LEGISLATIVE COUNCIL

Thursday 1 November 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) (11:03): 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 and question time to be taken into consideration at 2.15pm.

Motion carried.

WORK HEALTH AND SAFETY BILL

In committee.

(Continued from 31 October 2012.)

Clause 155.

The Hon. R.I. LUCAS: I oppose this clause. The legal advice to the Liberal Party is that this is a new power for the regulator which goes beyond the existing powers in the Occupational Health, Safety and Welfare Act. The first point to make is that the essential powers of collecting information for the prosecution of offences are covered in subsequent clauses which relate to the powers for inspectors. One can see, under clause 160, the functions and powers of inspectors; under clause 163, the powers of entry; and, under clause 165, the general powers on entry, which are obviously wideranging in terms of being able to collect the evidence and information and being able to assist the investigation of an alleged breach of the act and being able to prosecute where it is deemed to be appropriate.

In relation to the regulator, one can see that the functions of the regulator are under clause 152, that is, essentially to provide advice, to collect information and publish statistics and a variety of other things like that in terms of sharing of information. The powers of the regulator are outlined in clause 153, which provides:

...the regulator has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions—

which are outlined in clause 152. Speaking broadly, that reflects the current position under the Occupational Health, Safety and Welfare Act. Clause 155 goes much further in that, in terms of the functions of the regulator in collecting information, it gives the regulator wideranging powers: the power to require documents to be produced, the power to require any person to appear on a day and at a time or place specified in the notice which is issued to that particular individual, to give either oral or written evidence of the production of documents and a range of other functions.

It is the view of the Liberal Party, having taken submissions on this from industry associations, that the government has not made a case for the requirements for the significant expansion of the powers of the regulator over and above the powers that exist within the existing act. I repeat: the issue in terms of the collection of evidence for potential offences is well and truly covered by subsequent clauses when one looks at the powers of inspectors of the regulator. For those reasons, I oppose the clause.

The Hon. R.P. WORTLEY: We support clause 155 as it enables the regulator to obtain information from a person in circumstances where the regulator has reasonable grounds to believe that the person is capable of giving information, producing documents or records or giving evidence. In relation to a possible contravention of the bill or that it will assist the regulator to monitor or enforce compliance with this bill, it is important for a regulator to have access to all necessary information in order to carry out its functions effectively.

Clause 155 enables the regulator to request information if it will assist the regulator to monitor or enforce the compliance of the act. I would also like to indicate in this committee that the government will be supporting the reinsertion of the right to silence, so protections are there. It will be moved by the Hon. Mr Darley. We believe there is ample protection for people under those provisions.

The Hon. T.A. FRANKS: The Greens will be supporting this clause. We believe the regulator needs strong powers to enforce occupational health and safety compliance. The National Review into Model Occupational Health and Safety Laws report recommended inspectors and regulators to have strong powers and ensure that they are able to enforce occupational health and safety. This is why we will support this clause.

The Hon. D.G.E. HOOD: Family First will be not be supporting the clause.

The Hon. J.A. DARLEY: I will be supporting the clause.

Clause passed.

Clauses 156 to 162 passed.

Clause 163.

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

Page 78, line 32—Delete 'suspects' and substitute 'believes'

The legal advice provided to the Liberal Party is that the more usual word used in these circumstances is 'believes' rather 'suspects', and for those reasons we move the amendment standing in my name.

The Hon. R.P. WORTLEY: We will oppose this amendment.

The Hon. D.G.E. HOOD: We will be supporting this amendment. Family First has had the same legal advice.

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

The Hon. T.A. FRANKS: Without the benefit of seeing this legal advice the Greens will be opposing this amendment.

Amendment negatived; clause passed.

Clause 164 passed.

Clauses 165.

The Hon. R.I. LUCAS: This amendment is consequential, so I will not be moving it. Again I make the point that I made earlier that this clause gives all of the required powers for inspectors within the regulator to ensure compliance with the Occupational Health and Safety Act; that is, it is the inspectors who need the powers in terms of the collection of evidence gathering information to

assist in the prosecution of alleged offences under the legislation. That is the reason we gave earlier in relation to the move to delete the additional powers for the regulator.

Clause passed.

Clause 166 to 169 passed.

Clause 170.

The Hon. R.I. LUCAS: This amendment is consequential on an earlier amendment. I will not be moving it.

Clause passed.

Clause 171.

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

Page 82, line 23—After 'inspector' insert 'subject to the operation of section 172'

The Liberal Party first flagged the issue of the removal of the provisions that relate to self-incrimination, which are covered in clauses 172 and in 173. In parliamentary counsel's drafting of our package of amendments to achieve this right to silence or removal of self-incrimination provisions, parliamentary counsel has advised us that we are required to move this amendment to clause 171. We see this as the test clause for the issue which will be addressed more substantively in relation to 172 and 173.

I note that the Hon. Mr Darley, who has adopted the same position, has similar amendments to 172 and 173 but does not have this amendment for 171. I am assuming that the same parliamentary counsel drafted the amendment, so I am not sure what the distinction is. However, certainly the advice from parliamentary counsel to us is that there is a package of amendments to 171, 172 and 173 which is required to give effect to this removal of the right to silence issue, and they are all part of a package and consequential. We see this as the test clause on this issue, and if this one is successful the amendments to 172 and 173 are consequential.

This has been one of the very important issues that industry associations and others have felt very strongly about and lobbied very strongly on in relation to the legislation. The minister has, in a number of public interviews, attacked the critics of this provision by saying that it was an important provision, in his view, to be kept within the legislation. On FIVEaa, he indicated that in the interests of reducing the number of people who die from industrial accidents or who are seriously injured it was important that this provision be retained. He has indicated that this was an important part of the legislation. Again, the minister's backflip on this issue is inconsistent with his continued claim that the government's position is consistent with harmonisation of occupational health and safety laws.

One of my questions to the minister is: would any other jurisdiction under the harmonised laws that has introduced this have deleted these provisions? The clear to answer that is and will be no. The minister still clings to the facade of saying that none of the changes impacts on the core principles of harmonisation, and yet, as I said, he is on the public record, FIVEaa and a number of other media interviews as highlighting the importance of this particular provision in the harmonised legislation.

The opposition obviously welcomes the backflip from the government on this issue, its recognition that its previous position was incorrect and unsustainable, and its willingness now to accept the position put by industry associations forcibly, first raised by the Liberal Party, the Law Society and a number of other advocacy groups and flagged by way of amendment by the Liberal Party. For those reasons, I move the first of a series of amendments standing in my name which seek to remove these provisions from the legislation.

The Hon. J.A. DARLEY: Can I just ask the Hon. Mr Lucas to clarify with parliamentary counsel that that is the intention? I have basically the same amendment, but if that is the case I will be supporting this amendment.

The Hon. R.I. LUCAS: Parliamentary counsel's advice to me is that to meet the purpose that we have now all agreed we should, which is to remove what is known as the right to silence provision, we are required to move three amendments: an amendment to 171, which is the one we are debating; an amendment to 172, which is the substantive provision; and then the amendment to 173.

In looking at the amendments that have been drafted for the honourable member, the amendments to 172 and 173 are exactly the same as our amendments but, for some reason, the amendment to 171 is not in the honourable member's amendments. So the answer to the question is yes, parliamentary counsel's advice to me is that we require the three, and this is why he has drafted the amendments. I know that the honourable member has had copies of our draft amendments, and they have not changed over the period of time. The draft amendments are the same here. So the answer is yes, that is the advice that parliamentary counsel has provided to us, that it is part of the package.

The Hon. R.P. WORTLEY: The government will support this amendment. I must say that I had that opposition to this clause but, as we know, the dynamics of this council meant that because the opposition had put a position of total opposition to this bill we entered into dialogue and long and protracted negotiations with the Hon. Mr Darley. I do recognise and acknowledge the fact that there was a lot of concern about this particular clause amongst the business and legal fraternity, and even a number of unions. The Hon. Mr Darley took up their cause and as a result we are supporting this amendment and the Hon. Mr Darley's amendment.

The Hon. D.G.E. HOOD: I would like to place on record that Family First will most definitely be supporting this amendment. As this is the first clause that touches on this issue I will make a brief contribution on it. The right to silence is, of course, a fundamental aspect of our criminal justice system and something I think none of us would seriously consider removing for almost any reason, except perhaps in extreme circumstances—ones that, frankly, I cannot imagine. So the question has to be asked: why would we be doing that under these circumstances?

We need to understand that employers generally act in good faith, overwhelmingly so. There may be a very small element of rogue people out there acting as employers, but they would be in the absolute, absolute minority. In my estimate—not that we have any reliable figures on these sorts of things—I would imagine substantially less than 1 per cent of the employer pool, if I can put it that way. So why we would have a different set of rules for people like that, who are basically doing good things in the community—that is, providing paid employment and dignity for people to go about their daily business, enjoy a wage to take home and feed and house their family, etc.—why we would have a separate set of rules for these people, to demonise them, in such a way that they are somehow worse? We wouldn't consider removing the right of silence for accused murderers for example—

The Hon. R.P. Wortley: Ark Tribe had his rights removed.

The Hon. D.G.E. HOOD: In very extreme circumstances, that is the case.

The Hon. R.P. Wortley interjecting:

The Hon. D.G.E. HOOD: With that interjection, minister, are we pooling these employers with the sort of people you are mentioning? I don't think so.

The Hon. R.P. Wortley interjecting:

The CHAIR: The Hon. Dennis Hood has the call—

The Hon. D.G.E. HOOD: Ignore the interjection, sir? Yes, I will.

The CHAIR: —and is almost in robust agreement, so please continue.

The Hon. D.G.E. HOOD: Correct; thank you, Mr Chairman. I think I have made my point. My point is that employers are overwhelmingly doing very good things in our community. Do mistakes happen? Yes, they do. Are they regrettable? Absolutely. We should do everything we can as a parliament to ensure that those mistakes do not happen any more than they absolutely have to. I must say that I think that this is a pivotal amendment in this bill, and Family First will support it strongly.

The CHAIR: There is a further amendment to clause 171. The Hon. Mr Lucas.

The Hon. R.I. LUCAS: My amendment is consequential, and I will not be moving it.

Amendment carried; clause as amended passed.

Clause 172.

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

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.

This amendment is identical to the amendment the Hon. Mr Darley intends to move. We had the substantive debate on this in clause 171; I do not intend to add to it.

The Hon. J.A. DARLEY: I will be supporting this amendment because, as the Hon. Rob Lucas has mentioned, the amendments are identical and, as a result of that, I will be withdrawing my amendments Nos 8, 9 and 10.

The Hon. R.P. WORTLEY: In accordance with the undertaking we gave to the Hon. Mr Darley, we will be supporting this amendment.

The Hon. D.G.E. HOOD: For the record, Family First supports the amendment.

Amendment carried; clause as amended passed.

Clause 173.

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

Page 83, line 24—Delete 'warn' and substitute 'advise'

This amendment is consequential on the previous debate.

Amendment carried.

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

Page 83, lines 26 to 29—Delete subclause (2)

This is a consequential amendment.

The Hon. R.P. WORTLEY: In accordance with our arrangements with the Hon. Mr Darley, we will be supporting this amendment.

Amendment carried; clause as amended passed.

Clauses 174 and 175 passed.

Clause 176.

The Hon. R.I. LUCAS: I oppose this clause. In speaking to my opposition, I refer members to clause 175, which gives very wideranging powers to the inspectors to seize evidence. An inspector who enters a workplace can seize anything—and I emphasise 'anything'—if the inspector reasonably believes 'the thing is evidence of an offence against this Act'. Subclause (3) of 175 states:

An inspector may also seize anything else at the place if the inspector reasonably believes—

(a) the thing is evidence of an offence against this Act; and

(b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

I am advised that they are broadly the powers that exist within the occupational health and safety act in South Australia at the moment. It is quite clear that they are broad, sweeping powers. If there is anything that the inspector reasonably believes is required in terms of evidence, then the inspector can seize that evidence. The legal advice provided to me is that 176 for some reason seeks to go beyond that. Parts of it reflect 175—it just repeats it—but one of the things that 176 seeks to do is actually provide that 'the inspector may seize the workplace'.

One can understand why equipment or documents or machinery or anything like that may need to be seized in terms of the contravention of an act, but why does an inspector need the power actually to seize a whole workplace—a whole factory, for example—to prosecute an alleged contravention of the act? The legal advice to me is that this goes way beyond the existing powers in the act in South Australia. Nobody has provided thus far any evidence as to why there is the power to seize a workplace, as opposed to machinery and all those sorts of things.

The inspectors also have powers obviously to cordon off parts of a workplace if that is required in relation to the investigation of a particular alleged breach of the occupational health and safety act, or under this, the work health and safety act. So, there are wideranging or sweeping powers under 175 to seize anything that is required for evidence and we see no justification for the power to be given to an inspector to seize a whole workplace, a whole factory, in terms of its investigation.

For those in this chamber who support this sweeping new power, we seek from the minister and anyone else who is supporting the power the reasons why an inspector should be given the power to seize a whole factory in relation to the investigation of an alleged breach of the occupational health and safety legislation. We think that the powers are already sweeping and that there is no need and there has been no evidence produced to justify why it should be broadened to this particular step, where an inspector is given the power to actually seize a whole workplace.

The Hon. R.P. WORTLEY: Clause 176 enables an inspector to seize a workplace or part of a workplace, plant or substance or a structure only when they reasonably believe that it is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur. A workplace could be a truck, a taxi or a whole number of issues. It could be a building that is so dilapidated that it is actually dangerous to be working in it. Section 38(4) of the current Occupation Health and Safety Act 1986 states that:

> ...if the inspector suspects on reasonable grounds that an offence against this Act has been committed, seize and retain anything that affords evidence of that offence, or in relation to which the offence is suspected of having been committed.

The Hon. Mr Lucas by his own admission on FIVEaa made clear that the Occupational Health and Safety Act has served us well, it was a good act, so why would we not insert into the new act something similar to what is in the current act, which has served us well over many years and helped us reduce injuries in this state over the last 10 years by 40 per cent? Why would we not make sure the new act has similar provisions?

All jurisdictions had similar provisions prior to the development of the model Work Health and Safety Act. Already Queensland, New South Wales, the commonwealth, the ACT, the Northern Territory and Tasmania—and hopefully soon South Australia—have the same provision in their acts. The national review of the model laws noted that the model act should provide for all of the powers currently provided in occupational health and safety acts that may be exercised by an inspector in relation to testing analysis, seizure and forfeiture of plant and substances. This is an important power for inspectors to ensure compliance with the legislation.

An inspector's power to seize will only arise in the most dangerous of situations, and if those circumstances seek to exist it will be reasonably expected that the seized items will be returned immediately. There is no impact on a person's proprietary title to the place or thing. Procedures are included in the bill for return of seized things in clause 180 and access to seized things in clause 181.

Inspectors are subject to the regulator's direction and oversight and also other checks and balances in the provisions, including the requirement for written notice to be given of the decision and the requirement to provide a receipt for seized things. The protections when an inspector seizes goods are greater under the Work Health and Safety Bill than under the current South Australian law.

The Hon. R.I. LUCAS: The minister does not understand the existing act and indeed the powers in the bill. As I read out, clause 175, which we have just passed, reflects the existing powers under the Occupational Health and Safety Act. So the provision he read out makes no reference to seizing a workplace—it says that in essence you can seize whatever you need to assist in the investigation of alleged contravention of the act.

The words in the existing act that the minister read are reflected in the proposed bill, but in clause 175. So, when the minister says, 'Why would not we support the existing position in the act?', we are. That has already just been passed in clause 175. For the benefit of the minister, he might like to look at clause 175 and apprise himself of the fact that that is actually a reflection of what exists in the existing act (and that is the legal advice provided to us).

Clause 176, which we are debating here, is not in the existing act. There is no reference, that the minister can show in the existing act, where the inspector is given the specific power of seizing a workplace. I challenge the minister to quote from the existing act any reference to an inspector having the power to seize a workplace. What is in the existing act is what is covered

under clause 175 of the current bill. An inspector can seize whatever is required to assist in the investigation of the prosecution of alleged contravention of the act. The minister then introduces a furphy and says, 'What happens if the whole building is decrepit or a danger to workers?'

I am surprised that the minister is unaware under the existing act, for example, of the issue of prohibition notices. If that was the circumstance, if an inspector is of the opinion that there is an immediate risk to the health and safety of persons at work because the whole building is unsafe, they are able to issue a prohibition notice. So, there is the power to protect workers if there is a danger at work without actually having to give power to the inspector to seize the whole building.

The minister's logic is deficient in terms of trying to raise the furphy that we are somehow leaving workers at risk in a building that is unfit or unsafe for the workers who work within it. The existing act gives the inspectors the power for prohibition notices. There are similar powers in the proposed bill for those particular circumstances, which we obviously support. No-one supports workers being required to work in a workplace where it is unsafe.

Equally, as the minister should know, a worker can refuse to work if they are in an unsafe workplace, and the health and safety representative can call everyone out and close down a worksite if there is a danger to workers as well. There are a number of protections short of the inspectors in relation to the sort of circumstance that the minister is suggesting. Certainly none of the aspects of the minister's attempted justification of this new power hold any weight at all in relation to justifying why an inspector should be given this extraordinary additional power to seize a whole factory when that is not specifically provided for under the existing act.

The Hon. R.P. WORTLEY: As I have stated before, in the significant amount of time I have engaged in consultation with everyone, I have not had any concerns on this clause expressed to me. Consistent with what we currently do, clause 175 is post breach (that is, collection of evidence), whereas clause 176 requires the need to seize things that might be hazardous or a defection—for example, it could be a truck, a boat or a taxi, as I have stated before.

The whole idea of this is to update the old act of 1986. Things have changed. We acknowledge now that there is a much wider net to be cast over the various employment relationships. We also want to make it quite clear that workplaces are not just factories. Workplaces are things that could be moveable or of a different nature. We oppose his position.

The Hon. D.G.E. HOOD: Family First does not support this clause. I have no doubt that the minister is telling the absolute truth when he says that this issue has not been raised with him, but it is probably because there were so many other issues in this bill that were raised with him that people did not have time to raise this particular issue with him.

The truth is that the seizure of goods, items, factories or whatever it may be is a very serious thing. Our current system where prohibition notices are able to be used—and are used, in fact; on my understanding are used quite appropriately—seems to be working very well. To then increase that jurisdiction or that power by introducing a new power which enables the seizure of what are assets belonging to somebody, we are really entering the realm of law enforcement. This is a power that rightly belongs with the police, in my view. For that reason, we will not be supporting this clause.

The Hon. R.I. LUCAS: I ask the minister: if the regulator seizes a property under this provision, does that restrict the capacity for the owners of that property to transact businesses by way of sale during the period for which SafeWork SA holds or has seized that property?

The Hon. R.P. WORTLEY: If a workplace is seized—for instance, a truck—and they have seized it because it is extremely dangerous and could have the capacity to cause death or injury, and those are very extreme cases, there will be no ability for someone to sell on that truck, if that is the question you are asking.

The Hon. R.I. Lucas: I am not talking about a truck: I am talking about a building, but you can talk about a truck.

The Hon. R.P. WORTLEY: A workplace.

The Hon. R.I. Lucas: Yes.

The Hon. R.P. WORTLEY: If it is seized in very extreme cases, where they believe that the degree of seriousness is so great that it could cause death or injury, no, they will not be able to onsell that.

The Hon. R.I. LUCAS: Let me just highlight that there is nothing in clause 176 which says it is limited to the circumstances where the breach may well cause death or serious injury, it is just the investigation of a contravention against the act. Clause 176(1) talks about 'serious injury or illness or a dangerous incident to occur'.

Given the situation in relation to SafeWork SA, on some occasions it can take a year or up to two years (I am not sure what the limitation is) for SafeWork SA to investigate and eventually bring charges or not. What we are actually saying is that you may well own a building, SafeWork SA may well seize that building and, for a period of maybe up to two years—the minister can indicate whether or not that is the appropriate period—you will be left in a position where SafeWork SA will, in essence, have seized control of the building.

They may not actually institute charges at the end of it, but you will have actually lost any ability—your business might be going down the tube or whatever else it is—to, in essence, sell the factory or sell the building and protect the jobs of the workers who are there because SafeWork SA has been given the power in this legislation to seize the whole factory or the whole building.

If there is a change of ownership and so on, you obviously do not and cannot absolve yourself from any potential offence under the legislation; you will obviously still be caught or covered by a potential breach. But, given the time SafeWork SA takes to investigate some of these things—and eventually, as I said, they might not even proceed with a charge—to give them the power to seize a whole factory or a whole building in relation to these circumstances seems to be an extraordinary power that goes beyond the powers that exist within the legislation at the moment.

The Hon. R.P. WORTLEY: Under clause 176, subclause (1), you have paragraphs (a), (b), (c) and (d), which provide:

> (1) This section applies if an inspector who enters a workplace under this Part reasonably believes that—
>
> (a) the workplace or part of the workplace; or
>
> (b) plant at the workplace; or
>
> (c) a substance at the workplace or part of the workplace; or
>
> (d) a structure at a workplace;
>
> is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.

I argue that, if there is a plant or a workplace which is so dangerous to the degree that it will cause serious injury and, naturally, death could follow from that, it is quite appropriate that, for public safety, that plant/workplace is seized.

The Hon. R.I. LUCAS: In the circumstances the minister has indicated you have the power to issue a prohibition notice, which in essence closes everything down. If it is a safety issue for workers, the workers themselves and the health and safety rep have got powers anyway to protect the workers. If you are concerned about the issue of inspectors, under 195, and what follows, you have the power to issue a prohibition notice. If any activity is occurring in a workplace and involves, or will involve, a serious risk to the health or safety of a person you can issue a prohibition notice.

In the circumstances the minister is talking about you do not actually need to seize the whole factory or the whole building; you can issue a prohibition notice to protect the workers. We all support the protection of workers in the circumstances that the minister is talking about; that is not an issue. The issue is: does the regulator need the power to seize the whole factory or the whole building? Our view is that you do not.

The Hon. R.P. WORTLEY: It is likely that a prohibition notice would have been issued, and once they complied with the prohibition notice they can return to the workplace. What we are saying here is that it is only in cases where the workplace itself is considered to be so dangerous that it is a threat to life and limb. I see nothing wrong with a situation where if a factory is so badly dilapidated and it is a health and safety issue that it be seized. Once it has been rectified they will be returned. I really cannot see the objections of the Hon. Mr Lucas.

The Hon. J.A. DARLEY: Just by way of clarification, can the minister advise whether SafeWork SA seized the whole of the property at Gladstone at the explosive factory and also Diemould where Daniel Madeley died?

The Hon. R.P. WORTLEY: Yes, we did.

