considered environmentally unacceptable; such shacks will eventually be removed.

The government has had its way with all but one of those shacks and I think needs to explain to the shack lessees why it continues to hold that view. Interestingly, in Little Dip Conservation Park the rangers have remarked to the lessees that their presence in the area keeps trouble away, with which the locals agree. Again, as in all other areas, they clean up after other campers and keep the beach clean.

The second to last of the Little Dip shacks was removed two weeks ago and the main reason for this was the increasing expense both from the DEWNR increases and the local council—I think people would be astounded about the local council rates—and those expenses became too hard to justify. That family feels very sad about the loss of their shack and, again, have many fond memories of it as a special place of rest, recreation and gathering. This has now been lost.

The government allowed shacks to be established in times past and they have often been there for a very long time and no environmental harm has ever been established by their presence.

In fact, the opposite is true. They pre-date a number of the national parks, and I think that they are a unique part of South Australia's heritage. They provide healthy activities for people—

The Hon. R.L. Brokenshire: For families.

The Hon. J.M.A. LENSINK: Yes, for families, as the Hon. Mr Brokenshire interjects.

The Hon. T.J. Stephens interjecting:

The Hon. J.M.A. LENSINK: My honourable colleague Terry Stephens is coming up with slogans, 'Shacks, where families relax.'

The PRESIDENT: He can do that on his own time.

The Hon. J.M.A. LENSINK: At that point, I might rest my comments and commend the bill to the house.

Debate adjourned on motion of Hon. G.A. Kandelaars.

PORT STANVAC

The Hon. R.L. BROKENSHIRE (17:30): I move:

That this council—

1. Notes that Exxon Mobil, as current site owners, have elected not to continue operating a refinery at Port Stanvac in Adelaide's south;

2. Notes that as part of its exit from the site, Exxon Mobil plans to remove the significant jetty and wharf structure at the site due to the lack of interest from any other party taking responsibility for it; and

3. Calls upon the state government to take responsibility for the jetty and wharf and promote a site master plan that develops the facility for tourist and recreational purposes for Adelaide's south.

This motion is, in a way, self-explanatory, but I rise to speak briefly to it and invite honourable members to consider supporting it.

Port Stanvac derives its name from the Standard Vacuum Company, which was one of the former site occupiers when the Playford government—yes, that great administration again—encouraged industrial development in Adelaide's south by supporting the construction of a deep sea loading facility that become the Port Stanvac wharf.

This is not a motion to explore the fuel supply for South Australia; sadly, that argument has been had and lost, and Exxon Mobil is not continuing to use the site. That issue is relevant to the years of delay and uncertainty about the site, and I understand that it is only in relatively recent years that Exxon Mobil has finally decided not to continue operating the facility and shift from a retention mindset to a decommissioning mindset. As part of the decommissioning program, they need to decontaminate the site and also look at existing facilities and what to do with them.

Constituents contacted me about this issue when Exxon Mobil wrote to them about staying clear of the wharf while they demolished it. In the letter, they explained to local residents that they had tried their best to retain the facility, but neither the City of Onkaparinga (and I would not have expected the City of Onkaparinga to take on the management) nor the state government were willing to take it on board.

The wharf is a fantastic tourism and local recreational opportunity for South Australia. It would be a terrible shame to see it taken down without a full investigation of opportunities at the site, particularly when the south misses out on a lot compared with other parts of the metropolitan area. It is a growing area, and this could be a real icon in my opinion.

I have no criticism of the City of Onkaparinga; I believe it has taken all reasonable steps to see whether the wharf can be maintained. However, due to the maintenance costs and, I understand, the potential insurance requirements, it has declined to take full ownership of the wharf. I might add that there are other jetties in state government ownership in South Australia, so it would not be odd for such an arrangement to be put in place.

I understand that the Department of Planning, Transport and Infrastructure has been looking into a site plan for the precinct, which will of course involve the desalination plant, whether or not it is ever switched on. I understand that we, the legislators, and the general public have not been brought on board to participate in that site planning. I know that at one stage there was

planning for an intermodal facility between rail and road freight at the site, and there is interest in the land being used for industrial purposes.

Family First believes there is a combination of uses that could be put in place at the site and would like to engage with the government on this. I also want to note that one result of the boating and recreational restrictions around the site has been that the coastal cliffs, intertidal reefs and marine environment have been left relatively untouched, leaving a unique environmental asset and diving opportunity for local enthusiasts.

I am told that prior to it being known as Port Stanvac the precinct was known as Curlew Point, and it is Family First's hope that a future site plan, including a wharf under state government responsibility, will see Curlew Point known as a unique combined industrial, tourism and possibly even high-value residential seafront opportunity in the precinct.

Debate adjourned on motion of Hon. K.J. Maher.

MENTAL HEALTH

The Hon. R.L. BROKENSHIRE (17:35): I move:

1. That this council calls upon the state and federal governments to increase funding and support for mental health initiatives, including improved contribution towards the non-government sector; and

2. That this resolution be conveyed to the federal Minister for Mental Health.

As I have been meeting with constituents around the state, I have become very concerned about mental health services in this state. By this motion, I invite the council to consider the quality of mental health services in this state and to decide whether or not we need to send a message to the federal government that we are underfunded and need more support.

Wednesday 10 October (my wife's birthday; it was a good day) was World Mental Health Day, and this is the last day of World Mental Health Month. I acknowledge the growing public awareness of this issue—people such as Olympic champion Ian Thorpe and others are going public about their mental health battles—and therefore the growing realisation of how big a problem mental health is. Last month, Australians observed R U OK? Day, which saw us checking up on others to make sure their mental health is okay.

We welcome the government advertisements about including back into our social circle those people who might have dropped out or taken a back seat for a while because of a mental health issue. These are positive issues, but we need to do much more. Professor Allan Fels, who is well known as the former high-profile head of the ACCC and now the chair of the National Mental Health Commission, recently said that the folding in of his commission into the Prime Minister's portfolio showed that mental health was not being seen as a significant issue.

Professor Fels said that they are realising that one of the major challenges is the high incidence of mental health issues being dealt with in the workplace. Yet a recent poll by the Chartered Secretaries of Australia of the ASX top 300 companies revealed that 40 per cent of companies did not perceive mental illness as being any risk to their organisation, and half of those who saw it as a risk did not have a mental health policy in place.

On the question of mental health in the workplace, I have to mention the issue of section 56 of the Public Sector Act. We have received many allegations that it is being abused by senior management to claim that someone has a mental health problem when they do not. There is no denying that this has been happening. Mental Health tools for management to set an employee aside have been wrongly used to bully employees who do not toe the cultural line in some parts of the Public Service, and that is a disgrace.

On 7 November, the government will be staging for public servants a seminar organised by the Commissioner for Public Sector Employment, Warren McCann, about mental health in the workplace. Although this will cover generic matters addressing mental health at work, which some say is a hidden problem in this country, I note that the Department of the Premier and Cabinet has told public servants that chief executives and managers involved in reliance on laws requiring medical examination (that is, section 56) are being encouraged to contribute to a discussion on how to handle those examinations more sensitively.

Quite frankly, the handling of those powers has created the risk of mental health problems for people who do not have any. The Stepping Up mental health plan, which expires this year, stated that South Australia was to be a leader in managing mental health in the workplace. The evidence in the Public Service reflects negatively on that goal but, to be fair, I have had some of

those constituents meet with minister O'Brien. He has a draft guideline, which I will be commenting on, regarding how senior management in the Public Service should be dealing with section 56. I commend him for that; however, I still feel that we need to go further to protect bullying and harassment being used as a tool with respect to section 56 of the act. On the broader policy front, though, Professor Fels said:

> ...every few years something is done about it [that is, mental health] by whichever government's in power and then other priorities become more important and mental health tends to drop down the list somewhat.

The commission is due to deliver its first major report into the state of mental health in Australia at the end of this coming month (November), and at about that time I hope that this motion will be close to being finalised.

I want briefly to talk about national reporting. I cannot tell whether or not the commission's work is being unreasonably held up. For instance, the chair has said that he is trying to develop a national mental health report card, but I note that, after a reliable number of years of constant annual reporting, the last national mental health report was in May 2011, and I think it can be said that it is well overdue.

This is the same report the government has referenced in saying that extra beds at James Nash House take us closer to the national average, but we do not know because we do not have the latest report. The last report, published in May 2011, showed that since 1992-93 South Australia's doubling of funding to 2007-08 was the third lowest rate in the nation, with the ACT, WA and the Northern Territory increasing by 160 to 170 per cent compared with our 100 per cent. Our per capita spending was fourth in the nation. Our service mix compared to the national average in other states was more dependent on psychiatric hospitals and general hospitals than on community services, that is, non-government organisations.

I turn now to the Weatherill government's recent Mental Health (Inpatient) Amendment Bill—basic language changes but universally accepted changes, including by Family First. Describing people with a mental health issue as an 'inpatient' rather than 'detainees' is commendable, but much more needs to be done. Debate on this bill illustrated what little interest the government had in taking that opportunity to do more when the bill was introduced. We know that the Stepping Up reforms on mental health in SA for 2017 will not be reviewed or a new plan developed into 2013, well after the next state election, so there is a gap in strategy on mental health in this state.

Recently, I visited the Mental Illness Fellowship of South Australia, which nationally says that there are 100,000 people with serious mental health illnesses missing out on essential mental health service; and, as a result, this non-government organisation has formed the Mi Networks initiative with support from SANE Australia and Aftercare. I must say and put on the public record how impressed I was with the Mental Illness Fellowship of South Australia staff, their commitment and compassion, and the clients I met during my visit and how much they were benefitting from this wonderful organisation. I commend them for their work.

Also, I mention the Public Advocate, Dr John Brayley. Most of us would have had meetings, I assume, with Dr Brayley. He has said a great many useful things on mental health issues as he faces them daily. He is a wonderful advocate. In response to the shackling of prisoners in the prison system, he has said that there needed to be a benchmark on the number of mental health beds and other services provided in each state, which he felt should be set by the National Mental Health Commission, which is part of a new annual report card that Professor Fels wants.

The non-government organisations are playing a vital role on mental health issues, but they lack the funding to do the work as effectively as they could, and I will give a couple of examples in a moment. I note that the federal mental health minister, Mark Butler, announced this month that there was $500 million nationwide available in government funding for their Partners in Recovery program, which detailed that applications were due by 18 December this year.

This came after a large debate federally on mental health funding, with the 2011-12 budget putting in place a $2.2 billion reform package, but it took $583 million out of the Better Access program, which in part explains the cuts to availability for psychological consultations from 31 December.

Secondly, a Western Australian Labor MP has criticised it, and I put these on the record. I cannot yet analyse these comments. He claims that, in one of the central programs of the

2011-12 changes, a $222 million youth mental health program for early psychosis prevention and intervention centres, the pre-psychotic states the program seeks to diagnose have a false positive rate of 64 per cent to 92 per cent and could result in young people being put on antipsychotic drugs unnecessarily. I note the minister has disputed those claims with former Australian of the year Patrick McGorry, saying the program takes 27 per cent of patients off antipsychotic drugs.

South Australia is the only state that does not fund Lifeline, as the Hon. Dennis Hood and other colleagues have highlighted. I note that Lifeline can do important work with that funding, such as they now do in Western Australia in investigating the mental health impact of fly-in fly-out lifestyles on workers and their families. I acknowledge the interest and work of the Mental Health Coalition, the YWCA and others on this important project. I also acknowledge the line of questioning on borderline personality disorder asked by the Hon. Kelly Vincent in this place, and I look forward to her contribution on this motion.

The ABC in Broken Hill reported a fortnight ago that a meeting at the Trades Hall there as part of the review of the New South Wales act identified as a key issue the cross-border issues with South Australia that arise for mental health inpatients. I have to mention also the related issue of suicide prevention and our work on calling for a suicide prevention coordinator. I acknowledge the government's suicide prevention strategy, including identification of suicide issues in regional areas.

I want to now talk about the funding of non-government organisations. In my consultation and preparation before moving this motion I offer just two examples of how NGOs are struggling under the government funding settings. The One Voice Network has been operating throughout country SA, but the CEO recently said they did not meet key performance indicators and reporting requirements, which they actually dispute. In fact, they claim they sent them twice, but Country Health SA has lost them, but now in yet another health cut they have been defunded.

One Voice's mental health activity and resource centres (ARCs) began as an alliance of four such centres at Wallaroo, Mannum, Yorktown and Nuriootpa, and have since been augmented by centres in Auburn in the Clare Valley, Berri, Port Augusta and Mount Gambier, with outreaches at Millicent, Kingston and Robe. Collectively they have 10,000 attendances at their ARCs and outreaches every year, providing support, rehabilitation and recovery-based programs, education and information sessions.

Compeer's international mental health program is run and solely funded by donations through the wonderful St Vincent de Paul Society SA Incorporated and has been operating since 2007. It recruits, trains, matches and supports volunteers to form ongoing relationships with people who have mental health issues and it addresses social inclusion. They have 64 people in the program, 11 of whom are about to be matched and 21 on their waiting list. Sadly, this program is now to close after they were unsuccessful in securing government contributions to the approximately $50,000 in funding which they needed, as donations decreased after the global financial crisis.

Whilst the government agencies refer clients to them they cannot get any help. Compeer's 2009 analysis of users found that 74 per cent of clients had an improved or stabilised housing situation, and roughly half of those assisting the clients felt that the client had lessened their use of or had not needed hospital or crisis services. These two things illustrate that we are going backwards, not forwards as a state in assisting those with mental health issues, particularly in rural and regional areas, which Family First is very committed to supporting.

I want to finish on couple of points, and one is James Nash House. I want to go back to my earlier comments about yesterday's ministerial statement about the James Nash redevelopment. The 10-bed step down rehabilitation unit and the 40 beds are being consolidated at James Nash house. Of these 10 were formerly at Glenside, and it is a positive development. The government was under enormous pressure after the public advocate and others, including myself, called for more forensic mental health beds in light of embarrassing situations that have arisen for the government.

However, this is a government service, not a non-government service. This motion is about improved mental health funding across the board but highlights the deficit in funding to the non-government sector. James Nash House is there as an important link in the chain, but I wonder, if the state and federal governments were committed to funding proactive community-based non-government programs, whether we would have so much need for beds at James Nash House.

In conclusion, I call on my honourable colleagues to support this motion and to keep the focus on mental health at a state and federal level to prevent, as chairman Professor Allan Fels of the National Mental Health Commission says, a periodical focus on mental health and to have instead a constant focus on it so that we see a major improvement in services, awareness, care and understanding for those with mental illness in this state.

Debate adjourned on motion of Hon. K.J. Maher.

CHARACTER PRESERVATION (MCLAREN VALE) BILL

Consideration in committee of the House of Assembly's message.

The Hon. G.E. GAGO: I move:

That the Legislative Council do not insist on its amendments.

The Hon. R.L. BROKENSHIRE: I have said a lot on this particular bill, so I will be very brief now. I am supporting what the government has brought back into the chamber but I just want to publicly say a couple of things briefly because it was confusing with respect to the clause that the government amended and brought up here regarding the McLaren Vale protection bill whereby many of us had expressed concerns about the fact that we could have had a review of the boundaries and issues around the township boundaries within just one year. I actually moved an amendment that it be 20 years, which the government did not accept at that point.

However, since then I think they have seen the wisdom in that 20 years, as it would have actually secured even better protection. Having said that, they have now gone to five years, and for that reason I will support the government and not insist on the amendment originally put up by them. It is confusing, and a lot of the community in the south wanted an absolute minimum of 20 years' protection, similar to the Napa Valley; that has not occurred. That is disappointing, but we have done our best and overall, finally, after several years, we have a bill that will benefit the protection of both the McLaren Vale and Barossa Valley regions.

