LEGISLATIVE COUNCIL

Thursday 21 April 1994

The PRESIDENT (Hon. Peter Dunn) took the Chair at 11 a.m. and read prayers.

WORKCOVER CORPORATION BILL

In Committee.

(Continued from 20 April. Page 568.)

New clause 11A—'Primary objects.'

The Hon. M.J. ELLIOTT: I move:

Page 6, after line 2—Insert new clause as follows:

11A. The corporations's primary objects are—

(a) to reduce as far as practicable, the incidence and the severity of work-related injuries; and

(b) to ensure, as far as practicable, the prompt and effective rehabilitation of workers who suffer work-related injuries; and

(c) to provide fair compensation for work-related injuries; and

(d) to keep employers' costs to the minimum that is consistent with the attainment of the objects mentioned above.

I note, first, that both the Workers Compensation Bill and the Occupational Health, Safety and Welfare (Miscellaneous) Amendment Bill will be introducing objects in their respective Acts. However, here we have the Bill which establishes the corporation that oversees both these organisations, and it at present does not have an objects clause but does have a functions clause, which we will be looking at next.

I believe it is important that an objects clause be inserted into this legislation. Until this time, workers compensation and occupational health and safety organisations have been working, at best, at arm's length, and now we have one corporation responsible for both. I am very aware that some people are nervous about where the emphasis will lie. Some people fear that the WorkCover board could become very insurance-minded and have an overly great emphasis on those aspects which come under its functions rather than taking what I think most people see as needed, which is a very holistic approach, recognising that there are a couple of important things which need to be achieved in conjunction with each other.

The functions clause is so very long that, while it talks about many things that need to be done, it does not really give any emphasis or balance in the way in which it is constructed. Within this objects clause I hope to make it clear to the corporation that it has four objects that it needs to carry out, and each of those needs to be carried out to its fullest possible extent. Those four objects are, first, to ensure that as far as is practicable the incidence of injuries at the workplace is reduced. That is important for two reasons.

First, and quite simply, that is an aim that is worth achieving in its own right. We do not want people being injured or killed at work. There is also, of course, an economic aspect to it in that, from the point of view of those people who do want to see reductions in the cost of workers compensation, at the end of day the surest way of reducing the cost is not to have the accident occur in the first place. So, for both the human and economic reasons, a very high priority must be placed on occupational health and safety.

The Minister has said in his second reading speech that that is to occur, but there is nothing in the legislation which gives me any confidence that this independent corporation set up underneath this legislation will give any special emphasis to occupational health and safety, other than noting that it has to administer the Occupational Health and Safety Act itself. However, there is no real direction in the Bill before us as to what sort of resources would be directed toward occupational health and safety. It also needs to be made amply clear that prompt and effective rehabilitation should be applied when an injury occurs. The reasons for that are for both human and economic benefit. The third factor is that a person who has been injured should receive fair compensation. Finally, we should endeavour to keep employers' costs to a minimum and consistent with the first three objects.

I note objections from different people regarding paragraphs (c) and (d): the unions say that I have not made paragraph (c) strong enough and the employers say that I have not made paragraph (d) strong enough. The point I make is that paragraphs (c) and (d) are largely covered by the legislation. The level of compensation is fixed by legislation. It should not be fixed according to a whim. Some minor amendments that I will make will endeavour to make sure that that is the case. Compensation should not be a discretionary matter. Compensation and the way in which it is determined should be spelt out within the legislation. That is why I have said to employee groups that I do not believe that any further change to paragraph (c) is necessary. Similarly, regarding paragraph (d), much of the employers' costs are not and should not be discretionary under legislation. They relate to—

The Hon. T. Crothers: Somewhere along the line if that change gets through the South Australian population will bear the cost instead of the employer.

The Hon. M.J. ELLIOTT: I will enter that debate later and go into it in some depth but not at this point. A significant amount of the costs are not discretionary, anyway. The one point where it could be argued that employers' costs should involve some discretion relates to the efficiency with which an organisation is run. To a large extent, beyond the absolute obligations within the legislation which create costs, this is really an instruction to run your organisation as efficiently as you can in order to minimise the cost. As such, just as strongly as I knock back the concerns of employees in relation to paragraph (c) I reject the concerns of employers in relation to paragraph (d) because, largely, there is not a huge amount of discretion contained in either of those paragraphs except in relation to the efficiency with which an operation is run. To that extent, this contains the clear message that we want an efficient operation as well.

I believe that primary objects are important. My preferred position is that we do not have three pieces of legislation, that we have one; that we do not have objects scattered all over the place. I have commented before that I think this legislation is a dog's breakfast; it is legislation on the run, and it is bad legislation for a number of reasons.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: It is legislation on the run; it is very patchy. I am not surprised that the Attorney rejects that, but I assert that strongly.

The Hon. Carolyn Pickles interjecting:

The Hon. M.J. ELLIOTT: It is worth noting—and I will put it on the record now, although the Liberals scream—that I recall when the Labor Party first brought in its workers compensation scheme the Democrats delayed it for an incredible amount of time whilst actuarial studies, etc. were done. The legislation was radically changed, and the Labor

Party had to put up with that. Otherwise, at that time South Australia would have adopted the Victorian scheme, which was an absolute and dismal failure. I make no apologies for anything that we are doing now. In comparison with what the Labor Party suffered—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: You want to talk but you do not want to hear. You want me to listen.

The CHAIRMAN: Order! Would the honourable member please come back to the subject at hand.

The Hon. M.J. ELLIOTT: By way of interjection I am being told to hurry up, because the Government is going to support it. I find that interesting, because the second reading explanation, which I did listen to, was critical of the objects.

The Hon. K.T. Griffin: I have no option but to support you because I don't want theirs.

The Hon. M.J. ELLIOTT: I welcome a debate where people are willing to listen to the arguments and weigh them up, as I must do often with the Attorney-General in respect of various other pieces of legislation. But he tells me that weighing up in this case is not necessary, because his mind is made up without any argument.

The Hon. K.T. GRIFFIN: We all want to make some progress on a variety of Bills for a variety of reasons, and I am happy—

The Hon. M.J. Elliott: We were willing to do this last Thursday. We didn't stop this from being debated. Don't give me that rubbish.

The Hon. K.T. GRIFFIN: Come on!

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: You need an extra night's sleep.

The CHAIRMAN: Order! We will keep to the motion in hand, thank you, Attorney.

The Hon. R.R. Roberts interjecting:

The CHAIRMAN: Order! I will control the speed at which this question goes through.

The Hon. K.T. GRIFFIN: I have looked at the alternatives presented in the amendments. I was critical of the proposals of the Hon. Mr Elliott in my second reading reply. But let me say that it is quite obvious that something will get up. What we are prepared to do is support the Hon. Mr Elliott's proposals in respect of objects, recognising that they are preferable to those which are on file from the Hon. Ron Roberts, but we want to keep open an option for further discussion about the objects. I do not think anyone disagrees that there is a need for some objects. The Hon. Mr Elliott should note that in a subsequent Bill we propose to incorporate quite extensive objects in relation to the WorkCover Corporation. So, it is really a question of which Bill it comes in. It may be as a result of his amendment passing, as I said, that we want to re-examine the drafting of the objects, and it may be at the deadlock conference—and I am sure there will be one—that there can be an accommodation which gets the best of all worlds.

I will just raise a couple of issues. In the proposals that we have in the subsequent Bill, rather than talking about work-related injuries, we talk about work-related disabilities, and the focus is upon disabilities. I just flag that as an area for further consideration, but I do not intend to move an amendment to that now. I know there can be a debate about whether it is injuries or disabilities that we are talking about, but it is better dealt with it in the context of further discussions than by debating the connotations of both words. I also draw attention to the fact that in paragraph (d) the provision is to keep employers' costs to the minimum that is consistent with the attainment of the objects mentioned above. Again, that tends to make the object to keep employers' costs at a minimum subservient to paragraphs (a), (b) and (c), and maybe that is appropriate. But also it may be that there is a better way of describing that, in the context of the whole legislation and scheme, the employers' costs be kept to the minimum. That is implicit, anyway.

One acknowledges that it is within that framework of the legislative package, the principal Act as amended by what subsequently comes out of the Parliament, that the employers' costs can be kept to a minimum; there is no other way that that can be achieved. I just signal there are those two areas, and there may be some additional objects that we want to address, keeping in mind that there are some more comprehensive objects we have in the later Bill. I indicate that I am prepared to support the amendment by the Hon. Mr Elliott, subject to those reservations that I have indicated.

New clause 11A—'Primary objects.'

The Hon. R.R. ROBERTS: I move:

Page 6, after line 2—Insert new clause as follows:

Primary objects

11A. The corporation's primary objects are—

(a) to reduce, as far as practicable, the incidence and the severity of work-related injuries; and

(b) to ensure, as far as practicable, the prompt and effective rehabilitation of workers who suffer work-related injuries; and

(c) to provide fair compensation for work-related injuries; and

(d) to encourage consultation with employers, employees and registered associations in relation to injury prevention, rehabilitation and workers compensation arrangements; and

(e) to encourage registered associations to take a constructive role in promoting injury prevention, rehabilitation and worker's compensation arrangements; and

(f) to provide for the efficient and effective administration of the worker's compensation scheme under the Workers Rehabilitation and Compensation Act 1986; and

(g) to reduce, so far as practicable, litigation and adversarial disputation in relation to the claims determination process under the Workers Rehabilitation and Compensation Act 1986; and

(h) to keep employers' costs to the minimum that is consistent with the attainment of the objects mentioned above.

I am quite amused that the Government has now decided to support Mr Elliott. What we are seeking in our amendment is to look at the objects. In fact, we were impressed when Mr Elliott's motion came on file about putting the objects into the WorkCover Corporation Bill.

I have some support for the concept that the objects—the functions, if you like—ought to be in the principal Bill. I took the view that what we were doing here was setting the culture. There can be some argument about the composition of our amendment. I know that the Hon. Mr Elliott believes that a couple of clauses we put in there are basically functions and not objectives. We can argue the semantics of whether it is an object or a function but that will not get us far down the track here today because, fairly obviously, the numbers are there to defeat our proposition. In defence of that proposition we should point out that this Bill will sit above the other two Bills. That is why we were impressed with the proposition of the Hon. Mr Elliott to put the objects in the principal Bill, because we see that this will be the principal part of this package of three pieces of legislation. This will set the culture for the whole of the organisation and it makes sense to me to put that in one place rather than to do it in the

first instance and then do two separate ones for two separate Acts.

It seems to me that, as we are talking about the culture of the reorganised WorkCover, we ought to put up front exactly what we are trying to do. I have strong support for removing paragraph (d) from the Hon. Mr Elliott's proposition, because I think it is axiomatic: if you do the other three you lower the employer's costs in a way that is consistent with the three. I do not believe it is actually necessary. I think that we have to go back a step to when we set up WorkCover. The obvious intention in setting up the WorkCover scheme in South Australia was to provide good occupational health and safety, good rehabilitation, affordable cost, and low cost to the employer. We are really now reinventing the wheel of the culture of WorkCover and I would be much happier to put all these things in one place. I see that the Hon. Mr Elliott actually picks up a couple of the things we have in our objectives in another part of the Bill, which we will be supporting. However, it is very clear from the numbers that we will not win this and we leave our submission before the Council for its consideration.

The Hon. M.J. ELLIOTT: I do not support the amendment of the Opposition, not because I disagree with the content so much as with the location of some of the material it has. I think that objects and functions are different, and a number of these matters that the Opposition picked up are functions and belong in the function section of the legislation.

The Hon. M. J. Elliott's new clause inserted; the Hon. R.R. Roberts' new clause negatived.

Clause 12—'Functions.'

The Hon. M.J. ELLIOTT: I move:

Page 6, lines 9 and 10—Leave out paragraph (b) and insert—.

(b) to provide resources to support or facilitate the formulation of standards, policies and strategies that promote occupational health, safety or welfare; and.

The amendment is really aimed at the insertion of one additional word, 'standards'.

The Hon. K.T. GRIFFIN: The Government accepts this amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 6, after line 17—Insert new paragraphs as follows:

(ea) to encourage consultation with employers, employees and registered associations in relation to injury prevention, rehabilitation and workers compensation arrangements; and

(eb) to encourage registered associations to take a constructive role in promoting injury prevention, rehabilitation and appropriate compensation for persons who suffer disabilities arising from employment; and.

These two amendments are functions, which were mentioned briefly during the debate on new clause 11A. They are matters on which I agree with the Opposition but disagreed as to where they should be found in the legislation. These functions are both relevant to the corporation.

The Hon. K.T. GRIFFIN: The Government is sympathetic to these amendments, although I have a couple of observations. In relation to paragraph (ea) which is sought to be inserted there is a reference to registered associations. Not all associations may in fact be so registered technically. They may be enterprise based associations that do not satisfy that technical reference. So, I would be happier if the word 'registered' could be deleted. The same applies in relation to 'registered associations' in paragraph (eb) there. But I wonder why it does not reflect the format of paragraph (ea) and include the encouragement to employers and employees as well as to associations to take a constructive role, because I would have thought that there ought to be a focus upon both employers and employees as well as on associations to undertake that role.

Subject to the answer given by the Hon. Mr Elliott, we are sympathetic to this amendment. If he could make those modest changes we would be prepared to support it without reservation.

The Hon. M.J. ELLIOTT: I cannot think what difficulty would be created by removing the word 'registered' but it seems to me that this Bill will be returning to us at a later time. In those circumstances, perhaps we will leave these two as they are, because the questions have been raised on the spot. I do not immediately see a difficulty with either of them but, if they are left as they are, I do not see any difficulty and I expect that the next time round I will accept an amendment to it

The Hon. R.R. ROBERTS: We will be supporting this amendment. I do not really see any need to take up the honourable member's invitation to drop the word 'registered'. If you want the other side you say 'registered associations and other associations'. I do not see that you have to drop one out. I am persuaded by the Hon. Mr Elliott's resolution of this. If it needs to be adjusted we will do it later on. I think we are all on the same wavelength. We will be supporting the amendment as it stands.

The Hon. K.T. GRIFFIN: It seems that there is almost some agreement on this; that the Hon. Ron Roberts has said 'registered and other associations'. I would have thought that 'associations' actually encompasses all associations, not just those that are registered or unregistered.

The Hon. M.J. Elliott: On the face of it, it is okay, but it is coming back so it is no big deal.

The Hon. K.T. GRIFFIN: I am sorry that I do not have it in writing, but I will move an amendment to the amendment of the Hon. Mr Elliott in paragraph (ea) by deleting the word 'registered'. I know we will revisit this but it is an important issue that I want to have on the record. Would the honourable member support 'registered and other associations'?

The Hon. R.R. Roberts: I would rather come back. I do not think it is a problem.

The Hon. K.T. GRIFFIN: If we go this way, we can talk about it later.

The Hon. K.T. GRIFFIN: I move:

Delete the word 'registered' in paragraph (ea) and paragraph (eb).

Amendment to amendment negatived; amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 6, line 19—After 'to foster a' insert 'consultative and'.

This again is a relatively minor amendment, with the insertion of the word 'consultative.' I think it broadens out the sort of relationship we are looking for between management and labour, saying that it should be both consultative and cooperative. I do not expect any difficulties with that.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 6, line 29—After 'promote' insert 'research'.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 7, after line 5—Insert paragraph as follows:

(ja) to monitor the enforcement of codes of practice and standards of occupational health, safety and welfare; and.

I do need support for this amendment because the corporation does monitor the enforcement of codes of practice and

standards. I understand that enforcement will be carried out by the DIA. It is in the corporation's own best interests, if it is trying to adhere to the objects that we have inserted, that there be a monitoring program to make sure that the DIA is doing its work.

The Hon. K.T. GRIFFIN: The amendment is opposed. It seems quite inappropriate to duplicate what is happening. The inspectorate is in the Department of Industrial Affairs. It is not a function of the corporation to monitor that inspectorate. The inspectorate is accountable to the chief executive officer of the department and then to the Minister and the Minister ultimately to Parliament. That is the way it ought to be. We ought not to be duplicating, which is what this appears to be doing, that function of the inspectorate through this statutory corporation which is subject at least in accountability to the Minister. To the Government it seems to be an unnecessary area of duplication and quite unnecessary. We oppose it.

The Hon. M.J. ELLIOTT: I believe this is a very important. It is one of the more important amendments to this legislation. The DIA in any other circumstances will really be monitoring itself, deciding whether or not it is doing a good job in the area of enforcement. As to this particular body and the role we have given it in the area of occupational health and safety, what does it mean if in fact the body which has ultimate responsibility in some ways for occupational health and safety, but not enforcement, cannot monitor the enforcements being carried on? It will not have the capacity to do anything else once it has monitored other than make a report to suggest to the Minister that the job is not being done adequately and, as a consequence, employers are paying too much, or too many people are being injured or whatever. I find it quite amazing that the Government would not contemplate that WorkCover Corporation would want to monitor how things are progressing in the area of enforcement.

The Hon. R.R. ROBERTS: The Labor Party will definitely be supporting this proposition for the reason that has just been espoused by Mr Elliott. We have decided to draw two Bills and functions together where the corporation sits over the top of them, and to then suggest that it should not monitor the operations of those two arms of the organisation, to me, has got to be ideology. There is no other reason. It seems to me that if you put someone in charge of an organisation, and say you can monitor what is going on in one area but you do not have to monitor the other one, is ill-conceived. This is straight down the line.