The Hon. T.A. FRANKS: That was a very useful question, and I thank the Hon. John Darley for that. I indicate the Greens will not be supporting the amendment to delete this clause. We are looking at particular cases which are the most extreme. It is our understanding that similar powers do exist in Victoria and a similar model exists in Queensland. These are obviously subject to regulated oversight checks and balances, and there are other protections in the bill that will ensure that this power will not and cannot be misused. It is also not lost on me the irony that recently we had asbestos in the other chamber of Parliament House, and I do not think anyone would have argued against the closing down of the other chamber.

The Hon. R.I. Lucas: You would have argued against SafeWork SA seizing it.

The Hon. T.A. FRANKS: In the case where I was working at a particular workplace that was so unsafe that I would be putting my health at risk—

The Hon. R.I. Lucas interjecting:

The Hon. T.A. FRANKS: Then I am glad that the law is there in those most serious of cases to protect my safety as a worker.

The Hon. D.G.E. HOOD: I do not want to prolong this, but I just want to be clear in my mind. Can the minister outline the circumstances in which a prohibition notice would not be sufficient and would require seizure of a building or asset?

The Hon. T.A. FRANKS: While we are waiting, can I ask a further question? I lost my train of thought, given the interruption previously. I also wanted to ask the minister whether or not, if this power was removed, a worker would be able to prosecute the PCBU for not having duly secured their safety in that workplace.

The Hon. R.P. WORTLEY: To answer the Hon. Mr Hood: as an example, where there is a substance at the workplace presenting a hazard for workers, inspectors may need to seize it rather than to put a prohibition notice on it. Could the Hon. Ms Franks repeat her question, please?

The Hon. T.A. FRANKS: Should we delete this particular clause, would a worker be in a position to take legal action against the PCBU for not ensuring that the workplace was safe, and how would that happen?

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

The committee divided on the clause:

AYES (7)

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

NOES (6)

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

PAIRS (8)

Vincent, K.L.	Lee, J.S.
Parnell, M.	Brokenshire, R.L.
Zollo, C.	Bressington, A.
Kandelaars, G.A.	Ridgway, D.W.

Majority of 1 for the ayes.

Clause thus passed.

The Hon. R.I. LUCAS: My amendments Nos 79 to 88 are consequential, so I will not be moving them.

Clauses 177 to 229 passed.

Clause 230.

The Hon. T.A. FRANKS: I move:

Page 102, after line 28—Insert:

or

(c) in the case of a summary offence by an official of a union any member or members of which are concerned in the matter to which the proceedings relate.

Put simply, this is an amendment that would enable union prosecution of breaches of this act. This amendment seeks to insert provisions for a union to prosecute an employer or a PCBU who has breached safety standards in a workplace. Indeed, it is a scheme that has been adopted in the state of New South Wales under this harmonised system. There is a distinct advantage in improving health and safety in a workplace by allowing a union which represents its members in that workplace to bring prosecutions where practices have breached the occupational health and safety standards.

In fact, while union-led prosecutions are rare, it is a very useful mechanism for strengthening the safety standards for workers and also for the community at large. I will highlight that by sharing with members the example of the Finance Sector Union, which successfully ensured the health and safety of bank employees who were facing a series of armed robberies at various New South Wales bank branches.

These armed robberies not only hindered the health and safety of those bank workers but, of course, they affected the safety of the public. The successful prosecution of this case resulted in New South Wales banks investing around $100 million to improve the safety standards of their workplaces, and that is a significant amount. This included full-height anti-jump barriers, ATM bunkers, digital-controlled circuit TV and other measures. But as a result, there was a dramatic fall in armed robberies, from 102 in 2002 to just four in 2010

This is just one example of a successful union-led prosecution. It is a useful amendment and, of course, it was a Greens amendment originally in New South Wales. I would note that it continues to be upheld under the O'Farrell government, and it has support from various sides of politics. It is a common-sense amendment, and I commend it to the committee.

The Hon. R.P. WORTLEY: I do acknowledge that a similar clause was passed in the New South Wales upper house. This government is committed to trying, where possible, not to alter this bill. We want to keep within the framework where it as much as possible harmonised legislation, and we believe that what we have now, as an outcome through negotiations, does not really affect the pillars of this legislation.

The government considers that part 13 of the bill provides transparency and accountability of all proceedings brought under the bill. This is facilitated by a requirement on the regulator to issue and publish guidelines about the prosecution of offences under the bill, and also the ability of the DPP to bring proceedings if the regulator does not. Clause 31 allows for a review by the DPP of a regulator's decision not to prosecute a category 1 or category 2 offence. We will not be supporting the amendment.

The Hon. R.I. LUCAS: It will not surprise the Hon. Ms Franks that the Liberal Party will not be supporting her amendment either. Her amendment seeks to increase massively the power of unions and union leaders in South Australia's industrial relations and occupational health and safety system. However, at least the Liberal Party's position on this and amending the bill has been a consistent one.

I think the hypocrisy of the minister's position and that of the Premier and the Labor Party is stark and apparent to anyone and, I suspect, even to the Greens. The minister's position, up until recently, has been at least a consistent one; that is, he refused to amend the bill because he agreed to introduce the model and harmonised bill. So, he could say to the Greens and the union leaders who want this change, 'I am sticking to the position that this a national agreement, a harmonised bill, we're not going to amend it.'

However, he has lost that defence. He has now amended the bill in a number of significant areas, as he has had to indicate during the debate on the bill. So, he no longer has the defence to be able to say to the Greens or to the unions, 'I'm not going to amend this bill because it will offend against the harmonisation principle.' In essence, what he is saying is that he is not going to support

the amendment from the Greens and the position the unions want but that he will support some of the other amendments that he has indicated his willingness to support.

Whatever one thinks of the Greens, on one hand, in relation to their position or, indeed, the Liberal Party, at least we have been consistent in our position that the bill can be amended. The hypocrisy of the minister's position and that of the Premier and the Labor government is all too apparent to anyone who has followed this debate.

The Hon. B.V. FINNIGAN: I support the Hon. Ms Franks' amendment in principle. I accept that it is not going to be part of the bill, but the ability for unions to prosecute has existed in New South Wales for many years. I do not think it has been the subject of wide abuse. It would be a very expensive proposition for any union to undertake a prosecution, so it is very unlikely that they are going to do so unless they were satisfied they had a reasonable chance of success, so I do not think it is likely to be abused.

It would seem unusual, perhaps, for a non-state entity to be prosecuting, but it is not unheard of in other areas, particularly in the health and safety and industrial relations area where you have quasi-judicial tribunals rather than the traditional courts. I do support the amendment or certainly the concept of the unions having that prosecuting ability.

The CHAIR: The Hon. Ms Franks, my understanding is that all three amendments are related. Are you going to move all three?

The Hon. T.A. FRANKS: I am happy to see them moved as a package. I move amendments [Franks-3] 7 and 8:

Page 103—

After line 7—Insert:

(6a) To avoid doubt, subsection (1)(c) does not authorise a person to proceed under subsection (4).

After line 14—Insert:

(10) In this section—

official of a union means a person who holds an office in, or is an employee of, a union.

The writing is on the wall. I know that I do not have the support of the council. I am surprised, actually, that the opposition does not at least support these amendments in principle, if not in practice, given some of the speeches that we have heard and particularly the criticisms of the Salvemini prosecution and SafeWork SA specifically.

Certainly, in New South Wales, the Greens offered to other players here and certainly to employers the option to prosecute breaches but, in fact, there was no great interest shown in that and so it simply stayed with the unions being able to prosecute. I would like to note that I have certainly had discussions with Andrea Madeley and I do understand that, in some jurisdictions, it is not only unions that could prosecute those breaches but also potentially families or supporters in particular cases.

It is obviously not something you would enter into lightly but certainly it is something that the Greens would bring back to this chamber in another form. With that, I will not be dividing on this particular amendment and I will not pursue the subsequent amendments but I certainly would like it on record that there was a lost opportunity here to improve the prevention of occupational health and safety breaches and also to improve the options for those who do in fact, in the very worst examples, lose a loved one to a death in the workplace.

Amendments negatived; clause passed.

The Hon. R.I. LUCAS: My next amendments are consequential, so I will not be moving them.

Clauses 231 to 268 passed.

New clause 268A.

The Hon. T.A. FRANKS: I move:

Page 114, after line 4—Insert:

268A—Industrial manslaughter

(1) An employer is guilty of an offence if—

(a) the employer breaches a duty imposed under Division 2 of Part 2; and

(b) the employer knew, or ought reasonably to have known, or was recklessly indifferent as to whether, the act or omission constituting the breach would create a substantial risk of serious harm to a person; and

(c) the breach causes the death of a person (whether or not the person was an employee of the employer and whether or not the death occurred in a workplace).

Maximum penalty:

(a) in the case of an employer who is a natural person—20 years imprisonment;

(b) in any other case—$1,000,000.

(2) An officer of an employer that is a body corporate is guilty of an offence if—

(a) the officer engages in conduct that, had the officer been acting within the scope of his or her actual or apparent authority, would be imputed to the employer pursuant to section 244; and

(b) the conduct would, if so imputed, constitute a breach by the employer of a duty imposed under Division 2 of Part 2; and

(c) the officer knew, or ought reasonably to have known, or was recklessly indifferent as to whether, the act or omission constituting the breach would create a substantial risk of serious harm to a person; and

(d) the breach causes the death of a person (whether or not the person was an employee of the employer and whether or not the death occurred in a workplace).

Maximum penalty: Imprisonment for 20 years.

(3) It is a defence to a charge of an offence against this section for the defendant to prove that the act or omission alleged to constitute the breach—

(a) occurred in the course of an emergency; or

(b) was authorised under this or any other Act or law of the State or the Commonwealth.

(4) Nothing in this section prevents an employer and an officer of the employer from both being guilty of an offence against this section in respect of a particular death.

(5) For the purposes of this section—

(a) the way in which the activities of the employer were managed or organised causes a breach of a duty if it substantially contributes to the breach;

(b) a breach of a duty causes the death of a person if it substantially contributes to the death.

(6) An offence against this section is a major indictable offence.

(7) Section 267 of the *Criminal Law Consolidation Act 1935* does not apply in respect of an offence against this section.

(8) If at the trial of a person for an offence against this section the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of an offence under Division 5 of Part 2, the jury may bring a verdict that the accused is guilty of that offence.

This amendment is a long overdue measure, and I previously brought it before this council in the form of a private member's bill, as I note the former member the Hon. Nick Xenophon also undertook to do. It seeks to capture the minority of employers who cruelly put workers through unnecessary risk. It introduces the concept of industrial manslaughter into our state laws, and the intentions and the implications of this amendment would only apply in the event that a worker tragically died.

Putting people's lives at risk for the sake of cost cutting or other reasons is unacceptable. The statistics speak for themselves: on average one person dies every three days in Australia from a work-related incident. This is an unacceptable figure. For every death, there are many more who lose part of their lives, their children who live their life without a mother or a father, perhaps a partner is lost to a loved one. These people who are left behind have to struggle with coming to terms with having to bury either their child, their brother, their sister, their grandparent, their uncle, their aunt, their cousin, their friend or their colleague. It is far too often a needless death, and of course this would only apply in those particular cases.

Companies must and can continue to do all they reasonably can to prevent workplace injuries. This amendment would ensure that culpable employers are held responsible for workers' deaths. If they do not take that responsibility, this is a stick rather than a carrot that would apply, introducing the concept of corporate criminal responsibility.

I note that industrial manslaughter exists in the ACT and has done for some time, and certainly I note that Greens around the country are pursuing industrial manslaughter in various jurisdictions, including the Hon. Alison Xamon in WA. The United Kingdom has industrial manslaughter within its statutes, and as legislators we are beholden to ensure that there is genuine incentive for employers to ensure they are providing safe work places. We provide many carrots and we all hope that the worst does not happen, but this amendment would only come into play where the worst has happened and a worker has died. These are the most significant and devastating incidents of a breach of workplace health and safety that we can imagine.

I do not expect the Liberal Party to support this amendment, although I am always happy to be surprised and would be pleasantly surprised should we receive that support, but I note that they went to the 2010 state election with a specific policy that said that they would not support industrial manslaughter. I certainly do not expect to get the numbers here today, but I would hope that this issue will not fall off our legislative agenda. With that, I commend this amendment to the council.

The Hon. R.P. WORTLEY: The government is sympathetic to the symbolic appeal to the community of industrial manslaughter offences, but supports the use of offences based on recklessness to risk as superior options that retains consistency with current occupational health and safety legislation nationally. The bill does not specifically establish an offence for industrial manslaughter.

The national review into model occupational health and safety laws commissioned by the federal government in 2008 considered this issue as part of its assessment of the types of offences that should be included under harmonised model occupational health and safety legislation. In particular, it examined offences relating to work-related deaths and serious injuries that arose in workplaces. It noted that the Australian Capital Territory was the only jurisdiction that had a specific offence for industrial manslaughter. It was also noted that this offence was contained in its criminal code and not specifically in the occupational health and safety legislation.

The review further noted that the previous reviews of occupational health and safety laws undertaken in the last 10 years in Australia—that was in Victoria, New South Wales and South Australia—all had recognised the seriousness of work-related deaths but that there was no common ground as to how occupational health and safety acts should deal with industrial manslaughter. The review's report did not recommend that industrial manslaughter be a separate offence under any proposed model occupational health and safety legislation. In accordance with that, we will be opposing this amendment.

The Hon. R.I. LUCAS: The Liberal Party has long opposed the introduction of industrial manslaughter laws in South Australia. The Hon. Ms Franks has rightly quoted a specific policy commitment given by the party at the last election, and I suspect previous elections, and we will be adhering to the promises and commitments we gave to the electorate at the time of the last election on this particular issue.

The Hon. B.V. FINNIGAN: I support the concept of industrial manslaughter offences. When I was on the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation dealing with this, we did an inquiry inspired or moved by the Hon. Mr Xenophon (now Senator Xenophon). While the majority of the committee, including myself, did not support a change to the law, I think there is a clear case for industrial manslaughter legislation. I am not certain that the Work Health and Safety Bill is an appropriate place for it. I think it probably belongs more properly in the criminal law and that any prosecution ought to be in the Supreme Court rather than through any work tribunal, given the severity of the offence and the potential penalty.

I am not aware that there have been any successful prosecutions in the ACT but I am not certain of that. It would be extraordinarily difficult to prove as an offence, so I think the sort of hysteria that gets whipped up about it amongst employers on occasion, whenever it rears its head, is a bit exaggerated. This amendment would need a lot closer consideration, given the importance of it—certainly there will not be majority support for it anyway—but I do place on the record that, in principle, I think industrial manslaughter is an offence that ought to be recognised in state law.

The Hon. J.A. DARLEY: I believe the matter of industrial manslaughter is not an issue for debate in this bill. I believe it should be debated as a separate issue and, therefore, I will not be supporting the new clause.

New clause negatived.

Clauses 269 and 270 passed.

The Hon. R.I. LUCAS: My amendments Nos 95 and 96 are consequential, so I will not be moving them.

Clause 271 passed.

Clause 272.

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

Page 115, line 18—Delete ', limit or modify' and substitute 'or limit'

This is not an amendment of great significance, but the legal advice provided to us is that the words 'limit or modify' can be succinctly summarised as 'limit'; it means the same thing. The words 'or modify' do not actually add anything to the clause.

The Hon. R.P. WORTLEY: The government opposes the amendment.

The Hon. D.G.E. HOOD: We are happy to support the amendment. I do not think it makes a big change.

Amendment negatived; clause passed.

Clause 273.

The Hon. R.I. LUCAS: I oppose this clause. This is of some significance to some industry organisations and, in particular, the Master Builders Association. They have asked that the potential unforeseen implications of this provision at least be understood by members and considered before they support the existing provision. The Master Builders Association have provided quite a lengthy submission to interested members, which I will share with the committee.

The Master Builders write:

This clause, while perhaps paved in good intentions, will be unworkable in practice. It is common for a person to levy someone for things done in relation to WHS matters. For example, an employer may issue personal protective equipment but require an employee to pay the cost of that equipment if it is lost or damaged as a result of the employee's conduct. This is a reasonable course of action that would be prohibited. The only alternative that would be left for the employer in this situation would be to discipline and/or terminate the employee. One can hardly consider this as a desirable outcome but the alternative of asking to repay the monies would be an offence. Recovering monies from employees in such circumstances is already heavily prescribed in the *Fair Work Act 2009* and modern awards and agreements made under that legislation and are subject to numerous safeguards.

The arrangements between the extended definitions of 'worker' are commercial arrangements and there is no justification provided as to why, for example, a builder could not charge a subcontractor a portion of the cost of scaffold hire that they use. The alternative is [that] each party would need to provide all safety equipment themselves. This loss of efficiency would lead to unnecessary cost increases. As a result, Master Builders urge a reconsideration of this provision, which adds little (if anything) to safety but considerably restrains a PCBU in its ordinary activities.

Also, the Master Builders in another submission have highlighted that:

...it is common practice for an employer to provide high level WHS training (such as a Diploma or Degree qualification) which is transferable from one employer to another, on condition that the employee stay employed for a period of time following provision of the training. This clause would prohibit this and therefore make employers more reluctant to provide such training, to the detriment of the industry.

What the Master Builders Association are saying is that there exist what they believe to be sensible practices which up until now have not been objected to by employees, workers or unions who represent them in relation to these particular arrangements. In the first example it would seem eminently sensible that, if an employee's conduct has damaged the equipment which has been provided free to an employee, it is a preferable course of action to say they have to replace the equipment because the worker has damaged it as a result of their actions rather than take disciplinary action or terminate the employee's employment as a result of their behaviour.

The MBA are saying that there are existing practices. The last example is in relation to high level WHS training such as diploma or degree qualifications. In the other examples that the MBA have given they believe that perhaps those who have drafted this legislation at the national level

have not understood the reality of what goes on in the workplace in relation to these issues. On legal advice that the MBA has received, this particular provision would prevent all of those existing circumstances from continuing.

The Hon. J.A. DARLEY: I have similar concerns to those of the Hon. Mr Lucas. I understand it is a common practice for an employer to require an employee to pay for personal protection equipment in instances where the employee has repeatedly lost or damaged the equipment issued to them. There is some concern that this would not be allowed under the bill and that the only alternative would be for the employer to take disciplinary action against or terminate the employment of the employee. According to the Master Builders Association, recovering moneys from employees in such circumstances is already heavily prescribed and subject to safeguards under the Fair Work Act. Can the minister provide clarification regarding the intent of clause 273 in light of these concerns?

The Hon. R.P. WORTLEY: In regard to the clarification required by the Hon. Mr Darley, the intention of this clause is to prevent a person conducting a business or an undertaking from charging workers for anything done directly by the PCBU for the worker, or provided by the PCBU to the worker, relating to the worker's health and safety. The clause does not intend to interfere with commercial relationships that may exist between PCBUs and subcontractors relating to the contracting of projects.

Further to this, regulation 46 of the work, health and safety regulations specifically requires a worker to take care of personal protective equipment. Furthermore, the bill requires a worker to cooperate with any reasonable policy. Accordingly, there are a number of provisions within this legislation that would help to avoid the situation referred to by the honourable member. It is also worthy to note that industrial laws prevent the deduction of any money from a worker's wages without their consent.

Once again, I had quite significant consultation with the employers associations, and at no time was that brought up with me as an issue. The MBA was represented on the local SafeWork SA Advisory Committee. The MBA is represented nationally through their representative on Safe Work Australia, which is the Australian Chamber of Commerce and Industry. They ticked off on this legislation, so why are we seeking to change something which the MBA nationally and in this state have given the green light to? I would urge everyone to oppose the amendment.

The Hon. R.I. LUCAS: The minister this morning has again repeated on a number of occasions that in all the consultation particular issues have never been raised with him. Can I outline to the committee that the minister made that claim late last evening in relation to this controversial issue (which has attracted some publicity this morning) about the removal of the exemption for small businesses for the costs of training for health and safety representatives.

The minister said last night the same thing he has just said, that, 'In all the consultation over a long period of time this issue has never been raised with me, no-one has ever protested.' My office contacted the MBA this morning and asked, 'Is that claim from the minister true?' The MBA representative told my office that it is not; that they have long protested to the minister and the minister's representatives in relation to the exemption issue for small businesses which exists in South Australia being removed.

So, whilst I hear what the minister has said on two occasions this morning that, 'In all the consultation no-one has ever protested, no-one has ever raised this with me,' all I can say is that the minister said exactly the same thing last night in relation to a controversial issue, and the first organisation we rang today (the MBA) has denied what the minister said and has indicated that one part of the MBA's position has been for quite some time to protect the position of small businesses in South Australia. I take with a grain of salt the minister's claims that no-one has ever protested about this because as soon as we check these things we pretty quickly find that his particular claim is not true.

The Hon. B.V. FINNIGAN: I support this clause. There are instances I can think of where employers and employees enter into an arrangement to, say, pay for health and safety courses or particularly tertiary qualifications and things like that, or for additional personal protective equipment that may not be—I will not say necessary—obligatory, shall we say, and where the employee will contribute to the cost of those things. However, I am assuming that they do not count as an imposition because it is a voluntary arrangement.

In relation to personal protective equipment it is very important and we know that employers are obliged to provide whatever PPE is necessary for the worker do their job. I

understand the point that the Hon. Mr Lucas and the Hon. Mr Darley are raising. Some of this stuff is very valuable and we certainly would not want a situation where every two weeks someone is coming back and saying that their very expensive safety boots or overcoats or whatever have disappeared and they want another one, but I think that would certainly be the exception rather than the rule.

If somebody has entered into an employment arrangement on the basis that they are told, 'You're given this and if you should lose it or require it to be replaced you will have to pay for it,' I am not sure how that would intersect with this clause. However, the notion that it is going to be a particular problem in relation to PPE I think is unlikely.

The Hon. D.G.E. HOOD: My reading of clause 273 is—and I am sure this is not the intention, by the way, but I think it could reasonably be argued—that somebody could be provided, as they should be, with appropriate safety equipment and clothing, etc., on the very first day of their employment with an organisation, that they could take that home (and I am not suggesting that anyone would do this but it would be possible under this reading), they could then sell the stuff on the internet that night and turn up the next day and say, 'I need more,' and that the employer would have no option but to provide it in full as they did the day before, because charging the worker anything at all, as this very clearly says, would mean that they are in breach of the act should this bill pass and become an act.

I am sure that is not the government's intention but I think the Hon. Mr Lucas has a very strong point here: it could easily be abused and I think that is the point. Up until now we have had a system which I think works well and is respected by workers and employers: that is, people are issued with appropriate material and if, through some reason, it needs to be replaced then, in most circumstances, employers do that at their cost. However, if there has been some negligence on the part of the employee there may be a levy imposed, and I think that is not unreasonable.

This clause, however, could be abused as it says very clearly that if they impose a levy or charge or permit a levy or charge to be imposed on a worker for anything done or provided in relation to work health and safety, then they are in breach—so anything. It needs to be kept as provided at the employer's cost, that is what this clearly says. I am sure that is not the intention but that is what it says. That being said, Family First will support the amendment for that reason.