The Hon. D.W. RIDGWAY: The opposition will not insist on its amendments. Now that the Hon. Mark Parnell has come back, I will not speak for very long, because I know that he was going to get his notes. I indicated in the debate when the bill was before the chamber that a five-year review was probably a sensible time if you were going to have any boundaries, whether they be the town or even the region boundaries. There needs to be a five-year review because things change; community needs and wants change.

Everything else in our planning regime is subject to review, and five years is a time frame that is often used in other parts of the Development Act, so it is consistent with what happens elsewhere in the legislation that we have a review after five years. It gives the community some chance to look at what has happened, whether it is working, whether it is providing a level of protection or whether it needs to be tweaked to address the community needs of the time at some point in the future. The opposition is happy to not insist on its amendments.

The Hon. M. PARNELL: Given that one of these amendments was mine, I propose to make a few comments in relation to it, namely, the objection which the House of Assembly has to the proposed insertion of a new clause 6A. I will start by commenting on the government's own amendment that it now seeks to withdraw, and that is the insertion of the new clause 10A into the McLaren Vale bill. I note that that is not in the Barossa bill, but the comments I make relate to both these messages we have from the House of Assembly.

What I will say in relation to the government's amendment is that, if the government wants to pull its amendment, it can, and I certainly will not stand in the way of that happening, so I will not insist that the new clause 10A be inserted. However, I want to put on the record the fact that, when these messages came from the other place, I did seek the advice of the planning departments of both the Barossa and McLaren Vale councils, and the response I got back from the Barossa Council in relation to 10A was that the council still saw merit in the inclusion of this provision, but it did acknowledge that there were other review mechanisms in the legislation and therefore it was not really a die-in-the-ditch issue.

So, I do not think we need to spend too long talking about that. I am very grateful to Paul Mickan from the Barossa council and similarly to Terry Sutcliffe, the Director City Development at the City of Onkaparinga, who also thought that there was some merit in the five-yearly review of the township boundaries, but acknowledges that there are other mechanisms, including the existing section 30 process.

In relation to my amendment, the proposed insertion of 6A, I note that the Attorney-General, in his capacity as the planning minister in the other place, basically said that we were creating—I think his words were—either a Hutt River province or a Vatican City by giving such special status to the Barossa and the McLaren Vale.

Members interjecting:

The Hon. M. PARNELL: Okay: I am Vatican City, you are Hutt River, the Hon. John Dawkins reminds me. The planning minister made a point of these special enclaves that were being created. In fact, the minister's words were that the new clause 6A will:

> ...have the effect of setting up special enclaves within two districts where the ordinary rules of the planning system do not apply. This would be unprecedented within our state planning system.

The point that cannot have escaped members is that the entire purpose of the legislation was to set up special planning rules for two separate enclaves, the two character preservation districts, and the normal rules of planning will not apply in those areas. That was the entire purpose of the legislation. These enclaves, the government believes, and the Greens agree, are of such significance that they warrant their own separate legislation. Major project status will not apply so that is a state law that will not; they will have their own special chapter in the planning strategy in the 30-year plan and, therefore, I think that that criticism is unwarranted.

However, having said that, I accept what the minister has said, that through this amendment, we are creating an extra level of protection that the government had not originally envisaged and, therefore, that is the reason behind the government's opposition. Again having consulted with the planning staff of both The Barossa Council and the Onkaparinga Council, I am inclined to accept that we can proceed with this legislation without insisting on the amendment, and I also note the planning minister's commitment in the other place to engage more thoroughly with members of parliament on planning reform.

He has promised to engage with me, in particular, as someone who has a particular interest in it, so I am prepared to accept the minister at his word that we will have an opportunity to raise some of the bigger picture issues that this amendment sought to address. Therefore, with that commitment, I look forward to that process, I thank the planning minister for taking the time to meet with me recently on it, and I think that in the interests of getting this legislation through, we can quite reasonably not insist on our amendments and allow both of these bills to now pass.

Motion carried.

CHARACTER PRESERVATION (BAROSSA VALLEY) BILL

Consideration in committee of the House of Assembly's message.

The Hon. G.E. GAGO: I move:

That the Legislative Council do not insist on its amendment.

Motion carried.

[Sitting suspended from 18:05 to 19:45]

WORK HEALTH AND SAFETY BILL

In committee (resumed on motion).

Clause 17.

The Hon. T.A. FRANKS: I had some questions, and I am waiting for my computer to warm up but I can remember some of them off the top of my head. My first question was with regard to the change from two metres to three metres in terms of falls policy. What data is there and in what jurisdictions does the three metres apply rather than two metres?

The Hon. R.P. WORTLEY: I would like to thank the honourable member for her question. A two metre threshold currently applies in all states and territories that have adopted the nationally harmonised work health and safety laws, this includes: Queensland, the commonwealth, New South Wales, Victoria, Western Australia, the ACT and the Northern Territory. Tasmania is expected to adopt the two metre threshold when it commences legislation on 1 January 2013. Preliminary advice indicates that Victoria has a two metre threshold as well, although this needs to

be confirmed. Where does the three metre threshold apply? The three metre threshold applies in existing Western Australian legislation, where edge protection is required.

The Hon. T.A. FRANKS: Can the minister indicate what is the number of falls by industry and what percentage of these falls have either been considered serious injuries or led in fact to deaths? Is there any data on falls between two and three metres and the level of harm caused? Although I am holding out hopes that that exists, I am not sure that that data would have been so disaggregated. Also, and most importantly, what are the costs to industry and/or government of falls each year?

The Hon. R.P. WORTLEY: Whilst I do not have the data available for each separate industry, I can outline for the chamber that in the housing industry, 84 falls occurred over the past five years. These 84 falls from heights claims resulted in more than 5,100 working days lost. When you consider that, when you divide 84 into 5,100, you can see that these are all significant injuries, and each one of these injuries could have just as well been a death. The cost has been more than $1.5 million in workers compensation claims. Whilst I do not have a breakdown of other industry groups, it is clear from the data that the housing sector has more than its fair share of falls.

The dangers of working at heights are well known. As I indicated to this chamber yesterday, the research committee of the SafeWork SA Advisory Committee, which administers the Work Health and Safety Innovative Practice Grants program, 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 HIA has acknowledged the danger of working at heights by seeking funding to improve its safety performance in this area.

Is there any data on falls between two and three metres and the level of harm caused? I have been advised there is no data available in relation to this. What are the costs to industry and/or governments of falls each year? This can be teased out to falls from a height above three metres. Regarding the number of falls by all industry groups, it was reported in the Safe Work Australia comparative performance monitoring report that between 2006 and 2011 there were approximately 62,000 compensatable injuries arising from falls across all injury sectors. This represents approximately 20 per cent of all compensatable injuries across the nation. It is not possible to determine how many of these led to death. However, all these falls are serious in so far as these people were off work for one week or more.

The Hon. R.I. LUCAS: Can the minister indicate what is the definition of fall that the minister has used for the collection of figures that he has just indicated? Are these falls from greater than two metres, for example?

The Hon. R.P. WORTLEY: This is from any height—84 falls.

The Hon. R.I. LUCAS: So, if I fall over from two inches, that is classified by the minister as a fall?

The Hon. R.P. WORTLEY: Once again, common sense has to prevail on this. Regarding the Housing Industry Association, these 84 falls for instance in the housing industry resulted in 5,100 days off. That is a significant number of days off, many months for each fall on average, so they are serious falls and should not be made fun of during this debate. My advice is these statistics are serious falls, serious compensatable injuries, so I do not believe falling from two inches is a serious sort of debate to have in regard to this issue.

The Hon. R.I. LUCAS: I do not like the way the minister is making light of some compensatable injuries which could be quite serious and which might not have been from a height. You might fall because of the uneven nature of the worksite. There might have been a hole or a pothole, or whatever else it is. All could be classified as falls. The minister has been leading everyone to believe that these particular figures relate to falls from heights.

He has now been forced to reveal that these figures do not actually reveal falls from heights of two metres or three metres or whatever it is; it is just a fall from any height, or indeed if you walk along and you fall over. That can be a serious injury and I am surprised that the minister would make light of falls of a compensable nature (where someone is off work for a week or more) just because they did not happen to fall from two or three metres.

I think what has now been revealed for the first time is that these figures being used by the minister are dodgy figures. They do not relate to people working at heights of two and three metres: they relate to people who might have been working at heights—and some of them clearly were—

but they also relate to people who might have been walking along and fell over and had a serious injury as a result of that.

It has nothing to do with the issue of working at heights, the issue of scaffolding and trusses and the variety of other safety options that workers working at heights have to observe. We are indebted to the Hon. Ms Franks for the question that she has put because that has now thrown a completely new light on the figures that the minister has been using—in a misleading way, I might say—in relation to this issue of falls.

Now that that issue has been cleared up, I want to clarify two other matters in relation to the debate that we had before lunch today. One issue was in relation to the Markellos case, or what has been colloquially referred or more commonly referred to perhaps as the Salvemini case. I want to make it clear that the legal advice provided to the Liberal Party is that if the amendment being moved by the Liberal Party is successful, the position will be as simple as saying that if someone has some level of direct control over a safety risk then they can be held responsible and can be prosecuted.

So, in the circumstances that we are talking about—and I do not know the detail and the magistrate would ultimately have to determine it and he did say in that case that the company, in terms of culpability, had the major portion of blame rather than the skipper—the position is that under the amendments being moved by the Liberal Party, if it can be demonstrated that both the company and the skipper in a set of circumstances have some level of control, then they can be held responsible and prosecuted. I imagine that the Hon. Mr Darley would potentially argue the same in relation to his amendments. It certainly would not have been the case in relation to the model bill introduced by the government.

I want to make it clear on behalf of Liberal members in this chamber, and others who support the amendment, that in relation to this particular case—and not just this case, frankly, but any other case— it would be clear that, in the end, if an individual or company can be shown to have control of a particular safety risk, then they can be held to account and they can be deemed to be responsible. If they have done something wrong over an issue that they have control of they could and should be prosecuted for that if it is serious enough. I just want to place that on the record.

The second point I wanted to raise was in relation to what the minister indicated before the luncheon break today, when I pointed out to him that he was saying that the amendment that he is about to support does not contradict or contravene the harmonisation principles that he has talked about, because he argues that this is not introducing any element of a control test: he says this is just clarifying control. He went on to say in relation to the amendment that he is going to support that it is clear that a person or an individual who has the capacity to influence a particular safety risk should be held to account for it.

My question to the minister is: given that he is about to support this amendment which says 'has the capacity to influence and control', does the minister accept that the words 'influence and control' mean that control actually limits the extent of influence in terms of any legal judgement? That is, you might influence something but if you do not control it as well then that influence will not be taken into account in terms of the test that is being introduced here.

The Hon. R.P. WORTLEY: The Hon. John Darley gave an explanation for his amendment, and this government supports that amendment, so I do not need to go into detail any further. The statistics in regard to the 84 falls from heights are taken from WorkCover statistics which identify the injuries as 'falls from heights'. To make a bit of a joke about this and say you might have tripped over your foot and you are off for three months or so I think is typical of the way the Hon. Mr Lucas has handled this whole issue from the very beginning.

The Hon. R.I. LUCAS: The minister might say it is disappointing, but if a person injures themself seriously having fallen from a step, which might be six inches or a foot, and that is classified as a fall under the minister's statistics, then in some way he would demean the seriousness of that injury. I think it is beneath contempt for the minister to demean somebody injured in those circumstances. That is a fall from a height because the minister has just conceded it is any height. It could be six inches, it could be a foot. It can still be a serious injury and compensable for the classification of a week or more.

The minister cannot wriggle his way out of that issue in that way. He has had to concede that these are not all falls from heights of two or three metres—they are falls from any height—and, if someone falls off a step at six inches or a foot and injures themselves, that is covered. The

issues about two or three metres and scaffolding and trusses and all those sorts of issues are not going to resolve those sorts of falls.

Unless the classification of figures can actually categorise (as the Hon. Tammy Franks was asking for) the number of falls from between two and three metres and greater than three metres (and the minister has said he is not in a position to do that), then they are all being categorised within the minister's figures of falls and some of them, clearly, will not be impacted by the issue of two or three metres.

My question was in relation to the issue of influence and control; there has not really been a debate, and I want to ask the Hon. Mr Darley, if the minister is going to refuse to answer—although he has put on the record prior to the lunch break today his interpretation of this. He was actually seeking to interpret this in a much broader sense than I believe the Hon. Mr Darley intends and the legal advice given to the Hon. Mr Darley.

My question to the Hon. Mr Darley is: how does he intend, as the mover of the amendment, that the words 'influence and control' be interpreted? Certainly, if this said 'influence or control', then it is a much broader legal interpretation because 'control' I would call a specific subset of influence. Influence can mean a whole range of things, but you do not necessarily control something. If you said influence or control, it is a much broader understanding. Influence and control limits it essentially to control, and that is contrary to what the minister was indicating before the lunch break. So, I ask the Hon. Mr Darley: what is his legal advice as to how he sees these three words 'influence and control' being interpreted?

The Hon. J.A. DARLEY: My amendment is the broader sense, influence and control.

The Hon. T.A. FRANKS: I would appreciate an explanation of why the words 'influence or control' were not used. It is one of our queries as well. I just thought I would make that known to the chamber.

The Hon. J.A. DARLEY: The clause is consistent with clause 16(3)(b), and it is to be read conjunctively.

The Hon. R.I. LUCAS: Is the honourable member referring to 16(3)(b) of the bill or the act?

The Hon. J.A. DARLEY: The bill.

The Hon. R.I. LUCAS: It states:

> (b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

From industry associations that have discussed this issue with the Hon. Mr Darley, he did use the phrase, I think, and he repeated part of it, that this is to be interpreted legally conjunctively and not some other word—

The Hon. J.A. Darley interjecting:

The Hon. R.I. LUCAS: Sorry, I had better let you say what it is.

The Hon. J.A. DARLEY: The word is 'conjunctively'; that is the way it is interpreted.

The Hon. R.I. LUCAS: All that is saying, I think, in ordinary, non-lawyer terms, is that it is influence and control; that is, it has to be both. For example, if you can influence a particular safety risk but you do not also control it, then that will not be covered by this particular provision. You have to both influence and control, so control is an essence because it is the smaller subset of influence. Clearly, in terms of understanding this, control means you actually control something. You could influence something without actually controlling it.

The amendment is seeking to say that it is influence and control. If you influence something but you do not control it, that is not covered by this amendment the government is moving. I want to make that clear, and that is obviously the interpretation that the Hon. Mr Darley is putting on it. It is certainly the legal advice that has been provided to me, but it is contrary to what the minister was saying prior to the luncheon break.

So I just want to make it clear, as we vote for this, that we are all voting for it in the full knowledge that you have to both influence and control. If you do not control something but you

influence it that does not activate this particular clause or provision. It is to be read in that way, as the Hon. Mr Darley has indicated.

The Hon. R.P. WORTLEY: To put this whole issue in a nutshell, it is likely that in order to have influence you will have a degree of control. It is quite straightforward as far as I can see.

The Hon. J.A. DARLEY: I would just like to clarify the two or three metres; in Queensland the figure is three metres.

The Hon. R.I. LUCAS: Can we clarify that? The minister gave advice contrary to that; he said that every jurisdiction, including Queensland, was two metres.

The Hon. R.P. WORTLEY: I did say that. I must say that I thought the same as the Hon. Mr Darley, that Queensland had three metres, but I have been advised only a few minutes ago that Queensland Regulation 291 reads:

> In this chapter, 'high risk construction work' means construction work that—
>
> (a) involves a risk of a person falling more than 2m; or

As I said, this was given to me only a couple of minutes ago. Like the Hon. Mr Darley, I thought Queensland's regulations were three metres, but I have been advised that it is two metres.