The Hon. M.J. ELLIOTT: I point out to the Minister the Liberal Party policy before the last election, which made it quite plain that the WorkCover Corporation was going to be responsible for policing and enforcement processes. The Government has decided not to have WorkCover acting as the enforcing agency. It has broken a promise. It just so happens that it is a promise we will allow it to break because we think it is a sensible one to break. But not only are they taking the policing away but they are saying that WorkCover cannot even monitor the policing. That is absolutely scandalous. I have policy quoted at me all the time and yet in this debate, on many occasions already, we see you characters ducking and weaving all over the place. You are being allowed to break the policy in relation to policing because I think most people agree that that is probably a good idea, but it is important that the monitoring role at least of the enforcement remain with WorkCover.

The Hon. K.T. GRIFFIN: I hope that the honourable member is as diligent in relation to supporting those policy areas that he asks us to implement as he is in being critical about the ones we are not. One would hope that that begins to set a precedent for support of the policy initiatives we take.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 7, line 6—Leave out 'with the approval of the Minister,'.

I believe it is inappropriate that the Minister may stop the corporation from carrying out a public inquiry in relation to matters under its own Act. We have set up what is supposed to be a relatively independent corporation. We have set up a body with very clear guidelines under legislation. I believe that the less ministerial interference with it the better. If we want to change the way WorkCover operates then we do it by way of legislation. If WorkCover wishes to inquire into some matter which it considers of importance under its Act then it should not be stopped. For instance, if it wanted to inquire into Occupational Health and Safety, which the Minister is not too keen to monitor, then the tampering could stop it from carrying out what would otherwise be a very important duty. I do not think there is any justification.

The Hon. K.T. GRIFFIN: I draw attention to the fact that in the Occupational Health, Safety and Welfare Act 1986, among the functions of the commission, section 14 (1)(m) provides:

> . . . to promote or, with the approval of the Minister, conduct inquiries and public meeting and discussions relating to occupational health, safety or welfare.

I suggest that what is in the Bill is already there. It is consistent with what is in the present Act. If there are to be public inquiries it is not inappropriate, in my view, because of the policy focus of responsibility of the Minister consistently with the existing Act, to have to give approval. I do not support the amendment.

The Hon. R.R. ROBERTS: The Opposition supports the amendment. It is a short way to dispel some of the concerns that we have about the attitude of the Government to changes in the Act and in a number of other areas where there is obviously a desire to have ministerial overview of the functions of duly elected boards which are elected to do certain functions.

The Hon. K.T. Griffin: Why did you leave it then in 1986?

The Hon. R.R. ROBERTS: We have moved on since 1986. That is what you always say. We are now facing a Government which has made its intentions very clear not only in the area of WorkCover and rehabilitation but also in relation to a whole range of other boards—

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: We will bring the TAB into it later on, and some of those other things if we have to. The Government has the clear intention, where people have been appointed properly and given good and diligent service on boards, of stamping its ideology on the operation of those boards. This amendment goes some way to putting the brake on the zealots in the Liberal Party. So, we will be supporting this amendment.

The Hon. A.J. REDFORD: As a practising lawyer, I am delighted to see as many public inquiries going on as possible, because it is the legal profession that tends to benefit from those things.

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: Yes, I am sure that you would do that: to be consistent with taking people's rights away. I want to go on record as saying that this is yet another step towards removing the system of responsible government. We are seeing constant examples of this, where the Administration is no longer responsible either to this place through a Minister or in any direct sense, and this amendment (if it gets through) is yet another example of that. That is something, one would have thought, that this Chamber and other people would have learnt from the State Bank, but it is obvious that that has not occurred.

The Hon. T.G. ROBERTS: It appears that we are heading for a lack of confidence by the Opposition and the Democrats in the ability of the Minister to determine in a fair and equitable way the roles and functions of boards at a broad level. The State Bank has been used—

The Hon. K.T. Griffin: We do not have to run to Trades Hall, though, to get out instructions.

The Hon. T.G. ROBERTS: But the culture of this State has been for broad consultation. In a lot of cases it has been broad to the point of being painful, but that includes employers as well: it includes all people who are affected by a broad range of issues and Bills, and what we are getting now is a change in ideology and culture. That is fine. The Liberal Party has a mandate to govern and to change, but we must recognise that the Opposition and the Democrats also have philosophical positions in relation to how they see this State being run.

The Hon. K.T. Griffin: And no mandate.

The Hon. T.G. ROBERTS: We have got a mandate in this House.

The Hon. A.J. Redford: I am sorry to interrupt—

The CHAIRMAN: Order!

The Hon. T.G. ROBERTS: You can have another go. Just let me finish. There is a strong change in the philosophical direction in which the Government is governing, and it is sending shivers down people's spines. In the normal Westminster transfer of power there is generally a recognition that over time people's contracts will run out in an orderly fashion, and there has not been a long history of ideology by individuals on boards to put in socialist objectives or agendas that challenge the well-being of South Australian citizens. Those on the Government side are using the TAB board as an example, where people have been approached to take early retirement—in the Public Service other people are being targeted for early separation—based on nothing else than the fact that they have been appointed by Labor Governments in the past. That intention has not been a part of South Australia's culture and history in relation to the Westminster transfer of power in this State.

So, you can understand that we are a little nervous about a whole range of philosophical changes and the stamping of authority. It is almost like a Kennett-style change. South Australians tend to be conservative; they tend not to want rapid accelerated change in relation to a lot of their social regimes. If the Liberal Party does not heed—

The Hon. R.R. Roberts interjecting:

The CHAIRMAN: Order!

The Hon. T.G. ROBERTS: If the Liberal Party does not heed what has happened in other States, such as Western Australia—

Members interjecting:

The CHAIRMAN: Order! The Hon. Terry Roberts has the floor.

The Hon. T.G. ROBERTS: In Western Australia the streets were full of people demonstrating because they were concerned about the rapid transfer of power, and the easing of the Westminster transfer was over a shorter time rather than a longer time. In Victoria the same thing happened. We would have thought that perhaps the Liberal Party might learn its lesson here, and the fact is that a lot of people did not vote for that Party on the basis of its whole policy but voted against the Government on the basis that they had seen that it had fouled up. We thought some lessons may have been learnt in that, but obviously not.

On this side of the House, whenever these provisions are put in Bills—it does not matter whether it is WorkCover or what it is—concern will be shown in relation to ministerial control over a broader range of board authority and consultation. In the Bills that we have seen before us so far, there is a narrowing of the consultation process, a narrowing of the boards in terms of numbers and the centralising of power through the ministerial chain. That is something that the Government will have to recognise: that in this House there will be a philosophical position that we will oppose these matters.

The Hon. A.J. REDFORD: I want to make one comment in response to that. The honourable member introduced the TAB board. The TAB board is an absolute classic case, because you have an organisation that is dealing with huge sums of money—such as this corporation—and the Minister says that he wants some financial information in relation to a radio station. However, that board says to the Minister, 'No, you can't have it. You don't have the right to have that.' That is effectively what happened.

So, the Minister is supposed to sit on his hands and trust that board, and that is precisely what John Bannon did. That is what got this State into the trouble that it is in. But at the end of the day it is fundamentally important that there be some accountability to this place.

As I have said in previous speeches, accountability directly to Parliament is no accountability at all, but accountability through the system of responsible government I think works. We have seen it work in the Federal Government of late and, if the Minister mucks up, the Opposition combined with the media, and particularly given that we do not have the control of this place, has enormous power to bring us to account. But to have independent bodies doing precisely what they want, when they want and how they want, with no direct accountability to either this Parliament or to the Minister, is a recipe for another State Bank. I should have thought that we had learnt that by now.

The Hon. M.J. ELLIOTT: Somehow or other we seem to have lost track of what this clause is about. This clause talks about conducting public inquiries in relation to matters that arise under an Act administered by the corporation. They are not wide ranging powers. It is about conducting inquiries into matters which are directly under their responsibility; it is about nothing more nor less than that. That point has to be made perfectly clear. I have consistently in this Parliament argued that the more information that the public has and the more involvement the public can have in issues of importance the better off we are. If the Minister decides he does not want an issue looked at, I cannot see the justification for that. I do not believe there is ever anything wrong—

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: It does not define how the public inquiry is concerned. It certainly does not suggest that you are going to get a job every time they have one. A public

inquiry can take many different forms. A public inquiry can simply be having a person sitting in a room with a small table and the possibility of a few people sitting in and listening to what is being said. The suggestion that they are going to run some royal commission type of inquiry is so absurd that it does not deserve response.

I always believe that the more information that is available to the public, the more debate that occurs and the more that the public itself is involved, the better government and the better operation we have in all fields.

The Hon. R.R. ROBERTS: It is always the little ones that cause the longest debate, but the Hon. Mr Redford has decided to throw his hat into the ring and mention ministerial responsibility. He draws in the TAB and holds it up as an example, saying there is no accountability to the Minister. However, the TAB (like this organisation) operates under an Act of Parliament whereby it is responsible to the Parliament in certain circumstances.

The other thing that needs to be pointed out is that this amendment does not preclude the Minister's going to his board and saying,'I want you to conduct an inquiry.' However, it does preclude him from stopping an inquiry which is legitimate under the provisions of the Act of the Parliament, which incorporates all members of the Parliament, not just the Government. We are not really talking about the Government's view: we are talking about the Parliament's view. It is a pretty simple proposition.

The Minister can have his input. If he wants to conduct a public inquiry, he can go to the board and say, 'I want you to conduct an inquiry.' I would be extremely surprised that if in 99.99 per cent of the cases he did not get his way. However, it does preclude him from political interference when the board, acting in accordance with the Act of Parliament, makes a decision to have an inquiry into its legitimate functions. It prevents him, or any other Minister, for purely political reasons, from stopping that inquiry if the Minister's intention were not honourable. I do not know whether this Minister will fall into that category. However, the public indications that we are getting in relation to the actions of this Government in a whole range of areas of responsibilities of duly appointed boards under Acts of Parliament are that it is its intention to interfere with the legitimate actions of those boards. We will not support that sort of interference.

The Hon. A.J. Redford interjecting:

The Hon. R.R. ROBERTS: That is not responsible government: that is irresponsible interference in the name of responsible government.

The Hon. K.T. GRIFFIN: This is an important policy issue with some very significant ramifications for Government and, I think, for the public. It is a statutory corporation; it has to be accountable. One of the problems with the State Bank was that as a statutory corporation it was not subject to sufficient ministerial scrutiny. We say that under the Act it could have been, and there was power there to make it subject to that scrutiny.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: It is about a wide range of administrative issues. With respect to the Hon. Mr Elliott, it is not a long bow. It is an important policy question in relation to any statutory corporation, whether it is in the mould of the State Bank or the WorkCover Corporation, or some other corporation. This body is akin to a Government department in the sense that it is administering an important framework of legislation meant to be providing a service to the community.

The moment you remove from a board the necessary mechanisms to ensure proper public accountability is the moment that they become unaccountable and they are more liable to make decisions which are either not in the public interest or in the interests of those who are serviced by them. That is more so where you have an agency such as WorkCover, which is a monopoly organisation.

This amendment seeks to provide at least one of a number of mechanisms to ensure proper accountability. I even question personally whether a corporation ought to have the power to conduct a public inquiry. After all, we have all the various standing committees of the Parliament. We will have two more as soon as we finally process the Parliamentary Committees Bill, which deals with statutory authorities. They can conduct the public inquiries; they are the bodies which can make the decisions.

It does not matter whether the Government of day is Labor or Liberal: the fact is that there is the potential for an Opposition in conjunction with the Australian Democrats, at least in this Council, to ensure that a matter is investigated by a particular committee. As I say, I even question the desirability of a body such as this, or any statutory corporation, having the power to conduct a public inquiry.

We can debate this for a long time. That is the Government's position; that is my position. I understand the position from which the members opposite come and the Hon. Mr Elliott's position. However, I hold the very strong view that if there is to be a power to conduct a public inquiry it ought to be subject to ministerial approval as it presently is under the existing Act.

The Hon. M.J. ELLIOTT: This is going on much longer than is really necessary. It is worth looking at some of the other functions which do not require ministerial approval. They can carry out projects, programs and even research. Precisely what does 'research' mean at the end of the day? The Government agreed to research. They can devise, promote and approve courses and they can prepare, promote and endorse guidelines to assist people. They are doing an awful lot without ministerial approval. On this one matter members are suddenly jumping up and down. It is terribly inconsistent.

It is not a question of whether Ministers should have power: it is a question of when they should have power and whether in the particular circumstance it is appropriate. That is why I said that talking about the State Bank's losses is drawing a long bow. There is one function of carrying out an inquiry, and it is quite a different function from the various functions of the State Bank board. That is why I said it is drawing a very long bow and I think the Government's opposition is really nonsense.

Amendment carried; clause as amended passed.

Clause 13—'Powers.'

The Hon. K.T. GRIFFIN: I move:

Page 7, lines 28 to 30—Leave out subclause (3) and insert:

(3) The corporation may, with the Minister's approval, engage a private sector body to perform one or more of the following functions under the Workers Rehabilitation and Compensation Act 1986 on behalf of the corporation:

(a) the management of claims (including the provision of rehabilitation services and the management or implementation of other programs designed to assist or encourage workers who have suffered compensable disabilities to return to work);

(b) the collection of levies;

(c) a function prescribed by the regulations.

Basically, the issue relates to the power of the corporation to appoint agents or to engage contractors to do a variety of functions to assist the corporation in the performance of its functions. Of course, this is one of the areas that is presently there. Then we go on, if we remove paragraph (b), to put beyond doubt the areas which the Government believes the corporation may undertake. Of course, this amendment is part of the two amendments relating to clause 13 which we believe are important.

The issues have been raised in relation to the capacity of the corporation to subcontract out the management of claims and the collection of levies, and we believe that these are vitally important functions which can be better done in the private sector under a competitive environment, but leaving the corporation with the ultimate authority.

The Hon. Mr Elliott, in his second reading speech, criticised the broad nature of the power of delegation, and we have endeavoured to accommodate that to some extent, but still focusing very much upon the two areas specifically which we believe ought to be capable of being contracted out in a competitive environment.

Of course, we also provide that, if there are additional functions that the corporation is to contract out then they can be prescribed by regulation. Personally, I am not happy with that, because it means there is a measure of uncertainty about it in the sense that the regulation can be disallowed. In any event, I believe it is an Executive responsibility and not a parliamentary responsibility to deal with the day-to-day activities of Government agencies, both corporations and departments. Certainly, we can be accountable for what we do by questioning and by reviewing Estimates Committees and through parliamentary committees, but it is inappropriate in my view for this Executive function to be the subject of disallowance. It makes it virtually unworkable, but we are prepared to tolerate it in respect of functions other than the management of claims and the collection of levies.

One of the primary weaknesses in the current WorkCover system has been the inadequacies of the current claims management. That is a practical problem for employers, who have to pay the costs, and it is a problem for employees in the longer term because of, perhaps, an inefficient means by which claims are managed. More particularly, if there is an increase in costs that ultimately, when paid by employers, may be the straw that breaks the camel's back in relation to job creation. We made it quite clear in our policy prior to the election that these are areas that we wish to have subcontracted out. If the Hon. Mr Elliott is not persuaded by that, I can read the actual policy statement.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: I am pleased about that. The policy states:

> WorkCover may tender out to the private sector insurance companies some or all of the collection of levy fees and the management of claims administration related to workers compensation and rehabilitation. Allowing the private sector to compete in management and administration of claims will establish a scheme which is more service oriented and cost effective.

My amendment is preliminary to the substantive amendment that will be moved later to clause 13. I oppose the amendments yet to be moved by the Hon. Mr Elliott and the Hon. Mr Roberts because they make the system almost impossible to operate at an executive level.

The Hon. M.J. ELLIOTT: The question of WorkCover, and more generally workers compensation, is an issue that I picked up for my Party at the beginning of this year. In fact, it was not until well into January that I knew I would be coming back to the Parliament, and it was a week or two after that before it was decided what responsibilities I would have. As it was clear that workers compensation would be a significant issue in this parliamentary session I spent and am spending a considerable amount of time looking at the legislation. What I sought to do as things progressed was to identify what appeared to be the key issues so that I could make up my mind what position I would take regarding the legislation.

It is fair to say that until probably about 10 days ago this particular issue had not loomed large in my mind because it had not loomed large in the public debate. That is important, because that led me to the position in which I find myself at this stage, and the propositions I will be making.

The Hon. T.G. Roberts: The *Advertiser* was running a rorts campaign.

The Hon. M.J. ELLIOTT: That is exactly the point. The *Advertiser*, with the kind help of the Government, had been running a campaign on rorts with almost a story a day. Those rorts tended largely to concern people who had been injured at work and who had simply rorted the system or people who had been injured on their way to work or wherever else. The Government's focus, if one reads the print statements in the media, was on journey claims and stress. It looked a little at whether or not claims should be appealable and the general overall structure, until just over two weeks ago when, out of all the press clippings I have seen, there was one sentence on the question of claims management. In all the print media until two weeks ago there was only one sentence. The Government itself had not made it any sort of a public issue. I emphasise that only to point out that the reason I have not spent time on it is because it had not been identified as an issue.

The legislation itself does not give us an awful lot of clues. I refer to the Minister's speech when he introduced the Bill in the Lower House. Do you want to know how much time he spent on this issue? One sentence. He spent all his time talking about rorts as well—the focus was somewhere else. I think it is reasonable for me to say that I did not detect this as a major issue in the Government's mind, because it had not made it a major issue. But then I had some reaction from employers who said, 'Hey, we think this is a big one; would you please have a closer look at it?' That is the truth of the matter.