The Hon. R.P. WORTLEY: The Hon. Mr Lucas has brought into question whether I am telling the truth in this chamber with regard to the consultation and the support that the MBA has given. It is quite clear, and I would like to make it clear to the people in this chamber, that the MBA was part of the SafeWork SA Advisory Committee. They were at the meeting where they ticked off on this, and the minutes were there. So who do you believe: someone who actually knows, who was there at the meeting, who ticked off on it, or the Hon. Mr Lucas who, right through this debate, has thrown up all sorts of straw men and issues that, to some extent, really defy imagination?

The very concept that a worker can be employed and given the appropriate safety clothing—they are only given safety clothing to protect them against safety issues—and then suddenly have their pay packet reduced to pay for it. The concept that the Hon. Mr Hood has brought up, that they will get it and go home and put it on the internet, there is really no evidence for that. There is just no evidence of that. We should not be supporting amendments based on things that do not really have basis in fact. I urge members to support this clause.

The Hon. G.A. KANDELAARS: I would not normally speak on a matter like this, but I bring the attention of the chamber to instances I have become aware of as a union official, where employers have unreasonably sought to charge their employees for lost property. I remember a case in Telstra, at point, where an employee was threatened with discipline because someone stole a computer out of the back of his car.

In terms of Mr Hood's assertion, if an employee goes and puts an article of safety clothing on the net to sell, that is an illegal act. He deserves to be dismissed. I do not defend actions like that; it is not an action that should be defended. However, to suggest that an employer be given a right to charge an employee for safety equipment is offensive, and I can tell honourable members that I have seen employers use such techniques against employees. So I strongly support this clause.

The Hon. D.G.E. HOOD: I was not at all suggesting that some employers do not do the wrong thing: they do. The Hon. Mr Kandelaars is quite right about that, I accept that. He is 100 per cent correct. But that was not my point. My point was that the clear reading of this clause is

that it is open to abuse. Now, is it an extremely unlikely scenario that I have painted? Absolutely; I accept that and I said it in my remarks, but it is possible.

The question is: should we be making laws that are open to abuse? The answer to that, I think all of us would agree, is no. That is the issue. I think the numbers in the house are what they are, and we will move on. So be it. However, we have created a scenario that could potentially be abused, and I do not think that is good to legislate.

The Hon. T.A. FRANKS: I certainly thank the Hon. Gerry Kandelaars for his contribution. It reminds me of a friend of mine who worked at BP, who was fined every time someone stole petrol unless he actually managed to get the details of the person who stole the petrol. He would have his pay docked for that week. He does not work there anymore, but I understand it is a common practice and something that workers face which I think is quite unacceptable, that they are docked for someone else's crime.

We are not looking at this clause in isolation. As the minister has noted, this clause must be read with the other parts of the bill, and there are provisions there for workers to be required to act not only legally but also responsibly and to take a proper duty of care. But we are also looking at situations where, yes, people may have items stolen and need them replaced. It is not as if the mover of this amendment has not noted himself that there is no remedy here.

There is a remedy where this worker in this case, if they do abuse this clause could be looking at losing their job, and I think that is a pretty big penalty for that worker to be facing. While the call has been that that is too big a penalty to apply, a suitable amendment has not been put forward that addresses the nuances of this issue. For that reason, we will not be supporting the Hon. Mr Lucas.

The Hon. R.I. LUCAS: Whilst I am interested in the contribution of the Hon. Mr Kandelaars, in relation to the computer, and the Hon. Ms Franks, in relation to petrol, I am not convinced that they are actually examples of safety equipment and therefore the subject of this provision.

The only other point I would make in response to the contribution from the Hon. Bernard Finnigan is that exactly the point he made that he was familiar with examples of employees contributing towards the cost of high-level qualifications in work health and safety, such as diplomas, etc., and he did not understand that would be prevented by this clause. The legal advice provided to the MBA is exactly that; that is, the arrangements they had entered into with higher-level qualifications, WHS qualifications, such as diplomas and—

The Hon. B.V. Finnigan: Certificates.

The Hon. R.I. LUCAS: I think it might have been certificates; I just cannot find it—certificates and diplomas. That is one of the reasons they are asking that this be considered. They are saying that they are common arrangements which have been entered into, and they would be prevented under this provision.

The committee divided on the clause:

AYES (8)

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

NOES (7)

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.		

PAIRS (6)

Vincent, K.L.	Lee, J.S.
Hunter, I.K.	Brokenshire, R.L.

PAIRS (6)

Parnell, M.	Bressington, A.

Majority of 1 for the ayes.

Clause thus passed.

The CHAIR: We will now be dealing with amendment No. 10 in the name of the Hon. Ms Franks to insert new clause 273A.

The Hon. T.A. FRANKS: I do believe this is my amendment with regard to workplace bullying, and I withdraw that amendment.

Clause 274.

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

Page 115, line 33—After 'if' insert:

the Minister is acting on the recommendation of the Advisory Council and

This is the first of two very significant amendments as they relate to codes of practice, and this is one of the very important issues that has caused much consternation and opposition from employer organisations and industrial organisations as well.

As outlined in the second reading, we have this comprehensive bill. We then have 500 or 600 pages of regulations but beneath that are 40 or more codes of practice which are very significant in terms of their potential impact on the operations of businesses nationally but, in our case, obviously here in South Australia.

The construction industry has been appalled at some of the examples of provisions within the codes of practice in particular. As I said, we are talking about more than 40 of them. Some of them, we understand, are more than 90 pages long. Not all of them have been finalised. There was some debate earlier about some of them which were still going through consultation stages; some are still being developed in relation to the impact.

Parliaments nationally have signed off much earlier on the legislation and the regulations and, in essence, have bought, sight unseen, these hundreds of pages of provisions in the codes of practice. Those earlier jurisdictions, in signing off on the legislation and the regulations, basically said, 'Well, deliver whatever you want under the codes of practice. We're not going to have any influence at all in relation to what you put in the codes of practice.'

That is not a position that we are in, obviously, because we are debating the bill much later than many other jurisdictions, but Victoria and Western Australia are yet to debate even the legislation. The issue in relation to the codes of practice is that they will have a significant impact: what input should the parliaments have in relation to these issues? The legislation does provide the first port of call in terms of providing some legislative oversight, some framework, within which these codes of practice can be developed.

The simple fact of the matter is that ministers have abrogated their responsibility over a number of years. Minister Wortley, and ministers prior to him who have held the portfolio, effectively have delegated to the equivalents of SafeWork SA nationally to go their hardest in terms of drafting codes of practice. With the greatest of respect to the hardworking bureaucrats in SafeWork SA, and their equivalents in other jurisdictions and nationally, that is not a healthy state to be in, where you leave to officers the final decisions or, to rephrase it, the guiding influence in terms of the final decisions of what is to be included.

The brutal reality is—and let us take the Hon. Mr Wortley—he will not apply much rigorous oversight, given his performance in this portfolio and others, in terms of the detail, whether it be legislation or regulations and certainly not codes of practice. He certainly will not be going through the codes of practice as a minister, looking at whether or not they contain unreasonable provisions.

We know, for example, that he even refused to read the Burnside council report because he was fearful of leaking it or inadvertently outlining the details publicly. So, the minister will not be providing the legislative oversight that is required. Whilst he, together with other ministers, will formally sign off on this detail, all the engine-room work is being driven by officers with whatever consultation processes they might have entered into.

There has been significant opposition in South Australia to much of the detail of these codes of practice, but the minister outlined earlier that, having heard all that criticism, the government will not amend or change in any way these codes of practice as they apply to business and to industry. What we are seeking to move (and time will not permit me to outline all the arguments for both aspects before the luncheon break) are protections for business and industry in relation to the codes of practice.

The first thing we are saying is that the minister should act on the recommendations of the advisory council. That is a body which comprises employers and employee representatives. We accept that a minister can stack that body, but that is the reality. The advisory council has operated in that way more often than not. That has not occurred, but certainly the structure allows a minister, if he or she so chooses over a period of time, to stack the particular body. At least it is some level of protection in relation to trying to get agreement from the employer and employee representatives on a particular code of practice. That is the first element of the package of amendments we are proposing to move.

The second element, which I will outline in greater detail after the luncheon break, relates to a regulatory role for the parliament; that is, the parliament has the say in relation to the legislation, whether or not we like it. The parliament has an opportunity in relation to regulations; that is, we have the capacity to disallow regulations if we so choose, and we are proposing a certain role in relation to codes of practice, which I will outline in greater detail after the luncheon break.

Progress reported; committee to sit again.

[Sitting suspended from 13:00 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—
- Club One (SA)
- Gaming Machines Act 1992
- Independent Gambling Authority
- Report on Barring Orders
- West Beach Trust

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

Reports, 2011-12—
- Australian Health Practitioner Regulation Agency
- Food Act
- Principal Community Visitor
- Senior Judge of the Industrial Relations Court and President of the Industrial Relations Commission

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

Reports, 2011-12—
- Correctional Services Advisory Council
- Guardian for Children and Young People
- Hydroponics Industry Control Act 2009, Section 34
- Protective Security Act 2007, Section 43
- River Murray Act 2003
- River Murray Act 2003—Supporting Document
- Witness Protection Act 1996

Response to the Premier's Climate Change Council on Advice Provided

CHILD PROTECTION

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:18):

I table a copy of two ministerial statements, one made yesterday and one made today, by the Minister for Education and Child Development in the other place.

QUESTION TIME

FORESTRYSA

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:19): I seek leave to make a brief explanation before asking the Minister for Forests a question regarding undervalued timberlands.

Leave granted.

The Hon. D.W. RIDGWAY: The government's own Auditor-General put a value of over $1 billion on the forestry commission's South-East timber assets which were forward sold, as the Treasurer himself said, for $670 million. That is a shortfall of over $300 million. The buyer is the Campbell Group whose corporate boast is that it takes an opportunistic approach to investing. The company's founder, Duncan Campbell, said, 'The Campbell Group capitalises on market inefficiencies to find undervalued timberlands.'

Meanwhile, the Forestry Corporation Act says that the corporation has to pay council rates on the land it owns. The Campbell Group has bought the forward timber but not the land on which it grows. The land is still the corporation's and, in fact, ours, the public's. My questions are:

1. Who is paying the council rates on that land?

2. Is the public paying rates on land for growing trees while the Campbell Group is opportunistically harvesting the trees on the same land without paying rates?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:21): I thank the honourable member for his most important questions. There has been much said about the value of the sale. The government has financially closed the forward sale of the state's—

The Hon. D.W. Ridgway: I didn't ask about when it was closed.

The Hon. G.E. GAGO: You talked about the value of the forests, and I will refer to that and—

The PRESIDENT: Minister, just ignore him; he has asked his question.

The Hon. G.E. GAGO: I will answer the question in a comprehensive way. I need to do justice to this. We know that the opposition wants these matters trivialised. We know that the successful bidder was the Campbell Group.

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Just relax. We're all tired and grumpy.

The Hon. G.E. GAGO: In terms of the value of the sale, the $670 million was above the government's reserve price, and the proceeds of the sale will be invested across the state in key areas such as roads, hospitals, schools and, obviously, future infrastructure that will clearly benefit the state. Some people in the community believe that the state government sold the forward timber rotations for less than they were worth. They have commented in the media that the government has undervalued the asset or sold it at a cheap price. These people have quoted from the Auditor-General's Report which shows the forestry asset classified as held for distribution to owner and worth $1,033 million.

The information reported by the A-G's Report is obviously accurate and reflects the appropriate accounting standards that are applicable as per the Australian Accounting Standards Board. However, this reported information does not explain the specific distributions being undertaken as part of the FSA transaction. FSA will distribute the $1,033 million of the assets by transferring part back to general government and part to the new operator.

I am advised that the people who have this view are confusing the accounting or book value with the transaction or sale value. Obviously, you can only sell an asset at what the market is prepared to pay to run a commercial concern and not for a reported accounting value, which reflects accounting standards and various assets that do not form part of the assets, including the transaction with the third-party private operator. So that deals with the issue of the value of the

sale. In relation to council rates, I do not have those details with me but I am happy to take those questions on notice and bring back a response.

WOMEN'S SAFETY STRATEGY

The Hon. J.M.A. LENSINK (14:25): I seek leave to make a brief explanation before directing a question to the Minister for the Status of Women on the subject of the progress of the Women's Safety Strategy.

Leave granted.

The Hon. J.M.A. LENSINK: In June I asked a question in relation to a specific case that highlighted comments made by the Director of the Women's Legal Service concerning police officers not issuing domestic violence intervention orders unless defendants were present, leading to delays and undermining the intent of the Women's Safety Strategy. Is the minister aware whether that issue has been followed up with the Attorney-General, the Minister for Police or herself, and what progress has been made?

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. Indeed, the rollout of a number of strategies we have put in place to reduce domestic violence has been most successful, and one of those has been reforms to legislation around sexual assaults, in particular. There has been the introduction of intervention orders and other legislative changes around that, as well as the rollout of our Family Safety Framework, which has also produced some very good results. Of course there is also our Don't Cross the Line campaign, which has worked on trying to change public attitudes around respectful relationships and which is particularly focused on young people.

Regarding the issue around intervention orders, there has been considerable in-depth discussion on that. I chair a chief executive officers group that is, in effect, a domestic violence task force, and one of the agenda items that has been considered at a number of the last meetings has been looking at the implementation of intervention orders. There is also an across-government group of other officers who are also looking at those issues, looking at the nuts and bolts of how it is working, how effective it is, where there are problems and where changes need to occur. So there are a number of different forums where this work is being closely monitored.

I am very pleased to say that at the last chief executive officers meeting I was at the preliminary figures were very promising. I do not think they have been formalised yet—it was a report given by police and, as I said, they are not formal figures as yet—but they were very promising. The number of intervention orders, or orders that have been put in place, has significantly increased since the implementation of the intervention orders. There has been a significant increase in orders, so there are certainly far more being applied.

The other preliminary statistic that was very interesting was that, although—and I am trying to make sure I get this right—there had been a slight increase in the number of breaches of intervention orders, it was in no way proportionate to the significantly large increase in the number of orders. The rate of breaches was certainly not increasing at the rate of the increase in implementing orders themselves.

What these figures are basically saying is that more people are accessing these orders and more of them are in place and that more women are safer. The other reports I have received back are, again, very promising. From right around the agencies, from the police, housing and education, the general feedback is that the system is working really well and that it has been a very positive reform in this state.

ENERGY CONCESSION SCHEME

The Hon. S.G. WADE (14:31): I seek leave to make a brief explanation before asking the Minister for Communities and Social Inclusion a question relating to the Energy Concession Scheme.

Leave granted.

The Hon. S.G. WADE: At page 240 of the Auditor-General's Report, he deals with his concerns in relation to the Energy Concession Scheme. In the 2011 audit, the Auditor-General identified that the energy concessions being provided by electricity entities did not match those

established under section 21(1)(h) of the Electricity Act 1996. The Auditor-General understood that DCSI relied on cabinet approval to deviate from the legislated concessions.

In September 2011, DCSI advised that the Energy Concession Scheme would be amended by December 2011 so that the concessions would be within legislative limits. The Auditor-General's follow-up of this matter revealed that the Energy Concession Scheme has not been amended and that the concessions are still in excess of legislative limits. My question is: why has DCSI not implemented the ECS as per the Electricity Act 1996, and why has the government not amended the ECS?

The PRESIDENT: The Minister for Communities and Social Inclusion will note that that is a question going to the Auditor-General's Report, which we will be dealing with later.

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:32): I am quite happy to deal with it now. If the honourable member would like to take it up now, I can suit him if it is the will of the chamber; it will save time for another question perhaps when we deal with the Auditor-General's Report later on.

The PRESIDENT: You have 47 minutes, sir.

The Hon. I.K. HUNTER: Thank you. The Auditor-General identified that the energy concessions provided by the electricity entities did not match those set out in the Energy Concession Scheme, as established pursuant to section 21(1)(h) of the Electricity Act 1996. The Auditor-General also identified that the Department for Communities and Social Inclusion does rely, as the honourable member pointed out, on cabinet approval when increasing the rates. The energy concession rates are updated from time to time by cabinet. Section 21(1)(h) of the Electricity Act 1996 states:

> The Commission must make a licence subject to conditions determined by the Commission...
>
> (h) requiring the electricity entity to comply with the requirements of any scheme approved and funded by the Minister for the provision by the State of customer concessions or the performance of community service obligations by electricity entities.

As indicated in the Auditor-General's Report, the department has relied upon cabinet approval when increasing the rates. The Auditor-General has recommended that the department seek amendment to the scheme to specifically identify cabinet approval as a mechanism for varying the energy concession rates.

I am advised that significant work has been undertaken towards reviewing the Energy Concession Scheme. The revised scheme includes words consistent with the audit recommendations on the rates. The energy concession amount may be updated by cabinet from time to time, and the minister will communicate changes with retailers. My advice is that the scheme has been looked at, and that will be the recommendation I will be taking to cabinet.

TOURISM, ACCESS TO SOUTH AUSTRALIA

The Hon. G.A. KANDELAARS (14:34): I seek leave to make a brief explanation before asking the Minister for Tourism a question about access to South Australia.

Leave granted.

The Hon. G.A. KANDELAARS: The minister has spoken in this place before about the importance of tourism to South Australia. One of the keys to being successful is having good access to South Australia and something special to offer. Can the minister tell the chamber about improved access to South Australia?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:34): I thank the honourable member for his most important question. Indeed, the Jay Weatherill government has done much to ensure that it is easier to get to South Australia and has done much to promote the wonderful things we have to offer here. While the opposition seems to spend all its time bickering and undermining each other, we are obviously getting on with the job, the hard work, of creating a vision and a working South Australia.

Tonight marks the arrival of the first direct Emirates flight into Adelaide. As members may be aware, Emirates will have four weekly flights to Adelaide and they will be increasing that to a daily service from 1 February 2013. I am very delighted that these flights will provide increased

access to SATC's priority European markets, which make up almost 45 per cent of South Australia's total international visitation. It will also benefit the conference sector, which depends on direct access for delegates, and it will benefit trade by providing better access to suppliers, customers, head offices, new markets and suchlike.

These flights are in addition to the direct flights already coming into Adelaide and these include Singapore Airlines, which operates 10 flights per week; Malaysian Airlines, which operates daily flights; Cathay Pacific, daily flights; Air New Zealand, six flights per week; Qantas, which operates three flights per week; and Virgin, which operates five flights per week. These now total 42 flights per week. In 2003 we had 13 flights. In 2003, just after the Liberal government was booted out, there were 13 direct flights and we have 42. Not only do we have the new airline coming in, but a number of these other airlines have recently increased their number of direct flights to Adelaide as well.

We also had more news recently with the announcement that Tiger was recommencing its services to Adelaide from their Melbourne and Sydney bases from 1 November and I am advised that they will initially offer two flights each way each day. It is a very positive thing for the state that they have been able to get back on their feet, because it is in all of our interests. These are hard times, particularly for airlines, and it is a good thing that they have been able to get back on their feet and are now operating again in South Australia. We are very pleased that they are able to do that.

I have no doubt that many of our visitors will be here seeking out our wonderful food and wine. South Australia is recognised globally for our premium food brands and wine regions, and we have a thriving food industry that contributes around $13.7 billion to our local economy. Many consumers are becoming increasingly interested in purchasing local and more natural products. We are closer to the supply route and have smaller environmental footprints. South Australia offers premium regional food and wine experiences, and we need to increasingly showcase this to locals as well as to the interstate and international visitors that I mentioned earlier.

Last week, I had the pleasure of launching the Eat Local initiative, which enables food establishments, particularly restaurants and cafes and the like, to highlight their support of local growers, producers and manufacturers by serving or selling local food while distinguishing themselves to culinary tourists travelling the regions for food experiences through distinct signage and an interactive website as well. Eat Local will help put the regions in particular on the culinary tourism map as well as helping to boost the local economy.

For the regions it means building on synergies between the great food and fantastic wines produced in each region, and tourists and local consumers can obviously use the Eat Local website to select and visit a venue that promotes local produce. Eat Local is a great example of the collective industry partners and government working together to achieve results for South Australia and helping to support our food industry.

I would like to acknowledge that Eat Local is an initiative of the Regional Food Industry Association and Regional Food Group volunteers developed by Food SA and supported by the South Australian Tourism Commission along with PIRSA. I commend the collaborative effort that has gone into developing this program.

TOURISM, ACCESS TO SOUTH AUSTRALIA

The Hon. J.S.L. DAWKINS (14:40): By way of supplementary question, will the minister explain to the council why food production was not included as a strategic priority in the first phase of the India engagement plan announced by the Premier in the House of Assembly yesterday?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:40): Food is one of the key seven planks of this government's strategic priority. There are seven key priority planks that Premier Jay Weatherill has outlined, and premium food and wines from a clean environment is one of those planks. These strategic priorities underpin the government's priority efforts for the forthcoming years. A ministerial task force has been set up for each of these priorities, including the food and wine priority. They have been chaired by the Premier to date, and underneath that ministerial task force sit chief executive groups that assist to put together plans in relation to those key priorities.

An enormous amount of cross-government work is being directed to premium food, so it is outrageous to suggest that it is not a key part of our strategic plan. We hear the opposition time

and again come into this place and they have no plans of their own, no policies, no idea, no vision and no discipline, as we have seen recently—no discipline at all. They are too busy fighting amongst themselves. Their leadership team is split and there will obviously be another challenge coming up, no doubt. We have a deputy leader who we know does not support his leader, did not vote for her—did not vote for his own leader but for someone else—and was on another ticket altogether. This is the sort of team we have. The opposition are not fit for opposition—

The Hon. T.J. Stephens: We haven't got any paedophiles in our group. Hey, Gail, how many paedophiles have you got over there?

Members interjecting:

The Hon. G.E. GAGO: They are not fit for opposition, let alone government.

Members interjecting:

The Hon. R.P. WORTLEY: On a point of order, that was one of the most unparliamentary comments I have heard in the time I have been here. That is an appalling comment.

The PRESIDENT: The Hon. Mr Stephens, the minister has raised a point of order on your objectionable unparliamentary language. I ask you to withdraw.

The Hon. T.J. STEPHENS: I'll withdraw.

The Hon. G.E. GAGO: That was one of the most ungracious withdrawals I have ever seen. What a churlish person he is.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: He does not even have the grace to apologise for such an unparliamentary comment. Well, he wouldn't apologise; he doesn't have the backbone to do that, the backbone, courage or dignity to apologise to me. But that's alright.

The Hon. S.G. Wade interjecting:

The PRESIDENT: The Hon. Mr Wade, just be quiet.

The Hon. G.E. GAGO: As I was saying, the opposition is not fit for opposition, let alone government.