The committee divided on the Hon. Mr Lucas's amendment:

AYES (5)

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

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)

Wade, S.G.	Vincent, K.L.
Lee, J.S.	Hunter, I.K.
Bressington, A.	Zollo, C.

Majority of 3 for the noes.

Amendment thus negatived.

The Hon. Mr Darley's amendment carried; clause as amended passed.

Clause 18.

The Hon. R.P. WORTLEY: In regard to heights, Queensland retains the two-metre height threshold for high-risk construction work. They have introduced provisions for falls from heights for the housing construction which have a threshold of three metres.

Clause passed.

Clause 19.

The Hon. R.I. LUCAS: Before I move the amendment, I want to make some brief comments. This is, together with the amendments we have just moved to clause 17, one of the key clauses in the bill: primary duty of care. It then goes on to the duty of persons in various other categories as well. I make this point on the basis of part of the debate that we entered into yesterday and last night, because it has attracted a lot of publicity and controversy today on talkback radio, blog sites and in contacts to my office.

The minister has acknowledged that mums and dads who employ a nanny will be a PCBU for the purposes of the legislation, that is, a person conducting a business or an undertaking. Therefore, all of the requirements of this amended bill will now rest with the mum and dad who

employ a nanny in the home, and other similar examples as well. This primary duty of care—this particular clause—outlines all of the expectations on a person who conducts a business or an undertaking.

I think, as had to be acknowledged this morning on some of the debate on radio, the minister was not able to say, 'Well, look, a mum or dad who employs a nanny and is a PCBU won't have to undertake all of these particular requirements.' He was forced to concede on these requirements, 'Look, these are expected; they are common sense, and all mums and dads who employ nannies should have been doing these things anyway.'

I am not sure what the minister's experience is in this particular area, but I can tell the minister that there is no mum or dad employing a nanny that I know who has been drafting occ health and safety policies as an employer when they employ their nanny in the event that they end up subject to a court action by a nanny or someone like that.

The minister may well want to argue, 'Well, they should have,' but all I would say is that some of us are living in the real world, and the notion that mums and dads who employ nannies should have occupational health and safety policies, do risk audits, and outline all of this to each and every nanny that they employ in the home environment is certainly not one which is likely to be supported out there in the broader community.

As I said, there has been quite some controversy about this today—a lot of talkback radio, a lot of feedback in relation to this particular issue, and great concern that Premier Weatherill and the ministers in this government would be pushing this sort of policy on mums and dads who employ nannies and others.

The advice I received from Dick Whitington QC, when I highlighted that any mum or dad who employs a tradesperson in their home will be similarly caught up, was that clearly, a mum or dad who employs a tradesperson for home renovations is a PCBU, contrary to the minister's contention that they are not, and that it is the tradesperson. The tradesperson might be a PCBU as well, but Dick Whitington QC is saying that the mum or dad who employs the tradesperson for home renovations is caught up as well.

As I said, before I move the amendment standing in my name I highlight this particular clause, and there are many others right throughout this legislation. As a result of the minister's confirmation yesterday, a mum or dad who employs a nanny is a PCBU and therefore caught up in the legislation. There are 270-odd clauses in this bill, not all but many of which relate to the obligations and responsibilities for PCBUs and, in the case we are talking about, for mums and dads who employ their nannies. I move:

Page 23, line 10—Delete 'or control' and substitute 'and control'

This is the first of a number of amendments, and I certainly treat this one as a test case for the many others later on. This is a similar debate to the one we just had, where the Hon. Mr Darley was quite clear, and I thank him for that. In relation to the amendment the committee has just passed, he said that he quite deliberately used the words 'influence and control'; that is, it is to be read conjunctively. It had to be both. You were not to extend the notion of control to the much broader notion of influence.

It is my simple contention that this is exactly the same argument we have just had. It does vary throughout the bill; sometimes it says 'management or control', sometimes it says 'management and control' but, in relation to this, it is a simple argument. It is saying that, when we are talking about the issue of control, it should be, as the Hon. Mr Darley has moved and been supported by the government, read conjunctively; that is, it is management and control, the same as influence and control, rather than management or control, which is what has currently been drafted in there.

It is clear that management is a broader notion than control, as influence is. You can have management, but you might not be in control of a particular safety risk. You might be a manager quite removed from the worksite. We have talked about the examples in the residential housing industry where a particular company has managers and they might have 500 different worksites throughout South Australia. You are a manager and you manage; therefore, it is management, but you are not in control.

That was this whole debate we had earlier about control. Whilst the Liberal Party's amendment was unsuccessful, at least the Hon. Mr Darley's amendment has been accepted, which we, at least, accept is a marginal improvement on the government's bill. But it introduces the

notion of control. It is on the basis that there are some people who might have influence or who might have management or whatever it is, but they do not actually control the risk. They should not be prosecuted and held to account for it; if you control a risk, then you should be. It is a pretty simple notion, as Dick Whitington, Rick Manuel and other lawyers have highlighted in their legal advice to many of us.

We see this as a simple contention. Our legal advice is that it would appear to be either a genuine oversight by the legal drafters for the government nationally or a deliberate intent to broaden the concept from just control, that is, to be management or control in this area. We think it is exactly the same argument as the Hon. Mr Darley has used, which has been supported by the government, in relation to the words 'influence and control', rather than 'influence or control'. In this case, it should be 'management and control'.

The Hon. R.P. WORTLEY: A mum and dad who hire a nanny are 'a person conducting a business or undertaking' and they have an obligation to provide a safe and healthy workplace for that nanny. Under the current act, they would be an employer and they have an obligation to provide a safe workplace for the nanny, so there is no change in their responsibilities. I would like to lift this debate that we have sunk to with the Hon. Mr Lucas up a level or two.

I have never known a prosecution where a nanny has successfully prosecuted her employer. However, let us now talk about what this legislation is actually all about. It is about the tens of thousands of factories, of workplaces, of retail outlets and construction sites where people are dying day by day and getting seriously injured. This is what this is all about.

To my knowledge no mum or dad has ever been sued or prosecuted under the Occupational Health and Safety Act. I think that we have got to put this all in perspective. In regard to mum and dad employing a tradesperson, the tradesperson themselves is the person conducting a business or undertaking, not the mum and dad; so, they would be the people who have to ensure that they work in a healthy and safe environment. We oppose the Lucas amendment and look forward to moving on.

The Hon. B.V. FINNIGAN: I indicate that I will be opposing the amendment moved by the Hon. Mr Lucas and the other amendments along the same train. I understand that he wants to restrict the scope of the bill or the application of the act, but while there may have been a legitimate question over what the word 'influence' might mean I think that with 'management' or 'control' that is going to be fairly straightforward.

With respect to the concern that he has raised that someone might be a manager but be nowhere near the work site or have no direct control over it, I think that these clauses do refer to 'reasonably practicable', which is a fairly well understood concept in the common law when talking about reasonableness, so I think that would have to be something that would be considered in the event of a potential breach.

Also, if one were to apply that logic, I think that the following sections about suppliers, importers, designers and so on would also have to go because you would say, 'Why should those people, if they are not necessarily at the workplace, have obligations under the bill?' I think that just overly restricts the application of the act.

The Hon. D.G.E. HOOD: Just briefly, I indicate that Family First will support the Liberal amendments. It makes sense to me that if someone does not have overall control, if you like, that they should not be held to absolute account.

The Hon. T.A. FRANKS: The Greens will oppose this amendment, and we certainly do have some reservations about inserting 'and' rather than 'or'.

The Hon. R.I. LUCAS: Just returning briefly to the minister's attempt to explain, again, his position in relation to mums and dads employing nannies or mums and dads employing tradespeople at home, all I can do is repeat what I said yesterday: Dick Whitington QC disagrees with the minister's interpretation of the bill.

The minister has not been able to give us the name of a lawyer who agrees with his interpretation, and, with the greatest respect to the minister, I think I would take my legal advice from Dick Whitington QC rather than from the minister in relation to it. If Dick Whitington QC says that if you are at home and you employ a tradesperson you are a PCBU for the purpose of this act, then I am prepared to accept his advice in the absence of anything specific from someone from the minister.

The final point I would make is that the minister says that he is not aware of any cases which involve nannies. The first thing I would say is that that would not be surprising to me. There are a lot of things the minister is unaware of, but put that to the side for the moment. Until I did the preparation for this I was not aware that if you are working at home and you walk up the stairs in your socks and slip over, you can successfully claim workers compensation.

That was news to me and it has certainly been news to many people to whom I have recounted that particular story in the last 48 hours or so. The reality is that, as you make new laws, over a period of time (as I indicated yesterday, it is likely to be five years or so) we will see magistrates and courts interpret the laws that we have passed.

As the national law firms such as Freehills and Allens Arthur Robinson highlighted (which I quoted in this place yesterday) that Telstra decision of the employee slipping over while walking up the stairs in her socks opens up significant issues under this particular legislation in terms of occ health and safety audits for the home that the employers will have to conduct. I just wanted to respond to that. In relation to the management and control issue, it is interesting that the minister has offered no specific rebuttal of that at all other than just saying that he does not agree with it.

The Hon. R.P. WORTLEY: Just on the issue of the Telstra worker who fell down the stairs while wearing socks, this is a workers compensation issue. Telstra was not sued and was not prosecuted for a breach of the Work Health and Safety Act.

The committee divided on the amendment:

AYES (7)

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

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)

Wade, S.G.	Vincent, K.L.
Lee, J.S.	Hunter, I.K.
Bressington, A.	Zollo, C.

Majority of 1 for the noes.

Amendment thus negatived.

Clause passed.

Clause 20.

The Hon. R.I. LUCAS: My amendments Nos 11 to 13 are consequential and I will not move them.

Clause passed.

Clause 21.

The Hon. R.I. LUCAS: My amendments Nos 14 to 16 are consequential and I will not move them.

Clause passed.

Clauses 22 to 30 passed.

Clause 31.

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

Page 31, line 37—Delete '$300,000 or 5 years imprisonment or both' and substitute:

$200,000 or 5 years imprisonment.

This particular amendment is the first in a series of amendments, and I will treat this as a test case for many of the remaining amendments. Our instruction to parliamentary counsel in relation to this—and we understand that it was a difficult task and I thank parliamentary counsel for their hard work in terms of adhering to the drafting instructions—was essentially to say: return the penalties to the existing penalties.

We did not seek to reduce the level of penalties; in our view they were significant anyway. The drafting instructions were—and this is the first of those—to reduce the penalties as close as possible to the existing level of penalties, which include significant fines and imprisonment in some cases as well.

I will not read it again but earlier today I did read Rick Manuel's legal advice onto the record, and one of the issues that he raised was the notion that, given that this bill is going to very significantly increase penalties, it is much more likely now that companies will defend, and defend vigorously, any prosecutions from SafeWork SA.

What Rick Manuel and other lawyers have been saying to us is that this will mean much more litigation and much more expensive litigation and the pressure is going to be on SafeWork SA and the government in terms of the way they handle the cases. I put on the record the very significant criticisms from lawyers as to the way SafeWork SA handled the Salvemini case, but those lawyers have been equally critical of the way SafeWork SA has handled a number of other prosecutions as well.

It is the view of a number of people who practise in this jurisdiction that the reality is going to be that the stakes are going to be lifted and people are obviously really going to defend themselves—as is their right—against the prosecution, so the onus is going to be on SafeWork SA to make sure that they get their charges right, that they do not mess things up beforehand, that they lay the right charges and get the appropriate evidence to seek to get prosecutions where it is appropriate.

All of us in this chamber would believe that if somebody is in control of a risk and they have caused death or injury to a worker and there is an appropriate penalty, then that should not be prevented through sloppy work from the prosecutorial agency. So, the onus is on SafeWork SA and the minister to ensure that that is not the case. I would hope that the minister—well, I do not have great hope, I must admit—would at least listen to the advice of some legal practitioners in this field and start asking some serious questions in relation to the operations of SafeWork SA.

As I indicated earlier today, another parliamentary committee is about to commence a searching inquiry into the efficiency and effectiveness of SafeWork SA and hopefully that will provide information for government and for decision-makers in terms of any changes that might be required in terms of the management, operations, efficiency and effectiveness of SafeWork SA as an agency. As I said, this is the first of a series of amendments. We believe the existing levels of penalties are already significant and we do not believe that the extraordinary, large, further increases in penalties that are contemplated in the model bill should be supported.

The Hon. R.P. WORTLEY: We oppose this amendment. The penalties reflect the recommendation of the national review which was undertaken by a panel of occupational health and safety experts and which preceded the drafting of the model Work Health and Safety Act. The national review recommended that the penalties in the model act should have a stronger deterrent factor. The category 1 offence, for example, is on par with the most serious breaches of the general criminal law.

However, this offence requires the element of recklessness in the behaviour of the alleged offender. The three levels of penalty allow for a differentiation that takes into account the culpability and risk. They also allow sufficient room for a sentencing court to adjust the penalty within each category to suit the particular circumstances of the offence.

The concept of this whole legislation is about making workplaces safe. It is not the intention for this just to be used for prosecutions. There is a section in this act that allows for enforceable undertakings, so where there is a low-level breach and noncompliance, the employer can enter into an enforceable undertaking and, with SafeWork SA, will ensure that they make their workplace safe. This is the emphasis that we like to believe is on it. It is not about prosecuting, it is about making workplaces safe.

To question the effectiveness and efficiency of SafeWork SA is almost outrageous when you consider that SafeWork SA, in the pursuit of reducing injuries in this state, leads the country in regard to the reduction of workplace injury. Over the last 10 years we have reduced numbers by 40 per cent and we have also reduced the incidence of serious injury by 25 per cent, so SafeWork SA ought to be congratulated for the great work they have done. However, there is only so much you can do with the tools you have in the box. They now need other pieces of legislation to continue on with their great job of reducing injuries and death in the workplace.

The Hon. B.V. FINNIGAN: I indicate that I will be opposing this amendment and the 40-odd other amendments in the same vein. It seems incongruous to argue that we should not increase these penalties because that will be too onerous on businesses and at the same time criticise the work of SafeWork SA in prosecuting them. If they are so incompetent at prosecuting, you would not imagine that it would be a big problem for the penalties to go up.

There are precious few successful prosecutions as it is. The bar that needs to be crossed in order to be successfully prosecuted for any of these sorts of offences is very high and we are not talking about expiating a traffic offence here, we are talking about serious offences. If people are successfully prosecuted, it is going to mean they will have committed a serious breach. I think there are not that many successful prosecutions and the fines that are levied, in many people's view, are not sufficient, so I think it is right that the regime be lifted across the board.

The Hon. T.A. FRANKS: It will come as no surprise to the Hon. Rob Lucas that the Greens will be opposing this amendment. We do so for the reasons I started to outline before. We also need to recognise that workplace injuries occur from negligence or not having high enough safety standards. Injuries occur and so do deaths in the workplace. For example, Safe Work Australia puts out Work-related Traumatic Injury Fatalities reports, which usually come out about two years after the financial year that was examined, and they are based on quite thorough research than the standard reports. These particular report find that generally 450 people per year are killed in work-related incidences; that is more than one a day and some of these are bystanders, not just workers.

The Greens believe that we need to recognise the seriousness of what happens if a breach of occupational health and safety law takes place. Setting a low penalty for a breach of occupational health and safety law does not indicate from this parliament the seriousness of this and does not set a deterrent for those workplaces with high injury rates. We also need to be making sure that we are not setting a precedent for other jurisdictions to follow us and lower their penalty rates.