It is also worth looking at the Government's policy a little more carefully. That is what I did as the issue evolved—I looked at what the Government had said. The Minister read out a specific sentence but he did not read the material leading up to it. On page 5 of the Government's policy under the heading 'Workers Compensation' it is stated:

> The new WorkCover board's key focus will be on financial, administrative and operational efficiency. Before it assumes its expanded operations an audit will be required.

It goes on to say:

> As a matter of high priority, the new board will be required to advise the Minister on the implementation of the Government's policy objectives, the legislative changes needed for them to be achieved and a timetable for implementation.

Any fair reading of that would lead one to believe that the new board was to be established, that it would examine the issues listed immediately underneath and then make a recommendation for legislative change. That would be a very fair reading of what the policy states.

The Minister may care to react to that statement as to the Government's intent, but we had interesting arguments about that only yesterday in relation to other legislation as to whether or not the words should be taken literally. The literal interpretation of what the policy states is that the new board would be established and that it would give advice and recommend legislation in this policy area. The Attorney-General keeps talking about policy. All I can do is quote it. I did not leave out the earlier sentences. I read the earlier sentences leading up to the sentence that the Attorney-General read out to this Council. Also, I think it would not have been unreasonable for me to say that it does not look like this is an issue of great significance now, although people are jumping up and down saying that I am about to destroy the whole system by not doing exactly what the Government wants.

Having made those comments, let me now examine the broader issue. I do not have a particular philosophical objection one way or the other as to whether there should be private enterprise involvement in the supply of these services. Unlike the Government, which seems to have a particular aversion to any form of public enterprise and unlike the Opposition which sometimes takes the opposite view, I do not have a particular view one way or the other, other than to say, 'Let's look at each issue on its merits.' That is the position I like to take. If we look at the legislation as it was first introduced into this place we see that it provides:

(a) enter into any form of contract or arrangement;
(b) appoint agents or engage contractors—
  (i) to assist the corporation in the performance of its functions; or
  (ii) to carry out a function on the corporation's behalf.

That is a wide clause, a blank cheque clause. The way it is drafted we could have gone very close to the bad old days before WorkCover came in—and they were the bad old days. The Minister in the other place has even said to me in conversation that he does not want to go to what the Victorians have even now with the role that insurers play there, but under the legislation he or some future Minister could do exactly that. There is no limitation whatsoever on how far these contracts may go. The clause as it stands gives the potential for open slather. The Parliament was stepping right back and saying, 'Look, the whole system can be totally changed and we won't be involved in it in any way whatsoever.'

I cannot think of how many times in the past eight years I have joined with the Hon. Mr Griffin to vote against clauses that gave away powers and did not keep parliamentary review in relation to many things—and he knows that; the number of times when we insisted that matters be incorporated in legislation rather than in regulations; the number of times that things were incorporated in regulations rather than simply being brought out by proclamation. The Attorney-General knows that we voted together frequently on those sorts of things, yet he was now arguing—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: No, I am sorry, this is far more than a management issue. I argue that there are philosophic considerations within this. There is a huge difference. We can see it between the Government and the Opposition about the extremes that are potentially possible, not just between the Parties but even among individuals. With a different philosophic attitude you could produce a remarkably different structure. I think that producing a system that can lurch around and constantly change form is unhealthy. I imagine the Attorney-General has not had the time to look at what the Industry Commission has had to say about these sorts of things. I have the Industry Commission's draft report, and its final report is due to be released within days, perhaps even today or tomorrow. I understand that it will probably not be greatly changed. But the commission talks about the different groups who have interests in this area. It states:

> Employers want the lowest possible workers compensation premiums and worry about the competitiveness as the cost of insuring against work related illness escalates. Employees want to work in safe workplaces. However, if they are injured at work or suffer an occupational disease, they want to be appropriately compensated and, if necessary, rehabilitated and/or retained. Governments want comprehensive arrangements in place which embody strong safety incentives, are fair to those who suffer work related injury or illness but which do not at the same time impose an unreasonable burden on either firms or taxpayers. Underwriters' insurers want schemes which allow them to earn an adequate return on their investment.

The next comment is crucial:

> These desires can pull workers compensation arrangements in different directions. Indeed, the history of arrangements in Australia bears testimony to the success of various stake holders in influencing the specifics of individual schemes from time to time. As a result, most schemes are in more or less constant flux and can be subject to periodic financial crises which spark major reforms.

The fact is that we really can have a workers compensation scheme that lurches in different directions and a change of Government can have it lurching off in another direction again. I do not believe that that is healthy for business, employees or for anybody. I do not believe that it is unreasonable for this Parliament to have a reasonable understanding as to what precisely it is that is proposed and say that it authorises that to occur. I do not mean very fine detail, but enough detail so that we know what we are getting. You are asking us to approve something. What you are asking us to approve is something which is incredibly broad. I am saying that I am not willing to accept that.

The Hon. K.T. Griffin: We've got to compromise.

The Hon. M.J. ELLIOTT: Yes; I'm not saying that I'm not willing to be prepared to look at particular proposals. Of course, the next problem I have, as I have said, with this issue really being identified as a major issue—at least within the debate—only in recent days, is that I have had nothing like adequate time to firm up a position in relation to more detailed proposals which are beginning to come forward.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: It's none of your business how long I speak for.

The CHAIRMAN: Order! I suggest the honourable member keep to the matter in hand. We are debating a fairly constrained amendment, and the honourable member is ranging far and wide now.

The Hon. M.J. ELLIOTT: This is an outrage. It has already been agreed between the Parties that this clause will lead to subsequent amendments, and I am covering the range of those amendments. It is a debate that will be had in this place, and I am covering that very reasonably.

I spoke with the Minister's office last Friday and asked, 'Would you please give me everything you can in relation to claims management?' I also approached the Employers Federation and the unions and said, 'Look, I want as much information as I can get on claims management, because it is now being focused on as a more central issue than it has been up until now.' I can report to this Chamber that, despite repeated phone calls—and we are now at Thursday, the following week—to the Minister's office on this subject I

have received nothing. I asked, 'Please give me the material which can help substantiate the need, because I am willing to examine it.' And I have got nothing—nothing in six days.

The Government carries on the campaign with the media. It has time to write press releases about how the Democrats are doing terrible things to this legislation. I do not know how many hours have gone into this media nonsense and, when I asked reasonably for the information to justify what you want, I got nothing—not a thing! This Government is absolutely incompetent. At least the Employers Federation took the time to put together a five page package so far, and I expect that I will get a chance to get more from it. How can Government members be treated seriously on this issue that they say is so central, when I ask for information and six days later, having said I am quite prepared to look at it, they give me nothing? At this stage, what I am saying to the Government is that the question of claims management is one that I am willing to look at, but I am not willing to pass the amendment now.

The Hon. K.T. Griffin: Keep an open mind about it.

The Hon. M.J. ELLIOTT: That is what I am about to say. It is already quite plain that this Bill will be coming back, and I am prepared to look at it then. But I also suggest that a bit more than zero amounts of paper and argument would be useful if I am to change my position.

The Hon. T.G. Roberts: That's media intimidation.

The Hon. M.J. ELLIOTT: Well, if they think that works, they don't know the psychology that I work with. I can guarantee it does not work one bit. This Government might think it is being very clever with what it is doing through the *Advertiser* but it does not work. It is totally unenlightening. With regard to the question of claims management, how much more have we actually had over recent times? Except for what the Employers Federation had to say—and that was not too enlightening in itself—Government members have added no light but further heat and more rort stories. Day after day they come out. There are more today, and there was another one yesterday. They are rorts that everybody agrees should be wiped out, rorts that I am quite prepared to tackle by way of this legislation. I expect something better, and so far we have not got it. What I am saying is that my mind was open, my mind is open. I am willing to treat this issue again when it returns. At this time, though, I will be insisting on an amendment the effect of which will be, if there is to be introduction of claims management or private insurers or levy raising, it will need to happen by way of regulation. I am prepared to look at that further, as long as the Government is prepared to be fair dinkum rather than carrying on in the way it has so irresponsibly so far.

The Hon. K.T. GRIFFIN: I understand that some information, although not necessarily completely satisfactory to the honourable member, has been presented. But there will be more information, and I am pleased to hear—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: I am being quite reasonable; I am not slamming you. Just cool down for a minute.

The Hon. M.J. Elliott: Just tell the truth.

The Hon. K.T. GRIFFIN: It is true. For example, the honourable member asked for the Industry Commission report on Tuesday, I think it was, and he got it within a hour. There is a paragraph in the Industry Commission report about healthy and unhealthy competition. Let me read it to the honourable member.

The Hon. M.J. Elliott: I've read the whole report already.

The Hon. K.T. GRIFFIN: You did not quote it; just let me get it on the record. It states:

> Healthy and unhealthy competition.
>
> Competition which erodes benefits is invidious. Competition which takes the form of shifting as many costs as possible on to other parties, for example to individuals or to the health and social security systems, is also undesirable. As one inquiry participant put it, ultimately someone has to pay. What needs to be encouraged is healthy examination, which focuses on cutting service delivery cost and/or provides better services. Beneficial competition can greatly improve occupational health and safety outcomes, as when insurers actively compete with one another to provide firms with the benefit of their expertise in the use of risk management techniques to improve workplace safety, claims management and superior performance in the crucial areas of rehabilitation and return to work.

I will just put it into context with what the Government proposes. The power of delegation will also enable a group of employers who are not exempt employers, not subject to all the rigorous scrutiny of WorkCover but who want to, to be self managers of claims. They recognise that they will get a distinct advantage by being able to manage their claims for rehabilitation personally, rather than being put out through an agency such as WorkCover. So the power of delegation is designed also to assist those employers who can demonstrate that they have a sufficient capacity to manage their own claims on the way to becoming exempt insurers.

The fact of life is that, not just around Australia but around the world, whether it is with WorkCover or other functions of Government, it is clear that statutory corporations are ceasing to lose their monopoly status and are facing the heat of competition. Even in communist countries there is a very strong focus upon moving away from the Government doing everything and enabling private enterprise to perform some of the functions. What is proposed here is that WorkCover will still be the body ultimately responsible for the oversight of claims management, and so on.

It has to be the body that is ultimately accountable, but competition will enable a much more sympathetic as well as a more efficient process to be undertaken in relation to the collecting of levies, claims management and so on. It is quite obvious from all the experience around the world that competition properly managed does provide significant benefits to the community as well as to the Government. All we want in relation to WorkCover is an efficient system providing services at the best possible price, providing effective rehabilitation services as well as other management responsibilities for claims. If you can get for employees a more responsive rehabilitation system, a system that is more focused upon the employee and the workplace so that it is within that context that rehabilitation is managed, you will get more people back to work in a quicker time and you will maintain their self esteem.

That is what we are focusing upon, and this is but one means by which we endeavour to bring the delivery of services closer to the people who need them. I am pleased that the Hon. Mr Elliott has an open mind on this issue and I can guarantee that, notwithstanding the heavy legislative program that he has to bear the burden of as much as anybody else, we will provide him with all relevant information and assist him to work through it. And I do not say that in a patronising sense: it is a genuine undertaking to provide that information to assist him to resolve a position on this issue.

The Hon. M.J. ELLIOTT: It is not my intention to debate the question of claims management now. As I said, it was a subject I wanted to research, had inadequate information on and had been requesting and not getting much, I think

five or six pages from the employers chamber and, I still say, nothing from the Government. The Industry Commission report that I sought was a more general request that did not relate to that; it was a separate request. In fact, my staffer had to walk round to the office, collect it, take it back to our office, photocopy it page by page and then carry the report back again. That is how much assistance we got in terms of that. Let us not exaggerate how much assistance the honourable member gave us.

I have looked at those sentences that the honourable member read from the report but, as I said, it is not my intention at this stage to debate that issue. I should have expected that a Government that had a policy on an area would have had some supporting data and arguments for it beyond the rhetoric that everyone will be better and it is more efficient. How and why is it efficient? Where is the analysis of this? Exactly what form will this claims management take? There is a wide variety of forms. Will any constraints be placed upon it? Those are the sorts of things I want to explore and I still do not have any of that; and I need it. If I do not have it, then you have Buckley's: I will make it as simple as that.

The Hon. R.R. ROBERTS: I can shed some light on a couple of questions the Hon. Mr Elliott had in respect of the Government's commitment to this clause and its content. I suggest that one of the main reasons why Mr Elliott has not been able to obtain a great deal of information or to research areas where there has been great commitment, or where this is an issue of public concern about contracting out, is simply because the advice that I have been given is that there are great advantages in having a single insurer concept.

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: And claims management. The Labor Party has made it quite clear. We believe that the system that is in place now is adequate and has been efficient. The administration of the board has been very efficient, and I suggest to the Hon. Mr Elliott and to this Committee that there are great advantages in having all these functions handled by the corporation. The reason why this has been flushed out in the past fortnight is that friends of the Government have seen an opportunity to get their fingers into the profitable parts of the administration of claims and the contracting out, and have put pressure on the Government, saying, 'You are not really doing enough to give us advantages in this area and, having made very strong commitments to this Party, we expect to get a big piece of the action.'

It is true that there are advantages in the monopoly system in that you get economies of scale in the handling of the affairs; you get reduced duplication of overheads; there is consistency, equity and a greater control of fraud and evasion. Insurance benefits from a larger premium pool. There is also the situation where, when you are dealing with a Government body that pays no income tax, these savings (which can be up to 10 per cent of income) are directly reflected in the premiums of the organisation. So, overall it is actually better. I am advised that one of the reasons why the Government has not gone in strong on this contracting out is that the board itself and the corporation have been advising that this is a function that was competently and efficiently being run by the corporation and there is no need for it.

In fact, the best advice possible that has been given to the Government is that it ought not to go down this track. I suggest to the Hon. Mr Elliott that that advice has been received by the Government, but it now finds that it has this obligation to its constituencies in the private insurance area and now has had pressure put on it to pay up. We are supporting the Hon. Mr Elliott's amendment. It is in line with our own thoughts on the matter and, therefore, it is the best we can get at the present time. My preferred position would be that there do not need to be changes in this area but, as we said at the outset, we will be participating in this to try to make this legislation reflect the best light it can under the circumstances.

Amendment carried.

The Hon. K.T. GRIFFIN: I move:

Page 8, lines 9 to 11—Leave out subclause (3) and insert—

(3) The corporation may, with the Minister's approval, engage a private sector body to perform one or more of the following functions under the Workers Rehabilitation and Compensation Act 1986 on behalf of the corporation:

(a) the management of claims (including the provision of rehabilitation services and the management or implementation of other programs designed to assist or encourage workers who have suffered compensable disabilities to return to work);

(b) the collection of levies;

(c) a function prescribed by the regulations.

I have already explained this.

The Hon. R.R. ROBERTS: We are canvassing the argument we have had before. It is the same thing. The view that I hold has been vindicated by the result of that vote. It brings into play the same principles as the Minister being able to interfere in the legitimate operations of the board, and I recommend to the committee that it support my amendment in this area. I move:

Page 8, lines 9 to 11—Leave out subclause (3).

The Hon. M.J. ELLIOTT: I move:

Page 8, lines 9 to 11—Leave out subclause (3) and insert—

(3) The Corporation—

(a) must not enter into a contract or arrangement involving the conferral of substantial powers on, or the transfer of substantial responsibilities to, a private sector body unless the contract or arrangement is authorised by regulation; and

(b) if so required by the Minister, obtain the Minister's approval for appointing an agent or engaging a contractor.

(3A) A regulation made for the purposes of subsection (3)(a) cannot come into operation until the time for disallowance has passed.

I have briefly consulted with Parliamentary Counsel and I think there may have been a misunderstanding between us when I was having a further amendment drafted up to clause 16 which I filed at a later time. As a consequence of that misunderstanding, there may be some anomalies created but despite that I think at this stage the clause should come in and we will have a chance to debate it again in any case. The effect I tried to create in relation to clause 13 was to recognise that the corporation may wish to contract out and that by regulation the Government would describe what sorts of powers may be delegated by way of contract to the private sector; whereas the amendment I have filed for clause 16 relates to delegation of powers within the corporation to public servants and the like. If there is some confusion created by those then, as I said, that is a just a misunderstanding in relation to instructions I gave to Parliamentary Counsel. At this stage I think it is more what we are seeking to achieve that is important. We will have a chance to further look at this in the next 10 days or so.

The Hon. K.T. GRIFFIN: I have indicated that I have moved my amendment which is a compromise. I understand that the Hon. Mr Elliott will keep an open mind on this issue

of management of claims and collections of levies. His amendment to replace subclause (3) is, I think, totally impractical, with respect, because it talks about the contract or arrangement being authorised by the regulations. That means a regulation will have to have annexed to it the actual contract or arrangement which, if he is proceeding—

The Hon. M.J. Elliott: It is not the intention and I do not believe it is the case.

The Hon. K.T. GRIFFIN: That is the intention:

> The corporation must not enter into a contract or arrangement involving the conferral of substantial powers on, or the transfer of substantial responsibilities to, a private sector body unless the contract or arrangement is authorised by regulation.

The entering into, negotiation of and approval of contracts is really an Executive function. It is not for the Parliament to vet every contract which is what this proposes. I suggest that it is quite unworkable and impractical.

The Hon. M.J. ELLIOTT: This might all turn out to be purely hypothetical later on, but my intention was not that a specific contract arrangement be authorised but rather that the regulations would describe the types of contracts or arrangements that might be authorised. That was clearly my intent. I believed it did when I read it; whether or not it did, it is not worth spending a lot of time arguing about that at this stage, because I have said that, no matter what result we get, there will need to be some redrafting in this area.