TOURISM, ACCESS TO SOUTH AUSTRALIA

The Hon. J.S.L. DAWKINS (14:44): By way of further supplementary, why is it that in the Premier's ministerial statement at no stage did he mention food or food production in relation to this India engagement strategy but mentioned Aerospace, defence, energy, natural resources and clean energy, as well as education and training, but no food?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:45): My understanding is that in relation to the India strategy a great deal of consideration has been undertaken around food but my understanding is that a number of issues need to be put in place first before the food relationships can be rolled out. Work is being done and, as I said, food is one of the seven key priority planks of this government. Food is right up there, and to suggest somehow that it isn't is outrageous. As I said, we have an opposition that has no policy itself in relation to food. It has no food plan, no policy, no vision, no direction. As I said, they have no ideas and no discipline; they are too busy fighting amongst themselves to come up with any decent idea or any policy initiative of their own.

TOURISM, ACCESS TO SOUTH AUSTRALIA

The Hon. R.L. BROKENSHIRE (14:46): I have a supplementary question. My supplementary to the minister regarding her answer to more airlines coming in is: does the minister agree with Business SA that if the curfew was to be lifted—

The PRESIDENT: Hang on a sec.

The Hon. R.L. BROKENSHIRE: —that there would be more—

The PRESIDENT: You are asking a supplementary on the airlines.

The Hon. R.L. BROKENSHIRE: She was raving on about all the extra airlines coming in. I am interested in whether she agrees with Business SA who say—

The PRESIDENT: But that was the previous question.

The Hon. R.L. BROKENSHIRE: —lift the curfew and more airlines will come in.

The PRESIDENT: That was the previous question. We are tired. We only have half an hour of this to go. The honourable minister, do you want to take it?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:47): This has very little to do with the issue, but nevertheless I know that different people have different ideas about our airport curfew and those people who usually have the strongest views opposing the curfew are those who live the furthest from the airport.

LOCAL GOVERNMENT COMMISSION

The Hon. CARMEL ZOLLO (14:47): My question is to the Minister for State/Local Government Relations. Can the minister please provide an update to the chamber on the financial assistance grants allocation for—

Members interjecting:

The PRESIDENT: Order! The Hon. Mrs Zollo, can you go again? I am having difficulty hearing. Try it again.

The Hon. CARMEL ZOLLO: Can the minister please provide an update to the chamber on the financial assistance grants allocation for the 2012-13 period?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:48): I thank the honourable member for her very important question and acknowledge her concern for small rural councils that require and look forward to these grants. As part of the 2012-13 budget, the Hon. Wayne Swan MP, Deputy Prime Minister and Treasurer, outlined that $2.2 billion in commonwealth financial assistance grants would be provided to local government across Australia in 2012-13 to assist councils with the provision of services to their communities.

I am pleased to advise that last month the Hon. Simon Crean MP, Minister for Regional Development and Local Government, approved the South Australian Local Government Grants Commission's recommended distribution of financial grants for 2012-13. For the 2012-13 period, local government in South Australia will receive $148 million in total, which represents an increase of 3.6 per cent over 2011-12. Approximately 60 per cent of these grants are going to regional, rural and remote communities.

The financial assistance grants are divided into two components: general purpose and identified local roads grants. Members may be interested to know that South Australia's estimated funding from the federal government comprises $109.5 million for general purpose grants (an increase of 3.8 per cent) and $36.4 million for identified local road grants (an increase of 4.3 per cent).

In South Australia the Local Government Grants Commission is responsible for making recommendations to the commonwealth government on the allocation of untied commonwealth financial assistance grants to local governing authorities in South Australia. To calculate the general purpose grants, both the capacity of councils to raise revenue and their expenditure needs relative to the average or standard council are assessed. Greater funding is directed to councils with less capacity to raise revenue from rates or where services cost more to provide for reasons out of the council's control.

I can further advise that the supplementary local road funding program (only available in South Australia) was extended for a further three years from 2011-12 to 2013-14 and will provide $16.9 million in 2012-13, which reflects the increase in the financial assistance grants pools. Additionally, South Australia will receive $28.4 million in Roads to Recovery funding for 2012-13. The Roads to Recovery program is of enormous assistance to local councils and I commend the commonwealth government for continuing this important initiative.

I also commend the Chair of the Local Government Grants Commission, Ms Mary Patetsos, along with commission members for their continuing commitment and hard work. You cannot underestimate the importance of these grants to regional Australia. I go out as much as

possible with the Grants Commission and on my own talking to councils and looking at their issues. I know firsthand, from when these grants are given, that there are some councils for which these grants account for half of their budget and without them they would find themselves not being able to operate. What that would do is disconnect a lot of rural people from anywhere and deprive them of services that we take for granted in the city.

BALYANA SWIMMING POOL

The Hon. M. PARNELL (14:51): I seek leave to make a brief explanation before asking the Minister for Communities and Social Inclusion a question about the Balyana Swimming Pool.

Leave granted.

The Hon. M. PARNELL: I have been contacted by members of the community concerned about the future of the much loved and well used Balyana swimming pool in Clapham in Adelaide's south. I understand that Bedford Industries, which owns and operates the complex, has just announced that it intends to close the pool permanently in April of next year. This pool is a vital part of the local community. It is used continuously for hydrotherapy and swimming training by a wide range of community groups, schools and clubs, including: Novita Children's Services, Anglicare Therapy Services, VACSWIM, scouts and nearby schools, and I will declare that my own children learnt to swim there.

The closure will have devastating consequences as Balyana is the only large pool in the Mitcham area. There is a significant shortfall in hydrotherapy and swim training facilities in that region. I understand, for example, that there are already large waiting lists of more than six months to access the hydro pool at the Repat Hospital. Hydrotherapy, as we know, is a vital service for those with disabilities and the elderly to maintain their health and recover from surgery. Equally, the announcement has coincided with a call from the Royal Life Saving Society for mandatory swim training for all primary school children.

I might add that one of the wonderful aspects of the Balyana facility is the integration of the Balyana residential supported accommodation with the swimming pool and the conference facility, which is a great example of integrating 90 people with a disability into the broader community. As there are no adequate alternative pools or hydro facilities in the area, a community campaign has now begun to keep the pool open until a long-term solution can be found. My questions of the minister are:

1. Have you had any discussions with Bedford Industries or any of the social or disability services that use the Balyana pool over the future of the facility?

2. Are you aware of any discussions between the Department for Communities and Social Inclusion and Bedford Industries over the future of the pool?

3. Has Bedford management attempted to source government funding to keep the Balyana pool open?

4. Do you agree that it would be appropriate for the pool to remain open until the long-term shortage of hydro facilities in the region is addressed?

5. Will you commit to investigating further and reporting back to this council what Bedford Industries intends to do and what possible alternative services could be provided?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:54): I thank the honourable member for his most important questions, which I number at five. My answers are: no; no; not to my knowledge; it is not my area of expertise; and, no.

APY LANDS, YOUTH STRATEGY

The Hon. T.J. STEPHENS (14:54): I seek leave to make a brief explanation before asking the Minister for Communities and Social Inclusion, representing the Minister for Aboriginal Affairs, questions about the dropping of the Aboriginal youth strategy from the APY lands.

Leave granted.

The Hon. T.J. STEPHENS: A few months ago the government informed the APY lands authorities that no other townships, apart from Amata, will receive a youth strategy in the near future. After four years of delays, the government finally delivered on its promise of a youth strategy for Amata. The strategies, which were supposed to be an initiative for all six major APY

communities to help tackle substance abuse, school attendance rates, crime and unemployment, have now been dropped from all other communities. According to experts, these strategies are vital to youth development on the APY lands and to stop the cycle of disadvantage. My questions are:

1. Why has the government abandoned Indigenous youth on the APY lands?

2. What alternatives is the government developing to assist youth on the APY lands?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:55): I thank the honourable member for his—

Members interjecting:

The PRESIDENT: I have been waiting for that. It had to happen. The honourable Minister for Communities and Social Inclusion.

The Hon. I.K. HUNTER: Thank you, Mr President. I thank the chamber for that entertaining interlude. I thank the honourable member for his most important question. I will take it to the Minister for Aboriginal Affairs and Reconciliation in another place and seek a response on his behalf.

DISABILITY SERVICES

The Hon. K.J. MAHER (14:56): My question is to the Minister for Disabilities. Will the minister update the house on the disability sector's Stronger Together conference held in August?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:56): What an excellent question from such a new member. I don't know how he does it, but once again the Hon. Mr Maher is on the button—

Members interjecting:

The Hon. I.K. HUNTER: —always at the forefront—

The PRESIDENT: Hang on a second.

The Hon. J.S.L. Dawkins: As a former state secretary, I though you would get his name right.

The Hon. I.K. HUNTER: Well, that could be why he has very similar views on these matters as I do, Mr Dawkins—former state secretaries both, we think alike. I do thank the honourable member for his most important question—

The Hon. D.W. Ridgway interjecting:

The Hon. I.K. HUNTER: —no, we won't go there, David—about the conference—

Members interjecting:

The PRESIDENT: Minister, you have the call.

The Hon. I.K. HUNTER: Thank you, Mr President—for the disability sector in South Australia. Staff in my department, the non-government sector, and people with a disability and their families all gain very much from this annual event. This year, I am advised, it was no different. The Stronger Together conference in 2012 was held over two days, with a number of guest speakers presenting updates on the major reforms taking place in the disability sector at the moment. Speakers included Disability SA leadership teams, academics, advocates and representatives from the non-government sector.

One particular speaker left quite an impression on many of the attendees at the conference, someone who has a lived experience with disability and has a very powerful message to share. This speaker offered an insight into her experience with self-management and individualised funding, telling the audience that the new system has quite simply transformed her life. That speaker was a woman by the name of Ms Rebecca Hughes.

Mr President, you know how much of a stickler I am for protocol and tradition. You know how much I support the old way of doing things and the unchanging nature of the Legislative Council, no matter how disconnected those practices might be from the modern world and no matter how irrelevant, so I will refrain from pointing out to you, Mr President, that Ms Rebecca

Hughes is in the chamber today. I wouldn't do that, sir, because I would not want to be unparliamentary, but I would like to take this opportunity to share some of her presentation with you all.

Rebecca is a bright young South Australian who told the conference of her desire as a person living with disability to pursue her dreams and her hopes to not be lost in the old welfare model of support or, as Ms Hughes refers to it herself, 'service-land'. Rebecca had, for a long time, the desire to become a full and valued citizen of our community. She called it 'having a real life in the real world'.

Rebecca talked to the conference about her experience in the education system, where her desire to participate in mainstream education was not always embraced. Indeed, Rebecca had to travel 17 hours a week to attend a specialist school and found that it was not always meeting her personal needs and that she was becoming lost in the system. As a result of this, Rebecca decided to change the course of her life. She decided that she should be in charge of her own life, make her own decisions and choose her own support services.

With assistance from service agencies and through what we now term as a person-centred approach, Rebecca has been able to enjoy what we all take for granted, that is, choosing her own course in life, gaining independence, participating in the activities that she is interested in, and choosing how and when to use her resources. Rebecca now volunteers at the Wandana Community Garden and is undertaking further education. She is also writing a book with her brother Ben. She is an active member of her local community and lives a fulfilling and meaningful life.

This is what we desire for all South Australians living with disability. That is why the Premier announced last December that we were implementing individualised and self-managed funding, because we know that the person with disability is the best person to make decisions about their life. These reforms are about rights: the right for people with disability to be in charge of their own destiny. There is no doubt that, for Rebecca, these reforms are helping to deliver what would otherwise not have been available to her: as Rebecca calls it, a real life in the real world. Mr President, if Rebecca were in the chamber today I would like to say how very proud I am of her achievements and taking control of her life.

The PRESIDENT: And I am sure we would welcome her and say that she is a great inspiration to many.

Honourable members: Hear, hear!

CARBON TAX

The Hon. D.G.E. HOOD (15:01): My question is to the minister representing the Treasurer. Since the introduction of the carbon tax federally—that is, over the first quarter in particular, from 1 July to 30 September—what additional costs have been borne by the state government with respect to the following areas: first, the servicing of government vehicles, including air conditioners in such vehicles; secondly, other government transport activities, including public transport; third, police operations; fourth, health and ageing, including the operation of hospitals; fifth, education and further education; and sixth, social housing?

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) (15:02): I thank the honourable member for his questions and will refer them to the Treasurer in another place and bring back a response.

ADELAIDE RAILWAY STATION

The Hon. J.S.L. DAWKINS (15:02): I seek leave to make a brief explanation before asking the Minister for Industrial Relations, representing the Minister for Transport Services, a question regarding business operators in the Adelaide Railway Station precinct.

Leave granted.

The Hon. J.S.L. DAWKINS: Members may be aware that the Adelaide Railway Station will be closed throughout January 2013 due to the redevelopment of the Convention Centre. In addition to the resulting diversion of passengers onto buses at near-city stations such as North Adelaide, the suburban rail system will have a variety of train/bus substitution regimes on various lines. That situation was highlighted by the Hon. Mark Parnell earlier this week.

Like the Hon. Mr Parnell, I have noticed the significant impact on train passenger numbers during previous train and bus substitution periods. This has particularly affected the number of customers patronising the wide range of small businesses operating in the Adelaide Railway Station precinct. I should add that some of these businesses are longstanding tenants at the station. My questions to the minister are:

1. What level of compensation has been offered by the Department of Planning, Transport and Infrastructure to Adelaide Railway Station business owners for the imminent period in which the station will be completely closed?

2. To what extent has DPTI provided assistance to employees of these businesses who will lose all work opportunities in January?

3. What, if any, action did DPTI take to assist Adelaide Railway Station business owners during previous train/bus substitutions on the various lines?

4. What discussion, if any, has DPTI had with these business owners regarding any possible assistance during ongoing and/or future train/bus substitution periods?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:04): I thank the honourable member for his important question. I will take it on notice and refer it to the appropriate ministers in the other place and get a response as soon as possible.

FAMILY-FRIENDLY TOURISM

The Hon. G.A. KANDELAARS (15:04): I seek leave to make a brief explanation before asking the Minister for Tourism a question about family-friendly tourism experiences.

Leave granted.

The Hon. G.A. KANDELAARS: As the Minister for the Status of Women as well as the Minister for Tourism, I know that the minister is very keen to see families catered for when it comes to getting out and about in South Australia. Can the minister tell the chamber about a new family-oriented tourism experience funded by the South Australian Tourism Commission?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:05): I thank the honourable member for his important question. As the member has indicated, I believe that family-friendly tourism experiences are important, and I was delighted to be advised that a new family-friendly project, developed by the Barossa's Whistler Wines, has received a grant from the SATC.

Wine tasting can obviously be very enjoyable for adults, but there are often children there as part of a family outing and there can be tensions between sampling wine and appropriate entertainment for the children. A grant of $2,450 has been allocated from the SATC's new product support program to the Nuriootpa business, and I am told that Whistler Wines will use the grant to focus on developing child-friendly activities to encourage families to visit the Barossa.

I am advised that family has always been an integral part of Whistler Wines' history and in the development of the winery. The business will develop a treasure hunt walk and scavenger hunt for children, along with producing information to highlight family-friendly activities on site as well as across the region.

I understand that at present there are limited activities aimed at including children in the Barossa. Indeed, the need for family-friendly experiences was highlighted in the destination action plan for the region, the DAP for the Barossa region, which was launched in May this year. The Whistler Wines project will help address this shortfall and is expected to increase visitation to the property, which would be a great result.

I am pleased to advise that the SATC funding will be used for experience and website development, along with graphic design and communications. Of course, I hope that it will also help to promote premium food and wine from our clean environment because, as we all know, the Barossa obviously has a great deal to offer in this area. It is my belief that the Barossa is very well placed to cater to tourists seeking food and wine experiences. As many members already know, the Barossa is a very beautiful region and has some fabulous produce available.

As Minister for Tourism and for food and wine, I am very pleased that the South Australian Tourism Commission will again focus on other things that the Barossa has to offer. During

2012-13 the SATC will add another layer to the South Australia brand by reintroducing the Barossa to the domestic market. The Barossa is the most well-known region in South Australia. Relative to domestic wine regions, it is the second most considered wine region in Australia but fifth in terms of actual visitation.

This presents an opportunity to turn consideration into actual visitation. The Barossa has reinvented its brand, and the SATC will support the representation of this region to the domestic market—primarily Sydney and Melbourne—with a focus on food and flavours, in conjunction with the already well established wine association.

APY LANDS, EXPENDITURE

The Hon. R.I. LUCAS (15:09): I seek leave to make an explanation before asking the Minister for Communities and Social Inclusion a question on the subject of financial mismanagement by DCSI staff.

Leave granted.

The Hon. R.I. LUCAS: For some time now, three whistleblowers within the minister's department have been providing information to the opposition about their very significant concerns about financial mismanagement by departmental staff and the waste of moneys, in particular in relation to expenditure in the APY lands. Three months ago, I put a series of questions to departmental officers at the Budget and Finance Committee without naming officers or providing too much detail, nevertheless seeking detailed responses from the minister's department. To this stage, I have still not received any replies.

Some six or seven weeks ago, I put a question to the minister in this house, again without indicating the name of any individual officers, and six or seven weeks later there is still no response from the minister. Yesterday, I put a question to the minister asking about the questions to the Budget and Finance Committee, whether he had been briefed on issues in relation to one particular allegation and whether or not he was going to provide an answer to the question I had put to him.

The minister, as all would see, arrogantly refused to even address the question that was put to him yesterday. Therefore, I am left in a position where I will need to outline the details of some of these claims by the whistleblowers in an endeavour to flush out the minister and the department and provide information in the interests of transparency and accountability, and I do so with a list of questions to the minister, as follows:

1. Did an officer with the initials JC claim locality allowance for herself and her children, claiming that she was based in Amata between March 2011 and approximately August 2012?

2. Is it correct that JC never lived in Amata?

3. Has JC been required to pay back the locality allowance and, if not, why not?

4. Has JC also made claims for meal allowances when she was not entitled to make claims for meal allowances?

5. Has JC stayed in hotel accommodation rather than DCSI accommodation and, if so, does this cost DCSI additional funding and, if so, how much?

6. Did JC receive a significant pay rise in 2012?

7. Was that pay rise almost $35,000; and, if not, what was the level of that pay increase?

8. Did another officer with the initials ER claim locality allowance for herself and her partner for the period July 2011 to March 2012?

9. Is it correct that that officer with the initials ER was not entitled to claim locality allowance for that period?

10 Was that locality allowance ceased in March 2012 after an investigation?

11. If yes, is it correct that reimbursement of that locality allowance was not sought by the department and, if not, why not?

12. Is it correct that manager Sue Wallace, soon after March 2012, gave ER a 20 per cent attraction allowance and, if so, why?

13. Has any disciplinary action been taken against the officers with the initials JC and ER by departmental staff?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:13): I thank the honourable member for at last providing some details. Instead of having to go through charades and pretence and posturing for the last number of sitting weeks, his making vague allegations and asking me to walk into his little scheme without giving me any details, he has at last come forward with something I can actually respond to. I thank him for that, and I will take those questions on notice and I will bring back a response in due course.

The PRESIDENT: The Hon. Mrs Zollo.

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Are you on your feet?

An honourable member interjecting:

The PRESIDENT: What do you want? Are you going to ask a question? I called the Hon. Mrs Zollo, so you can sit down.

Members interjecting:

The Hon. CARMEL ZOLLO: I am always happy to get the call, the Hon. Mr Ridgway.

The Hon. D.W. Ridgway: Why don't you just put on those fish-eye glasses so that you can see around the corner?

The PRESIDENT: You need to go and have a coffee outside, sir. The Hon. Mrs Zollo.

WORK-LIFE BALANCE

The Hon. CARMEL ZOLLO (15:14): Thank you, Mr President. My question is to the Minister for Industrial Relations. Can the minister please advise the chamber of the results of the latest Australian work and life index and of the work currently being undertaken by SafeWork SA to deal with work-life balance issues?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:14): I would like to thank the member for her very important question. The South Australian government believes that work-life balance is crucial to ensuring a good quality of life for all South Australians. This is why we have set a target since 2007 in South Australia's Strategic Plan to improve quality of life through the maintenance of a healthy work-life balance. The Australian Work and Life Index (AWALI) is a tool used for measuring this target.

AWALI is a national survey of work-life outcomes amongst working Australians undertaken by the Centre for Work + Life, located at the University of South Australia. Since 2010, the Centre for Work + Life has been collecting data biennially, both nationally and in South Australia, comparing and contrasting work-life balance outcomes across various groups of people as defined by geographic location, employment characteristics and social demographics.

Earlier this year, the 2012 AWALI national survey was conducted with a primary focus on six particular themes, which included the use of the recently enacted right to request flexible working arrangements under the National Employment Standards. I am pleased to inform the chamber that the latest national AWALI report was launched here in Adelaide on 28 September by my federal colleague the Hon. Mark Butler MP, Minister for Mental Health and Ageing, at a very well-attended event organised by the Committee for Economic Development of Australia.

Overall, the South Australian results have indicated that the majority of full-time workers in South Australia are satisfied with their work-life balance, with results steady when compared with 2010 state data. However, they also highlight a continued and important need to progress strategies to improve and create a positive change in work-life balance for all South Australians, particularly women, as they face the challenges of balancing family and work commitments.

The results of this AWALI report are timely, as the importance of the work-life balance target was reinforced this year with the development of a new two-year work plan. The new work plan, which was approved by the Work-Life Balance Advisory Committee in March 2012, will see the work-life balance target progressed by undertaking:

- practical projects to support the implementation of work-life balance arrangements in South Australian workplaces, through partnerships with employers, unions and government departments;
- research into the social and economic arguments for achieving work-life balance; and
- public awareness-raising events dealing with the minimum standards and legislation that support flexible live and work arrangements.

Some of the projects that SafeWork SA, as lead agency for this target, is currently undertaking include the Quality Part-Time Work Project which will investigate strategies to better implement flexible working arrangements in the South Australian nursing and midwifery industry.

SafeWork SA, in collaboration with the Australian Nursing and Midwifery Federation and members of the Work-Life Balance Advisory Committee, is developing resources that will provide employers in this industry with guidance and tools for implementing better work practices to facilitate quality part-time work. This important project is particularly relevant in light of the future workforce shortages being predicted for the healthcare sector.

The development of an innovations project, which is designed to build a case for the adoption of innovative work practices to support the achievement of work-life balance by South Australian private sector employees, is another key initiative.

In implementing this project SafeWork SA will work directly with a range of employers to provide them with ideas and resources to assist in the practical implementation of work-life balance initiatives best suited to their industries. All these projects continue to be supported by the valuable contributions of the South Australian Work-Life Balance Advisory Committee.

WORK HEALTH AND SAFETY BILL

In committee (resumed on motion).

Clause 274.