The Hon. D.G.E. HOOD: Just briefly for the record, Family First supports the amendment and the ensuing subsequent amendments.

The Hon. J.A. DARLEY: I will not be supporting this amendment.

The committee divided on the amendment:

AYES (7)

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

NOES (8)

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

PAIRS (6)

Wade, S.G.	Vincent, K.L.
Lee, J.S.	Hunter, I.K.
Bressington, A.	Kandelaars, G.A.

Majority of 1 for the noes.

Amendment thus negatived.

The Hon. R.I. LUCAS: The next two amendments are consequential and I will not move them.

Clause passed.

The Hon. R.I. LUCAS: My amendments Nos 21 to 24 are consequential and I will not move them.

Clauses 32 and 33 passed.

Clause 34.

The Hon. J.A. DARLEY: I move:

Page 32, after line 32—Insert:

(a1) To avoid doubt, an officer of a prescribed strata/community titles corporation who is a volunteer does not commit an offence for a failure to comply with a duty under section 27 (but may be liable for a failure to comply with another duty under this Act).

I will speak to amendments Nos 2 and 3 together, as they relate to the same matter. At the outset I should disclose that I am the presiding officer of a group of 10 strata title units by virtue of the fact that I part own one with my wife. My wife also owns a separate strata title unit in her own right, and as such is a member of another strata corporation. I was also formerly a director of a company that owned a group of home units under the company shareholding system, which preceded the Strata Titles Act, which commenced operation in 1988.

For the record, that is not the reason I am moving these amendments. In fact, it had not even occurred to me at the time that this issue was raised with me. The amendment proposes to make it clear that an officer of a strata or community title corporation who acts on a volunteer basis is subject to the same exception that applies to volunteers, and I would suggest that those people who act as company directors in a company shareholding system would be affected in exactly the same way; that is, they do not commit an offence for a failure to comply with a duty under clause 27 by virtue of the exception provided for under clause 34.

Clause 27 of the bill provides that if a PCBU has a duty or obligation under this act, an officer of the PCBU must exercise due diligence to ensure that the PCBU complies with that duty or obligation. A breach of a duty by an officer is subject to penalty as outlined in clauses 2 and 3. The duties that relate to officers of strata or community titles corporations become less clear by virtue of clause 244 of the bill which deals with offences by bodies corporate.

Subclause (1) of that provision provides that any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate itself.

Regulation 7 of the proposed work, health and safety regulations provides that strata title bodies that are responsible for common areas used only for residential purposes are not classified as a PCBU in relation to those premises and, therefore, would not have duties under this bill. The exception does not apply if the body corporate engages any worker as an employee. However, where you have mixed-use premises, that is, premises that have both a residential aspect and a commercial aspect, the situation becomes less clear. The minister has provided me with written advice in relation to this issue which states that in terms of mixed-use premises, and I quote:

...the work health and safety laws would apply to the Strata Title body corporate if the body corporate employed someone or the body corporate had responsibility for areas used for commercial purposes. Therefore, officers of the body corporate would have a duty under the legislation to exercise due diligence to ensure that aspects of the building do not present a risk to those who use it. This would extend to, for example, ensuring that hazards, such as damaged floors in common areas were attended to so as to avoid trips and falls.

It is quite foreseeable that a strata title unit owner who is a member of the strata corporation only by the fact that they own a strata title unit in a mixed-use premises could be responsible for areas used as common areas or for commercial purposes. Further, it would not be impossible to imagine that the same strata title unit owner would potentially be captured by clause 244 of the bill. That is, the conduct of an agent or officer acting within his or her actual or apparent authority, could be

attributed to the body corporate and, therefore, the unit owner who sits on that body corporate voluntarily.

This may sound like a very remote possibility but it is possible nonetheless and made even more likely by the increasing number of mixed-use developments occurring around Adelaide, principally in the CBD. The fact that this issue has recently been addressed by SafeWork Australia insofar as it relates to residential premises, demonstrates that it is one of growing concern. The amendment goes one step further to address the issue of mixed-use premises, an issue that was raised with me some months ago by industry groups involved in the management of strata corporations. In closing, the aim of the amendment is to provide a clarity for volunteer officers of prescribed strata and community title corporations. I urge all honourable members to support it.

The CHAIR: The Hon. Mr Darley, you spoke to both your amendments and, for clarification, you will be moving both your amendments?

The Hon. J.A. DARLEY: Yes, Mr Chairman. I move:

Page 33, after line 2—Insert:

(4) In this section—

prescribed strata/community titles corporation means—

(a) a body corporate established under the *Strata Titles Act 1988* or the *Community Titles Act 1996*; or

(b) a company that holds land for the purposes of a building unit scheme consisting of 2 or more properties designed for separate occupation where the buildings comprising the scheme were erected before 22 February 1968.

The Hon. T.J. STEPHENS: If a strata group has a mixture of apartments where some are residential and some of the people who live in those apartments are officers of the strata group but also have apartments that they rent, where does that leave those people? Can you clarify that for me, please?

The Hon. J.A. DARLEY: Yes; those people are still covered by this amendment.

The Hon. R.P. WORTLEY: The government supports this amendment. It provides clarity for residents living in mixed residential/commercial accommodation under strata community title, confirming that private residents who volunteer as officers will not be liable for duties under section 27.

The Hon. R.I. LUCAS: Having heard the explanation I have some concerns relating to the amendment before the committee at the moment. During this long debate all sorts of people, including, as we have discovered, mums and dads who employ nannies, are going to be PCBUs and subject to the obligations, duties and responsibilities under the legislation. It is not entirely clear to me, and I am going to need some further convincing as to why, if this bill is good enough for everybody else out there in the community, including mums and dads who employ a nanny, it is that people in the circumstances the Hon. Mr Darley is talking about should get a free pass; that is, that they will be exempt. That is the first issue.

Certainly, the position we have adopted in the Liberal Party is that if the amendments in relation to control that we had moved had been accepted by the parliament we believe that would have resolved these particular issues; that is, the directors of these strata title corporations the Hon. Mr Darley is seeking to exempt and protect. If it can be demonstrated that they were in control of a particular issue then they could be held responsible and prosecuted. From our viewpoint, we think that is sensible, but in many respects, as I understand the argument from the Hon. Mr Darley, they are not; that is, they would not be deemed to be in control and therefore not responsible and therefore would not be prosecuted.

Again, if our control amendments had been accepted we think that would have resolved the sorts of issues the Hon. Mr Darley is now seeking to resolve because he has moved his amendment in relation to control and he is now moving these particular amendments in relation to strata corporations. The concern we have is: what is it that is so special about this particular group of people that they should be exempt from all of the rigours, responsibilities and requirements under the legislation?

Colleagues like the Hon. Mr Stephens have much greater experience in terms of the operations of strata corporations than I do and he has indicated, by way of his questions, that he has some knowledge of this area, but a number of lawyers have put to me the issue that there are

a number of other organisations (for example, charitable foundations and others) which do good works.

They raise funds (because they are a charitable foundation), they get grants from state and federal governments, they build homes for homeless people or disadvantaged South Australian families and they manage those, and the people who operate these foundations are volunteers doing a community service but, nevertheless, having to make decisions which might be subject to this legislation.

So, the question that some lawyers have put to me is: if you are going to exempt directors of strata corporations, why should all these other directors in the many other organisations that one can think of not also be exempted from the provisions of the legislation? It comes back to the first question that I put: what is it that is so special about this group?

If this legislation is going to be the greatest thing since sliced bread in relation to occupational health and safety and if everyone else is exposed to it, including mums and dads employing nannies, why should the directors of strata corporations not similarly feel the full force of the magnificence of this legislation in terms of occupational health and safety? It seems extraordinary that minister Wortley should stand up in this chamber and support this, given all that he has been saying in relation to these issues and the importance of occupational health and safety.

Minister Wortley is quite happy to stand up as he did last night and say mums and dads employing nannies are PCBUs and they should have all these requirements that relate to occupational health and safety but, whilst he is happy to say that to mums and dads who employ nannies, he is obviously prepared to support an exemption in relation to these particular groups. I am seeking further evidence or argument from the minister or the mover in relation to why this group of people is so special compared to a number of other groups who do good works or who are volunteer directors and who might equally be subject to the force of the new Work Health and Safety Act.

The Hon. T.J. STEPHENS: If you do not mind, Mr Chair, I would stand to benefit, I suspect, in the long term from agreeing to the Hon. Mr Darley's amendment, but to me it smacks of absolute hypocrisy, so I want it on the record that I will be voting against this particular amendment.

The Hon. R.P. WORTLEY: You see in the very first part of the Hon. Mr Darley's amendment, 'to avoid doubt'. During discussions with the Hon. Mr Darley, the government's view and Safe Work Australia's view is that volunteer officers such as these involved in strata corporates are already excluded. However, we are happy to support the amendment merely to remove any doubt.

The Hon. T.A. FRANKS: My question of clarification to the mover was almost summed up by the minister. My reading of this is that it puts these particular people on parity and gives no doubt that they fall under the category of volunteer officers. Is that the case?

The Hon. R.P. WORTLEY: Yes.

The Hon. T.A. FRANKS: So they are not actually being given special treatment. There is already particular treatment for volunteer officers in this bill. The Greens are comfortable with that.

Amendments carried.

The CHAIR: The Hon. Mr Lucas, you have a further contribution to clause 34?

The Hon. R.I. LUCAS: Indeed I have. Can the minister clarify some legal advice provided to the opposition that the exceptions provision in 34(1)—'A volunteer does not commit an offence'—covers, for example, if a business person sits on a board of directors but does so as a volunteer (that is, takes no payment for his or her contribution to the board; it is a contribution to that particular board) so that this exception applies to that individual and that individual will be exempt from prosecution for any breaches of the Work Health and Safety Act?

The Hon. R.P. WORTLEY: If they are a volunteer director, they will be immune from prosecution for a breach of the officer's duty.

The Hon. R.I. LUCAS: That seems to be an extraordinary loophole. What the minister is saying is that if Alan Bond or James Packer—pick a name, people who do not need the directors' fees from serving on a number of these companies, someone who is independently extraordinarily wealthy—serve as a director for a company and do so as a volunteer, they are automatically

exempt from any prosecution, and that is a piece of legislation that the Labor Party, the Greens and others want us to accept.

A very wealthy person in our community, through the device of not taking a payment as a director of a company, can automatically not be prosecuted. If they were smart, all of them would not take a salary or a fee, and the minister is saying that this model bill that has been developed will allow any wealthy businessperson in Australia to exempt themselves personally from any prosecution under this occupational health and safety act. I ask the minister: how does he see that as fair in terms of occupational health and safety legislation?

The Hon. T.A. FRANKS: Can the minister also clarify what the lines in the amendment that we have just passed, 'but may be liable for failure to comply with another duty under this act', would actually entail?

The Hon. R.P. WORTLEY: It is all very well for the Hon. Mr Lucas to use the example of Mr Alan Bond. The fact is that SafeWork SA and the government's view is that those people who are purely volunteers are not caught and cannot be prosecuted as an officer. In the case of Mr Bond being on a board and so on, you would probably find that he would be a PCBU himself; he would probably own half the company. I think you are going to extreme lengths—as you have done with the vast majority of these clauses—to denigrate the integrity of the clause.

The Hon. R.I. LUCAS: That is the most unconvincing response to a question I have ever heard—and I have heard a few from you over the last 48 hours. Putting aside Alan Bond, you can talk about your great mate Peter Malinauskas, if you like, or whoever, pick a wealthy businessperson in the community. There are a number who have been significant donors to the Labor Party in South Australia—pick any one of those, if you wish.

We are not talking here about strata corporations, we are talking about a company, any company or organisation, that might be in charge of a factory, a factory site, a business or whatever it is, and there might be the most horrendous occupational health and safety issues, and they might relate to asbestos or all sorts of issues. What the minister is saying is that he supports a wealthy businessperson or a wealthy union leader—and let us look at those because there a few of them sitting on boards and organisations—and, as long as they do not take a fee or a salary, they can fly through the coop.

So the company for which they are responsible can commit the most horrendous workplace safety offences and what the minister is saying is, 'Well, too bad. If you are wealthy enough not to need to take a fee or a salary, we are happy to let that go.' I am hoping the minister might actually have a more convincing explanation as to why he and the officers in SafeWork SA and Safe Work Australia, and their equivalents around the nation, are recommending this particular provision.

VISITORS

The PRESIDENT: The Hon. David Ridgway has guests from the Victorian Legislative Assembly. Therefore, we would like to welcome Mr Paul Weller MLA, member for Rodney, and Mr Andrew Katos MP, member for South Barwon. Welcome, and please avail yourselves of the Hon. Mr Ridgway's expense account: it is the biggest one in this place.

WORK HEALTH AND SAFETY BILL

Committee debate resumed.

The Hon. R.P. WORTLEY: Where there is a body corporate and there are people who are 100 per cent volunteers on that strata, they are immune from prosecution for a breach of officer duties. When it comes to Alan Bond, he or any person in that category can still be prosecuted as a worker or other person under sections 28 and 29 of the bill. This also answers the question asked by the Hon. Tammy Franks.

The Hon. J.A. DARLEY: I have a further amendment, but could I clarify the point? My amendment concerns a company that holds land for the purposes of a building unit scheme consisting of two or more properties designed for separate occupation where the buildings comprising the scheme were erected before 22 February 1968. We are not talking about companies in the general sense: we are talking about companies in terms of company shareholding schemes with units.

The Hon. R.I. LUCAS: I understand that point. The chamber having passed the member's amendments, I am not asking questions about his amendment: I am asking questions now about the government bill, which is clause 34(1).

What the Hon. Mr Wortley has just indicated to the committee is that if, for example, James Packer—let's move beyond his Alan Bond example—is sitting on the board of a company and does not take a fee (all he is doing is sitting on the board of the company), he in some way wants us to believe that he can actually be prosecuted as a worker.

Give me a break! James Packer or Lachlan Murdoch sitting on the board of public companies do not resemble workers. They are directors and are there for their expertise that they can offer to the particular boards that they are asked to sit upon; and the minister stands up in this house and says that Lachlan Murdoch or James Packer, if they are volunteer directors and therefore cannot be prosecuted as a director, can be prosecuted as workers within the companies. Give me a break!

If SafeWork SA is unsuccessful in relation to the Salvemini case, I would love to see them trying to hang that one on Lachlan Murdoch or James Packer, with the QCs they would have lined up on the basis that minister Wortley was going to prove that they were actually workers and not really directors of the companies. So, give me a break, as I said.

The minister's responses and answers have become more and more fanciful as the day has gone on. The response bears no resemblance to the facts. Sadly, the record will show that this has been the standard of the government response through the minister in relation to this issue. I am disappointed that this issue, having been raised, has basically been dismissed by the minister, saying 'Well, the Liberal Party is wrong; we would be able to prosecute Lachlan Murdoch or James Packer as a worker.' When the court of public opinion hears about this over the next 24 to 48 hours, I suspect that the minister may well adopt his response of this morning, that he does not comment on bills whilst they are before the parliament.

Clause as amended passed.

Clauses 35 to 37 passed.

The Hon. R.I. LUCAS: I will not be moving my amendments Nos 25 to 45, as they are consequential.

Clauses 38 to 67 passed.

Clause 68.

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

Page 46, after line 9—Insert:

(3a) Subsection (2)(g) does not extend beyond—

(a) a person who works at the workplace; or

(b) a person who is involved in the management of the relevant business or undertaking; or

(c) a consultant who has been approved by—

(i) the Advisory Council; or

(ii) a health and safety committee that has responsibilities in relation to the work group that the health and safety representative represents; or

(iii) the person conducting the business or undertaking at the workplace or the person's representative.