The Hon. R.R. ROBERTS: Because of this confusion we had an amendment that we wanted to put on file in this area. My understanding was that this area had been withdrawn; I made my assumptions on the fact that it was not going to go out. I would like to report progress and come back. I just want to have a look at this.

The Hon. M.J. Elliott interjecting:

The Hon. R.R. ROBERTS: We will support the amendment.

The Hon. R.R. Roberts' amendment carried.

The Committee divided on the Hon. K.T. Griffin's amendment:

AYES (8)

Davis, L. H.	Griffin, K .T. (teller)
Irwin, J. C.	Lawson, R. D.
Lucas, R. I.	Pfitzner, B. S. L.
Schaefer, C. V.	Stefani, J. F.

NOES (9)

Crothers, T.	Elliott, M. J.
Feleppa, M. S.	Kanck, S. M.
Levy, J. A. W.	Roberts, R. R. (teller)
Roberts, T. G.	Sumner, C. J.
Weatherill, G.	

PAIRS

Laidlaw, D. V.	Pickles, C. A.
Redford, A. J.	Wiese, B. J.

Majority of 1 for the Noes.

Amendment thus negatived; the Hon. M.J.Elliott's amendment carried; clause as amended passed.

Clause 14 passed.

Clause 15—'Committees.'

The Hon. M.J. ELLIOTT: I move:

Page 8, after line 31—Insert:

> (3) The Corporation must allocate sufficient resources to ensure that the Committees established under this Act, the Workers Rehabilitation and Compensation Act 1986 and the Occupational Health Safety and Welfare Act 1986 can operate effectively.

All I am seeking to ensure is that if committees, and indeed the two advisory committees that are set up under statute, are established under clause 15, they have sufficient resources to carry out the roles which they have been given.

The Hon. K.T. GRIFFIN: I oppose the amendment. The committees are ministerial committees. Certainly, they do need to be adequately resourced, but the allocation of resources is more appropriately a management function for the Minister, and particularly because they are ministerial committees which report to the Minister. The Government does not believe that it is appropriate to insert that sort of provision in the Act.

The Hon. R.R. ROBERTS: I will be supporting this amendment, because it does no harm. It simply puts into legislation the responsibility that is already there. Obviously, if we are going to set these things up, they should not have any cost restraints.

Amendment carried; clause as amended passed.

Clause 16—'Delegations.'

The Hon. M.J. ELLIOTT: I move:

Page 9, lines 2 to 4—Leave out paragraph (a) and insert:

(a) may be made—

(i) to a member of the board;

(ii) to a committee established by the Corporation or by or under an Act;

(iii) to a particular officer of the Corporation, or to any officer of the Corporation occupying (or acting in) a particular office or position;

or

(iv) to a public authority or public instrumentality.

This clause is identical to a clause contained within the current workers compensation and rehabilitation legislation. Basically, I am trying to tackle the routine delegations which are carried out within an organisation, and WorkCover Corporation will need to carry out routine delegations for administration or whatever, as distinct from the delegations of powers and responsibilities that it might have in the private sector. In these circumstances, I believe that this clause is the appropriate one.

The previous delegation clause was remarkably wide and created some confusion for me. We seem to have a very broad delegation provision in clause 16, yet the effect of clause 13 also was a very broad delegation of powers, and to that extent I wondered if they in fact should have had different purposes. Certainly, I had set about creating clauses, one of which was largely for the general day-to-day internal functioning of WorkCover in clause 16, and in clause 13 I was setting about tackling the question whether or not beyond the WorkCover Corporation itself there may be contracting out of some performances.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. We think it is important to have a wide power of delegation, particularly in relation to contracting out proposals—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Yes, it is; I know. There is some confusion about it, but we do not believe it appropriate or practical to restrict the power of delegation, but of course it is an issue that we will further examine in the course of the next few weeks.

The Hon. R.R. ROBERTS: We support the amendment.

Amendment carried; clause as amended passed.

Progress reported; Committee to sit again.

[Sitting suspended from 12.48 to 2.15 p.m.]

MABO

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by the Premier in another place on South Australia's response to Mabo and native title.

Leave granted.

PARLIAMENTARY SECRETARY

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a ministerial statement made by the Premier in another place today on the subject of the Parliamentary Secretary.

Leave granted.

QUESTION TIME

JUDICIAL INDEPENDENCE

The Hon. C.J. SUMNER: I seek leave to make a brief explanation before asking the Attorney-General a question about judicial independence.

Leave granted.

The Hon. C.J. SUMNER: Yesterday in the Council I asked a question of the Attorney-General about judicial independence and, in particular, the attitude of the Chief Justice to the current Industrial and Employee Relations Bill. I had been advised by Mr Ingerson in another place that the Chief Justice had written to the Attorney-General about the matter. I asked the Attorney-General to table the letter; he refused. I asked the Chief Justice to make the letter available; he refused also, at least for the time being.

Members interjecting:

The Hon. C.J. SUMNER: Just wait a minute.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: This secrecy in relation to an important constitutional principle is unacceptable. Surely in a system of open, democratic government we should be allowed to hear the concerns of the Chief Justice so that these matters can be openly debated before the Parliament.

I can now reveal that, by letter dated 8 April 1994, the Chief Justice wrote to the Attorney-General. I can also reveal to the Council that that letter contains trenchant criticism of the provisions currently contained in the Industrial and Employee Relations Bill on this particular matter.

The Chief Justice has advised the Attorney-General that the effect of the Bill is to confer on Executive Government an unfettered power to deprive an existing judge of the Industrial Court of his office as a judge of the corresponding court under the proposed legislation. He says that such a power is incompatible with the independence of the judiciary from Executive Government. He further says—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER:—as follows:

> In its present form, however, the clause is radically offensive to the principles of judicial independence.

He also points out concerns about the limited tenure of industrial commissioners that is contained in the Bill. My questions to the Attorney-General are as follows:

1. Can the Attorney-General confirm that he received a letter from the Chief Justice expressing the views that I have outlined to the Council?

2. Does the Attorney-General, as the first law officer of the Crown, agree with the Chief Justice about the threat to judicial independence contained in this legislation?

3. What action does the Government intend to take?

4. Will the Attorney-General now table the correspondence, instead of engaging in secret discussions in relation to this matter?

An honourable member interjecting:

The Hon. K.T. GRIFFIN: I sleep well actually; I have no problems. I made no secret yesterday of the fact that the Chief Justice had written to me about the industrial legislation. I indicated that—

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN:—I and the Government were giving consideration to the matters raised in it and that for the time being I was not prepared to table that letter and that I had not formally responded to the issues raised therein, and I maintain that position: I have not formally responded to the Chief Justice in relation to the views which he has made known to me in respect of provisions in the Bill relating to the current Industrial Court which he believes are matters of concern. We have discussed those and they are issues which, as I indicated yesterday quite openly, would be addressed when the Bill got to the Legislative Council. I have made no secret about that. That is really where it rests.

I must say that I do not agree with assertions that the Bill is a serious reflection upon the principle of judicial independence. Of course, there is a variety of issues which the whole concept of judicial independence raises. One does have to reflect seriously upon whether a Parliament has the right to abolish a court, as occurred in Western Australia. We are not talking about abolishing a court in the legislation at all. However, the situation is different in Victoria, for example, and at the Federal level under a Federal Labor administration—the Federal Labor Administration abolished a court.

In this whole argument about judicial independence, no-one has really finally focused upon the fact ultimately the Parliament makes the laws. If the Parliament decides that a court or a tribunal will be abolished then it is entitled to do that. Ultimately, that is the power of the people reflected in the Parliament.

Members interjecting:

The Hon. K.T. GRIFFIN: 'A court', I said. Ultimately—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: I am not suggesting that it will. I am saying that, as a matter of principle, one cannot resile from the fact that a Parliament must ultimately have the power to legislate. It can abolish a court if it wishes to. However, what I do say is that one has to be very careful, whether as a Parliament or a Government, in taking that course of action.

In terms of appropriateness, it is certainly not appropriate by legislation to remove a judge without, of course, following the processes which are already provided in the Constitution Act, where both Houses of Parliament can, by resolution, remove a judge, and it can be without cause that Parliament Acts in that way. There is no suggestion in anything that the Government has done or in any of the legislation which has been introduced to the Parliament that that is our intention: it is not.

The fact of the matter is that the issues that have been raised by the Chief Justice are matters that I will certainly be addressing, as I indicated yesterday, and have been addressing, and the Government has been addressing—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: I said at the beginning of my answer that I am not yet prepared to—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: No, I am not. You say you have a copy.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: Quite obviously, the Leader of the Opposition is media driven.

The Hon. R.I. Lucas: He is a media junkie now.

The Hon. K.T. GRIFFIN: Well, he's changed. He used to have no time for the media. Opposition changes everything, doesn't it? I undertake to the Council—

The Hon. C.J. Sumner: Just table it, then you won't have any more problems. I'll stop asking the question.

The Hon. K.T. GRIFFIN: That's all right, you keep asking it; I'm having a great time answering the question. If there isn't something like this occasionally the place is deadly dull and boring.

The Hon. Anne Levy: You do most of the talking.

The Hon. K.T. GRIFFIN: I don't do most of the talking. If you ask the question you will get an answer.

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: One thing that you have no control over is the answer.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: You have control over the question, but you have no control over the answer, and you will get the answer that I decide that I want to give or that other Ministers give.

The Hon. Anne Levy: There are Standing Orders about answers.

The Hon. K.T. GRIFFIN: Of course there are Standing Orders about answers; but there are also Standing Orders about questions and explanations which should not contain opinions but frequently do. When we were in Opposition the Government raised no objection, and now that we are on this side we raise no objection if matters of opinion and long statements are given by way of explanation. That is fair enough—no worries.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: Well, there are long answers, but this is an important issue. Can I make one further comment about this question of judicial independence? It is a very vexed question.

The Hon. C.J. Sumner: Are you treating it seriously?

The Hon. K.T. GRIFFIN: I'm always serious. A very important issue ultimately, although it is not directly related to the issue regarding the Industrial Court, is how you require accountability from judicial officers. I am sure that the Leader of the Opposition when he was Attorney-General from time to time would have wrestled with the issue of how to make judicial officers accountable without impinging upon the principle of judicial independence, which is spoken about so frequently. I certainly do not have any answer on this issue at the moment, and it is certainly not something that I intend to create great waves about, because I think it is important in our system that those sorts of issues be dealt with sensitively and appropriately in consultation with judges as well as with the Parliament.

ORGAN TRANSPLANTS

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Hon. Dr Pfitzner, in her capacity as Presiding Member of the Social Development Committee, a question about organ transplants.

Leave granted.

The Hon. CAROLYN PICKLES: In today's *Advertiser* there is a statement purported to have been made by the Minister for Health (Dr Armitage) regarding a program that he thought he should introduce relating to people carrying instructions on their driver's licence stating whether or not they wish to have their organs donated. The article states:

> Under the existing system, drivers' licences carry an 'organ donor' endorsement for people who agree to their organs being taken once they are clinically dead.
>
> Dr Armitage says the scheme—being examined by State Parliament's Social Development Committee—could create a big increase in the number of desperately needed transplant organs.

The article states further:

> Dr Armitage said he expected the Social Development Committee to make a decision on the proposal in the next six months.

Under the Parliamentary Committees Act, the Social Development Committee takes its terms of reference from the Parliament. The committee can initiate its own terms of reference. At the present time, the terms of reference of the Social Development Committee include matters related to prostitution, HIV infection, family leave provisions and rural poverty. Strangely enough, they have nothing to do with organ transplants. My questions to the honourable member are:

1. Will she explain why the Minister told the *Advertiser* yesterday that the Social Development Committee of the Parliament was examining his proposal to take organs for transplants from dead persons?

2. Did the Minister say that the committee, which is not apprised of that term of reference, will make a decision on the matter within six months?

3. Did the Minister discuss this matter with the Hon. Dr Pfitzner prior to making this public statement?

The Hon. BERNICE PFITZNER: I thank the honourable member for asking those questions so that I might set the record straight. I also read that article in the *Advertiser* and was quite concerned about it. The first part of the article, as the honourable member said, stated that the scheme was being examined. As members of the committee know, it is not. I therefore checked with the Minister and asked him whether he had said this to the newspapers. He said that he had not, so it looks as though this is blatantly inaccurate reporting. This then casts doubt on the remainder of the article. The second part of the article refers to the fact that the Minister expects the committee to make a decision on the proposal within the next six months. I was concerned about that statement also.

The Hon. Carolyn Pickles: We are very busy.

The Hon. BERNICE PFITZNER: Yes, and it was very ambiguous as to whether the committee was to begin to look at the matter or to have made a decision on it within six

months. Again, I rang the Minister to ask him what his understanding was. He said that he thought the committee might begin to look at the matter possibly, he hoped, within six months.

The truth of the matter is that the Minister came to see me about two nights ago to tell me about this issue of organ transplants. I said that the committee had an agenda, as the honourable member mentioned, which was chock-a-block with rural poverty, HIV, prostitution, unemployment, etc. I also said that, if he wanted us to look at the matter, he should refer it, as the Act suggests, through the House of Assembly by way of motion or through a letter to the committee so that the committee members could make a decision and pass a motion as to whether they would look at the matter of organ transplants. That was the discussion.

So, I say to the honourable member that no commitment has been made to expedite the matter or to report on it within six months, which was my understanding on my first reading of that article. At 1.30 p.m. today, I received a letter from the Minister for Health which states:

> I am writing in relation to the important matter of organ donation. As you know, it is a very important part of our health system and also presents a unique opportunity to assist someone else in leading a better lifestyle. I have been approached about the need to increase the number of donors. One manner in which that may be achieved, taking into account experience in other countries, is by moving to an opting out system of organ donation.
>
> Recognising that there are divergent community views on opting in versus opting out, I believe that the Social Development Committee with its mandate may be well placed to consider the matter. I realise that the committee has a busy program, but in view of the importance of the issue, I would be pleased if the committee would consider placing it on its agenda. There would no doubt be a range of community views seeking to be heard. If the committee is prepared to undertake the task, I would be pleased to facilitate it in its work by arranging for the presentation of facts, figures, etc., which may assist. I look forward to the committee's response.

So, I am very pleased to have been given this opportunity to clarify the situation.

The Hon. CAROLYN PICKLES: As a supplementary question, will the honourable member ask the Minister to refer this matter through his House in order that the matter can be properly debated in the Chamber?

The Hon. BERNICE PFITZNER: I have made that suggestion to him. I have not had a response, but I will put it to him again, as the honourable member has requested.

GLASSES, READY-MADE

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question on ready-made glasses.

Leave granted.

The Hon. M.S. FELEPPA: I draw the attention of the Minister to the background of the regulation under the Optometrists Act 1920, No. 152 of 1993. The company Wormack Investments Pty Ltd is the principal supplier of ready-made glasses and, when regulations were proposed, the report of the Legislative Review Committee stated:

> The company had no argument with the new standards *per se*, and had taken steps to comply with them. However, it had non-compliant stock which it claimed it was financially unable to take back from its stockists and give them a credit on it.
>
> Initially, the company sought an extension until 30 June 1993. However, in April 1993 the company sought a further extension until 31 December 1993 to dispose of the old stock. Regulations under the Optometrists Act must be made on the recommendation of the Optometrists Board.
>
> On 5 May 1993, the Hon. John Burdett, with the support of the Hon. Mike Elliott, successfully moved to disallow the regulations, to afford the company more time to dispose of stock.
>
> The Optometrists Board has reconsidered the matter, taking into account the expressed view of Parliament, and has accepted that the matter needs to be resolved by postponing the operation of the provisions to do with ready-mades until 1 January 1994.
>
> The proposed regulations seek to remake or reinstate the disallowed regulations in the same form as previously, but with a delayed operative date of 1 January 1994 for the regulation dealing with the ready-mades.

In evidence before the Legislative Review Committee, the representatives of Wormack Investments were asked:

> . . . even with the slow down in sales, you still believe that you can get rid of most of the stock by the 31st, by the end of the year?

In reply they said:

> What we are saying is that we are making an undertaking that, if we do not, we will take the stock back.

So the time for the disposal of the stock has now expired, and all non-compliant stock should now be unavailable for retail sales. Further, it should be noted that ready-made glasses have been advertised on the television for $8 a pair from a retail outlet trading as Cunninghams. My questions are:

1. Has Wormack Investments Pty Ltd been in communication with the Minister concerning its stocks of non-compliant ready-made glasses?
2. Is the Minister satisfied that the non-compliant ready-made glasses are no longer available through retail outlets?
3. Will the Minister ascertain from Wormack Investments Pty Ltd what was the disposal of the returned stock of non-compliant ready-made glasses?

The Hon. DIANA LAIDLAW: I will refer those questions to my colleague in another place and bring back a reply.

ORGAN TRANSPLANTS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about organ donor transplants.

Leave granted.

The Hon. SANDRA KANCK: I refer to an article on page 1 of today's *Advertiser* entitled 'radical move to find more organ donors'. The article outlines the Health Minister's proposal to replace the 'opt-in' system of organ donorship with an 'opt-out' system and claims that transplants offer reduced health care costs. The example of kidney transplants is cited, with the cost of saving of a transplant claimed to be $110 000 cheaper than dialysis over a five year period. No information on costs is given in the article in relation to heart, lung or other organ transplants. My questions to the Minister are:

1. How many additional organ transplant operations does the Minister envisage will be carried out as a result of a move to the proposed 'opt-out' system of organ donorship, and what type of organ transplant operations will these be?
2. Can the Minister provide the Council with information about the cost of these types of operations, including cost-benefit information over a five year period on each type?
3. If the net result of increased numbers of transplant operations is an increase in health care costs, will these costs be met from the existing South Australian Health Commission budget or will additional funds be allocated?