The Hon. R.I. LUCAS: Before the luncheon break I moved the first of a package of two amendments, and I indicated that this was one of the very important amendments the Liberal Party is moving. This particular aspect of the amendment is in relation to the approval by the advisory council. It will read as follows:

> (2) The minister may only approve, vary or revoke a code of practice under subsection (1) if the minister is acting on the recommendation of the advisory council and that code of practice, variation or revocation was developed by a process that involved consultation between—
>
> (a) the Government of the Commonwealth of each State and Territory; and
>
> (b) unions; and
>
> (c) employer organisations.

It is endeavouring to ensure that there is a voice for business and employers at a critical stage in terms of providing advice to the state minister. There is certainly the concern from industry groups in South Australia that the unreasonable nature of some of these codes of practice already, some draft and as we now know some already endorsed, has been because there has not been sufficient input from employer organisations into that process.

Our advisory council process is well established and, as I indicated before the luncheon break, it involves representation of employers and employees, and this is saying that as a threshold condition the minister needs to get the recommendation of that advisory council, that is, some agreement between employers and employees, in relation to the code of conduct before the minister proceeds to the next step, which I will address in my subsequent amendment.

This is a critical issue for the Liberal Party and for many employer organisations. They are trenchantly opposed to the provisions in some of these codes of practice. Up until recent times, in all the discussions I had with the Hon. Mr Darley, this was the one set of Liberal Party amendments he indicated to me that he would continue to support. So, whilst he reserved his position in the latter period in relation to a number of other amendments the Liberal Party was moving, on a number of occasions he indicated to me that he supported our provisions in relation to the codes of practice.

Given the amendments the Hon. Mr Darley has filed and the public statements made that that support for our amendments has now been withdrawn for the amendments that he is about to

move, on behalf of industry and the Liberal Party, I want to express our extreme disappointment at that late change of position from the Hon. Mr Darley in relation to the codes of practice. When he moves his amendment, if we get to that stage, we will express our concerns and reservations about the provisions of the alternative mechanism that the Hon. Mr Darley has arrived at in the deal with the government. With that, we urge members to support this amendment.

The Hon. R.P. WORTLEY: The government opposes this legislation.

The Hon. R.I. Lucas: Legislation?

The Hon. R.P. WORTLEY: This amendment. Feedback from industry overwhelmingly requests further guidance and information on how to comply with health and safety duties. Codes are often developed by industries themselves and presented to occupational health and safety authorities for ratification for just this purpose. Codes of practice do not impose additional obligations on duty holders; they merely provide practical guidance on how to meet standards of health safety and welfare required under the Work Health and Safety Bill and the model Work Health and Safety Regulations.

In most cases, following an approved code of practice would achieve compliance with health and safety duties in the Work Health and Safety Act. However, compliance may be achieved by following another method if it provides an equivalent or higher standard of work health and safety than that code, so industry is not required to follow codes of practice. As long as they comply with the Work Health and Safety Act, that is all that is required. The codes of practice are there to assist industry. Industries actually play a part in developing these codes of practice and, once again, this has not been a big issue in the negotiations I have had.

It has been an issue in regard to our negotiations with the Hon. Mr Darley and we have agreed to consult all future codes of practice and they will be consulted by the Small Business Commissioner. No doubt, if industry or small businesses have a problem with the codes of practice, there is no doubt they will use the Small Business Commissioner to bring those concerns to the fore. Under the existing act there is no process required other than the advisory committee recommending to the minister that a code be adopted. However, the procedure under the Work Health and Safety Act is much more rigorous.

As outlined on Tuesday for the house, the codes are developed in consultation with all jurisdictions and involve business, industry, unions and the government. These are sent out for public comment, revised, endorsed and then endorsed by Safe Work Australia. They are then endorsed by the select committee of workplace relations and then adopted. This level of consultation is quite significant, so we ask you to ask the chamber to oppose this amendment and allow for the Small Business Commissioner to do their work and allow for the industries to get on with their job of doing what they do best.

The Hon. D.G.E. HOOD: I think the Hon. Mr Lucas used the expression 'trenchantly opposed' in his dealings with the industry groups about these particular codes of practice that we are now focussing on. If anything, I think that is an understatement. My dealings with various industry groups, which will come under the banner which will encapsulate those being subject to codes of practice, are that they are strongly opposed to this process and they have expressed that to us in the strongest terms. I would like to place that on record. We will certainly be supporting the Hon. Mr Lucas's amendment.

The Hon. J.A. DARLEY: In response to the Hon. Rob Lucas's comments, I had indicated that I would support this amendment. However, given that codes are to be used as guides only and that making them subject to disallowance could give them more force than they actually have, I have decided not to support the amendment. My amendment is intended as an alternative.

The Hon. R.I. LUCAS: The issue about disallowance is in the next amendment, but if I could address it quickly, and I will address it later on as well. The issue of disallowance gives them no greater force in terms of whether they are presented to a court or not. That is just an issue in relation to the parliament's powers over the code of practice. The issue of what force they have and when they present it to a court is as a result of other 275—Use of codes of practice in proceedings, and that is the powers there. The issue of whether the parliament has a power to disallow them or not gives no greater or lesser weight to a code of practice in proceedings. So, that argument carries no weight at all.

In relation to the codes of practice issue in this particular amendment, the minister rightly points out that what we are moving here is exactly the existing practice. Let me quote 63(1) of the

existing Occupational Health, Safety and Welfare Act, 'The Minister may, on the recommendation of the Advisory Committee'. That is the existing practice. The minister was saying, 'Okay, that's the existing practice. This is what we are seeking to incorporate into the legislation.' There have been—I forget the number—relatively few codes of practice compared to the mushrooming number of over 40 and, as I said, some over 90 pages in length, that are now being developed under this new regime in the work health safety legislation.

My recollection was there might have been a handful or so, I cannot remember exactly, but it was a much smaller number in terms of the codes of practice. The existing process, and no-one has complained about that process, went through the advisory council with employers and employees on it and the minister, once he or she received the advice, then acted on it. That is all this particular amendment is seeking to—

The Hon. R.P. Wortley: We want more than that. We want a more rigorous process.

The Hon. R.I. LUCAS: Well, you can have more rigorous.

The Hon. R.P. Wortley interjecting:

The Hon. R.I. LUCAS: No; you will not. You can have this process and an alternative process which is outlined in the legislation, which is the discussion with governments and other jurisdictions and unions and employer organisations. So, you can have a more rigorous process by having both. You can have the process which was in the proposed bill, we are not opposing that, and you can add to that the more rigorous process of the existing provisions in the existing legislation. How, for the life of me, anyone could oppose an existing provision in existing legislation, which the minister even concedes has worked well, is beyond me.

The Hon. R.P. WORTLEY: The new process recognises that the codes are being developed nationally. The SafeWork SA Advisory Committee will still be involved and retain its function to make recommendations to the minister. I would ask everyone to oppose this amendment.

The Hon. R.I. LUCAS: The process is different because under the existing act the minister acts on the recommendation of the advisory committee. The advisory committee may or may not be consulted under this proposed process, but the minister can ignore the recommendations of the advisory committee under this new proposal.

The committee divided on the amendment:

AYES (10)

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

NOES (7)

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

PAIRS (4)

Lee, J.S.	Vincent, K.L.
Bressington, A.	Kandelaars, G.A.

Majority of 3 for the ayes.

Amendment thus carried.

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

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).

The amendment relates to the adoption of codes of practice. Clause 274 of the bill provides that the minister may approve, vary or revoke a code of practice if the code of practice variation or revocation was developed by a process that involved consultation between the government of the commonwealth and each state and territory, the unions and employer organisations.

The amendment provides that, before the minister can adopt a code of practice, he or she must first consult with the Small Business Commissioner in order to assess whether the code would affect small business if implemented. The Small Business Commissioner may provide comments or advice in relation to the code, including that it be varied.

If the Small Business Commissioner recommends that a code be varied, the amendment enables the minister to make such a variation without the need to adopt the process envisaged in clause 274(2); that is, it will not be necessary for the minister to take part in the consultation process provided for at the national level.

As I mentioned earlier in the debate in response to the questions of the Hon. Rob Lucas regarding this amendment, my preference would have been for the Small Business Commissioner to undertake an assessment of all existing codes of practice that are set to become operational at the time of the commencement of the bill.

I did make representations to the government on this matter but, as already mentioned, agreement could not be reached on this point. This was made very clear to all industry groups following my discussions with the government. Those groups included representatives from the MBA, the HIA, the MTA, Business SA and the Ai Group.

Other than the obvious resourcing implications that my preferred position would have created, the government was primarily opposed to it on the basis that the 23-odd codes (and I understand it is 23 and not 40 codes) that have been approved by Safe Work Australia were developed as part of the package of harmonised work health and safety laws with input not only from stakeholder groups but also from the SafeWork SA Advisory Committee, which comprises representatives from employer groups, unions, SafeWork SA and the WorkCover Corporation.

That said, the Small Business Commissioner will be in a position to assess any new codes in terms of their impact on small business in the absence of any other sort of state-specific cost-benefit analysis. I have already had preliminary discussions with the Small Business Commissioner about this provision, and I understand he is considering how it would work in practice.

It is open to the Small Business Commissioner to seek assistance where specialist knowledge is required. It is also open to him to determine the appropriate level of consultation with industry regarding the codes. I intend to continue my discussions with the commissioner about these matters. My primary concern with respect to the commissioner's role is that an appropriate balance be reached between increased compliance requirements and cost for business on the one hand and worker safety on the other.

Turning back to the issue of codes for a moment, I would like to address very quickly the earlier comments of the Hon. Rob Lucas insofar as what was agreed to. The fact that pro forma statements already exist, and are likely to be rolled out more generally, is certainly no news to me. What was agreed to was that the pro forma or template document was capable of being drafted and used in such a way as to take into account foreseeable risks that do not necessarily exist at the commencement of a project but that may arise during the course of a project.

For instance, it would be reasonable to foresee a risk created by bad weather and torrential rains or even extreme heat. These are factors that a contractor or principal can take into account at the commencement of a project. It is when an unforeseeable risk arises that a contractor or a principal will have to step back and ask, 'How do we address this?' When they have worked that

out, they can amend the existing statement. They will not be required to start from scratch. On that basis, I do not accept the arguments of the Hon. Rob Lucas.

The other point—and I understand that the government will clarify this when we get to the relevant provisions—is that it is not intended that the work at a site will effectively have to come to a stop so that a principal can be chased down in order to sign an amended safe work statement, as has been suggested by some. I urge all honourable members to support this amendment.

The Hon. R.P. WORTLEY: We support the amendment. We support the valuable role the Small Business Commissioner plays in advocating for the small business sector in South Australia and by providing independent advice and recommendations to the government about the needs of small business. We would therefore expect the Small Business Commissioner to participate in the public consultation process relating to the development of new codes of practice. Accordingly, we are happy to support the amendment that provides for the commissioner to continue his important work by providing advice to the government on how a particular code of practice may impact small business.

The Hon. R.I. LUCAS: I never cease to be amazed in these debates, and I thank my very good friends in the Greens for their support for the previous amendment and anticipate their support for the long-held principle of parliamentary accountability implicit in my next amendment, which is the disallowance of codes of practice akin to the regulation process.

As I indicated in earlier debate, I would have very significant concerns about the particular amendment we have here if this were to be the only check and balance for the codes of practice. If there is to be the amendment that I am about to move in relation to disallowance, that does give the ultimate check and balance, that is, parliamentary disallowance, as we can disallow all the regulations, for example, in relation to this legislation as well. That is a parliamentary power we have and jealously protect.

However, if this amendment of the Hon. Mr Darley were to be the only amendment in terms of checks and balances and accountability, my concerns are manyfold. One is (as we have already established) that the more than 20 already endorsed codes of practice would not go through this process with the Small Business Commissioner. That has been conceded. Most of the trenchant opposition—and the Hon. Mr Hood says that that is an understatement—from the industry groups relates to a number of the codes of practice which have already been endorsed, whereas my amendment in relation to approved codes of practice will allow the endorsed codes of practice and any new codes of practice, therefore all 40, to have to go through the disallowance process.

The second concern I have in relation to the Hon. Mr Darley's amendment, if it were to be the only check and balance, is that it does just relate to the Small Business Commissioner. With the greatest of respect, these codes of practice will impact on small businesses—we concede that—but they will also impact on big businesses as well. Big businesses also ought to have an opportunity to put a point of view.

The Hon. Mr Darley will know that we have been lobbied by small and big businesses in relation to this particular issue, and some of the more articulate and vocal opponents would not be characterised as small businesses able to avail themselves of the Small Business Commissioner. So in essence, what we would be saying to them through this amendment, if it were the only check, is that they do not have the entitlement to raise an issue because they are not a small business; they are defined not as a small business but as a big business for the purposes of accessing the services of the Small Business Commissioner.

Another issue is that, in the honourable member's drafting, if the Small Business Commissioner recommends a code of practice be varied, the minister may make such a variation. I assume the clear intention of that is that the minister does not have to; that is, the Small Business Commissioner can recommend a variation but the minister retains the discretion, because it says 'may': 'may make a variation without the need to adopt the process envisaged'. So it says, 'Okay; the Small Business Commissioner makes a recommendation, the minister may make that, and, if he or she does make it, then it does not have to go through the processes envisaged by subsection 2.'

That is my non-lawyer's reading of the member's amendment. If it is different from that I would be pleased to hear it, but that is certainly the plain reading of the words I see before me in the amendment moved by the member. As I said, my concerns would dissipate significantly if the honourable member's amendment were in addition to the amendment I am moving, which allows for disallowance. It is possible that, with the support of the Greens, if that were to occur in terms of

supporting the principle of parliamentary accountability in relation to these things, in essence there would be both processes.

That is ultimately a decision for the government. It has obviously committed to the Small Business Commissioner process, and I can understand why. As I said, many of the endorsed codes of practice would not have to go through the Small Business Commissioner route that the honourable member is outlining, and it would appear that the minister has the flexibility to ignore the recommendations of the Small Business Commissioner if the minister so determines.

I think that is an important issue that we need to clarify with the mover and with the minister: does the minister retain that flexibility or discretion to ignore the recommendations of the Small Business Commissioner, and was that the intention of the Hon. Mr Darley when he had the amendment drafted?

The only other point I would make is that I have had a quick consultation with parliamentary counsel, and there is nothing legislatively that prevents both mechanisms existing together; that is, it is workable in terms of both supporting the Hon. Mr Darley's amendment and my amendment. SafeWork SA and the government might not like both processes—it will certainly take longer—but there is nothing legislatively wrong with supporting both the Hon. Mr Darley's amendment and the amendment I am about to move.

The Hon. J.S.L. DAWKINS: On a point of order, Mr Acting Chair, and I raised this point last night, these conversations into the outside of the chamber, I think, are certainly unparliamentary and not conducive to the continuation of the committee, and I wish that you would rule on that.

Amendment carried.

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

Page 116, after line 17—Insert:

(7) An approved code of practice or the variation of a code of practice is subject to disallowance of Parliament.

(8) The Minister must ensure that each approved code of practice or variation is laid before both Houses of Parliament within 6 sitting days after it is published in the Gazette.

(9) If either House of Parliament passes a resolution disallowing an approved code of practice or the variation of a code of practice, then the code of practice or variation ceases to have effect.

(10) A resolution is not effective for the purposes of subsection (9) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not all fall within the same session of Parliament) after the day on which the code of practice or variation was laid before the House.

The committee has passed two amendments now to the codes of practice provisions. The first one is to ensure a continuing role for the advisory council as it already exists; that has been passed. The second one that has now been passed is the Hon. Mr Darley's amendment, which provides a role, albeit limited, for the Small Business Commissioner. This third one is the one which protects the principle of parliamentary accountability; that is, it gives the role of the parliament in terms of possible disallowance of a code of practice. The process that is being recommended here is exactly the same as the process for a disallowance in relation to regulations.

This parliament has the power, for the 500 or 600 pages of regulations, to disallow all those regulations if we so choose—it would be a big step, but we do have that power—and that will be a decision that this parliament may or may not have to take at some stage in the future. Consistent with that principle of parliamentary accountability, and consistent with my first amendment in relation to the advisory council, we have argued and continue to argue that this parliament, as it can disallow the regulations and vote against the legislation if it so chooses, although it is obviously is not going to, should also have the power to disallow the codes of practice.

I repeat again: this amendment has the advantage over the Small Business Commissioner amendment, which has now passed, in that all the codes of the practice and, in particular, the ones that have been challenged or opposed trenchantly by some members, in particular, of the construction industry, can go through this process. Ultimately, you still need a majority of members in the Legislative Council and the House of Assembly to disallow either the regulations or the codes of practice, so that is the protection for those who do support the codes of practice.

However, if one of these codes of practice is just so destructive to the operations of business and industry in the nation—and, in particular, in South Australia—and if a majority of members in a chamber takes that view, then we should have the power to disallow. Then ultimately of course, as with regulations, the government can come back with a different code of practice for the parliament to consider. I urge members to support this amendment.

The Hon. J.A. DARLEY: Given the explanation by the Hon. Rob Lucas, especially regarding their force, I will be supporting his amendment.

The Hon. M. PARNELL: I was going to wait for the government to put a compelling argument as to why the Hon. Rob Lucas's amendment does not deserve support, but I will not read anything into their silence. I will judge this issue on its merits, as the Greens always do. Looking at clause 274, in relation to approved codes of practice, the bill does set out a level of consultation that is required. Certainly it involves government, it involves unions and it involves employers, and the following clause, 275, talks about the use of these codes of practice in legal proceedings.

So, one of the questions before us is: what is the status of such a code in the hierarchy of law? It is not an act of parliament and in fact it is not a regulation, but it is still a document that has some legal force and a document of which judicial notice will be taken. It can be used in proceedings; it can be used in criminal proceedings in particular. So the question then is: what level of parliamentary oversight is appropriate for documents of that category?

I do not think this is the only situation where similar quasi-legislative documents are subject to parliamentary accountability. I note that the Hon. Rob Lucas's amendment uses, as I see it, the standard form of disallowance methodology involving the tabling of a code of practice within a certain period and a 14 sitting day window of opportunity in which a member can move disallowance.

Putting all those things together, I do not think it is an exceptional level of complication or added bureaucracy. It does in fact make sure that these codes of practice, with the legal force that they possess, will have the support of parliament and they will have that support by their survival in a disallowance motion, so the Greens will be supporting this amendment.

The Hon. D.G.E. HOOD: I think this has been thrashed out enough but, just for the record, Family First will be supporting it as well.

Amendment carried; clause as amended passed.

Clauses 275 and 276 passed.

New clause 277.

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

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.

The amendment provides for two separate reviews: the first, as I mentioned earlier, will be conducted one year from the commencement of the act, the second after three years. The amendment makes clear that the review must include a specific report on union right of entry, including the extent to which inspectors have attended workplaces and the effectiveness of the policy established by the executive director.

We have previously seen the benefits that a review of legislation can provide. In this case, we will have three reviews—two at the state level and one at a national level. This should provide ample opportunity for us to assess how the legislation and codes of practice are working, whether they need improving and whether indeed they have led to the sorts of issues that have been raised by those who oppose the bill. I ask all honourable members to support the amendment.

The Hon. R.P. WORTLEY: We support the Darley amendment. The review of the act will allow the examination of the impacts of the laws in a South Australian context and ensure the continued effectiveness of nationally harmonised work health and safety laws within that context. This amendment is consistent with the Council of Australian Governments' request for a national review of the legislation under the auspices of Safe Work Australia by the end of 2014. The findings of the review of the South Australian work health and safety act may be used to inform the national review. Therefore, the government supports this amendment to the bill.

The Hon. R.I. LUCAS: The Liberal Party will support the amendment. The only comment we would make is that, given the juxtaposition of the timing of this now and an impending state election, I wonder whether it would not have made more sense for the first review to have been conducted 18 months after the commencement of the act because this will commence on 1 January 2013 and 12 months will be 1 January 2014 and there will be a state election 10 weeks later in March 2014.

As a commentary, ultimately it is a decision for the mover and the government to discuss whether it would not be sensible for whoever is fortunate to be elected to government by the people of South Australia in March 2014 to have oversight and carriage of the review. If the member intends to move it in the way it is, generally we have been comfortable with reviews in other pieces of legislation and we are prepared to support these reviews outlined in this amendment.

The Hon. T.A. FRANKS: The Greens will also support this amendment. We question why there would be any difference in regard to the timing of the review starting before or after a state election, and certainly would hope that it would not in fact have any impact on the way this review was undertaken.

The Hon. D.G.E. HOOD: Family First supports the amendment.

Amendment carried; new clause inserted.

Schedules 1 and 2 passed.

Schedule 3.

The Hon. R.I. LUCAS: I had a consequential amendment. I will not be moving it.

Schedule passed.

Remaining schedules (4 to 6) and title passed.

Bill reported with amendment.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (16:06): I move:

That this bill be now read a third time.

The development of this bill and its progress through parliament has been a long but worthwhile battle. Numerous people deserve recognition for their efforts over the years in ensuring the advancement of this important and historic legislative reform.

First and foremost, I thank the committed professionals at SafeWork SA. This agency sometimes cops some flak in the media and in parliament if, for example, an occupational health and safety prosecution has not gone according to plan or if with their limited resources they are unable to foresee every possible injury in the workplace. Those who I have worked with during my time as Minister for Industrial Relations have all shown an intense passion for workplace safety and a commitment to ensuring workers are able to return home to their families healthy after a day's work. Their efforts should be absolutely commended.

I cannot name them all but Ms Marie Boland, Director of Policy, has been instrumental throughout this entire debate. Her knowledge and especially her patience have been exemplary. Mr Bryan Russell, Executive Director of SafeWork SA has been terrific throughout the entire process and he has performed a great service to the government and the people of South Australia. Directors Ms Juanita Lovatt, Mr Robin Scott and Ms Kim Tolotta, as well as policy officer

Ms Ashe Bucco and many others, have also provided advice and guidance during the progress of this bill. It is so important to have dedicated public servants who are passionate about the subject matter and really care about how their efforts can positively impact on the community.

My staff have been exceptional, including my Chief of Staff Mr Nick Lombardi, Advisers Mr Noel Paul and Mr Michael Irvine, and lastly Mr Jim Watson whose years of service to the union movement, battling for workers' safety, has proved to be beneficial over the recent months. I also thank the SafeWork SA Advisory Committee, particularly Mr Tom Phillips who provided me with helpful advice, and I look forward to working closely with the advisory committee during the implementation of this legislation. I also thank Ms Lois Boswell, Deputy Chief of Staff to Premier Weatherill. She has been invaluable with her negotiations leading up to this endorsement of this bill.

It has been a pleasure dealing with unionists who were prepared to sacrifice some elements of the existing occupational health and safety legislation for the overall benefit of harmonisation. Again, I am unable to name them all but I will mention Ms Janet Giles from SA Unions, Mr Aaron Cartledge, and Mr Darren Roberts from the CFMEU, along with many other unions and officials whose support made this legislation possible.