This is a new issue, which has not been discussed before. We are in the section of the bill which relates to the powers and functions of health and safety representatives. The provisions in the legislation allow a health and safety representative, if required, to have assistance, through a consultant or an adviser.

I referred indirectly to this, I think, in the debate yesterday when we indicated that our position was that, whilst we opposed automatic right of entry for unions, we accepted that unions, if workers so wished, could and should be involved in those circumstances. We highlighted the circumstances where the workers can appoint a union member as a health and safety representative, if they so chose; that would be a free choice for them.

Then, secondly, if the health and safety representative felt that they needed the assistance of someone from outside the company, whether it be on the basis of expertise or whether they felt intimated by the employer, or for whatever reason, in relation to a health and safety issue, again, as I indicated yesterday, we are quite happy for a properly approved and accredited consultant or assistant who is a union representative to be engaged or involved as well. In essence, this is in part tackled by this particular issue. Our amendment provides:

(c) a consultant who has been approved by—

(i) the Advisory Council, or

(ii) a health and safety committee that has responsibilities in relation to the work groups that the health and safety representative represents; or

(iii) the business conducting the business or undertaking at the workplace or the person's representative.

There is a related amendment in the same clause (amendment No. 47), which defines 'consultant' as being 'a person who is, by reason of his or her experience or qualifications, suitably qualified to advise on issues relating to work health, safety or welfare'.

It has evidently occurred in the Eastern States in some cases where, rather than bringing in someone who might help resolve the health and safety issue from a health and safety viewpoint, some health and safety representatives might have been attracted to bringing in a media outlet or a journalist or whatever else it happens to be.

So, rather than bringing in someone properly trained and accredited to try to sort out the issue from a health and safety viewpoint, some people have sought to use, if it is wide enough, the provision to bring in somebody who is not a health and safety representative, consultant or adviser in any way but someone who might just serve to further inflame the situation. So, we think the amendment we are moving is a relatively simple one; we think it is a logical amendment and worthy of support.

The ACTING CHAIR (Hon. G.A. Kandelaars): And are you moving both amendments?

The Hon. R.I. LUCAS: I am happy to do so, Mr Acting Chair. I move:

Page 46, after line 11—Insert:

(5) In this section—

consultant means a person who is, by reason of his or her experience or qualifications, suitably qualified to advise on issues relating to work health, safety or welfare.

The ACTING CHAIR (Hon. G.A. Kandelaars): We are considering amendments Nos 46 and 47. Minister?

The Hon. R.P. WORTLEY: The government supports both the amendment and the consequential amendment. Whilst we did not seek this amendment, it does not infringe upon the key pillars of a harmonised bill; therefore, in the interest of progressing this important legislation, the government will support the amendment.

Amendments carried; clause as amended passed.

Clause 69 passed.

Clause 70.

The ACTING CHAIR (Hon. G.A. Kandelaars): What is your intention, Hon. Mr Lucas, in terms of amendments Nos 48, 49 and 50? Are they consequential?

The Hon. R.I. LUCAS: I will just speak to 48 and 49; I deem these to be consequential and I will not be moving them. In relation to clause 70 I will just give, as another example, a point that I made earlier in the debate, and this is in relation to 'Obligations of person conducting business or undertaking to health and safety representatives'. These are general obligations of persons conducting a business or an undertaking.

The minister, as I said earlier, has conceded that mums and dads employing nannies are persons conducting businesses or undertakings, and I just again highlight, in some cases, the absurdity of some of the requirements of the legislation as it relates to what the minister has now put on the record, that is, that a mum or dad employing a nanny is a person conducting a business or undertaking.

I invite people to look at the two pages of obligations under clause 70 in relation to what a person conducting a business or undertaking is required to do. I am not sure who the health and safety rep for the nanny is going to be—I guess it will have to be the nanny. It is just another example of the requirements on a PCBU outlined in the legislation.

Clause passed.

Clause 71.

The Hon. R.I. LUCAS: My amendment No. 50 is consequential. I place on the record, and I am sure the government does too, our gratitude to the hardworking parliamentary counsel, who have drafted copious pages of amendments, most of which have been unsuccessful. In relation to clause 71, I am not moving amendment No. 50 because it is consequential, and I am not moving amendment No. 51 because that is consequential, but I want to leave open, at least for the moment, whether or not I move amendment No. 52.

This is in part consequential to the earlier amendment at clause 68 that I had not anticipated the government supporting. My question to the minister is in relation to subclause 71(5), which provides:

> (5) The person conducting a business or undertaking may refuse on reasonable grounds to grant access to the workplace to a person assisting a health and safety representative for a work group.
>
> (6) If access is refused to a person assisting a health and safety representative under subsection (5), the health and safety representative may ask the regulator to appoint an inspector to assist in resolving the matter.

I guess the only concern I have is—and here is me as the great champion of the workers and the unions and the minister as the ogre—in the circumstances, one of the reasons why I was seeking to delete these subclauses was that, in what has now been approved, what we have said is that if you are properly accredited and trained and you happen to be a union member or representative that is fine; but what is in here is, if I am the boss of a business and the workers decide to get a properly trained union rep to come in as their consultant, the boss can actually say no.

I am not sure why the minister, with his union background, would be wanting to support that position. If that is the position the minister wants, fine, but the reason I was looking to remove these subclauses was that our position was that we did not think unions should have automatic right of entry, and that is still our position. They are now going to have automatic right of entry, so maybe I should not give a continental that, if workers have appointed a consultant who is a union member and the boss does not like that person, he can veto the provision because the union, if it has coverage, can walk in there anyway.

But I am not sure why the minister from a Labor government is supporting a position where, if a union member is a properly accredited consultant, and the workers want him or her to come in and assist, the boss who hates unions will not let that particular person onto the worksite. I ask the minister what his reason is for that.

The Hon. R.P. WORTLEY: Clause 71(5) allows for a PCBU to refuse a health and safety rep's assistant access to a workplace on reasonable grounds. It is intended that access could be refused, for example, if the assistant had previously intentionally and unreasonably delayed, hindered or obstructed any person, disrupted any work at a workplace or otherwise acted in an improper manner.

The Hon. R.I. LUCAS: The minister is saying that he is comfortable with the boss of a business saying no to a worker who is a union representative, because this clause does not say they had to have committed any previous offences, or anything. That might be a circumstance and one could understand that, but there will be many circumstances where that might not be the case. The minister is comfortable with leaving this particular clause in the legislation?

The Hon. R.P. WORTLEY: I do not think that this clause is going to be used all that often. Those assistants, in particular union permit holders, are properly trained and very responsible, I must say. The Hon. Mr Lucas's own observation is that South Australia has a very good industrial record. There is no evidence that the current provisions to allow unions access to the workplace under the Fair Work Act are being abused, so we do not expect this clause to be used. However, if there is an issue where an assistant is refused, based on the fact that this person had disrupted the work, or whatever, unreasonably, well, so be it. It is consistent with protections in respect of right of entry, but bear in mind that the consultant may not be a union rep.

The Hon. R.I. LUCAS: If the minister is happy for a business owner to say no to a union person on any grounds, then I will not move ahead with the amendments. I therefore withdraw those particular amendments. I do note that the Liberal Party position in relation to stopping automatic right of entry by unions into worksites was unsuccessful, so the position is going to be that, if a union claims coverage, it will be able to send someone in, anyway.

Clause passed.

Clause 72.

The Hon. T.A. FRANKS: I move:

Page 48—

Lines 27 to 29—Delete:

'The person conducting a business or undertaking must, if requested by a health and safety representative for a work group for that business or undertaking, allow the health and safety representative to attend' and substitute:

A health and safety representative is entitled to take at least the prescribed number of days per year off work for the purposes of attending

Line 35—After 'conducting the' insert 'relevant'

After line 35—Insert:

(1a) The person conducting a business or undertaking must, at the request of health and safety representative for a work group for that business or undertaking, allow the health and safety representative to attend a course of training under subsection (1) (after undertaking the consultation referred to in subsection (1)(c)).

I will speak more broadly to the issue, and certainly there are a few amendments here that come under this particular issue regarding existing provisions to give health and safety representatives options to take at least five days off per year for the purposes of occupational health and safety training.

This has been an entitlement since 1986, and it ensures that health and safety reps (HSRs) are well equipped to deal with health and safety issues that do, of course, arise in the workplace. There are many providers who offer occupational health and safety training to these HSRs. I will keep my speech on this issue short, but certainly the evidence shows that poorly-trained representatives can be detrimental to safety, and it is vital to ensure that if a representative is in fact elected they are properly trained in order to for them to carry out their role. They have considerable powers under the act and they can also have considerable protections under the act in the performance of their role.

It is in the PCBU's interest, therefore, that these reps are well trained, ensuring that they know not only their powers but also their obligations. I note that this is the third incarnation of this particular amendment. I acknowledge that while the Greens had hoped to have a more significant entitlement to training, what we have before us is an entitlement for health and safety reps being proposed to be five days for the first year, three for the second, and two for the third in their term of office should they be re-elected or if a new person is elected that five days will kick in again.

I have also covered those who are on health and safety committees. Currently, where there are 20 or more workers in a particular enterprise, a committee is formed and there is 50 per cent workers and 50 per cent management. I understand that the government will not be supporting the entitlement for committees but will be possibly entertaining this Greens' amendment for that training entitlement to be extended to representatives. If they could indicate that at the beginning that would probably save this committee's time in proceeding through these clauses.

The Hon. R.P. WORTLEY: We support the amendments Nos 1 [Franks-3], 2 [Franks-3] and 3 [Franks-3]. I understand there is something happening with amendment No. 4.

The Hon. T.A. Franks: I will leave that in two parts.

The Hon. R.P. WORTLEY: Okay; good. We support the amendment for the increase in health and safety training.

The Hon. R.I. LUCAS: I have a question for the mover or the minister in relation to what is intended. The minister seems to be hinting that something different is going to happen to clause 4, so before we vote on amendments Nos. 1, 2 and 3 from the Hon. Ms Franks can either the mover

or the minister indicate what is happening? In relation to the number of days of training and costs involved for health and safety representatives, what is the agreed position between the government and the Greens that we are going to be asked to vote on eventually?

The Hon. T.A. FRANKS: As I indicated in my statement, there are health and safety representatives and there are also those who are members of health and safety committees. My understanding is that the health and safety representatives have the government's support to continue to enjoy the access to the training, but I do not think the government will be supporting the committee's members; so, in fact, they are not going to support those particular workers and management to undertake this training. The training is outlined in the amendments; that is, five days for the first year of their term, three days for the second and two days in the third year.

The Hon. R.I. LUCAS: Can I clarify? Given the number of changes to the amendments, were five, three and one always the position in relation to health safety representatives, or was there at one stage an amendment which was five days, three days and one day?

The Hon. T.A. FRANKS: The Hon. Rob Lucas just asked me whether or not it was five, three and one. You actually repeated your numbers. Although this is not the amendment that we are debating now, originally I was seeking to have five days' entitlement each year.

The Hon. R.I. LUCAS: I thought the minister was indicating that amendment No. 4 was going to be put in two parts. What is the significance of that comment from the minister? What two parts and is the minister supporting one part and not the other?

The Hon. T.A. FRANKS: I am happy to respond to that. Amendment No. 4 [Franks-3], subsection (8)(a), provides:

> no more than 20 persons are employed or engaged in a regular basis for the purposes of the relevant business or undertaking; and

That simply means that that is applying to the committees and the entitlements of committee members, which I do not believe the government will be supporting, but that is where it came from. That is why I will not be moving that particular subsection.

The Hon. R.I. LUCAS: So the Hon. Ms Franks is indicating that, in this package of amendments, she does not intend to move subclause (8)(a) but does intend to move all of the remaining sections of amendment No. 4 as part of the package that she has agreed with the government?

The Hon. T.A. FRANKS: Indeed, that is right.

The Hon. R.I. LUCAS: Minister, are the current requirements for the training of health and safety representatives five days for the first year, five days for the second year and one day for each subsequent year?

The Hon. R.P. WORTLEY: The current entitlement is five days for the first year, second year and the third year, so it is 15 days over the three years.

Amendments carried.

The Hon. R.I. LUCAS: My amendment No.53 is consequential and I will not move it.

The Hon. T.A. FRANKS: I move my amendment [Franks-3] 4 in an amended form:

Page 49, after line 21—Insert:

(9) For the purposes of this section, the *prescribed number of days*, in relation to a health and safety representative, is—

(a) during the first year of the health and safety representative's term of office—5 days; and

(b) during the second year of the health and safety representative's term of office—3 days; and

(c) during the third year of the health and safety representative's term of office—2 days,

(and if the health and safety representative is re-elected at the end of a term of office then paragraphs (a), (b) and (c) will again apply during that new term of office).

The ACTING PRESIDENT (Hon. G.A. Kandelaars): We need to be very clear.

The Hon. R.I. LUCAS: The Hon. Ms Franks might be, but the rest of us might not be.

The ACTING PRESIDENT (Hon. G.A. Kandelaars): Well, we had better be very clear.

The Hon. R.I. LUCAS: Exactly, and that is the point that I am raising. As I understand it, the Hon. Ms Franks is now saying she is not going to move to insert subclause (8), and she is just moving to insert subclause (9). I hear that, but what I want to know is: what is the impact of this? I think the honourable member has just indicated that the government is not supporting subclause (8). Can the minister outline what the concerns are in relation to subclause (8) and what, if any, additional imposts might be imposed on business as a result of this?

The Hon. T.A. FRANKS: The Hon. Rob Lucas would be well aware that, in fact, this is the system as currently exists that the Greens have attempted to maintain, so there is no additional impost. In fact, it will be a cost saving to government. South Australia traded away its entitlements to these training options for both health and safety representatives and members of the committees in the harmonisation bargaining. However, the Greens have sought to keep the high standards of South Australia as they are.

We have acknowledged that the writing is on the wall and that we are not going to get to enjoy the current entitlements of five days each year as we currently do and certainly that those who are on committees will not necessarily be able to access them in the same way they currently do. However, the government has indicated that it will support the retention of this current activity—I emphasise—at no additional expense, in fact, at less expense (although I am not sure that that is in fact the honourable member's concern here) but at the rate of five days in the first year, three days in the second year and two days in the third year instead of at the rate of five days in each year.

The Hon. R.I. LUCAS: Can I ask the minister: given that the minister is supporting, so he says, national harmonised legislation, what will be the equivalent training responsibility in the other jurisdictions? Will it be five days, three days and two days as outlined in this amendment that he is supporting and, if it is not, what is the requirement in the other states?

The Hon. R.P. WORTLEY: At the moment in Victoria and Western Australia, it is five, five and five, I understand, but in the other jurisdictions there would be five, one and one.

The Hon. R.I. Lucas: That's what the bill was.

The Hon. R.P. WORTLEY: Yes, that's what the bill was—five, one and one. We believe that, in the best interests of making sure that workplaces are safe, reps should have adequate training, and this will equip them to identify issues in the workplace and hopefully reduce the number of injuries in the workplace.

However, we will not support the Hon. Ms Franks' amendment [Franks-3] 4, because that would exclude organisations that have fewer than 20 employees, and the person conducting the business or undertaking is not a person in respect of whom a supplementary levy or supplementary payment has been imposed by WorkCover under part 5 of the Workers Rehabilitation and Compensation Act. What that means is that, if we supported that and it became part of the bill, any organisation with fewer than 20 employees would only get the amount of training as the person conducting the business or undertaking wishes to give.