The Hon. DIANA LAIDLAW: I will refer those questions to my colleague in another place and bring back a reply.

SALO

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General a question about *Salo*.

Leave granted.

The Hon. L.H. DAVIS: Some weeks ago there was criticism of the Liberal Government's decision to ban the viewing of the film *Salo*. I have not seen the film, and I do not offer a comment on it. However, I was interested to see that the *Australian* of Friday 15 April carried a report of some strong remarks made about the film by none other than the Labor Premier of Queensland, Mr Wayne Goss, no doubt a close colleague of the shadow Attorney-General. Mr Goss has called on his Labor colleague, the Federal Attorney-General, Mr Lavarch, to investigate the operations and composition of the Federal Government's Film and Literature Board of Review, which he said had failed in its duty by allowing the 'appalling, grotesque trash' film *Salo—120 days of Sodom* into Australian cinemas.

Mr Goss said that the Federal censor had repeatedly refused to classify this appalling trash but, unfortunately, an appeal to the Board of Review had been successful. Mr Goss took what I thought was the rather unusual step of appealing directly to Queenslanders not to see the film, which opened in Brisbane late last night. He said:

> I don't believe this sort of appalling trash should be shown. That's why I think the Commonwealth's Film Board of Review should get a good going over by the Attorney-General.

Mr Goss's criticism of the board—

Members interjecting:

The Hon. L.H. DAVIS: Well, you should know what the position is in Queensland; you're revealing your ignorance if you don't; I'll tell you later—was backed up by none other than the Queensland Labor Party's Deputy Premier, Mr Tom Burns, a veteran Labor member (and obviously a close colleague of the Hon. Anne Levy; she is nodding her head). He said that urgent consideration should be given to appointing persons who reside in Queensland, South Australia, or Western Australia and criticised the gross geographic imbalance of the board.

The Queensland Opposition had also attacked the screening of *Salo* and it asked why the Government had permitted, in the Year of the Family, the screening of the film which was described by the Federal censor as, 'wallowing in depravity' and which included the torture, sexual abuse and assault of children. The Opposition pointed out something that I would have thought the Hon. Anne Levy, as a former Minister for the Arts would know, namely, the fact that the Goss Government ultimately had to accept responsibility for the screening of the film in public cinemas in Queensland, because that Labor Government had scrapped the Queensland Film Board of Review. So, there was no check and balance at that State level.

Does the Attorney-General have any comment on the Queensland Labor Premier's remarks about *Salo*, particularly in view of the South Australian Labor Party's criticism of the Government's decision to ban the film?

The Hon. K.T. GRIFFIN: I think my response to *Salo* was more measured than that of Mr Goss. At least I acknowledged that there were some people who believe the film may have had some artistic merit, particularly in terms of film archival interest. It was, as I recollect, the last film of Pasolini and, from that point of view, to film buffs may have held some special significance.

Members interjecting:

The Hon. K.T. GRIFFIN: I did. I was quite measured in my response. It is interesting to note that someone of Labor persuasion (or more than one in Queensland) was less temperate in his description of his reaction to the public exhibition of that film in Queensland. There are two points to note. First, in Queensland, as the Hon. Legh Davis has said, ultimately the responsibility has to be borne by the Goss Government because it abolished its Film Board of Review. The other interesting point that is drawn from the article is that there was a distinct bias in the membership of the Film Board of Review towards the two biggest eastern States, New South Wales and Victoria, with I think some token representation from Tasmania. All that will probably change with a significant restructuring at Federal level, which is being undertaken in consultation with the States.

That is the responsibility of the Federal Attorney-General, but there has been reasonable consultation on membership in relation to the structure being put in place at Federal level. Certainly, I take some comfort from the less temperate remarks of Mr Goss in relation to the way in which he has responded to the public exhibition of that film in that State.

EQUAL OPPORTUNITY ACT REVIEW

The Hon. C.J. SUMNER: I seek leave to make a brief explanation before asking the Attorney-General a question about the Equal Opportunity Commissioner.

Leave granted.

The Hon. C.J. SUMNER: In today's *Advertiser* is an article that refers to a review the Attorney-General apparently intends to conduct into South Australia's Equal Opportunity Act. The Equal Opportunity Act in South Australia, passed in 1985, is one of the if not the most comprehensive in the country and a major achievement of the former Government in the area of human rights and equal opportunity. It covers the areas of race, sex, marital status, sexuality, disability and age, and is generally regarded as a very important and significant piece of legislation, but I note that the Attorney-General is now apparently to conduct a review. I also note that his spokeswoman said that it would be a difficult task overhauling the Act; that it is a long and complex job that will involve an enormous amount of work.

If what the spokeswoman said is correct, that means that the Equal Opportunity Act could be subject to significant change and, possibly, to reduction in its scope and effectiveness. The reality is that the present Act, although from time to time it is amended and, indeed, could be amended to be improved, is basically a very good, comprehensive piece of legislation, which is recognised as such around Australia and which is an important statement on the rights of individuals, anti-discrimination and equal opportunity. My questions to the Attorney-General are:

1. When will the terms of reference of the inquiry be announced and who will conduct it?

2. Will the Attorney-General guarantee that, as a result of this inquiry, first, there will be no reduction in the scope of the legislation or the State's role in it and, secondly, will he assure the Council that there will be no budget cuts to the office of the Commissioner for Equal Opportunity following the review?

The Hon. K.T. GRIFFIN: There is to be an examination of the legislation in South Australia and I have made no secret of that. In fact, the report of the Equal Opportunity Commissioner tabled earlier this year in this place referred

to a number of areas where she would like to see changes made to the State legislation. There have been also some significant changes in the Federal Sex Discrimination Act, particularly in relation to sexual harassment and, again, I have made no secret of the fact that we need to examine those changes to determine whether there is some merit in incorporating them in South Australian law.

The Hon. C.J. Sumner: 'A long and complex job. . . enormous amount of work.'

The Hon. K.T. GRIFFIN: You don't want to believe everything you read in the press.

The Hon. C.J. Sumner: She got it wrong?

The Hon. K.T. GRIFFIN: You'll find out in due course. But there are a number of issues in relation to the legislation that need to be addressed. There was an equal opportunity conference in Adelaide several months ago at which I indicated that we needed to examine whether the Equal Opportunity Tribunal was an appropriate forum for continuing to hear complaints, because it hears a very small number of complaints, and whether there is a better mechanism for resolving complaints. There are a number of issues of that sort and developments in national legislation that we ought to examine. Certainly, I would not expect to see any downgrading of the law and the protections in South Australia.

The terms of reference have almost been finalised and I intend to make them public when they have been. The Commissioner for Equal Opportunity has been very involved in discussions about those terms of reference, and I hope that within the next day or so I will be in a position to publicly release them. There have been some discussions with a person to undertake the examination of the law. Again, that has not been finalised, but I will be making that public as well as the terms upon which that person has been asked to undertake the task. So far as the question of budget is concerned, the Leader of the Opposition may well remember that he put a submission to Cabinet in the previous Government looking at the question of overlap of responsibilities between State and Federal legislation and the Human Rights and Equal Opportunity Commission and the State Equal Opportunity Commissioner, and specific reference was made to the apparently small amount of funding that was received from the Commonwealth.

Quite obviously, that is an issue that has to be examined and we will be looking at that. I cannot predict what will be the position with respect to the budget in the future, either in respect of this or any other function of Government. All that, as the Leader of the Opposition knows, is dependent on the budget review and development process. But it is important to recognise that what will be announced has a certain measure of consistency with the proposals that were accepted for review, as I recollect, by the previous Government, but were not significantly advanced. So, I would like to think that there was at least a reasonable bipartisan approach to the examination of the legislation and the focus of it.

The Hon. C.J. Sumner: Are you going to reduce the scope of it?

The Hon. K.T. GRIFFIN: There is certainly no intention of doing that. Certainly, that was one of the issues that the previous Government had raised and given consideration to, but I certainly have no plans to do it. Whilst I cannot give a categorical denial that that may come out of it, I can say that there is a very strong possibility that it will not come out of it, that in fact there will not be any reduction in the scope of the State's role. But that is an issue that I do not wish to preempt at this stage and I will address it when I have had the report on the legislative review.

Members interjecting:

The PRESIDENT: Order!

SAGASCO

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about contracts with the gas company.

Leave granted.

The Hon. ANNE LEVY: Sometime ago I received a gas bill, as I am sure a number of people do, the envelope of which contained a little pamphlet on conditions of supply for domestic consumers. Condition No. 7 states:

> A continued supply of gas to the customer is conditional upon the customer paying, when they become due, all moneys owing to the company including all fees and charges for gas, appliances and other goods and services provided by the company.

It is true that the gas company not only supplies gas to its customers but also makes available for hire or purchase gas-run appliances such as stoves, hot water systems, heaters and so on. However, condition No. 7, if agreed to, would mean that the gas company would be able to cut off the gas supply to a person even if they had paid all the charges for the gas they had received but had fallen behind in their payments on the gas heater or the gas hot water service. As an analogy one could consider someone, who, through the same hire purchase company was purchasing both a car and a video. If they fall behind in their payments on the video, the company would not have the right to repossess the car on which the payments may be quite up to date. They would have the right to repossess the video, of course, if the payments on that had fallen behind. It seems to me that this condition that the gas company is applying could be regarded as a harsh and unconscionable contract.

The Hon. L.H. Davis: Ring the gas company and ask them. They will give you the answer.

The Hon. ANNE LEVY: Let me talk; you have had your turn.

The PRESIDENT: Order! The honourable member will ask her question.

The Hon. ANNE LEVY: The provision of an appliance is separate from the provision of gas and, if payments are up to date on one of those, the other should not be used as security, in effect, for payments on the other. This could well be regarded as a harsh and unconscionable contract by the Commercial Tribunal. I ask the Minister whether he agrees that this could be regarded as a harsh and unconscionable contract, and will he have his officers consider the matter and see whether a test case, perhaps with the assistance of his officers, could be taken to the Commercial Tribunal to see whether this does in fact constitute a harsh and unconscionable contract?

The Hon. K.T. GRIFFIN: I am not going to give legal advice on the run without at least having had an opportunity to consider the various contracts to which the member refers. I must say that the approach is rather heavy-handed to consider taking a matter to the Commercial Tribunal before even some consultation takes place with the South Australian Gas Company. Certainly the policy of this Government is that going to courts and tribunals is a matter of last resort; not a matter of first resort. I would like to see that policy position taken in all areas of involvement with consumers, and certainly the Office of Fair Trading does take the view that

its office is to be used as a second last resort and the final resort is going to a court or tribunal in resolving a difficulty.

In respect of this particular matter I am certainly prepared to refer the issue to my officers for consideration and maybe discussion with the South Australian Gas Company, but I certainly do not intend to take the matter to the Commercial Tribunal without examining the matter and without some consultation with the South Australian Gas Company. My experience of bodies like the South Australian Gas Company is that they are very amenable to consumers making arrangements with them if they fall into arrears with payments, and again my exhortation to consumers who are in difficulty is that they should, as soon as they get to that point, take the matter up with the business which is providing the goods or services or the finance, rather than letting it fester on for an inordinately long period of time when it is less likely that it will be capable of easy resolution.

In relation to these particular conditions of contract that the gas company has circulated with accounts, it may be that there are inter-related terms and conditions in various contracts for both gas supply and appliance purchase, that they are dependant upon each other, and in those circumstances it may not be such an unreasonable proposition. I hasten to say I make no judgment on the issue on the run. It is a matter which I will certainly have my officers examine and maybe consult with the South Australian Gas Company to get the facts and, in due course, bring back a reply.

HINDMARSH ISLAND BRIDGE

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport a question about the Hindmarsh Island bridge.

Leave granted.

The Hon. T.G. ROBERTS: Yesterday an article in the *Advertiser* indicated that parties associated with the protest groups in the Goolwa area were to be sued using section 45D of the Trade Practices Act and that the intention of the Government was to continue to push ahead with the building of the bridge at Hindmarsh Island. In an article by Colin James in today's *Advertiser* there is a call by the people of the Riverland to put a bridge at Berri. The situation at Goolwa appears to be stalemated in that section 45D is a fairly harsh measure to take against protesting individuals and organisations.

The article in today's *Advertiser* is indicating that there are difficulties with proceeding with the bridge at Hindmarsh Island and that there is potential for further slow-downs or stoppages, given the determination of the community groups in that area to prolong their struggle against the building of that bridge. The questions I have are:

1. Does the Minister believe that the action taken to stifle debate and demonstration using section 45(d) of the Trade Practices Act is appropriate in this case and is like using a sledgehammer to crack a walnut?

2. Will the Minister negotiate with the people of Goolwa and Berri, through their community representatives, alternative priorities for the building of the bridge across the River Murray?

The Hon. DIANA LAIDLAW: Built Environs did not advise me that they had taken such action in the court, and their application to the Federal Court has since been granted, at least on an interim basis.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: I am sorry: Binalong. I thank the honourable member. There is a big difference, and I apologise to Built Environs for that error. It was Binalong that applied to the Federal Court. Its action was granted. I was not involved in any way in making the application; I was not consulted about it and I certainly did not make any representations on the matter before the court. So, my opinion on the matter is pretty irrelevant in the circumstances.

Built Environs came to see me some time ago, indicating a wish to build a bridge at Berri, in the knowledge that the Government had indicated that a bridge at Berri was a matter of some priority for the Government—it was certainly always the preferred option over the bridge at Hindmarsh Island—and that was one of the sources of Liberal Party anger, at least initially, with this bridge at Hindmarsh Island.

We have an obligation to build a bridge at Hindmarsh Island, and there is a contract. We have inherited that contract, and it is an obligation that we have indicated we will now honour. So, there is no possibility of a trade-off between a bridge at Hindmarsh Island and a bridge at Berri. The bridge at Berri has to be considered on its merits. I have met with two councils in the area in more recent weeks, and they are preparing a submission to me on the matter in terms of a new funding proposal. I learnt from the paper this morning that they will engage a consultant for this purpose.

In the meantime, the Federal Minister for Transport, Mr Brereton, has also engaged a consultant to look at all the national highway responsibilities to order a set of priorities. As part of that consultancy, I have written to the Federal Minister and indicated that we want him to consider a bridge at Berri, as part of the national Government's Sturt Highway obligations, to be a priority.

GROYNES

In reply to **Hon. BERNICE PFITZNER** (22 March).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources has provided the following information:

The honourable member asked specific questions about the Environment, Resources and Development Committee's report on the foreshore erosion at Southend.

1. In particular, the Minister for the Environment and Natural Resources does not fully accept the committee's recommendation on the construction of a groyne field to the east of the caravan park, though does support an incremental and experimental move toward a groyne strategy. The Minister has been advised that the apparent success of the recent small groyne at Eyre Street may have been influenced by last year's mild winter and could be misleading. The Minister has therefore endorsed the Coast Protection Board's recommendation that the small groyne be extended by approximately 10 metres and a further one be constructed and that the effects of these be tested over another one or two winters, with a view to proceeding with a groyne field thereafter.

The Coast Protection Board has advised against shortening the eastern drain training wall at this time to provide rock for the groyne extension, because it does not consider that this would divert drain flows as the committee expects. The board considers it would be better to defer any shortening of the training walls until a 'no-replenishment' trial, at which stage it may be appropriate to reduce both training walls and use the rock for a groyne field between Eyre and Leake Streets.

2. Given the present proposals, the Minister is not convinced that the recommended working party is necessary or useful at this stage, however, the Minister is aware that a meeting was convened at Southend on 11 April, involving all the nominated parties and which was also open to the public. The Minister would expect that the parties would need to get together again in about a year's time to review the situation and to decide on the most appropriate actions, and it may be appropriate to arrange another public meeting at Southend at that time. Meanwhile, the Coastal Management Branch will be communicating with and assisting the Millicent Council on the groyne extension and such other matters as may arise.

The Coastal Management Branch will continue to monitor beach and nearshore sand movements, so that the effects of these trials can be properly measured.

3. The District Council of Millicent is being offered a grant of $5 000 to cover some of the cost of extending the Eyre Street groyne and providing a further groyne. Further funding from the Coast Protection Board will be determined on the nature of future proposals.

PUBLIC INFRASTRUCTURE

In reply to **Hon. T. G. ROBERTS** (23 March).

The Hon. DIANA LAIDLAW: The Minister for Housing, Urban Development and Local Government Relations has provided the following information:

The Government is aware of opportunities in South Africa as well as in Asia for the development of housing and infrastructure in these emerging economies.

The Government is reviewing its processes for involving public and private sector enterprises in these developing markets.

At this stage no specific initiatives are being undertaken with South Africa.

GOOLWA BARRAGE

In reply to **Hon. CAROLYN PICKLES** (22 February).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources has provided the following information:

1. The Minister for the Environment and Natural Resources is not aware of any advice given to the District Council of Port Elliot and Goolwa concerning listing the Goolwa barrage on the National Estate Register or the State Heritage Register.

2. The Minister is aware that in 1985 a consultant's report recommended placing the barrages, along with all other barrages and locks on the River Murray on the State Heritage Register. This recommendation presented serious practical difficulties and was not pursued by the former Government.

On 28 January 1994 the State Heritage Branch of the Department of Environment and Natural Resources wrote to the Chief Executive Officer of the E&WS Department requesting consultation about the future of all the barrages of the lower Murray/Lake Alexandria system. There has been no written reply, but there has been discussion between officers of the two departments. No action is proposed in the near future.