I have also been pleased to work closely with business groups that were instrumental in developing this legislation at a national level several years ago. The Australian Industry Group, Australian Chamber of Commerce and Industry, and many other business groups have supported the development and progress of this legislation.

We also worked with numerous other employer groups, including the Roof Tilers Association, which wanted this legislation to enhance protections to their members against falls from heights. We also worked with volunteer groups including Volunteering SA/NT, Volunteering Australia and even Scouts Australia which were sensibly able to work through the legislation and see the obvious and inherent benefits.

Finally, I would like to thank my colleagues in this place who looked at this legislation, not solely through a clouded ideological lens, but analysed the legislation sensibly and thoroughly before making informed decisions. The Hon. Ms Franks' particular contribution regarding increases to HSR training will benefit workers all across the state. Her adviser, Ms Yesha Joshi, worked closely with my office and her efforts are noteworthy. The Hon. Ms Vincent looked beyond the obvious fear campaign and made a decision based on the best interests of workers in this state. The Hon. Mr Darley's forensic analysis added some clarification to this legislation. I want to especially mention Ms Connie Bonaros, Mr Darley's legal adviser, who has been a pleasure to work with over the previous year.

In a couple of months, South Australia will be able to set aside a piece of legislation that has served us well for 26 years, but was in obvious need of updating. The new law reflects modern employment relationships and moves beyond the traditional, but dated, employer/employee relationship. This is incredibly important, as many workers are not actually employees but still deserve workplace protections.

The transitional arrangements will serve businesses well, so they can spend the next year fully preparing for some specific legislative changes. Union right of entry for occupational health and safety purposes makes sense and has been in place in all other jurisdictions across the country for years. Another set of eyes looking out for health and safety can only be a good thing. So, I encourage all stakeholders, including employees, employers, unions and government, to implement the new laws with a sense of collaboration and cooperation for the benefit of all South Australian workplaces.

The Hon. J.A. DARLEY (16:11): I would like to make a few brief comments in response to some of the issues that have been raised throughout this debate. There is no question that this bill has been floating around for far too long and that, ideally, we should have completed debating it months ago. However, I make no apology for taking the time that I did to get to the position we are at today.

A lot has been said about the package that was agreed to with the government and whether anything was really gained from that, other than my support for the bill. I remain committed to the fact that concessions that were of huge concern to industry; that is, concessions which industry itself asked for and which would not have otherwise been addressed, were able to be agreed to. Each and every time I have met with industry I have made it clear that the amendments and the commitments I have negotiated with the government in good faith must be viewed as a

package. In their entirety, they make a difference. They may not be as much as I had initially hoped for but that is the nature of compromise: each side gives a little in order to gain something else.

The change in falls from heights from two metres to three metres was a direct result of representations made to me by the construction industry. That same industry also expressed concern that pro forma safe work method statements would not be acceptable and that a new statement would be required each time there is a change in circumstances. The government has confirmed that this is not the intent of the legislation.

Another concern that was raised with me and addressed by way of a commitment by the government includes the $250,000 threshold assigned to construction projects. Other issues I agreed to raise were addressed by way of clarification of the intent of relevant clauses. It was made clear on the record that the intent of clause 273 was not to interfere with any commercial arrangements that may exist between PCBUs and subcontractors relating to the contracting of projects and the supply of, for instance, personal protective equipment.

It was made clear that union right of entry provisions were not to be used as industrial relations tools and that breaches of permits will be dealt with accordingly. This legislation does not simply pay lip service to breaches by union officials, it imposes hefty penalties and provides a scheme under which permits can be revoked. I, for one, expect this matter to be taken very seriously by the responsible authority. Most importantly, the government is committed to reviewing this legislation with a view to addressing any issues that may arise. Those reviews happen to also coincide very closely with the next election. If there is still opposition to this bill at that time I am sure it will be addressed accordingly. These are all matters which I have spent hour upon hour addressing with industry.

I would also like to make a couple of further comments in relation to the Salvemini case. To be clear, there is no question in my mind that SafeWork SA did not handle that investigation well from the beginning. I am not talking about the Crown's handling of the case and whether or not the correct charges were laid against the skipper because I trust that at that time there were what appeared to be adequate grounds to proceed on that basis. Nor is there any question that culpability for the incident lay predominantly with the company. Generally speaking, however, the fact that one party happens to be more culpable than another does not excuse the other party for failing to exercise any duties that may apply to them, irrespective of their working arrangements.

I do agree with the Hon. Rob Lucas that SafeWork SA's investigation into Jack's death was far from acceptable. I know that Jack's family certainly were not happy with the investigation into their son's death. The fact that we are coming up to the seventh anniversary of Jack's death and this family is still having to endure ongoing legal argument is hard enough. To think that the matter was not given the attention it deserved and handled in the best possible manner just adds insult to injury.

I have made no secret of the fact that I am far from impressed with the way the agency operates. I make the point again that there needs to be a significant culture shift if this legislation is to succeed in its objectives. More importantly, there needs to be a shift in mentality from one of prosecution to prevention. SafeWork SA needs to be out there on the ground, educating businesses and workers about their responsibilities and ensuring that everything is being done to prevent accidents from occurring in the first place. The government needs to take a proactive approach and ensure that this occurs.

Many, including some honourable members, are opposed to this bill because of concerns relating to the cost impact on business. I want to make it very clear for the record that this has been one of my primary concerns as well. Do I care about small businesses in this state? Of course I do. Do I care about subcontractors going out of business? Again, yes; that is why I pushed so hard for the introduction of the Small Business Commissioner legislation.

Am I concerned about further pressures being imposed on businesses, particularly in today's economic climate? Without a doubt. Have I listened to the concerns of all industry groups and tried to address the concerns they have raised? Yes. But does supporting this bill in any way suggest that I do not care about these matters? I do not think so. All these considerations need to be carefully weighed against the need for increased worker safety.

As I have said before, since coming to this place, my office has advocated for a number of families who have lost loved ones in workplace accidents. Indeed, Andrea Madeley, founder of Voice of Industrial Death, and Lee and Carol Salvemini are some of the first constituents I met after becoming a member. Since then, my office has continued to advocate for and support these

families through the many legal processes they have had to deal with over the years, and I have given a commitment that I will continue to do so in the future.

Again, as I have said before, Andrea provides invaluable support to families who have lost loved ones in workplace accidents. She knows only too well the devastation these families are confronted with, having lost her own son, Daniel, in a workplace accident at the tender age of 18, yet she continues to push for tougher compliance and enforcement of health and safety measures in the workplace. She continues to advocate for and provide support to the Salvemini family, the O'Neil family, the Posnakidis family and the mother of Brett Fritsch, amongst others. These are all families who have lost loved ones in workplace accidents. The VOID website is dedicated to the memory of victims of industrial death.

None of us wants another family to go through that pain—to lose a husband, a wife, a brother, a sister or, perhaps most unimaginable of all, a child in such tragic circumstances. It is for this reason, and this reason alone, that I have supported this bill. I am not under any false illusion; I acknowledge that accidents will still occur and that workers will still be injured and even killed as a result.

I accept that even with this bill, accidents such as the one that claimed Daniel Madeley's life or Jack Salvemini's life may not be prevented. This is an unfortunate fact of life, but we as lawmakers have a responsibility to do our utmost to implement laws that address these matters, whether it be by ensuring more accountability, more awareness, more compliance and even tougher penalties for those who show a flagrant disregard for the safety of workers.

I, for one, cannot look Andrea in the eye and tell her that I could not support measures which may have saved her son's life and that ensuring the highest level of safety at a workplace was going to come at too much of a cost. I am not suggesting by any means that any other honourable member would, and I know that they share my concerns. I recognise the reasons other members have given for not supporting this bill. The confronting reality for people in Andrea's shoes is that their loved one is dead; they are never coming home again—it is that simple.

Finding an appropriate balance between costs on the one hand and a person's life on the other is an impossible task and one that none of us should ever have to grapple with. This bill is not seeking to achieve the impossible at any cost; it is merely seeking what is reasonable. I hope that all industry groups can appreciate that it was not an easy position that I found myself in and that I endeavoured, so far as was reasonably practicable, to achieve a fair outcome.

In conclusion, I would like to thank all those individuals who have given up so much of their time to meet with me over and over again throughout this debate. I would like to thank all members and their staff for all their hard work. I am sure we will be equally relieved at the conclusion of this debate. I would also like to give special thanks to parliamentary counsel and, in particular, Richard Dennis and Richard Ewart for their hard work and especially for their patience through this debate.

Last of all, I would like to make special mention of the work done by my legal and policy adviser, Connie Bonaros, who has worked tirelessly through this exercise, and also to Jenny Low who has filled in when Connie has not been available. Just this afternoon I received a copy of a letter from Andrea Madeley, the chairperson and founder of VOID, and I table the letter.

The Hon. T.A. FRANKS (16:22): I rise to speak to the third reading of this bill—approximately a year after I spoke to the second reading of this bill and I gather approximately 19 months after we first had this bill in front of us. As we know, it all comes down to numbers, and the bill before us appears to have the numbers to pass today, some 19 months later. Along the way I think it is worthy to note that the debates on this bill were not fought in this chamber: they were fought on talkback radio and in the tabloids; they were fought on hyperbolic fearmongering misinformation, by and large.

I would like to touch on some of the issues fought in this bill. In one case it was in this chamber where, only a few nights ago, we first heard the 'nannies' issue. That referred to a discussion that had been held on FIVEaa originally with the minister and a member of the Public Service. It was put forward by the Hon. Rob Lucas that mums and dads employing nannies would be expected to have some sort of occupational health and safety audit. That was put to this chamber and it was also put on ABC 891 the next morning.

I happy to be corrected on this, but as somebody who is possibly one of the few here who has had to employ a nanny, and certainly had to do so with the crash of the ABC childcare centres where my child lost her place because we have a privatised childcare industry—which should

never have been allowed to happen—I was well aware that there are actually quite a lot of things that you have to go through if you are going to employ a nanny.

I went back through my previous records and went to CareforKids.com.au where there is an enormous reference service and where I had to list my need for a nanny for some six weeks before I was finally able to secure one in order to retain my job. In the meantime, I was allowed by a very generous employer to work from home because I could not find anywhere else to care for my child.

There is certainly a range of things you do to be eligible for childcare benefits, and there is a lot of paperwork to fill in. I employed a nanny who was a member of an agency, and with that there are eligibility requirements to qualify for childcare benefits: your child has to be immunised, and you have to provide proof; you also have to be working or studying and satisfy a test there; you have to set down the salary, which of course has to be according to the award; you have to set hours of work; you have to set conditions of work; you have to have agreed duties and parenting philosophies; you are given draft paperwork to follow; and, of course, if they are ongoing, they have leave entitlements.

There is a whole range of things to do with payroll and so on, and they also can come with domestic WorkCover insurance. In fact, that is usually the easiest way, that is, to make sure that the nanny is covered by their own insurance. You do have to provide a safe work environment if that work environment is your own home. That was the case when my child was 18 months old and that is what the case will be when we pass this bill and in a week's time when some other poor parent has to struggle to find a nanny to keep their job.

Yet we heard that we are going to have these new and onerous conditions put upon us. I certainly found the nanny argument quite spurious. While it does lead to jokes about a nanny state and poor parents having to do occupational health and safety audits of their home, the reality is that in real day-to-day life it is simply no different from what currently exists. Common sense will prevail long after the sideshow of the polemics has passed.

The other debate we heard, which came from the government and which I did want to call to account, was that of the Telstra employee Dale Hargreaves and that this bill before us would have significant implications for those workers who work from home. We heard about this particular decision, and I use the words of the Hon. Rob Lucas from the *Hansard* of Tuesday night, with regard to this Telstra employee:

> She fell down the stairs twice while on a break at home. The Administrative Appeals Tribunal found in June that Hargreaves' injuries had occurred in the course of employment and she was, therefore, eligible for compensation.

He went on to say:

> The Telstra decision is a pretty frightening one for employers. The line between personal and work has really become quite blurred...20 years ago it was quite clear, when you were at work you were at work. The lines didn't overlap like they do now.

That caused me to look up that particular case. While the headlines at the time seemed to indicate that this poor woman had fallen twice down the stairs while at her home—once while she was in her socks and getting cough medicine, I understand, and once while she was securing the screen door, which she had actually been ordered to do by her work following a burglary of her home—it was portrayed as if she were simply doing a few things from home, or that she was sick that day and had decided to work from home, and that had led to her having the compensation awarded.

If you go to the actual details, from 2005 the woman had, in fact, had an arrangement with her employer that she would work from home two days per week and in the city office three days per week. The employer had arranged for her to be provided with all the necessary equipment—laptop computer, cabling, mobile phone, internet, and access to the respondent's computer system at its own expense. The nature of her work was that she could work from any location, although the contact with stakeholders was when she was required to go into the city office. Her supervisor was actually located in Melbourne, in a different state from this woman. This arrangement had been deemed satisfactory because of the availability of technology for meetings and communications.

In respect of the first fall, the tribunal was told that at the time she was enjoying her role as campaign manager and that her duties required long working hours from home or in the city office. She was becoming tired because of the workload, strict deadlines and lack of support staff. She had also been suffering from respiratory problems for several months and been receiving treatment from her GP. In fact, it goes on to note that, at the time of the first fall that she had logged on to the

respondent's computer system and, indeed, was in the course of working—not on a day off, not on a sick day off, not taking a day off from working from home. This was a regular occurrence that had been completely and properly set up and was completely authorised by Telstra as the employer.

It goes on to detail those injuries. It also goes on to note that it was the lack of adequate response from her employer that exacerbated not only her physical injuries but also her psychological injuries as a result of these injuries sustained at work. That is a very different story from the one that ran on talkback radio and in the tabloids—that all employers who let their employees work from home will now be facing these terrible penalties. It is a very different story when you actually read the judgement of what happened in the Administrative Appeals Tribunal.

We also heard, with respect to this debate, that South Australia is the only remaining state or territory that does not have occupational health and safety right of entry provisions for unions, and we will be facing some significant and serious consequences. It was put by the Hon. Rob Lucas that, in fact, Tasmania and possibly some other states do not have these provisions. Well, we are the only state or territory jurisdiction in this country that does not currently have entry rights in relation to occupational health and safety.

If every other state and territory can do this and the sky has not fallen in, I am pretty sure that we are going to be fine. I am pretty sure that the review will show that, in fact, it is better when you have occupational health and safety taken seriously. The belief that the royal commission under Howard found that occupational health and safety was to be used as an industrial tool by unions to beat employers over the head I think is spurious at best and certainly should not have been entertained in this place. The Greens are disappointed that the opportunities in relation to the right to silence in this bill have been lost. We note that—

An honourable member interjecting:

The Hon. T.A. FRANKS: Despite the interjections, I want on the record the right of Ark Tribe not to go before what in fact is a bit of a Star Chamber and give evidence with regard to an occupational health and safety meeting held at his worksite; there were no raised voices in defence of his right to silence in this case. Certainly, the right of Ark Tribe to attend that safety meeting at a construction site here in our own state of South Australia should be something that is paramount for all members here. I would hope that, should a similar occurrence happen in the future, those who are so vociferous today in the defence of the right to silence will similarly stand beside and behind and support people like Ark Tribe.

Going back to numbers, it was not lost on me last night—and I am sure that it was not lost on you, Mr President—that we debated this bill finally when Billy Bragg was in town and appearing at the Adelaide Town Hall. I see from Twitter that the Premier was there and that the Premier and his wife had their picture taken with Billy Bragg, and I must admit that I was incredibly jealous. The Hon. Rob Lucas did tweet that perhaps that was going to sing *The Internationale* while we were here working hard on the Work Health and Safety Bill.

My favourite Billy Bragg song, although I prefer the Kirsty MacColl version, was always *A New England.* The lines that resonate with me now when we are talking about numbers is, 'I was 21 when I was wrote this song, I'm 22 now but I won't be for long.' Well, I was 42 years old when we started debating this bill. I am 44 years old now and, if I serve out this current term, I will be 50. But there are those who are affected by this bill who will not see another birthday.

Daniel Madeley will always be the age of 18; his mother will always remember him as her 18 year old son. Charles Hiscock will always be 45. His mother, Hazel, his wife, Stacey, his son Dylan, his daughters Bianca and Danielle and the other members of his family will always remember him as the age of 45. He was killed as a result of a three-metre trench collapse. He was a supervisor and he had in fact been complaining of the unrealistic time constraints of the project he was working on at the time.

Brian Murphy will always be aged 33 to his partner, Cynthia, and Shaun, Brenton and John, his loved ones. He was a truck driver and he was killed when a load of steel that he was delivering became unstable as the forklift was unloading it. Max Logan will always be 52 to his wife, Edith, and his son, Keith. Karl Eibl will always be 34 to his father, Bob, his mother Nanette, his brother, John, and John's wife, Sharyn, and their children, Shaun and Kyle.

Stuart Munzberg will always be 34 to his partner, Elizabeth. Stuart died when a travelator he was working inside suddenly became activated. Gregory Sleep's age is unknown according to

the VOID website but he will be that age forever to his wife, Neecy, his son, Sam, his daughter Kimberly, his brother, Colin, and his sister, Pam.

Similarly, to his wife, Jane, and his son, Michael, Dean Robinson will always be the age that he was when he was killed while working in the ports of Port Adelaide when an unstable load of steel trapped him. Matthew Keeley will always be 22 to his partner, Carly, and his son, Ethan, and his devastated family and friends. Damian Harris will always be 30 as he was when he died alongside Matthew Keeley. He will be remembered as the age of 30 by his father, Gary, his mother, Bev, and his partner, Leanne.

Darren Millington will always be 45 and remembered that way by his wife, Judy, his sons, Rhys and Koby, and daughter, Bailey. Craig McAlister will always be 39 to his wife, Sue, and his children, Ben and Dylan. Andrew Baulderstone will be the age of 37 to his loved ones, his fiancée, Debra, and his son, Ashley. Doug Jackman will always be 31 to his son, Paul. Desmond Jaensch will be 42 to his wife, Colleen, and his children, Vanessa and Ashley.

Jack Salvemini will always be 36 to his father, Lee, and his mother, Carol. Of course, Jack warranted quite a few mentions in the debate that we undertook this week and certainly, on that note, I do think it was a missed opportunity not to enable union-led prosecutions with regard to workplace deaths.

I also want to thank a few people: my staff member, Yesha Joshi, in particular; advice from Janet Giles and Kevin Purse and dozens of others, and parliamentary counsel. This has been, as I say, a bill that has taken 19 months to get to this stage. In that time, there have been 16 notifiable fatalities in this state, 10 of which in fact occurred in this last financial year.

That has all happened while we have seen the polemics waged and the debate on this issue in the tabloids and on talkback radio. This bill will probably pass by one vote, but more important is the one person who comes home alive as a result of the occupational health and safety conditions that we enjoy in this country. With that, I commend this bill to the council.

The Hon. R.I. LUCAS (16:39): At the outset, can I say on behalf of Liberal members in this chamber that I am sure all members in this chamber and all in the community are committed to worker safety. No member of parliament wants to see a family devastated in the way many families have been devastated over the years due to either death or serious injury. The differences lay in what is the best way of achieving appropriate occupational health and safety or work health and safety legislation.

I say at the outset that we reject completely those who seek to appropriate the moral high ground to themselves as being the custodians and the only people interested in worker safety in South Australia. They know who they are, and we reject completely that notion that in some way, because members adopt a different approach in terms of occupational health and safety, they are lesser beings, uninterested in worker safety.

On behalf of members, I thank Richard Dennis as parliamentary counsel. He has been mentioned by the Hon. John Darley. He has spent countless hours patiently working with us and I know all other members and obviously the government in the first instance.

The Hon. J.S.L. Dawkins: He's been here longer than you, he tells me.

The Hon. R.I. LUCAS: He doesn't have as many grey hairs as I do, so he obviously does not worry as much. He has been patient and meticulous and has fairly worked through all the competing views. One can only imagine the challenges of drafting amendments for someone like the Hon. Russell Wortley and the Hon. Tammy Franks, and on the other hand drafting amendments for myself and the Hon. John Darley. It is a challenge and he certainly met that challenge all the way through.

This has been particularly challenging for him because on this occasion, unlike many others, he has through the various industry associations, received high-powered legal advice right through to the levels of Dick Whitington QC and various other prominent legal identities, putting their views, some which coincided and some which did not on occasions with parliamentary counsel's interpretation of the impact of various amendments.

Nevertheless, with good humour and with considerable capacity he has worked his way through that process, and everyone who worked with him, given that we came from every direction around the compass, were satisfied that he fairly reflected the views in the amendments we were

seeking to move. There are many others to thank, but I will not take the time of the council this afternoon. I want to summarise our position in relation to this bill.

We reject completely the self-serving summary the Hon. Tammy Franks just gave on a number of issues in relation to matters that were raised over the last two or three days. We see this bill as a bad bill, even with the amendments, and as a full frontal assault on the subcontracting industry in South Australia. The Hon. Ann Bressington already highlighted evidence from within her extended family of the early impacts in Queensland, and we believe we will see the same impacts over the coming years (it will not happen straight away) as a result of court decisions here in South Australia.

As I indicated in the second reading, there were varying estimates about the impact on costs of housing in particular and on jobs in the community. At one end you had the consultants employed by the industry associations, who I repeat have also been employed by the government on a number of their own projects and who estimated significant increases in costs. On the other hand, we had the minister, who said there would be no increase in costs at all or insignificant increase in costs in relation to housing.

As I said in the second reading, my estimation of this is that there will be a significant increase in costs. It will certainly not be insignificant in relation to what the minister has claimed, but it will probably be, as they always are, somewhere in between what the minister said, which was nothing or insignificant, and the level estimated by the consultants employed by the industry. When one looks the codes of practice, the regulations and the legislation, there is no doubt there will be cost impacts.

These are issues this house has to address as well. Worker safety is important, but jobs in South Australia will be important and the costs for first home owners will also be important as more and more young South Australian families struggle to purchase their first home. It is too easily dismissed by the government and its cheer-chasing supporters to forget the challenges confronted by struggling South Australian families as they seek to purchase their first home. There is no doubt we will also see a significant increase in union power in South Australia. That will be welcomed by the government; it is certainly not something the opposition would welcome.

There will also be a very significant impact on small businesses in South Australia. We saw again a further example of that yesterday where the previous special position of small businesses in South Australia in relation to training costs for health and safety representatives has been ripped away by the government and their supporters in this bill. Contrary to what the minister said last night that no-one had ever protested about this, as I highlighted earlier today, the MBA indicated that that particular statement was not true, that the MBA had opposed these particular changes in relation to the costs of training for small businesses in South Australia.