The Hon. R.I. LUCAS: Isn't that the current position? Is there not a distinction at the current time between small businesses and larger businesses? That is, if you are a small business, you are not required to provide at your expense this level of training for the health and safety representatives.

The Hon. R.P. WORTLEY: That is correct, but those provisions in the current act have been there since 1986. We believe it is time to move on and equip safety reps in organisations with less than 20 in our battle to fight injury and death within workplaces.

The Hon. R.I. LUCAS: First, can I clarify something? In the bill that the minister had introduced, what was the situation for small businesses? Were they to be excluded or were they going to have to undertake the five, one and one days' training?

The Hon. R.P. WORTLEY: In the model bill that exclusion was not there.

The Hon. R.I. Lucas: So a small business had to do five, one and one.

The Hon. R.P. WORTLEY: Yes, under the current model work health and safety legislation.

The Hon. R.I. LUCAS: Was that issue raised in the consultation from industry associations? Did they protest that small businesses were going to be hit with an impost? In the bill

it is seven work days. The minister is saying that is not enough, let's make it 10. What the minister is saying to small business is that two full weeks—I guess it is over three years, isn't it? It is a week in the first year and then three days and two days in the subsequent years that a small business has to provide by way of training. Can I have clarified, was there opposition expressed by industry associations to this additional impost on small businesses in South Australia?

The Hon. R.P. WORTLEY: This model bill was negotiated over quite a number of years between the government employers and employee associations. It is a model work health and safety bill. However, when it came to this parliament, business put up a number of changes, in particular right to silence. We are putting that back in even though there was not a lot of consultation about that, but business wanted it, so we succumbed to it and agreed that we would put that in.

The unions themselves wanted to go back to the five, five and five. We opposed that but we saw some merit in giving five, three and two days. It is all very well to say 'what consultation?' A lot of consultation happened in the beginning when that model work health and safety bill was put into this parliament. If everybody had just abided by the fact that very often there are national organisations that are part of negotiations, the bill would have been passed and we would all be off working under the bill.

However, as I said, businesses had a position which we adopted in regard to the right to silence. There were some changes required for the union rights of entry. There was not a lot of public consultation about that. It was the fact that they wanted it and we ended up agreeing to it to get it through the parliament, so we thought it was appropriate that a number of the issues which had been agreed to nationally have been changed.

Mind you, they did not alter the pillars of the legislation. Actually the increase in training would probably help to some extent where work health and safety reps are now able to have five days in the first year, three days in the second year and two days in the third year. We think that is quite an appropriate position to have, so we support the Greens' amendment.

The Hon. R.I. LUCAS: That is all very nice, but we are not actually discussing the self-incrimination or right-to-silence amendments. My question was: was opposition expressed by any industry association to the removal of the exemption for small businesses in South Australia from the cost of training of health and safety representatives?

The Hon. R.P. WORTLEY: The provision to exclude organisations with under 20 employees was negotiated at the national level a couple of years ago.

The Hon. R.I. Lucas: All of it was negotiated nationally: was there opposition in South Australia to it?

The Hon. R.P. WORTLEY: It was also negotiated through the South Australian SafeWork SA Advisory Committee. So, consultation had taken place.

The Hon. R.I. Lucas: Was opposition expressed to this particular issue is my question. I know there was consultation. Was opposition expressed to this particular provision?

The Hon. R.P. WORTLEY: It went through the advisory committee and it was signed off and there was no opposition on the advisory committee.

The Hon. R.I. LUCAS: I was not just asking about the advisory committee because, as the minister knows, the advisory committee is a small body of select people. The minister has received considerable lobbying, as indeed have I and every other member in this chamber, from industry associations after the model bill was consulted on and people started looking at what were the implications. He has had representations, as he knows, from the MBA, the HIA and every other industry group in South Australia on the bill. As part of that—not as part of the advisory committee discussions—was opposition expressed to this particular removal of the exclusion for small business?

The Hon. R.P. WORTLEY: Look, no opposition has been expressed with regard to removing organisations under 20 employees. I do not see how much clearer I can get: there was no opposition. It passed nationally through the tripartite committee and through Safe Work Australia. It has came down to SafeWork SA; it has gone through its advisory committee. Even though you are saying that it is a small body, those people consult within the business community and the employer associations, and right up to this very minute no-one has expressed opposition to me at all in regard to that exclusion.

The Hon. R.I. LUCAS: I find that extraordinarily hard to believe. After the debate this evening and before we recommence tomorrow I will seek to consult the industry associations to get their views on this, because certainly in the discussions I had recently with the MBA it was all on the basis (and they have had a quick look—there had not been formal consultation with the industry associations about the Hon. Tammy Franks's amendment and whether or not the government was accepting it) my recollection—and I will correct the record if I am wrong—was that they understood that the position was that small businesses were treated differently to bigger business, which the minister has conceded is the current position here in South Australia.

Just so that we can understand what are the cost implications for small businesses as a result of this change, will the minister outline to the committee that, if a business person has 10 or 15 employees, clearly they have, in the first year, to allow their health and safety representative (let us assume they have only the one) to take five days leave for training. So that is clearly a cost. They lose 1/52nd of a year's work immediately. I presume the business owner has to find an appropriate course and pay for the attendance of that particular course, and travel to and from that particular course. Is that the proposed requirements under the government's bill?

The Hon. R.P. WORTLEY: An employer who has less than 20 employees naturally will now, if they have a health and safety rep—bearing in mind that many of these places do not have health and safety reps—be required to find an appropriate forum through which they can be trained. The employer associations like Business SA and probably quite a number of others, all run these courses. There are employee associations that run them, so they would only have to make a phone call and I am sure they could enrol their health and safety reps.

The Hon. R.I. LUCAS: That is not my question; I understand that. My question is about the legal requirement; that is, the small business employer has to obviously absorb the cost of losing the worker for the week, and must also pay for the attendance cost at wherever they can find the course, whether it is an employer association or whatever; is that correct?

The Hon. R.P. WORTLEY: That is correct and that would have been understood when this was negotiated nationally between the employer associations, the employee associations and also the government. It would have been understood that that was going to be the case. It also would have been understood when it came down to the SafeWork SA Advisory Committee who endorsed that position, and it would have been well and truly understood that that was the case. It is 10 past 10 and I think the staff require a break.

[Sitting suspended from 22:12 to 22:40]

The Hon. R.I. LUCAS: During the break I was able to conduct some quick consultations, but obviously I was not able to get hold of a lot of people at this hour of the night. It is only the hardworking parliamentary staff, parliamentary counsel and members of parliament who are still slaving away at this hour. Before we commence proceedings tomorrow I will probably get a little bit more feedback, but at least in the early stages of this I want to express our concern, on behalf of small business in South Australia, that Premier Weatherill and the Weatherill government are going to slug small business in South Australia with a significant new additional cost impact at a time when the state economy is struggling and struggling hard.

Small businesses in South Australia are struggling and what Premier Weatherill is going to do with this bill is, for the first time, say, 'If you are a small business owner and you have five workers in your small business out at Glynde in the marginal seat of Hartley, or wherever, and if those workers decide they want a health and safety representative, which they are obviously entitled to under the legislation, then you will have to add to your cost base by paying for not only losing a staff member for five days training in the first year, three days in the second year and two days in the third year, you will also have to pay for the cost of the course,' and the minister is unable to indicate what the cost of that course will be.

One would also assume they would have to pay the cost of travel and related expenses for that week for the health and safety representative. If you are in a regional area and the only training opportunity happens to be in Adelaide, then the cost of not only travelling to Adelaide but also, potentially, one would assume, the cost of accommodation whilst you are in Adelaide would have to be met by the employer as well.

The minister says small business in South Australia does not oppose this. I do not know which small business people he talks to, but I can assure the minister that it will become known to

small business operators in South Australia that for the first time Premier Weatherill is saying to them, 'We are now going to add to your cost base in this particular way.' What is the problem that is being raised here? We have heard figures from WorkCover—and I do not have them with me, given the lateness of the hour, but I will try to get them before the debate tomorrow—in terms of the relative significance of injuries in the small business sector as opposed to the big business sector, basically talking in favourable terms about small businesses in terms of compensable injuries being incurred in small businesses.

I am working off memory in relation to that, but I recall the former chief executive officer giving evidence to the Occupational Health and Safety Committee of the parliament, I thought, along those terms, and I will have a look at it. From our viewpoint, at this stage, given that the Hon. Ms Franks is moving this amendment now (which we were not aware of), in an amended form, because the minister has indicated, speaking on behalf of Premier Weatherill, that they have taken a conscious decision to slug small business in South Australia with this additional cost and that is their intention, I indicate that we are going to oppose this particular provision.

We do so, as I said, in relation to the particular impact on small businesses. We obviously accept the need that has existed in South Australia for training as it has existed for health and safety representatives. It seems to have worked relatively well, and we are not sure what the problem is that Premier Weatherill is seeking to correct by this sledgehammer in relation to the cost base for small business in South Australia.

The Hon. R.P. WORTLEY: I must say I am quite surprised. This issue of organisations with under 20 employees has been in the public domain for around two years. The Hon. Mr Lucas has had this bill for well over a year, so it does come as a surprise that he has not actually got his head around this issue and does not understand that this issue was on the table. This has been endorsed by the national tripartite committee under Safe Work Australia. It has gone through the ministerial council. It has gone through SafeWork SA. All of them have representatives of employers, employees and government. I must say it concerns me that the Hon. Mr Lucas is now bringing this up as an issue.

Hopefully I will get the figures in regard to the injury rates and workers compensation rates in organisations with under 20 employees. Hopefully those figures will be available. Those figures will be there despite the fact that there is very little training for health and safety reps in organisations employing fewer than 20 people. We would be looking at a reduction in injuries in organisations with under 20 employees once work health and safety reps are trained.

I will add, though, that not every organisation will have a situation where a person wants to be a health and safety rep. You may find that in many of these organisations—and there are probably many thousands of them—the employees choose not to. It seems to be the case very often that small organisations do not have reps, but those employees who do want to elect a health and safety rep should have the right. Regardless of whether you are working in a small organisation or a large organisation, you should have the same right to training.

Bear in mind that this provision currently applies in the commonwealth, Queensland, New South Wales, the ACT, Northern Territory and Tasmania, so why should our organisations, with fewer than 20 organisations, be any different and getting different training from those jurisdictions? I look forward to the passage of this amendment and seek the support for the Greens amendment.

The Hon. D.G.E. HOOD: Family First will also be opposing the amendment. I think it will be an impost particularly on small business, precisely at the wrong time, if I might say so, given the current environment. Also, philosophically, I believe that mandated training often opens the door to training courses of limited or little value because the providers of the training courses know that a certain level of mandated training is required and therefore they will provide that training, no worries at all. The quality, of course, can be very questionable. For that reason, we will be opposing the amendment.

The committee divided on the amendment:

AYES (8)

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

NOES (7)

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

PAIRS (6)

Hunter, I.K.	Lee, J.S.
Vincent, K.L.	Wade, S.G.
Kandelaars, G.A.	Bressington, A.

Majority of 1 for the ayes.

Amendment thus carried; clause as amended passed.

Clause 73 passed.

The Hon. R.I. LUCAS: My amendments to clauses 74 and 75 are consequential and I will not move them.

Clauses 74 to 78 passed.

Clause 79.

The Hon. R.I. LUCAS: I will not be moving amendments Nos 56, 57 and 58 as they are consequential.

The Hon. T.A. FRANKS: I move:

Page 52, after line 10—Insert:

(5) Without limiting a preceding subsection, a member of a health and safety committee is entitled to take at least the prescribed number of days per year off work for the purposes of attending a course of training in work health and safety that is—

(a) approved by the regulator; and

(b) a course that the member of the health and safety committee is entitled under the regulations to attend; and

(c) subject to subsection (9), chosen by the member of the health and safety committee, in consultation with the person conducting the relevant business or undertaking.

(6) The person conducting a business or undertaking must, at the request of a member of a health and safety committee for that business or undertaking, allow the member of a health and safety committee to attend a cause of training under subsection (5) (after undertaking the consultation referred to in subsection (5)(c)).

(7) The person conducting the business or undertaking must—

(a) as soon as practicable within the period of 3 months after the request under subsection (6) is made, allow the member of a health and safety committee time off work to attend the course of training; and

(b) pay the course fee and any other reasonable costs associated with the member's attendance at the course of training.

(8) Any time that a member of a health and safety committee is given off work to attend the course of training must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.

(9) If agreement cannot be reached between the person conducting the business or undertaking and the member of a health and safety committee within the time required under subsection (7) as to the matters set out in subsections (5)(c) and (7), either party may ask the regulator to appoint an inspector to decide the matter.

(10) The inspector may decide the matter in accordance with the preceding subsections.

(11) A person conducting a business or undertaking must allow a member of a health and safety committee to attend a course decided by the inspector and pay the costs decided by the inspector under subsection (10).

Maximum penalty:

(a) in the case of an individual—$10,000;

(b) in the case of a body corporate—$50,000.

(12) Subsection (5) operates subject to the qualification that if—

(a) no more than 20 persons are employed or engaged on a regular basis for the purposes of the relevant business or undertaking; and

(b) the person conducting the business or undertaking is not a person in respect of whom a supplementary levy or supplementary payment has been imposed by WorkCover under Part 5 of the *Workers Rehabilitation and Compensation Act 1986*,

a member of a health and safety committee may only take such time off work to attend a course of training as the person conducting the business or undertaking reasonably allows.

(13) For the purposes of this section, the *prescribed number of days*, in relation to a member of a health and safety committee, is—

(a) during the first year of the member's term of office—5 days; and

(b) during the second year of the member's term of office—3 days; and

(c) during the third year of the member's term of office—2 days,

(and if the member is re-elected at the end of a term of office then paragraphs (a), (b) and (c) will again apply during that new term of office).

I will move this amendment, but I will not seek to divide. Simply put, this extends the allocation of training of the five days in the first year, the three days in the second year and the two days in the third year to members of health and safety committees. I do not believe I have the support of the chamber, but I certainly want to put it on record.

The Hon. R.P. WORTLEY: We oppose this amendment. This amendment seeks to provide health and safety committee members with the same entitlements to five days of training per year, as proposed in amendment No. 1 for the HSRs at section 72 of the bill. The government it of the belief that, with the new provisions now for health and safety reps of five, three and two days for organisations with under 20 employees, we think that provides adequate training for health and safety reps.

Amendment negatived; clause passed.

Clauses 80 to 96 passed.

Clause 97.

The Hon. R.I. LUCAS: My amendments Nos 59 to 66 are consequential and I will not be moving them.

Clause passed.

Clauses 98 to 115 passed.

Clause 116.

The Hon. R.I. LUCAS: This package of amendments is really the substantive package of amendments, which I was happy to take a test vote on sometime yesterday in relation to union right of entry. Having lost the test vote, I think in the definitional clauses, I do not propose to move amendment No. 67.

Given that this is the substantive section, I place on the record for those innumerable *Hansard* readers that the Liberal Party is strongly opposed to this particular section—clauses 116 to 151. The substantive debate was conducted, as I indicated, sometime yesterday, I think in the definitional clause, where we discussed the issue of whether or not unions should have automatic right of entry. I put the Liberal Party's position in that earlier case, and all of those arguments equally applied to these particular clauses but, as I said, given that we lost that debate, I do not intend to repeat the argument.

Clause passed.

Clause 117.

The Hon. J.A. DARLEY: I move:

Page 64, lines 18 and 19—Delete subclause (2) and substitute:

(2) The WHS entry permit holder must reasonably suspect before entering the workplace that the contravention has occurred or is continuing and involves a risk to the health or safety of a relevant worker.