RIVER POLLUTION

In reply to **Hon. M.J. ELLIOTT** (29 March).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources has provided the following information:

In response to the Honourable Member's question on whether the Government's concerns for pollution in the River Murray extends to tributaries such as the Bremer River, the Minister for the Environment and Natural Resources can assure the Honourable Member that this is certainly the case. The issues of sewage effluent and mine waste discharge raised in the letter to the Honourable Member are already being addressed.

The Bird in Hand Sewage Treatment Works receives sewage from the Woodside township and the Woodside Army Barracks to minimise the health risk and problems of nutrient pollution within a major water supply catchment. The plant discharges secondary treated effluent (not raw sewage) to a tributary of the Bremer River however it is recognised that the nutrient load placed on the river is unacceptable. The Environment Protection Authority, together with the Engineering ad Water Supply Department, are currently investigating the options available to reduce this problem.

The E&WS Department has applied for a licence to dispose of effluent from the site and public comment received following advertisement of this application is being reviewed. It is understood that when a licence is issued it is likely to require either a land-based disposal scheme or full nutrient removal treatment of effluent prior to discharge thereby removing this source of nutrients in the river system.

The problems of acid mine drainage from the Brukunga mine site are also being addressed. Acid mine drainage is recognised world wide as an extremely intractable environmental problem. The acid is generated through oxidation of pyrite in the tailings dam, the mine spoil or mullock heaps and in the rock exposed by mining. An acid collection system is in place to intercept as much acid drainage as possible and this is treated in a neutralisation plant before being discharged back in to Dawesley Creek.

However it is extremely difficult to collect the acid drainage from all these sources and at present it is estimated that some 30% of the acid generated at the site escapes into the creek without treatment although the acid collection scheme is being upgraded all the time. The tailings dam is being rehabilitated and revegetated to reduce the production of acid and to restore some of the original vegetation but rehabilitation of the mine site will be much more difficult because of the 70 metre high mullock heaps composed of large blocks of loose rock with side slopes of about 45 degrees.

A consultant has been engaged to make recommendations regarding future strategies to minimise the generation of acid, to develop strategies to ensure a greater percentage of the acid generated is collected for treatment and to review the operation of the acid neutralisation plant. When this report is completed the options will be reviewed and a long term rehabilitation program will be developed.

Unfortunately rehabilitation will take several years because of the complexity of the problem and the cost and scale of the rehabilitation process. Final rehabilitation will cost many millions of dollars and the current operating budget for the site is about $250 000 per annum.

In the mean time the Government is encouraging and supporting the work of Landcare Groups and the Bremer Barker Catchment Group in their efforts to deal with the wide range of environmental issues that arise in this catchment. This commitment has already extended to members from these groups participating in negotiations on licence conditions for the Brukunga site and close involvement in water quality monitoring programs for the area. The whole approach to managing the Bremer River is based on the concept of Integrated Catchment Management with a high priority as it is one of the few significant tributaries in South Australia to the River Murray or Lake Alexandrina.

YUMBARRA CONSERVATION PARK

In reply to **Hon. M.J. ELLIOTT** (12 April).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources and the Minister for Mines and Energy have provided the following information:

There have been on-going discussions between officers of the Departments of Environment and Natural Resources and Mines and Energy concerning providing some form of access to the Yumbarra Conservation Park to follow up an extensive aero-magnetic survey of the western portion of the State.

1. The Department of Environment and Natural Resources has indicated that it is unaware of any disturbances which have taken place within the restricted area of the Conservation Park. This has been confirmed in discussions with officers of the Department of Mines and Energy. The Minister for Mines and Energy has investigated what disturbances have taken place and can report with regard to the restricted area that the area has not been entered by prospectors nor has it been pegged. The Department of Environment and Natural Resources is aware that an aero-magnetic survey has been undertaken of the area and the Minister has asked his colleague the Minister for Mines and Energy to make the results of that aero-magnetic survey available, providing no confidentialities are likely to be breached.

Aerial surveying results were made available to the public in April 1993 and have been displayed at a number of Resources Seminars and at the Australian Mineral Foundation. Release of the data was advertised in both the Australian and Advertiser Newspapers.

2. The current status of the Yumbarra Conservation Park is that no access legally can be undertaken for prospecting, surveying or mining. However, the National Parks and Wildlife Act provides that the Minister for Mines and Energy can authorise a person to undertake geological, geochemical or geophysical surveys within a reserve, providing no disturbance is made to the land contained within the reserve. It is the Minister for the Environment and Natural Resources and Minister for Mines and Energy's intention that action would be taken against any person who breached current laws relating to the protection of this reserve.

3. Whilst the Yumbarra Conservation Park remains as a reserve in which access for prospecting exploration and mining remains illegal, the Minister for the Environment and Natural Resources can give an assurance that no on-ground exploration will take place. Discussions are continuing with the Minister's colleague the Minister

for Mines and Energy on the best way to follow-up the results of the aero-magnetic survey which has indicated significant levels of prospectivity in a particular portion of the Park.

Aerial surveys are not prohibited over any areas of the State. Ground surveys cannot take place within that part of Yumbarra that does not have a Joint Proclamation. The Liberal Government is continuing negotiations commenced under a previous Government considering the best outcome for the South Australian community.

BUSINESS ASIA

In reply to **Hon. BERNICE PFITZNER** (10 March).

The Hon. R.I. LUCAS: My colleague the Minister for Industry, Manufacturing, Small Business and Regional Development has provided the following response:

1. As at 22 March 1994, the net cost was $699 698.37.

2. While some business connections had been made before the conference, correspondence received after the conference shows that the value of businesses generated exceeded $100 million.

3. The services of relevant country-specific chambers of commerce will be used for advice and skills in the areas of business relationships, culture and methods of doing business.

4. The restructured EDA is focused on carrying out its objectives in an efficient, effective and business-like way. It will seek to employ and encourage managers of merit whatever their ethnic background.

ANREPS

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about ANREPS.

Leave granted.

The Hon. BARBARA WIESE: ANREPS, which stands for Australian National Real Estate Private Sales, was a company established in Western Australia in 1989. It is a franchise company and began its operations in South Australia in about 1993, if I remember correctly. The company describes itself as private house sales consultants. The company provides people who want to sell their homes with a seller's kit, professional signs, buyers' guides, offer and acceptance forms, etc., and practical and legal advice.

I recall from my own period as Minister of Consumer Affairs that the traditional real estate industry was very much opposed to this company and, if I recall correctly, it tried to prevent the company from opening its operations in South Australia.

I have recently received some correspondence from ANREPS, which says that the attack from the real estate industry has continued in all States of Australia where it has operated during this past six years or so, and the company advises me that it believes that Ministers in all States are coming under intense pressure from their respective Real Estate Institutes to take action against the private sales consultancy.

The company is accused of operating illegally by holding out to be a licensed real estate agency. The company denies the claims that have been made. It has been supported by consumer affairs organisations in various places, particularly in Western Australia, where I understand the attack has been strongest.

The company indicates to me that it believes that the industry's refusal to accept the Consumer Affairs' judgment and its intense pursuit of litigation against ANREPS is designed to protect the monopoly that it holds over the real estate market by stamping out any competitor, however small. This letter from the company states:

In no way is it conceived that ANREPS would replace the traditional role of agents. Both can operate side by side in the market place. Indeed, respected agents accept our presence as we present no threat to their business. Those of lesser integrity scrambling for a share of the market may feel insecure as ANREPS grows, but this in itself will result in a greater level of service for the consumer.

The company has sought my support, and I presume that of others in my position, to assist it in having the issue resolved favourably. One thing that interested me in the material that the company provided was a reference to the fact that Consumer Affairs in South Australia is currently investigating its operations and interviewing previous clients to determine the nature of its activities. So, my questions to the Minister are:

1. Does the Government agree that companies such as ANREPS provide an alternative to the traditional real estate industry for people wishing to sell their houses?

2. Does he support its right to operate?

3. Can he confirm that his department is investigating ANREPS at the moment?

4. Is he considering changes to legislation which would affect companies such as ANREPS?

5. Can he assure the Parliament that any investigation is not intended to support the desire of the real estate industry to rid the market place of the competition that they believe ANREPS provides?

The Hon. K.T. GRIFFIN: I take it from what the honourable member is saying that she is an advocate for ANREPS.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: I presume from the way she was couching the explanation and the question that she was advocating the continuation of ANREPS' activities. I make no judgment about whether it should or should not be carrying on business in this way. I am not under any pressure from the real estate industry to do something about it, but I know that the Office of Fair Trading has had a complaint, which it is examining, not with a view to forcing the company out of business but to determine whether, as the law is at the present time, it is conforming with the law or is in breach of the law. That is the guiding factor. It is not a question of persecuting the company or supporting it: it is a matter of trying to ascertain the facts and how they accord with the law.

I have previously indicated that there will be some amendments to the Land Agents, Brokers and Valuers Act, but not specifically directed towards companies such as ANREPS.

The Hon. Barbara Wiese: Will they affect ANREPS?

The Hon. K.T. GRIFFIN: I am not sure because I have not seen the final draft of the legislation. But, certainly, the object of the legislation, which is a total review of that Act undertaken by the legislative review team that I have operating in the Office of Fair Trading, is designed really to go back to basics to see what regulation is necessary and what goal we are trying to achieve.

It may be that it will impinge on that, but it is not being directed specifically towards either allowing or not allowing companies like ANREPS to carry on business. So, it is targeted, if that was the focus of the question, not on that particular company but more at the general principles that should be applied in the registration or licensing regime which affects land agents, brokers and valuers.

It is hoped that there will be some legislation, at least available for public discussion, in the fairly foreseeable future. If the honourable member, ANREPS or any other company has a concern about it, I am certainly prepared to give consideration to any representations they wish to make.

However, certainly from my point of view, and as far as I am aware from the point of view of the Office of Fair Trading, there is no attempt to persecute companies like ANREPS, only a desire to get to the facts and to determine whether or not it complies with the law.

EDUCATION POLICY

In reply to **Hon. C.J. SUMNER** (23 March).

The Hon. R.I. LUCAS: The Premier has provided the following response.

The Leader would realise that it is not appropriate to anticipate the report of the Independent Commission of Audit, but notwithstanding the Commission's recommendations, education will continue to be an area of priority spending under my Government.

EMPLOYMENT

In reply to **Hon. G. WEATHERILL** (24 February).

The Hon. R.I. LUCAS: My colleague the Minister for Industry, Manufacturing, Small Business and Regional Development has provided the following response.

The growth areas for employment in South Australia are likely to be:

- Wine Industry
- Food Processing
- Innovative applications for technology
- Automotive assembly and component manufacture
- Tooling and sub-assembly
- Tourism
- Back office functions and regional headquarters
- Pharmaceuticals

WOMEN'S STUDIES

In reply to **Hon. ANNE LEVY** (29 March).

The Hon. R.I. LUCAS: My colleague, the Minister for Employment, Training and Further Education has advised that the honourable member should refer to the replies to Questions 2 and 3 provided to the Hon. Sandra Kanck, in answer to her question on the same subject asked on 29 March 1994.

In reply to **Hon. SANDRA KANCK** (29 March).

The Hon. R. I. LUCAS: My colleague, the Minister for Employment, Training and Further Education has advised that the department is required to reduce its work force and the immediate strategy is to encourage the use of TSP. The priority is to increase efficiency by targeting position not directly related to optimising teaching. Hourly paid instructors and temporary staff are not able to receive a TSP. There is as yet no decision on the programs and courses to be targeted.

At the same time the department is targeting some staff areas, the work force is continually being supplemented, in order to teach new areas and in response to new priorities. TSPs are on offer throughout the department, however at this time the net reduction to be achieved for the financial year has not been finalised.

In reply to the honourable member's specific questions the Minister has provided the following responses:

1. No.

2. All programs are being examined to assess the consequences of uptake of any expression of interest in TSPs on program delivery. When this process is complete decisions will be made on programs in accordance with Government priorities.

3. Programs and courses which provide vocational training for women to assist them to enter the paid work force will continue to be provided within TAFE. However, all vocational courses and programs for women or men offered by TAFE must satisfy training and employment criteria. All courses and programs within TAFE are subject to constant review to ensure that they meet the vocational charter of the department. It is this Government's view that the Women's Studies Programs must be directly related to employment and further vocational training outcomes for women and these, together with their overall priority, will be reviewed and assessed as part of the budget process.

The Minister for Employment, Training and Further Education has requested the Women's Employment Strategy Ministerial Advisory Committee (WESMAC) to undertake a review of the employment and vocational training outcomes achieved by women from all TAFE courses. This review is currently under way and will report back to the Minister within six months.

DOMESTIC VIOLENCE BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to provide for restraining orders in cases of domestic violence; to make amendments to the Criminal Law Consolidation Act 1935, the Bail Act 1985 and the Criminal Law Sentencing Act 1988; and for other purposes. Read a first time

The Hon. K.T. GRIFFIN: I move:

That this Bill be now read a second time.

The Liberal Government believes that domestic violence is the ultimate betrayal of trust in a relationship and the most frequent threat to the safety of women in South Australia.

The Liberal domestic violence policy released before the election set out comprehensive measures that the Liberal Government would implement to combat domestic violence and to protect the victims of domestic violence.

The policy is wide-ranging and comprehensive. It is based on the fundamental premise that domestic violence is unacceptable and a crime that requires criminal justice intervention.

Traditionally, family or domestic violence was viewed as a private family matter that was of no concern to the wider community. It was also viewed as a social problem which was exempt from criminal justice intervention. Quite properly, these attitudes have changed significantly.

Domestic violence should not be treated differently from any other violence because it occurs in a home. To do so under-values the importance of the home in the life of the individual and the place of the family in our society.

Victims of domestic violence are entitled to the maximum protection from harm or abuse as provided by law, and perpetrators should be subject to punishment as imposed by the courts and assisted to change their behaviour.

The policy document laid down the principles on which the Liberal Government would base its policies, as well as setting out specific policy initiatives which would be implemented. The principles on which a Liberal Government would base its policies were stated to be:

- a recognition that domestic violence is not only physical violence but also includes verbal abuse, threats, intimidations and other acts to create fear;
- a victim of domestic violence is entitled to be free and safe from further violence;
- a victim of domestic violence is entitled to the maximum protection from abuse;
- a victim of domestic violence is entitled to be treated with courtesy, compassion and respect;
- a victim of domestic violence is entitled to information about legal rights and the assistance which can be obtained from community resources; and
- a victim of domestic violence is entitled to go to court and obtain a restraining order to stop her partner from threatening or annoying her and is entitled to expect that a breach of such order will be dealt with promptly and seriously by police and the courts.

The Liberal policy foreshadowed the introduction of a Domestic Violence Act and the strengthening of the law to

deal adequately with "stalking" in order to protect the victims of such threatening activity.

"Stalking" legislation has already been enacted and the introduction of this Domestic Violence Bill is further evidence of the Government's commitment to protect victims of domestic violence.

This Domestic Violence Bill builds on, and develops, the existing protection afforded by the summary protection order provisions in Part VII of the Summary Procedure Act 1921. A schedule to the Bill contains important amendments to the Criminal Law Consolidation Act 1935, the Bail Act 1985 and the Criminal Law (Sentencing) Act 1988.

The penalty for assaulting family members is increased to three years imprisonment. The Bail Act is amended to require that a bail authority must give primary consideration to the protection of victims of crime when making bail decisions, and finally the Criminal Law (Sentencing) Act is amended to provide that a judge can, when remanding a prisoner for sentence or when imposing a sentence, make a domestic violence restraining order or a restraining order.

The Domestic Violence Bill provides for the making of domestic violence restraining orders against a defendant if there is reasonable apprehension that the defendant may, unless restrained, commit domestic violence and the court is satisfied that the making of the order is appropriate in the circumstances.

Clause 4(2) spells out what is domestic violence for the purposes of the Act. A defendant commits domestic violence if

- the defendant causes personal injury to a member of the defendant's family;
- if the defendant causes damage to property of a member of the defendant's family; or
- if on two or more separate occasions the defendant behaves in a way which is likely to reasonably arouse a family member's apprehension or fear.

Clause 4(2)(c) lists some of the types of conduct which is likely to reasonably arouse a family member's apprehension or fear. This list is similar to the list in the 'stalking' legislation.

'Member of the defendant's family' is defined in clause 3 and means-

- a spouse or former spouse of the defendant
- a child who normally or regularly resides with a spouse or former spouse of the defendant
- a child of whom a spouse or former spouse of the defendant has custody as a parent or the guardian.

'Spouse' is further defined to include a person of the opposite sex who is cohabiting with the defendant as the husband or wife *de facto* of the defendant.

There will obviously be differences of opinion as to who should be included within the parameters of an Act entitled the Domestic Violence Act. 'Members of the defendant's family' is quite narrowly defined unlike in some other States and Territories where there is domestic violence or family protection legislation which affords protection to family members widely defined. In most of the States and Territories which have domestic violence or family protection Acts, protection is only afforded to those in domestic or family relationships—there is no equivalent to Part VII of the Summary Procedure Act.

The enactment of a domestic violence Act which applies to those within a narrow definition of family is not intended to detract from the seriousness of violence in other relationships or in the community generally; rather it is intended to emphasise the seriousness of domestic violence as the ultimate betrayal of trust in a relationship which the parties have entered voluntarily and the consequences of the violence on the children who are part of that relationship.

As I said, the provisions of this Bill build on and develop the provisions in Part VII of the Summary Procedure Act. Under section 99 of that Act, as it now is, a court can only make a summary protection order where the defendant has behaved in the proscribed manner and is, unless restrained, likely to behave in a similar manner again. Under this measure the protection will be afforded where a person has a reasonable apprehension that the defendant will behave in the proscribed manner. The Liberal Government does not believe that a person who has a real apprehension of danger should have to prove that there has already been personal or property damage, or the threat thereof, before receiving the protection of the law.