It is easy to dismiss, as the Hon. Tammy Franks has sought to do today, the genuine concerns of people in relation to what they hear from SafeWork SA in relation to the issue of mums and dads becoming PCBUs, as the minister has conceded in this chamber, under the legislation and the requirements that they will have in terms of ordinary functions such as employing a nanny. Let me say to the Hon. Tammy Franks, long before she experienced the joys of employing a nanny to have assistance in raising a family, my wife and I had been through that experience and road and, perhaps unlike the Hon. Tammy Franks, we did not go down the agency path that the Hon. Tammy Franks outlined.

There would be many South Australian families who would have adopted the alternative approach to the one that the Hon. Tammy Franks has outlined she had adopted in relation to the use of an agency for these issues. In many cases they are arrangements entered into with families or they are arrangements entered into through word of mouth through the recommendation of friends and acquaintances of people who have successfully conducted the enterprise or business of being a nanny or a babysitter for children. I reject completely the Hon. Tammy Franks's suggestions in relation to that.

This issue was raised by Marie Boland on FIVEaa, not an issue first raised by the Liberal Party. It was raised when the minister and that officer were answering questions on talkback on FIVEaa. Just because people on talkback raise issues, we certainly do not accept the view of the Hon. Tammy Franks that this is an example of the polemic nature of the debate because someone genuinely raises an issue with the minister and with the SafeWork SA officer and that in some way that is inappropriate or outrageous or a beat-up. These are the genuine concerns of real people out

there in the community and I advise the Hon. Tammy Franks on occasions to listen to some of them.

As I said, we reject completely the self-serving contribution of the Hon. Tammy Franks in relation to that particular issue. Similarly we reject completely the inferences she gave in relation to the issue of people who work from home and the Telstra case. Some of the quotes that she attributed to me were quotes that I took from prominent national legal firms Freehills, Allens Arthur Robinson and a number of other prominent national occupational health and safety consultants. Some of the quotes she attributed to me were me quoting from the advice that people more expert in the legislation let me assure you than I am, or indeed in my humble opinion the Hon. Tammy Franks is, in relation to these particular issues.

These are the people who will be arguing the cases, who are already arguing the cases in the Eastern States, in relation to these issues, and they are the ones who are advising people in relation to employers that if you do have someone working from home, you will have to ensure that you have an occupational health and safety audit either conducted by a consultant or conducted by a employee of your company or you have the employee who is working from home in relation to a checklist of occupational health and safety issues.

There are new elements in this, which will be, as we have discussed before and I will not repeat now, the persons conducting a business or undertaking (the PCBUs as they are). As we have said over the past two days, the full implications of the legislation will not become apparent for a number of years. It will be five and 10 years down the track as courts, tribunals and other judicial bodies make judgements in relation to appeals and decisions that will ultimately determine the full implications of the legislation before us today.

It will be in that period of time when we will be able to look back and make a judgement about who was right in relation to this particular legislation, those who raised the concerns or those who sought to reject those concerns as scaremongering by people unconcerned about the safety of workers in South Australia. With that, the Liberal Party's position is that this, even with the amendments, remains a bad bill and we will be opposing it at the third reading.

The council divided on the third reading:

AYES (9)

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)

NOES (8)

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.	

PAIRS (4)

Vincent, K.L.	Lee, J.S.
Zollo, C.	Bressington, A.

Majority of 1 for the ayes.

Third reading thus passed.

WILLS (INTERNATIONAL WILLS) 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) (16:57): I move:

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill amends the *Wills Act 1936* to adopt into the Act the uniform law contained in the UNIDROIT *Convention providing a Uniform Law on the Form of an International Will 1973* (the Wills Convention). UNIDROIT, the International Institute for the Unification of Private Law, is an intergovernmental organisation that formulates uniform law instruments aimed at harmonising and coordinating private laws between countries. The Wills Convention is one such instrument.

The Wills Convention establishes an additional form of will, the 'international will'. The international will's use is optional and will not replace existing forms of wills. Its key benefit is to provide greater legal certainty for testators and beneficiaries where assets or beneficiaries are located in several foreign jurisdictions. The international will is valid as regards form, irrespective of the place where it is made, the location of the assets and of the nationality, domicile or residence of the testator, if it is made in compliance with the provisions set out in the Articles in the Annex to the Wills Convention.

Although Australia has been a member of UNIDROIT since 1973 it is not a signatory to the convention. The convention currently has 12 state parties including Canada, France and Italy and an additional eight signatories, including the United Kingdom and the USA. In July 2010 the Standing Committee of Attorneys-General agreed to adopt the uniform law into local legislation to allow Australia to formally accede to the convention. The Bill is based on a model bill which reproduces the text of the uniform law.

The formalities required for the international will are similar to the State requirements, for example, the will must be in writing and signed by the will maker in the presence of two witnesses. The main difference is that the uniform law contains an additional requirement that the will must be declared in the presence of an 'authorised person', who must attach to the will a certificate to the effect that the proper formalities have been performed. The certificate, in absence of contrary evidence, is conclusive evidence of the formal validity of the instrument as an international will. The convention allows contracting States to designate the authorised persons. Through SCAG, States and Territories agreed that authorised persons should be legal practitioners and public notaries—as persons who understand the local laws concerning wills and the uniform law's form requirements.

I stress that adopting the uniform law will not affect the State's laws, but simply allows a testator to choose to have an international will, and will eventually allow Australia's accession to the Wills Convention.

To date, Victoria, ACT and Tasmania have passed Bills to implement the model law and WA has introduced a Bill. Once all States and Territories have implemented the model Bill and have confirmed with the Commonwealth that implementation has occurred, the Commonwealth will commence the formal accession process. The convention provides for entry into force of the convention six months after accession.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause provides for the short title of the measure.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Wills Act 1936*

4—Insertion of section 25E

Part 3 of the Act provides for the validity of wills made outside the State. New section 25E provides that Part 3 does not limit the operation of new Part 3A, which provides for international wills.

5—Insertion of Part 3A

This clause will insert a new Part in the Act which provides for international wills.

International wills are a separate form of will that will sit alongside existing forms of will recognised under the Act. New Part 3A of the Act will apply to international wills made in accordance with the requirements of the Convention's Uniform Law. Part 3 may continue to apply to a 'foreign will' that is not an international will, either because there was no intention for it to be made in the form of an international will or because the will has not been validly made as an international will. Article 1.2 of the Uniform Law provides that the invalidity of an international will does not affect its formal validity as a will of another kind. A detailed explanation of the provisions to be included in this new Part is as follows.

Part 3A—International wills

25F—Interpretation

New section 25F sets out the definitions of key terms used in the new Part.

The section defines *Convention* to mean the Convention providing for a Uniform Law on the Form of an International Will 1973, which was signed in Washington D.C. on 26 October 1973. A copy of the Convention can be found at—

http://www.unidroit.org/english/conventions/1973wills/main.htm

The definition of the term *international will* refers to a will made in accordance with the requirements of the Annex to the Convention as set out in a new Schedule to the Act (inserted by clause 6 of the Bill). This gives effect to Article I of the Convention, which requires a Contracting Party to reproduce the actual text of the Annex to the Convention. The Annex to the Convention contains the Uniform Law.

25G—Application of Convention

New section 25G provides that the Annex to the Convention, which sets out the Uniform Law requirements for an international will, has the force of law in South Australia.

25H—Persons authorised to act in connection with international wills

New section 25H designates the persons authorised to act in connection with an international will for the purposes of the law of South Australia. This gives effect to Article II of the Convention, which requires a Contracting Party to designate the persons who, in its territory, shall be authorised to act in connection with international wills. Under the Uniform Law, an authorised person is required to certify that the proper formalities for an international will have been performed.

The section also provides for the recognition of authorised persons who have been designated and operate in other Convention jurisdictions. This gives effect to Article III of the Convention, which provides that the capacity of an authorised person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognised in the territories of other Contracting Parties.

25I—Witnesses to international wills

New section 25I provides that the requirements for acting as a witness to an international will in South Australia are governed by the law of South Australia. This new section gives effect to Article V of the Convention, which provides that the conditions requisite to acting as a witness to an international will are governed by local laws.

25J—Application of Act to international wills

For the avoidance of doubt, new section 25J provides that the provisions of the Act that apply to wills extend to international wills. While the new Schedule to the Act (the Uniform Law) sets out the specific form requirements for an international will and the process for its execution, the other provisions of the Act that apply to wills, such as those dealing with revocation or the construction of the terms of a will, also apply to international wills.

6—Insertion of Schedule 1

This clause inserts a Schedule at the end of the Act, which reproduces the Annex to the Convention. This gives effect to Article I of the Convention, which requires a Contracting Party to reproduce the actual text of the Annex to the Convention. The Annex to the Convention contains the Uniform Law.

In summary—

- Article 1 provides that a will shall be valid as regards its form, irrespective of the place where the will is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will that complies with Articles 2 to 5 of the Uniform Law. If an international will is invalid because it does not comply with Articles 2 to 5 of the Uniform Law, it may still be valid as a will of another kind. For example, it may be a will to which foreign laws apply, the validity of which can be determined under Part 3 of the Act.
- Article 2 provides that a joint will cannot be drawn up in the form of an international will.
- Article 3 requires an international will to be in writing. It can be written in any language, by hand or by any other means and it need not be written by the testator.
- Article 4 requires the testator to declare that a document is his or her will, and that he or she knows the contents of the will, before 2 witnesses and an authorised person. The testator does not have to inform the witnesses or authorised person of the contents of the will.
- Article 5 requires the testator to sign the international will in the presence of the 2 witnesses and the authorised person, or to acknowledge his or her signature if signed previously. If the testator is unable to sign the will, the authorised person must note on the will the reason for the incapacity.
- Article 6 requires the signatures of the testator, witnesses and authorised person to be placed at the end of the international will. If the will consists of several pages, each page of the will should be numbered and signed by the testator (or the person designated to sign on his or her behalf or the authorised person). However, an international will will not be rendered invalid if these requirements are not met.
- Article 7 provides that the date of the international will will be the date on which it was signed by the authorised person. The date should be noted at the end of the will by the authorised person. The will will not be rendered invalid if these requirements are not met. If the will is undated or wrongly dated, the date will have to be proved by some other means.

- In the absence of any mandatory rule about the safekeeping of a will, Article 8 requires the authorised person to ask the testator whether he or she wishes to make a declaration about the safekeeping of the international will. If the testator wishes to make such declaration, he or she can request that the certificate that the authorised person attaches to the will (under Article 9) mentions the place that he or she intends to have the will kept. The will will not be rendered invalid if this requirement is not met.
- Article 9 requires the authorised person to attach a certificate to the international will certifying that the obligations of the Uniform Law have been complied with.
- The form of the certificate is prescribed in Article 10. It is intended that the form allow small changes of detail to the certificate, for example where the form allows for the omission of particulars marked with an asterisk. However, the certificate must be in a substantially similar form to that set out in Article 10. In accordance with Article 13, an absence or irregularity of a certificate will not affect the formal validity of an international will.
- Article 11 requires the authorised person to keep a copy of the certificate and deliver another copy to the testator. As another copy of the certificate is attached to the international will, this means that the authorised person must make out three signed certificates. In accordance with Article 13, an absence or irregularity of a certificate will not affect the formal validity of an international will.
- Article 12 provides that in the absence of evidence to the contrary, the certificate will be conclusive of the formal validity of an international will. Any challenge to the validity of the will will be solved in accordance with the legal procedure applicable in the Contracting Party where the will and certificate are presented.
- As noted above, Article 13 provides that the absence or irregularity of a certificate will not affect the validity of an international will.
- Article 14 provides that an international will will be subject to the ordinary rules of revocation of wills under local laws.
- Article 15 requires that, when interpreting and applying the provisions of the Uniform Law, regard must be had to its international origin and to the need for uniformity in it interpretation.

Debate adjourned on motion of the Hon. S.G. Wade.

TRUSTEE COMPANIES (TRANSFERS) 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) (16:58): I move:

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill makes amendments to the *Trustee Companies Act 1988* (the *Trustee Companies Act*) consequent on the enactment of amendments to the *Corporations Act 2001* of the Commonwealth (the *Corporations Act*).

In 2010, South Australia amended the Trustee Companies Act, by way of the *Trustee Companies (Commonwealth Regulation) Amendment Act 2010*, to provide for the transfer of entity-level regulation of trustee companies to the Commonwealth. Enactment of the legislation was necessary to fulfil South Australia's obligations under the *National Partnership Agreement to Deliver a Seamless National Economy* (the *NPA*) to transfer to the Commonwealth the responsibility for entity-level regulation of trustee companies.

Under the Commonwealth trustee company provisions, traditional functions of trustee companies (administering charitable and other trusts, obtaining probate, acting as the executor of a deceased estate or under power of attorney) are deemed to be financial services for the purposes of the Corporations Act. This means a trustee company providing traditional trustee company services must hold an Australian Financial Services Licence and be subject to the conduct, disclosure, compensation and dispute resolution obligations in Chapter 7 of the Corporations Act.

For trustee companies that did not hold an Australian Financial Services Licence at the commencement of the Commonwealth legislation, transitional arrangements provided that such trustee companies are deemed to hold an Australian Financial Services Licence with authorisation to provide traditional trustee company services until the end of the transitional period. The transitional period expires on 31 December 2012.

In April 2011, further Commonwealth amendments to the trustee company provisions of the Corporations Act came into effect which included, among other things, provisions allowing the voluntary transfer of trustee business between companies.

The 2011 Commonwealth amendments to the Corporations Act provide for the voluntary transfer of trustee company business from one trustee company to another. Prior to the Commonwealth taking responsibility for entity-level regulation of trustee companies, many corporate groups operated subsidiaries in States and Territories to hold trustee company authorisation in that jurisdiction. The Commonwealth advised at the time of making its 2011 amendments that the trustee company industry is keen to rationalise operations by transferring estate management functions to one licensed trustee company within the same group. State and Territory legislation is

required to make the regime effective by giving legal effect to the transfer of estate assets and liabilities, so that the receiving company will be taken to be the successor in law of the transferring company, to the extent of the transfer.

Voluntary transfers were not included in the earlier Commonwealth amendments to the Corporations Act but were expected by States and Territories. In January 2010, the Commonwealth advised that it would amend its legislation in due course to make provision for voluntary transfers. As the South Australian amendments had not yet been introduced due to the 2010 election, the South Australian Bill was able to include a regulation making power, which was in terms sufficiently broad to deal with the expected Commonwealth amendments to the Corporations Act providing for voluntary transfers.

The Commonwealth has recently advised South Australia that the provisions in South Australia's Trustee Companies Act to support the voluntary transfer of trustee company business from one entity to another (such as from a company with a deemed Australian Financial Services Licence to a company holding an Australian Financial Services Licence) do not operate as required by the Corporations Act following its amendment by the Commonwealth. After 31 December 2012, companies operating under a deemed Australian Financial Services Licence will cease to be deemed licence holders and must apply for their own Australian Financial Services Licence or apply to ASIC for a transfer determination. These companies will be unable to apply for a transfer determination without South Australian supporting legislation in place.

Urgent amendment to the Trustee Companies Act is therefore required to facilitate voluntary transfers so that companies operating with a deemed licence may apply for a transfer determination prior to the expiry of their deemed Australian Financial Services Licence on 31 December 2012. Such transfers will now be facilitated within the Trustee Companies Act itself rather than by supporting regulations, consolidating the transfer provisions—both compulsory and voluntary—in the Act.

The amendments will not make substantive changes to the Trustee Companies Act. The amendments are intended to change the mechanism by which the Trustee Companies Act facilitates the voluntary transfer of trustee company business from one trustee company to another. The amendments are to be considered consequential to the 2011 amendments made by the Commonwealth to the Corporations Act.

The relevant Commonwealth provisions are found in Part 5D.6 of the Corporations Act. Part 5D.6 of the Corporations Act provides that ASIC may, if certain conditions are satisfied, make a transfer determination that there is to be a transfer of estate assets and liabilities from the transferring company to the receiving company if ASIC has either cancelled the Australian Financial Services Licence of the transferring company, or the transferring company has applied for a determination. Again upon certain conditions being satisfied, ASIC issues a certificate of transfer under section 601WBG, to effect the transfer of estate assets and liabilities to the receiving company.

One of the conditions that must be satisfied before ASIC can make a transfer determination is that legislation to facilitate the transfer that satisfies certain requirements has been enacted in the State or Territory in which the transferring company is registered and the State or Territory in which the receiving company is registered.

The *Trustee Companies (Transfers) Amendment Bill 2012* makes the necessary amendments to facilitate the voluntary transfer requirements in the Corporations Act.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal. There being no commencement clause included, this measure will come into operation on the day on which it is assented to by the Governor.

Part 2—Amendment of *Trustee Companies Act 1988*

3—Repeal of heading to Part 3A Division 1

Part 3A is currently divided into Divisions, in particular, because that Part currently makes separate provision for compulsory transfers of estate assets and liabilities from 1 trustee company to another trustee company, and voluntary transfers of estate assets and liabilities from 1 trustee company to another trustee company, under Part 5D.6 of the *Corporations Act 2001* of the Commonwealth (the *Commonwealth Act*). Since the recent enactment of amendments to the Commonwealth Act, there is no longer any need in our legislation to separately deal with compulsory and voluntary transfers in as much detail as currently, and so, there is no longer any need to divide Part 3A into Divisions.

4—Amendment of section 25A—Interpretation

The proposed amendments to various definitions in this clause are consequential on doing away with Divisions under Part 3A.

5—Repeal of heading to Part 3A Division 2

This proposed amendment repeals the heading to Division 2 of Part 3A.

6—Amendment of section 25B—Purpose and application of Part

A number of the proposed amendments to section 25B are consequential on doing away with Divisions under Part 3A. The more substantial amendment proposes to repeal current subsection (2) and substitute a subsection that will provide that Part 3A applies if the Australian Securities and Investment Commission (*ASIC*)—

- makes a determination under section 601WBA of the Commonwealth Act that there is to be a transfer of estate assets and liabilities from a specified trustee company (the *transferring company*) to another trustee company (the *receiving company*); and
- issues a certificate of transfer under section 601WBG of the Commonwealth Act stating that the transfer is to take effect.

A note is to be inserted to the effect that section 601WBA of the Commonwealth Act enables ASIC to make a transfer determination if—

- ASIC cancels the licence of the transferring company (in which case the determination is a *compulsory transfer determination*); or
- the transferring company applies to ASIC for a transfer determination (in which case the determination is a *voluntary transfer determination*).

7—Amendment of section 25C—Transfer of transferring company's estate assets and liabilities

8—Amendment of section 25D—Certificates evidencing operation of Part

9—Amendment of section 25F—Exemption from State taxes

The proposed amendments to sections 25C, 25D and 25F are consequential.

10—Repeal of Part 3A Division 3

Division 3 currently provides for the making of regulations to facilitate the voluntary transfer of estate assets and liabilities from a transferring company to a receiving company where ASIC has made a determination allowing the transfer. This clause proposes to repeal Division 3 and is consequential.

11—Repeal of heading to Part 3A Division 4

This proposed amendment is consequential.

Debate adjourned on motion of the Hon. D.W. Ridgway.

AUDITOR-GENERAL'S REPORT

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (16:58): I move:

That standing orders be so far suspended as to enable the report of the Auditor-General for the year ended 30 June 2012 to be referred to a committee of the whole and for ministers to examine all matters contained in the report for a period of one hour's duration.

Motion carried.

The PRESIDENT: There not being an absolute majority in the council, ring the bells.

An absolute majority of the whole number of members being present:

Motion carried.

In committee.

The Hon. D.W. RIDGWAY: I thank the minister for the opportunity to ask questions. For the benefit of the departmental people here today, it is our intention to ask minister Gago questions for 30 minutes, briefly covering tourism, forestry, regional development and PIRSA. In the second part, my colleague the Hon. Stephen Wade will question the Hon. Ian Hunter, and we have a couple of questions at the very end—only a couple because we do not want to overstrain the Hon. Russell Wortley.

My first questions are in relation to tourism. The South Australian Tourism Commission's statement of income at page 1814 shows a drop in commission on sales from $683,000 to $64,000 over the last 12 months. That is a drop of more than $500,000—about $620,000—in just one financial year. Can the minister offer an explanation as to why that has happened?

The Hon. G.E. GAGO: I thank the honourable member for his question. I am advised that the SATC ceased operation of the SA Visitor and Travel Centre in July 2012. The residual revenue in 2011-12 relates to travel bookings made prior to the transfer of operations to a private service operator.

The Hon. D.W. RIDGWAY: The table on page 1818 (disaggregated disclosures) shows administration and accommodation costs totalling $8.8 million. How much of this figure is accommodation, and can you give me a definition of accommodation? I would also like to know what the rent was for the Visitor Information Centre in King William Street, the costs incurred for anything to do with Grenfell Street and, of course, any costs incurred on the North Terrace site.

The Hon. G.E. GAGO: I am advised that there was no rent paid for Grenfell Street in any year.

The Hon. D.W. RIDGWAY: What about King William Street; what was the rent for that?

The Hon. G.E. GAGO: I will have to take that on notice; I do not have that detail.

The Hon. D.W. RIDGWAY: Minister, can you explain what that $8.8 million for administration and accommodation costs is for? I am assuming it is for the lease of some King William Street offices rather than the visitor information centre, but can you perhaps provide a breakdown of those figures?

The Hon. G.E. GAGO: I am advised that the $8.8 million includes all the accommodation costs, which include the office accommodation at King William Street, the pageant warehouse at Woodville and a warehouse at Dudley Park. It also includes other associated costs, such as running photocopiers and other overheads, as well as the administrative costs.

The Hon. D.W. RIDGWAY: The costs for any of the SATC staff who may travel to promote the state, is that out of administrative costs or is it in another budget line?

The Hon. G.E. GAGO: I am advised that those costs are included in the administrative costs.

The Hon. D.W. RIDGWAY: I would be surprised if the minister had it available, but can she provide a breakdown of how much has been spent on travel and expenses incurred by SATC personnel and whether it was for travel intrastate, interstate or overseas?

The Hon. G.E. GAGO: I am advised that the international flights are published in the annual report, so they are already available. We can make the interstate and intrastate travel available; I will take it on notice.

The Hon. D.W. RIDGWAY: That is the conclusion of the questions I had on tourism. I do indicate that we will be seeking to examine the supplementary report when it is tabled on the visitor information centre.

The Hon. M. PARNELL: I might ask my question now, and I ask it of the minister in her capacity as Leader of the Government rather than in any particular portfolio—and I am conscious that the suspension of standing orders does allow us to ask questions only of ministers rather than anyone else. In her capacity as Leader of the Government, I refer the minister to Part B: Agency Audit Reports, Volume 3, pages 882 to 931, which is in relation to the legislature. This year, as in previous years, the Auditor-General criticises the accountability of parliamentary finances. If I can indulge the committee with three sentences from the Auditor-General's Report, he says:

> The inability to perform a complete audit of the functions and financial activity of the Joint Parliamentary Service was again raised with the Joint Parliamentary Service Committee. Audit has been advised that there is no change in the Committee's position of not providing Audit access to the Committee's minutes of meetings and to the records and accounts relating to the catering division trading account activities.
>
> In my opinion, the financial accountability and auditability of the Joint Parliamentary Service falls short of that adopted and applied to the public accounts and the financial operations and accounts of public authorities.