(3) Furthermore, a WHS entry permit holder must—

(a) give consideration as to whether it is reasonably practicable to give notice to the Executive Director about the proposed entry before exercising a power under subsection (1) in order to provide an opportunity for an inspector to attend at the workplace at the time of entry; and

(b) if it is reasonably practicable to give notice to the Executive Director about the proposed entry, comply with any requirement prescribed by the regulations in relation to giving such a notice under this section.

(4) The Executive Director must establish and maintain a policy that relates to the circumstances when inspectors will attend at workplaces when notified of the proposed entry of WHS entry permit holders under this section.

(5) The Executive Director must ensure that the policy is published on a website that is maintained or used by the Department and the Minister must cause a copy of the policy to be laid before both Houses of Parliament.

(6) If a WHS entry permit holder exercises a power of entry under this section without being accompanied by an inspector who has attended at the workplace under subsection (5)—

(a) the WHS entry permit holder must furnish a report on the outcome of his or her inquiries at the workplace to the Executive Director in accordance with the regulations; and

(b) on the receipt of a report under paragraph (a), the Executive Director must give consideration to what action (if any) should be taken on account of any suspected contravention of this Act outlined in the report.

Page 65—

Lines 1 to 4—Delete subclause (2) and substitute:

(2) However—

(a) the right of a WHS entry permit holder to require copies of a document under subsection (1)(d) is subject to any direction that may be given by an inspector (which may include a direction that copies of a document not be required to be made and provided to the WHS entry permit holder); and

(b) the relevant person conducting the business or undertaking is not required under subsection (1)(d) to allow the WHS entry permit holder to inspect or make copies of a document if to do so would contravene a law of the Commonwealth or a law of a State.

After line 38—Insert:

(6) However, the right of a WHS entry permit holder to require copies of a document under this section is subject to any direction that may be given by an inspector (which may include a direction that copies of a document not be required to be made and provided to the WHS entry permit holder).

Page 66, line 22—Delete '$10,000' and substitute '$20,000'

Clause 172—Delete this clause and substitute:

172—Protection against self-incrimination

A person is excused from answering a question or providing information or a document under this Part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.

Page 83—

Line 24—Delete 'warn' and substitute 'advise'

Lines 26 to 29—Delete subclause (2)

Page 115, after line 37—Insert:

(2a) In connection with the operation of subsections (1) and (2)—

(a) the Small Business Commissioner must be consulted before a code of practice is submitted to the Minister under this section so that the Commissioner may

assess whether the code of practice would affect small business if implemented and, if so, provide any comments or advice that the Commissioner considers to be appropriate in the circumstances (including that the code be varied); and

(b) if the Small Business Commissioner recommends that a code of practice be varied, the Minister may make such a variation without the need to adopt the process envisaged by subsection (2) (but may undertake such consultation in relation to the matter as the Minister thinks fit).

New Division, page 117, after line 31—Insert:

Division 4—Reviews

277—Reviews

(1) The Minister must cause a review of the operation of this Act to be conducted as soon as practicable after the expiry of 1 year from its commencement.

(2) The review under subsection (1) must include a specific report on the extent to which inspectors have attended at workplaces under section 117 and an assessment of the operation and effectiveness of the policy established by the Executive Director under that section.

(3) The Minister must then cause a second review of the operation of this Act to be conducted as soon as practicable after the expiry of 3 years from its commencement.

(4) The results of a review under this section must be embodied in a written report.

(5) The Minister must, within 6 sitting days after receiving a report under subsection (4), cause a copy of the report to be laid before both Houses of Parliament.

Part 7 of the bill relates to workplace entry by union officials or work health safety entry permit holders. At the outset, members should bear in mind that this amendment relates to union right of entry without notice; that is, situations where permit holders can, in essence, turn up to a worksite unannounced. It does not affect other provisions relating to entry on the grounds of consulting and advising workers, which requires at least 24 hours notice.

Clause 117 enables union officials, acting in their capacity as entry permit holders, to enter a workplace for the purposes of inquiring into a suspected contravention concerning a relevant worker; that is, a worker who is a member, or eligible to be a member, of a relevant union. The first point of difference between the amendment and the bill relates to the suspected contravention itself.

The amendment provides that the permit holder must reasonably believe that the suspected contravention has occurred, or is continuing, and involves a risk to the health or safety of a relevant worker. This is much narrower in scope than the bill itself, which simply provides that a work health safety entry permit holder may enter a workplace for the purpose of inquiring into a suspected contravention of the act that has occurred, or is occurring, and that relates to or affects a relevant worker.

Further, the amendment requires the permit holder to give consideration to the question of whether it is reasonably practical to give notice to the executive director about the proposed entry in order to provide an inspector an opportunity to attend at the workplace. The amendment has been drafted in a manner that reflects that in some instances it will be impractical, or perhaps even impossible, to give such notice. Having said that, where it is reasonable to do so, an entry permit holder will be expected to give notice of the proposed entry.

The executive director will be responsible for establishing and maintaining a policy that relates to circumstances in which inspectors will attend at workplaces in cases of suspected contraventions. That policy will need to be published on a website so that it is readily available to anybody who may wish to view it and it must also be laid before both houses of parliament.

Where an entry permit holder exercises power of entry without being accompanied by an inspector, there will be a further requirement that they prepare a report to be furnished to the executive director on the outcome of their inquiries at the workplace. The executive director will then be required to give consideration to what, if any, action should be taken on account of any suspected contravention outlined in that report.

Whilst on the face of it this amendment may appear overly cumbersome, it is in fact fairly straightforward. It focuses on the apparent need for union right of entry without notice and places

conditions on both union officials and SafeWork SA with respect to reporting. It provides a measure of transparency and accountability both in terms of entry by union officials and the performance of SafeWork SA.

The amendment goes hand in hand with a subsequent amendment that I will be moving, which will make union right of entry the subject of a review which will enable this parliament to assess whether these provisions are operating appropriately or whether indeed they are creating the sorts of problems that some groups anticipate.

The review itself will take place after one year from the commencement of the relevant provisions and, as I have alluded to, will provide an opportunity to assess any further need for amending the legislation with regard to union right of entry. Some concern has been raised, particularly by the building industry, over the lack of any direct reference in the bill specifically prohibiting union officials stopping work during their entry.

I have discussed this matter with the government and have been assured that the intention of these provisions is not to stop work on a site during the course of an investigation into a suspected contravention unless it is reasonable in the circumstances to do so.

Clause 146 of the bill provides that an entry permit holder must not intentionally and unreasonably delay, hinder or disrupt any person or disrupt any work at a workplace or otherwise act in an improper manner. My understanding is that this clause is intended to address the issue of union officials who misuse powers of entry.

It would be useful if the minister would clarify the intent of these provisions and confirm that clause 118 is not intended to be interpreted in such a way as to allow entry permit holders to effectively stop work on a site during the course of an investigation, particularly for matters unrelated to any contravention. More importantly, these provisions are not to be used for fishing expeditions or as a means of drumming up support for unions, nor are they intended to be used for industrial purposes. These are matters which serve only to trivialise safety matters.

There are two further amendments that I will be moving in relation to union right of entry, and they relate to the ability of permit holders to require copies of documents to be provided during an investigation. My approach on the matter of union right of entry was to consider it from a practical point of view and to implement measures that would alleviate some of the concerns raised by industry.

If a permit holder goes onto a site accompanied by an inspector, then really the role of the union official will come to an end in so far as the inspector will be able to determine whether or not there is a contravention that warrants further action. In these instances, if copies of documents are required, it will be for the inspector to determine.

If on the other hand a permit holder goes onto a site unaccompanied by an inspector and they find a breach, particularly where that breach exposes workers to injury, then one would think that the next course of action would be to report this to SafeWork SA. Again, it is logical that SafeWork SA would then investigate that breach. If for whatever reason the permit holder does not notify SafeWork SA of the breach but undertakes the investigation themselves, they will still be required to report back to SafeWork SA, which will then need to make a determination as to what action, if any, will be taken. In these instances permit holders will be expected to conduct their investigations appropriately without causing undue disruption at the worksite.

It is important to remember that union officials can have conditions imposed on their permits and their permit can be revoked where those conditions are breached. A union official can also be subject to a penalty which under a further amendment will be increased from $10,000 to $20,000.

It is certainly my expectation that the entry permit system will be properly policed and that breaches of permits will be treated seriously by the appropriate authority. All of these amendments combined are intended to provide some assurance to business that the misuse or abuse of these powers by union officials will not be tolerated. The review of these provisions after a year's time will, as I said, allow us the opportunity to assess any further need for amending the provisions and, if need be, remove union right of entry from the legislation altogether.

Union officials are being put on notice that this is their opportunity to demonstrate that they will do the right thing, that the concerns expressed by some industry sectors will not become a reality. I note that the Hon. Rob Lucas will be proposing a change to this amendment, which would mean that the contravention involves an ongoing risk. Whilst I do not oppose what he is trying to

achieve, I am still concerned that the addition of 'ongoing' will create ambiguity or at least further argument as to whether there is a risk.

In closing, I maintain the position that SafeWork SA also needs to lift its game and ensure that it is at the coalface, ensuring that businesses are complying with the legislation and that accidents are being prevented. As I said in my second reading contribution, if this means that it needs more inspectors and more resourcing, then that needs to be addressed by the government. This legislation will only work if it is backed by the best practice and a solid commitment from both the government and SafeWork SA. A change in the culture and attitude of SafeWork SA has to be the starting point. I urge all honourable members to support this amendment.

The Hon. R.P. WORTLEY: I thank the Hon. John Darley. Clause 118 lists the rights that a work health and safety entry permit holder may exercise upon entering a workplace to inquire into a suspected contravention. The clause allows an entry permit holder to inspect anything relevant to the contravention and to consult with workers. However, clause 146 will always be relevant in this context. Clause 146 prohibits a work health and safety entry permit holder from intentionally and unreasonably hindering or obstructing any person or disrupting any work while at a workplace or from otherwise acting in an improper manner when exercising or seeking to exercise entry rights.

Conduct by a permit holder that would hinder or obstruct a person would include action that intentionally and unreasonably prevents or significantly disrupts a worker from carrying out his or her normal duties. A request by an entry permit holder to cease work in situations where it is clearly unnecessary to address the relevant safety concerns would be considered disruptive if the entry permit holder insisted on the cessation of work where it was clear that this was not necessary and the request was unreasonable.

We support the Hon. Mr Darley's amendments. The introduction of the work health and safety entry permit system through the Work Health and Safety Bill provides South Australia with an opportunity to have more trained people attending worksites to address safety concerns. With the thousands of workplaces in South Australia, the more people addressing safety risks the better. Therefore, as the ultimate goal is workplace safety, I am comfortable with ensuring that SafeWork SA puts policies and procedures in place to ensure the smooth and efficient application of these provisions in South Australian workplaces.

I have consulted with the union movement over this provision, and they have unanimously given their support to this because they themselves know that they have trained work and health safety permit holders who act in a very responsible way. We have a very good relationship between employers and employees in this state and that is shown by the fact that we have much less industrial disputation in this state than anywhere else in the country. I am quite sure that unions will act in a responsible way. They have no reason not to and they were quite happy for the government to support the Darley amendments, so I seek support for them.

The Hon. R.I. LUCAS: The substantive debate on these related issues has been conducted, but I do want to briefly refer to just one or two aspects because they are raised by the contributions from the Hon. Mr Darley and the honourable minister in relation to union right of entry.

Can I firstly say that the minister refers to the provisions of clause 146 which say that a WHS entry permit holder—so let's take a union rep—cannot delay, hinder or obstruct any person or disrupt work at a workplace. He says that if that is the case, then action will be taken. The clear evidence from the MBA and other industry groups based on the operations of union right of entry in other states gives the lie to that particular claim from the minister.

I gave examples yesterday in relation to an ongoing dispute between, I think, the CFMEU and the Abigroup in Queensland and the CFMEU and Grocon in Victoria. In relation to the Abigroup dispute in Queensland, there was a dispute over provisions of a valid enterprise agreement which still had two years to run and which had been endorsed by the union. The union wanted changes; the employer said, 'No, we've got a valid agreement.' On one day alone—and this continued for some time—the union entered the worksite on four separate occasions to conduct meetings in relation to separate supposed health and safety issues.

The minister says, 'Well, if that's the case, the company Abigroup can take the union to court.' The reality is that in the context of (a) the expense and the cost and (b) being able to prove in the industrial jurisdiction these sorts of issues given the wording of the legislation, many employer groups just shake their heads and say, 'Well, there's precious little that we're able to do with it.'

The minister quotes the soothing words of 146 to convince people that there is this punitive power, but I have seen the example of a union representative in Western Australia, and what I would call the 'rap sheet' in terms of unreasonable entry to worksites and decisions taken against that particular unionist who continued. On occasions he was penalised in Western Australia but continued to get right of entry and on many occasions won particular cases over there, but continued to disrupt, even though supposedly the employers in those particular cases had rights to take action against the union representative who was unreasonably disrupting the worksites in Western Australia.

So, that is the first point I would make in relation to this issue. The second point (and I will not repeat all the arguments from yesterday) is that our position is that we oppose automatic union right of entry.

The Hon. Mr Darley's amendments in relation to this provision we think are well intentioned, but in the end our advice from industry groups is that they will not achieve what the Hon. Mr Darley believes they will achieve, that is, some genuine compromise between the positions adopted by the government, the Liberal Party and industry groups on this issue. For example, in relation to the drafting of this first amendment, it states:

> Furthermore an entry permit holder must give consideration to whether it is reasonably practical to give notice to the executive director.

The industry groups have said that what the union reps will do—some but not all—is just say, 'Look, it wasn't reasonably practical because my battery went dead,' or, 'I left my phone at home,' or, 'There wasn't phone coverage at the time and I had to enter the worksite to put a particular point of view.'

The practitioners in the industry who have experienced a disputation with union representatives on various worksites say that the drafting here is so broad that it will be impossible for any industry group to actually prove otherwise and to take action against the representative. It will be interesting to see, after the period of time, what eventuates, whether the intentions of the Hon. Mr Darley are met or the view of industry associations and their leaders are met, in that they believe that these particular provisions are drafted so broadly that in the end they will not count for much.

Subclause (6) of the amendment says that if the entry permit holder says, 'Okay, look I couldn't have the inspector come in with me because my phone battery had gone dead,' or whatever it happened to be, and enters the worksite without the inspector, they have to furnish a report on the outcome. The industry association has put the viewpoint that everyone will know exactly what the union representative is going to put in his or her report in relation to the worksite.

Business owners and operators are not taking the view that the union representative is likely to take the position of the business owner against the workers in relation to the particular issue. Clearly, they are not there and are unlikely to be the independent referee or umpire in relation to a difference of opinion on a work safety issue in the workplace between the employees and the employer.

That is fair enough; the unions, as you would well know, Mr Chairman, are there to represent the workers, although in this case, as we know, the workers might not want the union person to be there and there might not be any union workers at the worksite, but the government's position is that the union can insert itself into this particular equation, even if all the workers do not want to have anything to do with the union or a union representative on the site.

The unionist can insert themselves into this particular issue if he or she so chooses. Then the executive director of SafeWork SA will get receipt of this report, then the executive director of SafeWork SA will give consideration to what action should be taken on the account of any suspected contravention. I will be happy to be proved wrong but, if in 12 months time, SafeWork SA has taken action against any union representative, I will be happy to send a small gift to the executive director in congratulations.

That is because I would be mightily surprised if the executive director of SafeWork SA was to successfully take action under these provisions against a union representative who has entered a worksite without giving the appropriate notice. So time will tell. I am big enough and ugly enough to stand up in 12 months time to say SafeWork SA proved me wrong and they managed to successfully prosecute at least one union person who contravened the sections of this particular new amendment, but I will not be holding my breath in relation to the issue.