Another major change from the provisions of section 99 of the Summary Protection Act is that the types of orders that a court can make are spelt out. Section 99 provides that the court can make an order imposing such restraints upon the defendant as are necessary or desirable to prevent the defendant from acting in the apprehended manner. Clause 5(2) of this Bill details some of the types of orders the court can make. This is intended to direct the court's attention to the type of behaviour from which a family member may need protection—it does not limit the terms of the order the court may make but provides a reminder to the court of the type of behaviour that may need to be restrained.

Clause 6 spells out the considerations that a court must take into account when considering whether or not to make a domestic violence restraining order and the terms of a domestic violence order. The court is required to consider, as a matter of primary importance, the need to ensure that family members are protected from domestic violence and the welfare of any children affected, or likely to be affected, by the defendant's conduct.

The remaining provisions replicate the present provisions of division VII of the Summary Protection Act relating to procedures for obtaining restraining orders, enforcement, firearms orders and the registration and enforcement of interstate orders. There are, however, two differences. Clause 16 provides that a child over 14 can apply for a domestic violence protection order and provision is made for a parent or guardian, or a person with whom the child normally resides, to apply for a protection order on behalf of a child. This provision does not prevent the police from making a complaint; it merely makes it clear that a child over 14 may apply for an order and which other adults may apply for an order on behalf of a child.

Finally, clause 18 requires the court, as far as practicable, to deal with proceedings for domestic violence restraining orders as a matter of priority.

Turning now to the schedule. The first amendment is to the Criminal Law Consolidation Act. It increases the penalty for assault of family members to a maximum penalty of three years imprisonment. This increased penalty where family members are the victims of the assault will signal Government, Parliament and the community's belief that domestic violence is unacceptable.

The Bail Act is amended to provide that a bail authority must give primary consideration to the need the victim may have, or perceives as having, for physical protection from the applicant. This is one of the matters which a bail authority

must now have regard to—this amendment provides that it is the primary consideration.

The Criminal Law (Sentencing) Act is amended to provide that a court can, when remanding a prisoner for sentence or when imposing a sentence, make a domestic violence restraining order or a restraining order. Courts can now, when suspending a sentence of imprisonment or discharging the defendant without recording a conviction require the defendant to enter into a bond with conditions governing the defendant's behaviour. Section 42 of the Act specifies some of the conditions a court can include in a bond and then goes on to provide that the court can impose any other conditions that the court thinks appropriate.

The court, however, cannot require a defendant to enter into a bond if it imposes a fine. Enabling the court to impose a domestic violence restraining order or a restraining order on a defendant will give the court a useful extra option, not only in instances where it may not presently have the power to impose a bond but as an alternative to requiring a defendant to enter into a bond.

Restraining orders have certain advantages over bonds in that a breach of a bond can only be dealt with on summons or warrant whereas a person who contravenes a restraining order can be arrested without warrant and detained. This gives greater protection to victims of domestic or other violence.

The Government recognises—and this is on a broader note—that the police in South Australia are probably the leaders in Australia in the training provided to police and in the policies that are in place to deal with domestic violence. Police instructions currently provide that officers attending reports of domestic violence are responsible for:

- preventing the continuance or recurrence of violence;
- providing assistance to victims;
- apprehending offenders;
- referring, where appropriate, victims and offenders to other agencies for assistance;
- restoring the peace;

In addition, if circumstances disclose the commission of a substantive offence, positive action must be taken with a view to charging the offender with appropriate offences. In South Australia the police have assumed the role of instituting complaints for summary protection orders on a State-wide basis, at no cost to the victim. The police lay over 90 per cent of summary protection order complaints in South Australia.

Current police instructions require that officers attending instances of domestic violence must submit a report of the circumstances.

Special police domestic violence units have been established at Elizabeth, Glenelg and Adelaide with specially selected and trained staff.

Police records now identify instances of domestic violence and the Office of Crime Statistics, in its recent report entitled *Violence Against Women*, was able to cover domestic violence in some detail.

The Government, in cooperation with the Police Commissioner, will build on these existing programs to ensure that victims of domestic violence are entitled to the maximum protection from harm or abuse as provided by law and that perpetrators are subject to sanctions imposed by the courts and assisted to change their behaviour.

The Department for Correctional Services also has a role to play in reducing the incidence of domestic violence. Increasing the awareness among Correctional Services staff of the issues underlying domestic violence will enable them to work more effectively with victims and perpetrators in the correctional system. The department has initiated a number of programs addressing domestic violence. These include:

- special staff training for professional staff to enable them to work effectively with victims of domestic violence, including women prisoners;
- a range of training programs to enable professional staff to work with individual perpetrators on a one to one basis and with groups to facilitate behavioural and attitudinal change;
- a domestic violence group has been established to encourage the development of strategies and programs to reduce the incidence of domestic violence and to provide appropriate intervention programs;

Once again, the Government will build on these existing programs in implementing its domestic violence policies. Another aspect of the Government's domestic violence policy which I wish to mention is the establishment of domestic violence as a crime prevention program. Arrangements are almost complete to establish domestic violence prevention as a crime prevention program within the Crime Prevention Unit of the Attorney-General's Department in order to ensure prevention programs are developed and promoted through the community. The objectives of the program will be to continue to develop a broader knowledge about domestic violence within the community. This will be achieved by:

- working within existing structures of Government, as a part of whole of government approach to the prevention of domestic violence, and recognising the role of agencies in providing a service;
- building on the work of local crime prevention committees, and assisting in the development of prevention programs within other sectors of Government, for example, the Education Department, and non-government agencies;
- engaging a broader community involvement in the prevention of domestic violence;
- working with local crime prevention committees and other community groups, providing specialist advice and assisting them in the development of prevention programs;
- ensuring the office is up to date with current literature, research and developments in other States, nationally and internationally.

Much remains to be done in relation to domestic violence and the Government intends to pursue its policies with vigour. Community attitudes to domestic violence have changed significantly in recent years and there is now widespread acknowledgment that domestic violence is not only unacceptable but also a crime which must be prevented. It is, however, far too prevalent and the victims of domestic violence are entitled to protection. This Bill is designed to prevent domestic violence and enhance the protection that victims of domestic violence rightly expect the law to provide. It must be recognised that the law is but one aspect of the response to domestic violence. There is no single solution to the problem. However, we must ensure that the law in place is effective in achieving what can be achieved by legislative reform and the Government believes that this Bill will not only play a role in the prevention of domestic violence but also improve the protection afforded by the law to victims of domestic violence.

The Liberal Government recognises that domestic violence is the consequence of many factors including entrenched cultural attitudes, frustration, exercise of power, personal and social tensions often caused by economic circum-

stances including lack of employment, job satisfaction, alcohol and drug abuse and family history. In many situations force and violence, threats, creating fear and verbal abuse, are perceived to be a means of solving problems.

The Liberal Government will address these factors by constructive education, economic, housing, welfare, counselling and other policies as well as ensuring that the law and law enforcement respond appropriately to the needs of victims of domestic violence and meet society's expectations that domestic violence will be prevented, and when it does occur, treated as a crime. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

The definition of "member of the defendant's family" sets the scope of the Bill. The Bill covers restraining orders against a defendant for the benefit of—

- a spouse or former spouse of the defendant; or
- a child of whom the spouse or former spouse has custody as a parent or guardian or who normally or regularly resides with the spouse or former spouse, or .

"Spouse" includes a husband or wife *de facto*, without the need for any particular period of cohabitation.

Clause 4: Grounds for making domestic violence restraining orders

The Court may make a domestic violence restraining order if there is a reasonable apprehension that the defendant may commit domestic violence and it considers it appropriate to make an order.

Domestic violence is defined to mean causing personal injury or damage to property or engaging in conduct that amounts to an act of "stalking" (without the requirement to prove intention as is required in the stalking offence).

Clause 5: Terms of domestic violence restraining orders

The Court may impose whatever restraints it considers necessary. However, the clause sets out various examples of the types of restraints that may be considered by the Court in a case of domestic violence. These include prohibiting the defendant from being on certain premises or approaching or contacting certain family members and requiring the defendant to return certain personal property to a family member.

The Court may impose the order for the benefit of any family member no matter who made the complaint.

Clause 6: Factors to be considered by Court

The Court is to have regard to the factors listed in this clause before making an order. The factors are generally aimed at ensuring that the Court views the family situation as a whole, but treats the need to protect family members from domestic violence and the welfare of any children affected as of primary importance.

Clauses 7 to 15 reflect the current provisions of Part 4 Division 7 of the *Summary Procedure Act 1921*.

Clause 7: Complaints

Complaints may be made by a police officer or by a family member who has been, or may be, subjected to domestic violence.

Clause 8: Complaints by telephone

Complaints may be made by telephone and orders issued in urgent circumstances. The order must be confirmed at a subsequent hearing.

Clause 9: Issue of domestic violence restraining order in absence of defendant

If the defendant does not appear to a summons, an order may be made in the absence of the defendant.

An order may be made without first summoning a defendant to appear, but in that case the order must be confirmed at a subsequent hearing to which the defendant is summoned.

Clause 10: Firearms orders

The Court is obliged to make certain orders aimed at ensuring the person against whom a restraining order is issued does not possess a firearm.

Clause 11: Service

A restraining order is required to be served on the defendant personally.

Clause 12: Variation or revocation of domestic violence restraining order

A restraining order may be varied or revoked on application by a police officer, the defendant or the person for whose benefit the order is made.

Clause 13: Notification of making, etc., of domestic violence restraining orders

The Commissioner of Police must be informed about restraining orders.

Clause 14: Registration of interstate domestic violence restraining orders

Orders made interstate may be registered and enforced in this State.

Clause 15: Offence to contravene or fail to comply with domestic violence restraining order

The maximum penalty for contravention of a restraining order is imprisonment for 2 years.

Clause 16: Complaints or applications by or on behalf of child

A special provision is included for the making of a complaint, or an application for variation or revocation of a restraining order, by a child over 14 or by a parent, guardian or carer of a child.

Clause 17: Burden of proof

The balance of probabilities is retained as the level of proof required for questions of fact in restraining order proceedings.

Clause 18: Priority of domestic violence restraining orders proceedings

The Court is required to give priority to domestic violence restraining orders as far as practicable.

Clause 19: Summary Procedure Act applies

The procedure to be adopted in relation to domestic violence restraining orders is that set out in the *Summary Procedure Act 1921* except where modified by this Bill.

Schedule: Related Amendments

The *Criminal Law Consolidation Act* is amended to increase the maximum penalty for common assault from imprisonment for 2 years to imprisonment for 3 years in domestic violence situations, that is, where the victim is the spouse or former spouse or a child of whom the offender or a spouse or former spouse of the offender is the parent or guardian or who normally or regularly resides with the offender or a spouse or former spouse of the offender.

The *Bail Act* is amended to provide that a bail authority must give primary consideration to the protection of victims of violence when determining whether to release a defendant on bail.

The *Criminal Law (Sentencing) Act* is amended to enable a court to issue a restraining order when finding a defendant guilty of an offence or when sentencing a defendant. The *Criminal Law Consolidation Act* is further amended to provide that such a restraining order is an ancillary order for the purposes of providing an appeal against the order in accordance with section 345A of that Act.

The Hon. C.J. SUMNER secured the adjournment of the debate.

SUMMARY PROCEDURE (RESTRAINING ORDERS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Summary Procedure Act 1921. Read a first time.

The Hon. K.T. GRIFFIN: I move:

That this Bill be now read a second time.

This Bill follows from the decision to make separate provision for domestic violence restraining orders in a Domestic Violence Act.

The domestic violence restraining order provisions have been drafted to make the law much more readily understandable than the existing summary protection order provisions in Part VII in the Summary Procedure Act 1921. Also members will recall that the grounds on which a domestic violence restraining order may be made differ from those in Part VII in that to obtain a domestic violence protection order it is no longer necessary to prove that personal violence or property damage has occurred or has been threatened before a domestic violence order can be made. These reforms are carried over into this re-draft of Part VII of the Summary Procedure Act.

There are minor differences between the provisions of this Bill and the domestic violence restraining order provisions. The domestic violence provisions provide for the making of a domestic violence restraining order when a person has committed domestic violence. The grounds in this Bill are expressed slightly differently and refer to the defendant behaving in an intimidating or offensive manner. What is intimidating or offensive manner is spelt out in new section 99(2) which is similar, but not identical, to the domestic violence restraining order provisions.

Another difference between these provisions and the domestic violence restraining order provisions is that the type of orders which a court can make are not spelt out in detail in this Bill. The Government considers there is benefit in giving an indication to victims of domestic violence the type of protection they can expect from the court.

The provisions of this Bill improve the existing summary protection order provisions in Part VII of the Summary Procedure Act, they give greater protection to those faced with violence or intimidation and the re-drafted laws are easier to follow. I commend this measure to members and seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause 1: Short title

Clause 2: Commencement

Clause 3: Amendment of s. 4—Interpretation

The definitions are altered to reflect a change in terminology from summary protection order to restraining order.

Clause 4: Substitution of Part 4 Division 7

DIVISION 7—RESTRAINING ORDERS

99. Restraining orders

The Court may make a restraining order if there is a reasonable apprehension that the defendant may cause personal injury or damage to property or behave in an intimidating or offensive manner and it considers it appropriate to make an order.

Behaving in an intimidating or offensive manner is defined to engaging in conduct that amounts to an act of "stalking" (without the requirement to prove intention as is required in the stalking offence).

The Court may impose whatever restraints it considers necessary.

99A. Complaints

Complaints may be made by a police officer or by a person who has been, or may be, subjected to the apprehended behaviour of the defendant.

99B. Complaints by telephone

Complaints may be made by telephone and orders issued in urgent circumstances. The order must be confirmed at a subsequent hearing.

99C. Issue of restraining order in absence of defendant

If the defendant does not appear to a summons, an order may be made in the absence of the defendant.

An order may be made without first summoning a defendant to appear, but in that case the order must be confirmed at a subsequent hearing to which the defendant is summoned.

99D. Firearms orders

The Court is obliged to make certain orders aimed at ensuring the person against whom a restraining order is issued does not possess a firearm.

99E. Service

A restraining order is required to be served on the defendant personally.

99F. Variation or revocation of restraining order

A restraining order may be varied or revoked on application by a police officer, the defendant or the person for whose benefit the order is made.

99G. Notification of making, etc., of restraining orders

The Commissioner of Police must be informed about restraining orders.

99H. Registration of interstate restraining orders

Orders made interstate may be registered and enforced in this State.

99I. Offence to contravene or fail to comply with restraining order

The maximum penalty for contravention of a restraining order is imprisonment for 2 years.

99J. Complaints or applications by or on behalf of child

A special provision is included for the making of a complaint, or an application for variation or revocation of a restraining order, by a child over 14 or by a parent, guardian or carer of a child.

99K. Burden of proof

The balance of probabilities is retained as the level of proof required for questions of fact in restraining order proceedings.

Clause 5: Transitional provision

Restraining orders and registered interstate restraining orders are to continue in force under the substituted Division.

domestic the domestic violence retraining order provisions

The Hon. C.J. SUMNER secured the adjournment of the debate.

STATE BANK (CORPORATISATION) BILL

Adjourned debate on second reading.

(Continued from 30 March. Page 370.)

The Hon. T.G. ROBERTS: I support the Bill but indicate that I have an amendment on file to the provision on superannuation. I understand that, since the introduction of the Bill in the Lower House, a number of problems have emerged in relation to superannuation, staffing and security of employment and transfer. These issues have been discussed with the relevant parties, and I must congratulate those staff who were involved in those discussions. It was a fairly traumatic time for them. Any change as dramatic as corporatisation and large scale changes to any body, whether it be public or private, involves a lot of trauma. Most of the issues that have been raised since the introduction of the Bill have been settled through negotiations.

I understand that the financial sector union is satisfied with the negotiations around the superannuation package. If the amendments on file are carried in relation to security of employment, security of transfer and no benefit or economic loss, then those concerns raised by the financial sector union will have been satisfied. Again, it would not have been easy for those people negotiating the packages to have come away with an agreement that is satisfactory in the main to all those people involved.

The unfortunate circumstance in which we find ourselves in corporatising the State Bank has its seeds the 1980s, and the unfortunate decisions that were made by senior management in relation to the lending policies that they had and the growth that took place during the 1980s in a period that, as far as the financial sector was concerned, anyway, was very heady. It is a pity the same speculative initiatives were not put into the manufacturing sector. We may have come away with some better results. However, unfortunately the view at the time was in favour of the financial sector investment packages that not only the State Bank itself was being sucked into but all other banks and financial institutions were prioritising into speculative capital investments. Looking back, it is quite easy to say that they were doomed to fail.

As I said, the State Bank was not the only bank that was affected. Most other trading banks, with some exceptions, were convinced that their lending strategies were going to give the best returns to the State and to those people involved in associated companies. The policy that we had at that time was to allow State Banks (not only the South Australian State Bank but Victoria's, Western Australia's, New South Wales' and others) to be pump primers for regional economies and

to allow some of the profits that had been accruing to be returned to the State coffers to take the pressure off State taxation and to allow for financial benefits to accrue in being able to use capital to attract investment to the State.

Unfortunately, the strategy was misplaced in that the boom times that prevailed during the mid 1980s were short lived and the State Bank's senior management was, I suppose, attracted to a new style of banking, competing with international bankers, in a financial climate to which it and others were unused. The merchant banks that were licensed to come into the country during that period of deregulation were certainly acting as catalysts for banks such as our State Bank to go into activities other than their core activities, and the corporatisation Bill basically returns the bank's activities to those safe and well charted waters that the core bank is able to manage adequately.