I pose the question now to the minister, and I will let the minister respond but expect that part of the minister's response might be that that is not a matter for government, that that is a matter for the Joint Parliamentary Service Committees. First of all, I want to know: does the government have any response to the criticism? If the minister does not believe that it is a government issue, my question is: what is the process for members of parliament to be able to question either ministers or parliamentary office holders in relation to the running of parliament and, in particular, the income and expenditure of the parliament?

The Hon. G.E. GAGO: It is clearly very complex. I am happy to take the question on notice. I do not know how much of it is actually relevant for me as leader of this house in relation to the Auditor-General's Report before us, but I am happy to look into that. Basically, there is a joint

parliamentary committee and there is a finance committee, and the Auditor-General audits the finance committee and those reports are publicly available.

I understand that there is some catering money that has nothing to do with government, and therefore is outside these parameters. Fundamentally, the bulk of the parliamentary spending is dealt with by the finance committee, and those accounts are audited by the Auditor-General. The rest of the question, I will take on notice.

The Hon. M. PARNELL: I thank the minister for taking that on notice. I guess what I am keen to know is: is there any process at all for members of parliament to access this information? If the minister takes that question as part of her question on notice, I would appreciate that.

The Hon. G.E. GAGO: I have been advised that the audited accounts are published.

The Hon. M. PARNELL: The Auditor-General has gone out of his way to criticise the unaccountability of parliamentary finances, and he has said so in his report.

The Hon. G.E. GAGO: Well, that is not my portfolio. I am not responsible for that, so it is outside the purview of my responsibilities.

The Hon. M. PARNELL: If the minister can pass that on to whichever minister she does believe is responsible, I would appreciate it.

The Hon. G.E. GAGO: No; the other house has a process for managing the Auditor-General's reports. The ministers here are held accountable. I am happy to take questions in relation to my portfolios.

The Hon. D.W. RIDGWAY: I assume that I now ask questions in relation to forestry.

The CHAIR: The Hon. Mr Ridgway.

The Hon. D.W. RIDGWAY: Thank you, Mr Chairman. The minister did refer somewhat to this, I think, during question time. Page 1553 is in relation to the proposed distribution of assets and liabilities of the South Australian Forestry Corporation's owner and forward sale of forest rotations, and the table just above that shows the assets classified as held for distribution to the owner, totalling $1,032,776,000. I will just quickly read this relevant passage:

> The SA government announced...that it would proceed with the forward sale of three forest rotations in the South East. At 30 June 2012 the forward sale had not been completed, however, the sale process was at an advanced stage and it was considered highly probable that it would be completed during [2013].
>
> On 22 August 2012 the [government] announced that it had agreed to sell the forward rotations of the Green Triangle's plantations to a consortium led by The Campbell Group...representing a number of investors including Australia's Future Fund. Completion of the sale [date was] later in 2012.
>
> The [Forestry Corporation] has been advised by its owner, the [government], that the forward sale will be structured such that:
>
> - [the South Australian Forestry Corporation] will distribute all relevant assets and liabilities to its owner at book value
> - the [government], or one of its entities other than SAFC, will then enter into contractual arrangements with the new plantation owner whereby the Green Triangle standing timber is sold, land is leased and other associated agreements are entered into.
>
> In these financial statements SAFC has therefore classified and presented the assets and liabilities that are expected to be involved in these transactions as 'held for distribution to [the] owner', in accordance with [Accounting Standard 5].

My question is: can the minister explain which of these assets have been sold or transferred to The Campbell Group? Given that I think we received $670 million for the sale, I am intrigued just to know exactly what has gone to them and what we still hold.

The Hon. G.E. GAGO: I have been advised that the asset sold is the standing timber, and that is the 593 666 figure.

The Hon. D.W. RIDGWAY: Can the minister explain why the other assets are classified as 'held for distribution to owner'? Further in the commentary, the second dot point states that the government 'will then enter into contractual arrangements with the new plantation owner whereby the Green Triangle standing timber is sold, land is leased and other associated arrangements are entered into'. What are the other associated arrangements?

The Hon. G.E. GAGO: I have been advised that the other assets included there in item 13 that were not sold were transferred from the Forestry Corp to the Treasurer and the Treasurer then leased those to The Campbell Group. In relation to the second part of your question about other associated arrangements, it includes things like plantation management, a nursery purchasing agreement and suchlike.

The Hon. D.W. RIDGWAY: So if we are looking at a round figure of roughly $600 million worth of timber that was sold, are you saying ownership of the other assets was transferred to the Treasurer and then as part of the sale they have leased them those other assets?

The Hon. G.E. GAGO: That is what I have been advised.

The Hon. D.W. RIDGWAY: So if we say that the standing timber is valued at $600 million, you have a one-off payment of $70 million for the lease of all of those other assets, access to the land and everything else for 100 years or three rotations?

The Hon. G.E. GAGO: I have been advised that the $670 million figure is for the whole group of assets, including an up-front lease arrangement, and I have also been advised that you cannot attribute the $600 million of the $670 million figure and infer that you are only getting $70 million for the land lease.

The Hon. D.W. RIDGWAY: I cannot infer that; okay, I will move on, as I am aware of the time and trying to give everybody a chance. I will continue on forestry for a little longer. On page 1534, Part B: Agency Audit Reports, Volume 5, the South Australian Forestry Corporation forward rotations were sold for $670 million. Treasurer Jack Snelling stated that the sale to the consortium led by the US-based Campbell Group was substantially above the reserve. Can the minister advice us what was the reserve price?

The Hon. G.E. GAGO: I am advised that that figure is a commercially confidential figure.

The Hon. D.W. RIDGWAY: The sale has gone through and the deal has been done. I am surprised that it is still commercial-in-confidence. This is a deal for 100 years, not for 10 minutes.

The Hon. G.E. GAGO: That is the advice I have received.

The Hon. D.W. RIDGWAY: Page 1534, Part B: Agency Audit Reports, is in relation to the sale. It says that the completion of the sale date is expected to occur late in 2012. Can the minister provide a specific date that finalisation will happen and, basically, when does the Campbell Group take over?

The Hon. G.E. GAGO: The date is 17 October 2012 and the Campbell Group takes over one minute past midnight on 18 October 2012.

The Hon. D.W. RIDGWAY: So, they took over a couple of weeks ago. I want to give other members a chance to ask questions, so finally a set of conditions were agreed to by the forestry round table. I refer to page 1534, Part B: Agency Audit Reports, in relation to the sale. Will the minister or her advisers provide us with a copy of those terms and conditions, and do they mirror what was agreed by the forestry round table and have there been any other terms and conditions added by the Treasurer?

The Hon. G.E. GAGO: I am advised that the roundtable recommendations were reflected in the terms and conditions of the contract and those roundtable recommendations were published by the Treasurer some time ago. In relation to other terms and conditions to the contract, it is an extremely comprehensive contract. There are many terms and conditions associated with that contract.

The Hon. D.W. RIDGWAY: I will not ask any more questions given that there are other members who would like to ask questions. I think the Hon. John Dawkins will ask some questions in relation to PIRSA or regional development.

The Hon. J.S.L. DAWKINS: The general PIRSA section but initially one on regional development. I refer to Part B, Volume 4, page 1378 and there are other references in that section to the regional development team moving from DMITRE (formerly DTED) to PIRSA on 1 January this year. The regional development team in its various identities since it was established by the Olsen government—and I had a fair bit to do with it in those days—has always been with DTED and DTED's predecessors. It is indicated that there are two different styles of reporting and the manner of determining staffing levels, TVSPs, embedded in two different departments. My question really is: given the change from DMITRE to PIRSA, has there been any change of approach in the

way in which the regional development team works with federal agencies and local government in relation to the Regional Development Australia bodies?

The Hon. G.E. GAGO: I think the short answer is not that I am aware. I have talked in the house about how there have been changes to the structure and regrouping of resources and a setting up of new coordinators, regional coordinators and suchlike, so there have been changes in the structure of PIRSA. PIRSA continues to evolve and develop as most agencies do, so that does not stand still, but my understanding is that the fundamental relationships that had with other federal bodies and local government are pretty much the same. I do not know whether there are any new MOUs. The LGA are always wanting a new MOU, so there might be a new MOU in there. I am sure there are a few. Fundamentally, the relationships are pretty much the same.

The Hon. J.S.L. DAWKINS: I move now to general PIRSA issues. I refer to Part C: State finances and related matters, page 21. It refers to a report of 131 actual full-time equivalents below the cap. Will the minister explain what external parties the department is dealing with? Why is it taking so long to fill vacancies? Which research and development corporations are causing the uncertainty?

The Hon. G.E. GAGO: I have been advised that the primary industries reported actual FTEs of 131 below its cap is primarily due to delays in establishing and finalising contracts with a number of external parties in filling vacancies and uncertainty of funding from research and development corporations. Many of the research and development corporations do not work on a financial year, they have different time frames, so you have to realise that the 131 is a particular point in time which fluctuates and varies quite significantly throughout the year. It is just one snapshot at one particular point in time, and it does vary throughout the year.

The Hon. J.S.L. DAWKINS: Still on Part C, I refer to page 55, 8.2.4, Grants. Will the minister explain the community service obligation payments made to the South Australian Forestry Corporation?

The Hon. G.E. GAGO: I have been advised that community service obligation is an annual payment and involves fire protection, industry development and community use, so it is, in effect, the non-commercial component of ForestrySA.

The Hon. J.S.L. DAWKINS: I refer to page 64. Table 8.4—Summary of adjusted 2010-11 new budget operating savings, states that primary industries and regions saw an increase of $4.2 million from 2011-12 to 2012-13. Will the minister explain the detail of this increase?

The Hon. G.E. GAGO: Can I just clarify which figures you are referring to?

The Hon. J.S.L. DAWKINS: Table 8.4, the summary. It shows an increase of $4.2 million in the budget operating savings. Are you with me?

The Hon. G.E. GAGO: Yes; that is the combination of the 17.8 and the 22?

The Hon. J.S.L. DAWKINS: That is right, yes.

The Hon. G.E. GAGO: I have been advised that it relates to the incremental increases in savings requirements in relation to SARDI, RSSA and things like the executive reductions.

The Hon. J.S.L. DAWKINS: I refer to page 66 of Part C, State finance and related matters, table 8.5. Will the minister explain the detail of the 186 full-time equivalent savings initiatives?

The Hon. G.E. GAGO: I have been advised that that detail is outlined in the budget documents and the budget measures paper, and these have already been published; so that detail is already published and publicly available.

The Hon. J.S.L. DAWKINS: I refer again to Part C, page 68, and particularly the reference to the 131 full-time equivalents not met, which we talked about earlier, and 66 TVSPs. Will the minister indicate if this is attributed to the audit findings stated in Part B: Agency Audit Reports, Volume 4, for the Department of Primary Industries and Regions, which states there is:

> ...no evidence of certification of time attendance by managers; inconsistent practice in monitoring leave recording…Shared Services…systems and control environments could not be considered robust during 2011-12…a number of outstanding debts greater than 120 days old [in accounts receivable]…[fishing licensing] reconciliations were not performed on a timely basis.

What measures are being put in place to rectify what would seem to be relatively poor departmental management?

The Hon. G.E. GAGO: I have been advised that in relation to payroll, PIRSA has been progressively implementing the Timewise electronic time and attendance system across the agency with associated policies which address the concerns raised in the audit findings. The audit suggests that its findings support a conclusion that the CHRIS payroll system may not provide a complete and accurate record of leave taken by the departmental employees and leave balances may be overstated. PIRSA is reviewing any inconsistencies between the leave recorded in local time recording systems, including Timewise, and the CHRIS payroll system, and we will take any corrective steps as necessary.

In relation to the MPAR system, PIRSA will continue to work with Shared Services SA to investigate and rectify reconciling items. The reinstatement of the reconciliation process for the two subsidiary systems—namely, the standard invoicing system, SIS, and the SEEDS system—has been addressed in relation to the number of outstanding debtors greater than 120 days. PIRSA is continuing to follow up relevant clients in line with the agency's debt management processes. It should be noted that the outstanding debtors greater than 120 days have decreased significantly since the time of this audit.

In relation to licensing revenue, PIRSA has addressed the timeliness issues for fisheries licensing revenue and strengthened the current control arrangements with updated procedures. So, all those matters have been addressed in one way or another.

The Hon. J.S.L. DAWKINS: Thank you, minister. In your response you have covered some other areas of questioning that I had, and I appreciate that. When dealing with the reference to the debts that were greater than 120 days old, why were they left for longer than three months and not collected earlier?

The Hon. G.E. GAGO: I have been advised that it does not mean that those debts have not been followed up. It means that those debts have not been collected in that period. There is a whole range of different circumstances that might lead to that. For instance, the client might have gone into liquidation and there are issues around being able to collect payment, or issues around a dispute about payment that need to be resolved. There is a range of different circumstances that result in a slowdown of payment.

The Hon. J.S.L. DAWKINS: My final PIRSA question relates to the ongoing reference to the role of Shared Services. The minister referred to that in her earlier response. On page 1338 of Part B—Agency audit reports, the reference there was that Shared Services SA systems and control environments could not be considered robust during 2011-12. Will the minister explain what efforts PIRSA and Shared Services will undertake to make sure that they are robust?

The Hon. G.E. GAGO: I have been advised that, while noting that the responsibility of Shared Services obviously falls under the Minister for Finance, PIRSA will be monitoring the Shared Services SA progress in addressing the concerns that have been raised by the audit and will obviously work with them where required.

The Hon. S.G. WADE: I refer to the Auditor-General's Report Part C—State finances and related matters. With the recent downgrading of South Australia's credit rating I understand that the government will be paying higher interest on its borrowings. Can the minister advise whether there is a guarantee or similar fee that councils pay into the state budget because they have access to funds at a lower rate of interest than a private entity? Has this fee reduced since the loss of the AAA credit rating and, if so, by how much has it reduced across all local government entities?

The Hon. R.P. WORTLEY: I thank the honourable member for his very important question. I will take it on notice and get a response back to him as soon as possible.

The Hon. T.J. STEPHENS: On page 235 of the recently released Auditor-General's Report the Auditor-General raised a number of concerns about the process of grant funding within the Department of Communities and Social Inclusion. In one instance an NGO received $1.5 million of payments for services that were not covered by a grant agreement. Which NGO received the grant the Auditor-General was referring to? From which subprogram within the department was the funding provided? Why was no grant agreement initially established, and for what purpose was the funding provided?

The Hon. I.K. HUNTER: I thank the Hon. Terry Stephens for his excellent question and for his early notice of it last week.

The Hon. S.G. Wade: He is too kind to you.

The Hon. I.K. HUNTER: He is indeed; when he finds out the reason for it all he will be upset, of course, but there we are. I am advised that the non-government organisation that received the payment was Leveda Inc. It was funded through the subprogram within the agency of disability. Payment to Leveda Inc. was made in accordance with the department's grants management policy.

The variation to the grant agreement for these payments was prepared with effective dates to cover the services provided. During the execution stage the effective date was inadvertently transcribed as 1 July 2012 when it should have been processed as 1 July 2011. The error was not detected in the documentation process, but essentially it was a typo. As noted in the Auditor-General's Report, page 235, Leveda Inc. has provided the relevant services but there was an inadvertent error in the documentation.

The agreement is being varied to include the amounts paid and the services provided. The department will review the process controls in this area to ensure alignment between service provided and agreement documentation. I am advised that the funding was for the purpose of continuing support services provided at three group homes for people with disability. Essentially, as I said, it was a typographical error.

The Hon. S.G. WADE: My question is on a similar theme to that of the Hon. Terry Stephens. I refer to Part B, Volume 1, page 234 of the Auditor-General's Report. In the last financial year the minister responded to questions about funding being provided before a grant agreement had been reached. At the time he stated that 'the department has procedures in place that allow for payments to be made prior to finalisation of grant agreement if emergencies arise'. Can the minister advise what procedures the department introduced to address this issue and, given the Auditor-General's continued concerns, what steps will the government take to address the issues he has raised?

The Hon. I.K. HUNTER: I thank the honourable member for his question. Audit did find instances where execution of some grant agreements occurred after the service period had begun. The department endeavours to commence the preparation of service agreements and variations in adequate time to ensure that these can be executed before the commencement date. I am advised that the department does have internal controls to identify existing grant agreements which are soon to expire, but in some instances it can be difficult to provide adequate time to prepare and execute agreements before the service must commence. Such instances include responding to vulnerable people needing urgent care due to a change in their personal or family circumstances.

I am sure the honourable member will concur with us in saying that making sure the service is provided is much more important than getting the paperwork done on time, even though we attempt to do both. However, in circumstances where funding must be directed to a non-government organisation as a matter of urgency, or where process requirements could cause delays to the continuation or implementation of a service which may lead to a significant client risk, the department's policy allows the funding to be provided prior to an agreement being executed. The department will continue to review its internal processes to ensure that variations are prepared as early as possible.

The Hon. S.G. WADE: I refer to Part B, Volume 1, page 239 of the Auditor-General's Report in relation to accounts receivable. The Auditor-General's Report describes how outstanding debtors are a shared responsibility between the department and Shared Services, and that overdue invoices are required to be followed up within 10 days of month's end. The report found that as at 30 June 2012 overdue invoices had not been followed up since March 2012. Can the minister advise why there is a three-month delay, despite the departmental policy being less than 10 days in following up? Secondly, can the minister advise the total value of overdue invoices and how many overdue invoices there are?

The Hon. I.K. HUNTER: I understand that, in fact, ministerial responsibility for issues related to Shared Services lies with the Minister for Finance, Michael O'Brien, in the other place. I can advise that, thus far, expenditure processing services are provided to the department by Shared Services SA, and the department is reliant on Shared Services to rectify the issues identified by the Auditor-General. In relation to e-procurement (whatever that might be), the department has a number of additional internal controls to ensure that payments—

The Hon. G.E. Gago: You're e-literate!

The Hon. I.K. HUNTER: Indeed, I am quite e-literate, but I am sure that the honourable member is not.

The Hon. S.G. Wade interjecting:

The Hon. I.K. HUNTER: Brought to you by the letter 'e' in this case. In relation to that e-procurement thing, the department has a number of additional internal controls to ensure that payments are made in accordance with the department's financial approval limits. The department reviews a sample of all payments and, in particular, all payments in excess of $20,000. The department will continue to liaise with Shared Services on the issues raised by the Auditor-General, and it will monitor the progress of Shared Services' projects to ensure that these matters are promptly addressed.

The Hon. S.G. WADE: I refer to Part B, Volume 1, page 240—Concessions. The Auditor-General found problems with concessions not being reconciled against the department's database of clients. The department has previously advised that this problem will be remedied by the introduction of CASIS, which was due to be completed in 2011-12, which did not occur. Rather than ask the minister what CASIS is, I ask: can the minister explain the reason for the delay in rolling out cases and how much has so far been spent on developing the program?

The Hon. I.K. HUNTER: I can actually advise what CASIS is: it is Concessions and Seniors Information System. Over the last three years, the department has implemented a number of interim controls to minimise the risk of concessions being provided to ineligible customers. These include annual random sampling of clients receiving emergency services levy concessions on fixed property, and water and sewerage concessions provided by SA Water. The department is presently developing an internal audit plan to look at implementing additional controls across concessions systems, including controls for energy concessions, to ensure that concessions are made available only to eligible customers.

The development of the Concessions and Seniors Information System has experienced a number of delays, but significant progress has been made over the last six months, with the expectation that the system should be operational in 2013. Once implemented, the new system will significantly reduce the effort and cost for the department in managing concessions, with an improved data exchange system and better identity management.

It will also reduce the technology effort and cost for concession partners, SA Water, energy retailers, local government and other partners, in administering concessions due to improved system interfaces; streamline relationships and services between concession customers and partners through utilising single entry point infrastructure; and contribute to the future development of improved service delivery models across the Department for Communities and Social Inclusion; customer delivery service; customer service delivery initiatives; and concessions administration. There was a second part to the question?

The Hon. S.G. WADE: Yes. The minister did acknowledge that there has been a delay. I was particularly interested in the reason for that delay and how much has been spent on the program thus far.

The Hon. I.K. HUNTER: I will have to take that question on notice.

The Hon. S.G. WADE: My next question relates to the Auditor-General's Report, Part B, Volume 5, page 1606, in relation to rent assessment guidelines. Can the minister please advise why the household occupancy declarations, which are required to be issued to every household each 12 months, have not been issued since June 2010?

The Hon. I.K. HUNTER: My advice is that, regarding the household occupancy declaration process, the South Australia Housing Trust advises that the process is currently under review—hence, the delay—with various models being considered with a view to reintroducing the process in 2013.

The Hon. S.G. WADE: I presume that, with the Housing Trust tenant community, there would be reasonable turnover of occupancy over a two-year period and, if we are talking about 2013, we are talking about a three-year period. Given that by not conducting this assessment the government is likely to have forgone the opportunity to recognise potentially higher rents, how much revenue does the government expect to forgo because of this delay?

The Hon. I.K. HUNTER: My advice is that, whilst it may be so that there is a high turnover, we have other processes in place which would capture some of that information that would allow us to make decisions about rental issues; one of those is Centrelink. We have a memorandum of understanding with them, I think, and income issues are dealt with through an exchange of information at least twice a year, every six months. In terms of other processes, we have home

visits where we would, amongst other things, check on how many individuals are living at the premises and whether those people should be paying a higher rate of rental.

The Hon. S.G. WADE: I refer to Part B, Volume 5, page 1611—Loss on disposal of assets. Can the minister advise why 642 properties are shown as having been sold when cabinet only approved the sale of 450 properties and why this occurred during a soft market, presumably resulting in those sales being on average below book value?

The Hon. I.K. HUNTER: My advice is that the decision in relation to cabinet was actually on achieving a revenue target, not a total number of houses. We are committed, of course, to realising a certain amount of revenue each year to repay the Housing Trust debt. A lower average sale price per property, of course, meant that we had to sell more properties to realise that sale target.

The Hon. S.G. WADE: The same page refers to staffing costs. How many staff are included in that $7 million expense, and how many were working for the Housing Trust prior to the key development projects referred to in the report?

The Hon. I.K. HUNTER: My advice is that it is complicated. A number of staff were reduced because projects were completed, and therefore the number of ongoing projects, of course, was reduced. Many staff who were on contracts for those projects, of course, did not have their contracts renewed. In terms of the absolute numbers, I will need to take that question on notice, however.

The CHAIR: I report that the committee has considered the Auditor-General's Annual Report and the Financial Statements.

WORK HEALTH AND SAFETY BILL

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

At 18:02 the council adjourned until Tuesday 13 November 2012 at 14:15.