I understand the Hon. Mr Darley's position. It is well intentioned but we do not believe that it is going to be successful, and industry leaders do not believe it is going to be successful. It still allows for, as I said, union representatives to insert themselves in a situation where all the workers have chosen not to be a member of the union and do not want the union to be involved. The Hon. Mr Darley's amendment is saying, supported by the government, 'Too bad, the union should be able to'. Let us bear in mind it might not be just one union; it might be a number of them who claim coverage, and insert themselves into this particular situation and seek to take a role in whatever work, health and safety issue there might be. I move:

Page 64, lines 18 and 19—

New subclause (2)—delete 'and involves a' and substitute:

and involves an ongoing

New subclause (6)(b)—delete 'outlined in the report'

The Hon. Mr Darley has referred briefly to the first of those amendments. These have been raised within the last few days and, again, I thank parliamentary counsel for the hard work in turning around very quickly amendments which could be considered by our party room. The first one involves a concern that a couple of industry groups had about the drafting of the amendment in relation to the wording from the Hon. Mr Darley, which says:

...must reasonably suspect before entering the workplace that the contravention has occurred or is continuing and involves a risk to the health or safety of a relevant worker.

The concern that has been raised is that the 'has occurred' is past tense and it was viewed that it was clearly not the intention of the Hon. Mr Darley that, if a significant injury or workplace incident had happened some years ago and had been resolved, that was not an issue that could be used on an ongoing basis by a union rep to justify entry. So this amendment from parliamentary counsel is seeking, in essence, to try to ensure that it is something that has happened recently and is an ongoing risk, or is happening at the moment and is an ongoing risk to the health and safety of a relevant worker.

Bearing in mind if something has happened some time ago, and it is done and dusted but new evidence has arisen, then there is plenty of time in relation to bringing in an inspector from SafeWork SA or whatever it might happen to be. We are really talking about the circumstances which might necessitate the involvement, at relatively short and quick notice, of a union representative.

So this drafting is really intended to at least prevent the opportunity for a union representative to use something which has occurred, been done and dusted a couple of years ago and is not an ongoing risk to the health and safety of a relevant worker, and that that should not be used as an excuse to justify entry to the worksite. That is the first amendment.

The second one is an amendment to (6)(b). This was again raised with me by the MBA, I think. They had a very strong concern, from their viewpoint, and I have had parliamentary counsel draft an amendment. What they are saying is that on the current drafting the executive director gives consideration to this report, which has been written by a union representative, of any suspected contravention of the act. The MBA has the view, as I indicated earlier, that it is unlikely the union is going to outline in its report any contravention by a worker or employee; it is more than likely that it will be an allegation of a contravention by the employer.

What the MBA is saying is that SafeWork SA or the executive director should look at suspected contraventions of the act not only by the employer but, indeed, by anybody else, whether it be a worker or an employee. SafeWork SA should be looking at any contravention of the act by an employer, an employee, or anybody. That should be the role of the regulator, or the inspector.

I suspect that would be the case from SafeWork SA's viewpoint but the MBA are concerned at the use of the words outlined in the report and I am seeking to remove those to make it quite clear that the executive director will consider the allegations in the report, which would generally be against the employer, one would assume, but can also consider any other contraventions that (perhaps) the employer might make against the workers and then make a judgement about suspected contraventions.

So, for those reasons I am moving the second amendment to the Hon. Mr Darley's amendment. I do not think they are extraordinarily controversial amendments and I would hope the government and the Hon. Mr Darley would be prepared to support them.

The Hon. R.P. WORTLEY: The Hon. Mr Darley and I were just discussing the amendments of the Hon. Mr Lucas. We are trying to work out what our position is going to be. What I seek is not to report, but give us five minutes. We are having detailed discussions out there.

The CHAIR: I have an amendment by the Hon. Mr Lucas to amend the Hon. Mr Darley's amendment.

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

The CHAIR: Are you requesting five minutes?

The Hon. R.P. WORTLEY: Five minutes.

Members interjecting:

The CHAIR: Order! The Hon. Ms Franks. Hopefully you have at least a five minute contribution. Tell us anything.

The Hon. T.A. FRANKS: I do have a question of clarification for the mover of the amendment, the Hon. Rob Lucas. He indicated that he was not inclined to support the amendment that we are currently considering in the name of the Hon. John Darley, but he is moving to amend that. What I seek to find out from the mover, the Hon. Rob Lucas, is whether, should his amendments be accepted, he will indicate that would change his position on supporting the Hon. John Darley's amendments?

The Hon. R.I. LUCAS: I do not recall indicating. If I did, I did so in error. Our position is that we support removal of union right of entry. We have lost that argument. We think that the amendment being moved by the Hon. Mr Darley is not really going to achieve what was intended, and that is certainly what I have said. I think I said it was well intentioned as well, but ultimately I am not sure that I have actually said what our position is on the amendment.

With the amendments that we are proposing, we would probably either support or not oppose the amendment. We are assuming the numbers are there in the chamber anyway to support the package, so our position on the amendment is largely academic, I suspect. In relation to our position, we would believe with our amendments it is a marginal improvement on the existing bill, so we would either support or not oppose and are unlikely to divide against it.

The CHAIR: Are there any further contributions?

The Hon. G.E. GAGO: There are further discussions occurring. We have a choice: we can either just allow a couple of minutes for those discussions to ensue or—

The Hon. R.I. LUCAS: Suspend the house.

The Hon. G.E. GAGO: —or we can report progress and suspend the house.

The Hon. R.I. LUCAS: Come back at 1 o'clock.

The Hon. G.E. GAGO: Well, until the ringing of the bells.

The Hon. R.I. LUCAS: You're the government.

The Hon. G.E. GAGO: I am just saying, if it is the will of this chamber, if we can allow a couple of minutes. I think the minister is ready to come back into the chamber.

The CHAIR: I hope so. The honourable minister.

The Hon. R.P. WORTLEY: Thank you, Mr Chair. The government supports the Darley amendments, but does not support the Lucas amendments.

The committee divided on the Hon. R.I. Lucas's amendments to the Hon. J.A. Darley's amendments:

AYES (7)

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

AYES (7)

Stephens, T.J.

NOES (8)

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

PAIRS (6)

Lee, J.S.	Vincent, K.L.
Wade, S.G.	Kandelaars, G.A.
Bressington, A.	Hunter, I.K.

Majority of 1 for the noes.

Amendments to amendments thus negatived.

The Hon. J.A. Darley's amendments carried; clause as amended passed.

Clause 118.

The Hon. J.A. DARLEY: I move:

Page 65, lines 1 to 4—Delete subclause (2) and substitute:

(2) However—

(a) the right of a WHS entry permit holder to require copies of a document under subsection (1)(d) is subject to any direction that may be given by an inspector (which may include a direction that copies of a document not be required to be made and provided to the WHS entry permit holder); and

(b) the relevant person conducting the business or undertaking is not required under subsection (1)(d) to allow the WHS entry permit holder to inspect or make copies of a document if to do so would contravene a law of the Commonwealth or a law of a State.

This amendment relates to work health and safety entry permit holders' ability to obtain documents at a workplace. I have already outlined the purpose of the amendment; that is, where an inspector attends a worksite after having been notified of a suspected contravention by a permit holder, the permit holder's ability to require documents will be subject to any direction given by the inspector. As already mentioned, as I see no reason as to why a union official would need copies of documents where an inspector is present, so the ability to do so really becomes redundant. I ask honourable members to support this amendment.

The Hon. R.P. WORTLEY: The government supports the amendment.

Amendment carried; clause as amended passed.

Clause 119 passed.

Clause 120.

The Hon. J.A. DARLEY: I move:

Page 65, after line 38—Insert:

(6) However, the right of a WHS entry permit holder to require copies of a document under this section is subject to any direction that may be given by an inspector (which may include a direction that copies of a document not be required to be made and provided to the WHS entry permit holder).

This is a consequential amendment.

The Hon. R.P. WORTLEY: We agree to the amendment.

Amendment carried; clause as amended passed.

Clauses 121 and 122 passed.

Clause 123.

The Hon. J.A. DARLEY: I move:

Page 66, line 22—Delete '$10,000' and substitute '$20,000'

The amendment increases the maximum penalty that applies to permit holders who contravene a condition imposed on their permit by the authorising authority from $10,000 to $20,000. The purpose of the amendment is to highlight to union officials acting as permit holders that breaches of permit conditions will be taken seriously, and that they will face hefty penalties if they fail to comply with those conditions. I ask honourable members to support this amendment.

The Hon. R.P. WORTLEY: The government supports the amendment.

Amendment carried; clause as amended passed.

Clauses 124 to 153 passed.

Clause 154.

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

Page 75, after line 30—Insert:

(aa) in the case of a delegation to a person—may only be made to a public sector employee within the meaning of the *Public Sector Act 2009*;

This is a relatively simple matter. On the drafting of clause 154, a reading of the clause states:

The regulator may, by instrument in writing, delegate to any body or person...a power or function under this Act.

One or two of the industry associations were concerned that this allowed the regulator to delegate to somebody outside of SafeWork SA or a public sector employee within the meaning of the Public Sector Act—so, some other government agency—a power that was held by the regulator. One of the industry associations in particular was concerned that SafeWork SA might delegate to a union various powers under this.

Clearly, when one reads it, that is possible. The legal advice is that 'any body or person' means what it says. 'Any body or person' has no restriction in terms of it being a public sector employee. I would have assumed that, in the normal course of events, that is what is intended.

Normally, the regulator, the executive director, would delegate to his or her deputy or to some other senior officer, or an inspector or something like that, within SafeWork SA—maybe on occasions some other government agency (I do not know whether crown law is delegated some responsibilities or somebody else), but another public sector employee.

I would have thought it should be obvious that that is what is intended, and my amendment is, as I said, simply seeking to make it clear that the delegation should be to a public sector employee, not to somebody outside the public sector.

The Hon. R.P. WORTLEY: The government opposes the Hon. Mr Lucas's amendment. Clause 154 provides:

The regulator may, by instrument in writing, delegate to any body or person...a power or function under this Act.

The proposed amendment seeks to clarify that this delegation could only be made to a public sector employee. It will prevent, for example, delegations to persons who could provide expert technical assistance during an investigation but who are not public sector employees. The current provision in this act is consistent with the provisions in the current act.

The Hon. R.I. LUCAS: What powers would the regulator delegate to a technical witness? I can understand technical witnesses being employed to provide evidence, but what delegated power would SafeWork SA be delegating to an expert witness?

The Hon. R.P. WORTLEY: SafeWork usually delegates power to an expert to accompany a SafeWork inspector.

The Hon. R.I. LUCAS: Is the minister prepared to take on notice and provide by way of a letter—and I do not intend to hold up the committee—an indication of the number of examples of expert witnesses who have been delegated and what particular powers have been delegated, and

perhaps an explanation? Why is it that, if an inspector is attending a worksite, an expert witness who is attending with that inspector requires any delegated authority? One would assume they are not seizing documents or evidence, or whatever else it happens to be, that they are operating underneath the authority of the inspector who has those powers.

I would not expect the minister to have that information available with his officers this evening, but is he prepared to take on notice and provide information to me and anybody else who is interested examples of where the delegated authority has been given to someone other than a public sector worker?

The Hon. R.P. WORTLEY: I give an undertaking to the honourable member that SafeWork will provide him with a letter outlining the circumstances in which this will occur.

The CHAIR: The Hon. Mr Lucas, you are satisfied with that undertaking?

The Hon. R.I. LUCAS: Yes.

The Hon. T.J. STEPHENS: Minister, when will you provide that letter?

The Hon. R.P. WORTLEY: SafeWork SA executives are here, so I imagine very shortly.

The Hon. T.J. Stephens: Shortly means tomorrow.

The Hon. R.P. WORTLEY: Within a week.

The Hon. T.J. Stephens: Within a week?

The CHAIR: Well, tomorrow is three minutes away, the Hon. Mr Stephens. Are you happy with those undertakings?

The Hon. R.I. LUCAS: I am happy to have this issue voted on now, but I would have thought that, as we are reconvening at 11 in the morning, it may be possible—and we are not obviously going to get through all the committee stage before tonight—now that it is 12 o'clock, it would seem to be getting to a sensible hour where members might like to consider reporting progress so that we can reconvene at 11 in the morning. Ultimately, that is a decision for members of the committee, but the witching hour of 12 o'clock would seem to be a very sensible time to report progress.

The CHAIR: On Halloween?

The Hon. R.I. LUCAS: Exactly, and those who went home through the dinner break will know how many little munchkins descended upon the front doors looking for candy. I am happy to see this issue voted on. I hope that SafeWork SA might be able to provide some information, maybe not comprehensive information, that might be available in a week or so by 11 in the morning and we can continue the debate on these clauses when we reconvene.

The CHAIR: So you are proposing that we proceed with your amendment as moved?

The Hon. R.I. LUCAS: I am happy with that, yes.

The CHAIR: Minister?

The Hon. R.P. WORTLEY: Yes.

Amendment negatived; clause passed.

Progress reported; committee to sit again.

STATUTES AMENDMENT (COURTS EFFICIENCY REFORMS) BILL

The House of Assembly agreed to amendments Nos 1 to 4 and 6 to 13 made by the Legislative Council without any amendment; disagreed to amendment No 5 and made an alternative amendment in lieu thereof as indicated in the following schedule:

New Part, page 7, after line 28—After Part 6 insert:

Part 6A—Amendment of *Magistrates Act 1983*

19A—Amendment of section 6—Appointment to administrative offices in magistracy

(1) Section 6—after subsection (2) insert:

(2a) A person is not eligible for appointment as the Chief Magistrate unless he or she is a legal practitioner of at least 7 years standing.

(2b) For the purpose of determining whether a legal practitioner has the standing necessary for appointment as the Chief Magistrate, periods of legal practice and (where relevant) judicial service within and outside the State will be taken into account.

(2) Section 6(3)—delete 'the Chief Magistrate or'

(3) Section 6(4)—delete 'shall' and substitute:

(other than an appointment as the Chief Magistrate) will

19B—Insertion of section 6A

After section 6 insert:

6A—Chief Magistrate to be magistrate and District Court Judge

(1) The Chief Magistrate will be taken to have been appointed as a magistrate and as a Judge of the District Court of South Australia (if he or she is not already a magistrate or a Judge of the District Court of South Australia).

(2) Section 6 of the *Judicial Administration (Auxiliary Appointments and Powers) Act 1988* applies to the Chief Magistrate and, for that purpose, the office of Judge of the District Court of South Australia will be taken to be the primary judicial office of the Chief Magistrate and service as Chief Magistrate will be regarded as if it were service as a Judge of the District Court of South Australia.

(3) However—

(a) the Chief Magistrate may not perform the duties, or exercise the powers, of a Judge of the District Court of South Australia while the Chief Magistrate holds an appointment as Chief Magistrate; and

(b) the Chief Magistrate may resign from the office of Judge of the District Court of South Australia and from the office of the Chief Magistrate without simultaneously resigning from office as a magistrate and such a resignation will not give rise to any right to pension, retirement leave or other similar benefit.

(4) The Governor may, by regulation, make provisions relating to existing entitlements, and recognition of prior service, of the person holding the office of the Chief Magistrate on the commencement of this section or a person appointed to the office after that commencement, including by making modifications to the application of an Act that deals with superannuation or pensions.

WILLS (INTERNATIONAL WILLS) AMENDMENT BILL

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

TRUSTEE COMPANIES (TRANSFERS) AMENDMENT BILL

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

At 00:03 the council adjourned until Thursday 1 November 2012 at 11:00.