The core bank will provide services in lending, housing, personal loans, convenient deposit facilities, credit card services, rural lending and trade finance, lending for South Australian business and leasing, school banking and sponsorship, which are the core activities that the bank was very good at prior to its putting its foot into those uncharted international waters. The State Bank has had much respect as a financial institution and as a State primer for local industry and commerce, and this Bill returns the bank to that philosophical direction. I am not as critical as some others of the philosophical direction for which a State Bank is established. I believe that States need State Bank banking facilities to compete not only against national capital interests but international capital interests, to enable regional economies at least to compete with economic rationalist arguments that are generally associated with international capital and national capital directions.

The only other way that we can allow regional economies to develop is to have a strong national direction with national capital priorities that distribute capital directions back into regions, so that those regions can take the opportunities that present themselves from their natural geographic placement and their industrial historical development. I just cannot see that happening in the short term, although in the long term it may. The Federal Government seems to be moving towards a national policy of positioning Australia to become one economic unit but, in the transitional period, regional economies such as that of South Australia, Tasmania and, I guess, to some extent other sections of Australia will have trouble in attracting funds from national finance carriers and international carriers without some form of preferential treatment.

The Bill before us allows for the orderly transfer of the bank and its core activities into the marketplace to allow for potential buyers to look at it either for sale in the marketplace or for floating for a public float. The second reading explanation given in this place has a preference for a float, but I suspect that the options will be kept open. If there is a corporate buyer out there, the Bill itself allows for the comparison to be made by the Government to weigh up the benefits that may be provided by comparing one against the other at a convenient time for when the bank is either sold or floated. The Bill itself in part 1 covers preliminary matters and definitions. Part 2 allows the Treasury to subscribe capital to the Bank of South Australia. The bank's capital base is expected to be around $400 million to $500 million, and this compares with the present base of $600 million.

Part 3 provides that the Bank of South Australia is not an agency of the Crown, and this is the appropriate entity that will be privatised. The provision of this part will also render it subject to Commonwealth taxation, even while it is wholly owned by the State. This fulfils one of the conditions agreed with the Commonwealth Government. Part 4 provides for the transfer of assets and liabilities from the State Bank to the Bank of South Australia. While the provisions are relatively complex they operate to free customers of the need to do anything to transfer the business to the new bank, and facilitate that. Similar provisions will be enacted in a number of States and Territories in which the bank undertakes its business.

Part 5 deals with the vexed question that I referred to earlier of staffing and the problems associated with the uncertainty that comes with major change. As already noted, the overriding principle is that the transfer of staff to the Bank of South Australia will not affect remuneration, leave or continuity of service and at the same time will not constitute retrenchment or give rise to any right to damages. Staffing provisions are a very important part of the legislation. The Government, I hope, believes that they should be enacted only after close consultation with the staff (which I think is completed) and that the consultation process will continue in relation to staff transfers.

There is an amendment on file from the Attorney-General that details some of the concerns that the Financial Sector Union had in relation to the security relating to transfer and alternative duties, and that goes towards entrenching that security in the minds of people in the bank, and I hope that those provisions make sure that the staff is looked after during that transfer. The reason why I will move the amendment to the section on superannuation is that, although the Financial Sector Union is happy, or has agreed to renegotiate the position in relation to its own staff members, it is the view of the Opposition that the superannuation scheme now being negotiated may set precedents for other corporatisation plans in other departments. It would have been safer for employees to stay within the State Bank superannuation scheme.

The Hon. K.T. Griffin interjecting:

The Hon. T.G. ROBERTS: I know that it is a difficult program to put into place and difficult to administrate, but it is felt that the negotiations around some of the other prospective programs of corporatisation need to be discussed with the appropriate bodies in order to put together a complete package of superannuation security, which would enable all the other people working in Government services to define exactly how they stand in relation to their own superannuation. There is a lot of nervousness out there, but if it is going to be a signal for enterprise bargaining in relation to superannuation certainly the Financial Sector Union itself has indicated it is quite happy in relation to the application of the provisions that are being made for its employees.

Superannuation is a vexed question in that people are in differing stages of their working life: some are coming to the end; some are in the middle; and some are just beginning their working life. Superannuation for each individual has different connotations. Certainly if you are coming to the end of your working life or if you are in the middle of it, it holds far more worries and fears about security than it does if you are at the start of your working life. So, I acknowledge that it is a very difficult and vexed area on which to reach broad areas of agreement, but I will be moving the amendment. It was not supported in the Lower House by the Government but it is on file and has been circulated. We will be asking some questions on the Bill when in Committee.

The Hon. M.J. ELLIOTT: I rise to support the second reading of this Bill and I wish to address two issues. The first relates to the question of superannuation and other benefits of the employees of the State Bank, and the other is a more general question in relation to the eventual sale of the State Bank itself. Mr Acting President, I have sighted a letter, which was written by the Treasurer to the representatives of the bank employees prior to the last election, and there is no doubt in my mind that he was giving an undertaking that their benefits would be preserved if the State Bank was corporatised. Unfortunately, as things were eventuating, the Treasurer looked as though he was trying to renege on that undertaking and that is a matter of great concern.

I was concerned not just because the Treasurer had given a clear undertaking; I was concerned also about the principle. The Government tells us on many occasions that it is not willing to breach a contract or an understanding, and we have had a number of cases in this current session of Parliament where we have seen that as being a reason why the Government is saying that it will not do something. For instance, in relation to the Hindmarsh Island bridge the Government said, 'There are contracts there, legal obligations; we cannot breach them.' I have never encouraged Governments to breach legal undertakings, or if I have given that encouragement it has always been on the clear understanding that the parties who are involved in those matters would not be financially or otherwise disadvantaged. I have said that in relation to Hindmarsh Island and in relation to other places where I believed that a wrong legal contract had been put in place.

I believe that the employees of the State Bank had a clear contract with the Government. Some of these people have been working for the State Bank for 20 or 30 years. In many cases they would have had other career options available to them, but they decided that the package that was available to them at the State Bank was such that they wished to stay with the bank. If the superannuation arrangements were different they may indeed have decided to go somewhere else. Many of them have been employed by the bank for much of their working life and some of them are not far off retirement and are certainly at a time in their career where a move would be incredibly difficult. They are then threatened with losing something which had always been guaranteed to be theirs. Since it was guaranteed by the Government it was a reasonable understanding and as good an understanding as perhaps the people involved in the Hindmarsh Island bridge believe they have. I do not see a great moral difference between the two.

That is not entering into the debate as to whether or not superannuation arrangements were generous or not. In fact, the Democrats supported a new scheme in superannuation under the previous Government. We realised the previous scheme was too expensive and, in the long run, all new people would need to go into a less generous scheme. However, at that stage no-one attempted to take the people in the old scheme out, but in essence that was exactly what the legislation was going to do. After an agreement over a long period of time that these people had rights, in effect, they were to be taken away; a retrospective loss of rights as I see it. I am stunned at how flexible some people are on questions of legal obligations and retrospectivity and the like; taking a very hard line in one direction and then a different line in another.

In any event, on the basis of what the Democrats believed was right in relation to the guarantees that the employees had, both implicit and also explicit in relation to the promise made before the election, we made it plain that the rights of those employees should be preserved. I have heard one member of the Liberal Party say, 'Well, look, things have gone bad in this State and the load has to be shared around,' but when I asked whether that person was willing to share the load around and have his superannuation reduced a little bit there was no reply. Basically our superannuation is coming out of the same barrel as the superannuation for the State Bank employees when push comes to shove, yet he was quite happy for the State Bank employees to take their little cut but did not put his hand up to do the same, and that is hypocrisy at its worst.

That aside, we insisted that the employees were in the right and that we were prepared to defend them in this Parliament. Subsequent to that, negotiations have taken place between the Government and the representatives of the employees. They have come to an agreement and I have received a letter from Lance Bailey, who is the Secretary of the FSU State Bank Ownership Subcommittee, and for the record I will read it into *Hansard*. I imagine other members of Parliament have received a copy of this letter as well. The letter states:

> Dear Mr Elliott,
>
> This is to confirm that the union has sighted the amendments to the State Bank (Corporatisation) Bill (No. 31) 1994, dated 19 April 1994, that are to be moved in the Legislative Council. I have discussed the amendments with the Branch Secretary, Mr Grahame Pine, and we advise that the amendments are acceptable to the union.
>
> As part of the negotiated settlement of the superannuation issue the Government has agreed to 'quarantine' the negotiated arrangements for State Bank employees from any changes that the Government may make to the State scheme in the future that could affect employees in other organisations.
>
> A statement confirming this arrangement will be made or tabled in the Upper House. Grahame Pine has advised the Hon. Terry Roberts of the union's position on the matter.
>
> Yours sincerely,
>
> Lance Bailey, Secretary.

On the basis that the representatives of the workers have said that they feel that the matter is satisfactorily resolved between themselves and the Government, I am now willing to see the legislation proceed. I have not gone through the agreement with a fine toothcomb. As far as I saw it, as long as both the Government and the employees were happy, I was not going to tinker with the components of it, although I have had a few people contact me and say, 'Look, I'm still worse off,' and in the absence of proper representation by a union I might have taken quite a different view, because if people are still losing out then some of the principles I enunciated earlier are being breached, and that would be a concern to me.

I should also put it on the record for the Government that if this issue comes up in relation to corporatisation of other groups—and SGIC appears to be on the list at this stage—I would take the same stand in relation to employees in schemes there. I understand it has a little over 100 employees in a scheme similar to the old scheme in which the State Bank employees were involved. They were the other significant group of Government employees who may be affected, but I would treat that matter in a consistent fashion: that their rights also should be preserved. However, if members of Parliament are willing to share the burden along with the rest of the State, then I could take a different view.

In relation to the legislation more generally, of course, it is a consequence of the decision to corporatise and eventually to sell the bank. The Hon. Ian Gilfillan and I took slightly different views but not at a wide variation. I said that if we

received a good enough price for the State Bank I might be willing to sell it. The Hon. Ian Gilfillan always doubted that we would get a good price and said that there was too much down side. When there was talk of our getting a little over $1 000 million for the bank, my belief was that it could make such a significant contribution to the State debt that it would be of benefit to the State as a whole, and I would be willing to support it.

Unfortunately, the feedback I am getting is that the Hon. Ian Gilfillan's more pessimistic assessment is looking to be the more accurate one in terms of what we will actually receive, aside from the moneys that the Federal Government gave us to bribe us into it in the first place. The information I am getting is that we might be lucky to get around $600 million for the bank and, if that is the case, you start looking at the down side. The bank is capable of generating a profit and, remember, we are not selling the bad bank, we are not selling off the debts: we are selling the part of the bank that actually makes a profit and, while that one-off sale will reduce the overall debt, it will also be forsaking an ongoing profit—something that the State Bank is quite capable of making, as long as it does not get too adventurous as it did in the 1980s.

I do not accept some comments from other people who said, 'Look, it was just doing what the other banks were doing.' Well, if it was, it was doing a lot more of it and it was going into much riskier markets than were the other banks. It was offering the loans that nobody else would offer to people to whom no-one else would offer them, but of course the royal commission has had enough to say about that and I do not need to take that further.

Not only are we going to forsake the profits but also it is likely that we could lose at least one third, and perhaps even as much as two thirds, of the jobs, depending upon who buys the bank. If it is a sale to another bank—and it has been suggested that the National Bank is the most likely buyer, as the only cashed up bank in Australia at this stage—we could see ourselves losing perhaps close to 2 000 jobs. We would see 30 or 40 branches, at least, close in this State. We would be losing a bank that has been a major player in the home market. Currently, housing loans represent 20 to 35 per cent of the market, and the bank usually holds one-third of that market. So, in South Australia one-third of the loans are held by this bank.

I recall that the State Bank in the past played a very significant role in keeping interest rates lower in South Australia, and on several occasions it took the lead and other banks followed. That has been a saving for all South Australians who have had a loan, not only with the State Bank but with other banks as well, because it created that downward pressure.

The Savings Bank of South Australia has about 25 to 35 per cent of new housing loan sales. It is also a major player in the small business market. The market share in small business loans is 21 to 24 per cent, and members should not forget that it is certainly the biggest single source of funds for the farming sector in South Australia. A lot of that is all up side that we will lose.

So, for the sake of perhaps $600 million—and that is anyone's guess at this stage—we will sell off a bank which is making a profit, which is a substantial player in the home loan and small business area and which has helped to keep interest rates down. Everyone would agree that they were too high at times, but the State Bank certainly was not the leader in the charge. And we will be giving away perhaps 1 000 to 2 000 jobs.

There is a lot of down side with all of that and, as I said, whilst I in the early days was feeling optimistic and saying that it may be worth selling the bank, my colleague the Hon. Ian Gilfillan looks like he will be the one who was correct: that we will not get a reasonable return for it and, if we sell it for the sake of selling it—because we think Governments should not own State banks, although they managed to for a long time with no harm at all—then we will be doing the State a great disservice.

I make those comments recognising that at this stage, at least, it appears that the Government is not in great haste to sell it and it might take up to two years. However, after two years, if what we are being offered for the bank is equivalent to around $600 million, I would hope that the Government would then look to see if reassessment is possible, recognising of course the ramifications of the Federal legislation that is going through.

I realise that I have certainly made some negative comments about the corporatisation which is leading to sale. Nevertheless, at this stage we are not opposing the corporatisation in so far as it is really a requirement as a consequence of previous deals that have been made with the Federal Government. Also, the other area of major reservation in relation to the employees' benefits has now been resolved. So, the Democrats support the second reading.

The Hon. K.T. GRIFFIN (Attorney-General): I thank honourable members for their contributions on this Bill and for the indication of support. There is no need to revisit the reasons for this Bill and the corporatisation of the State Bank, except to say that after 30 June it will be a corporatised bank, moving towards being a private bank and fully competitive in accordance with the arrangement which was negotiated between the previous Government and the Federal Government following the disaster which occurred several years ago.

So, the whole thrust of this is to put the bank in that better condition, so that it is for all practical purposes a private bank, fully competitive, and where its performance can be appropriately measured.

As both honourable members have indicated, there were negotiations with the relevant unions in relation particularly to superannuation, and as a result of the successful outcome of those negotiations there was an agreement that certain amendments would be moved, and they are already on file and we will be debating those in the Committee stage. However, as the Hon. Mr Elliott has indicated, my understanding is that the unions fully accept the amendments and their form, and that they are amendments which accurately reflect the agreement which was reached.

Whilst it is probably not technically a matter of reply, I think it is appropriate, before we get into Committee, that I outline the statement which accompanies the amendments following the agreement with the union, because that was part of the negotiated conclusion of the discussions. I will do that now so that everyone knows where they stand.

The amendments concern the transfer provisions, entitlements and the superannuation arrangements of employees moving from the State Bank of South Australia or a subsidiary of the bank to the employment of Bank of South Australia—BankSA Limited.

These amendments were foreshadowed in the second reading speech. It was made quite clear at the time that these amendments would be introduced only following full

consultation with the union representing the interests of State Bank employees, the Finance Sector Union, which has now occurred.

Clause 19 in the amendments provides for the transfer of bank group staff to a position or another position in the employment of BankSA or State Bank by order of the Treasurer within a six month period of the appointed day. The transfer will not involve a reduction in status of the employee transferred nor will it involve any unreasonable change in the duties of the employee in the circumstances of his or her skills, ability and experience, and which is at the same location or at another location within reasonable commuting distance.

The clause declares that such a transfer does not affect the employee's remuneration or interrupt continuity of service, nor does it constitute a retrenchment or redundancy. All accrued entitlements to annual leave, sick leave and long service leave will be transferred. It further declares that such a transfer is not to give rise to any right to damages or compensation.

In addition, clause 19 provides for the retransfer of staff from the employment of BankSA to State Bank or any of its subsidiaries by order of the Treasurer within a six month period of the appointed day. Provisions and entitlements relating to transferred employees (including provisions relating to superannuation) will apply in a reciprocal way to all employees retransferred.

Schedule 1A details the superannuation provisions for staff transferred to BankSA or remaining with the bank. The schedule establishes one primary superannuation fund for BankSA, the Bank of South Australia Superannuation Fund, and one primary superannuation fund for State Bank, the South Australian Asset Management Corporation Superannuation Fund. It provides for the transfer of membership and benefits from current superannuation arrangements to the primary superannuation fund of the new employer. The provisions in relation to the transfer of membership and benefits will apply in a reciprocal way to employees retransferred under section 19.

The schedule provides that a transfer or retransfer of employees under section 19 does not give rise to an entitlement on the part of the employee to an immediate payment of a benefit under any of the superannuation arrangements.

In relation to superannuation arrangements for State Bank employees who are members of the SA Superannuation Fund (Pension Scheme), the Government undertook extensive negotiations with the Finance Sector Union and State Bank employees. At the meeting of the State Bank Finance Sector Union held on 7 April 1994, members approved the union's recommendation to accept the proposals concerning membership of the State Superannuation Fund and other staffing issues.

The union emphasised the proposals as a fair and equitable resolution to the changed superannuation arrangements, particularly in the light of possible implications of the Audit Commission report to the SA Superannuation Fund generally and doubts about future employer participation in the fund following the bank's privatisation. There were about 350 members in attendance, and all supported the proposals with the exception of 16 who were opposed and approximately 30 who abstained.

In accepting the proposals, the union, first, requested the introduction of appropriate amendments to the State Bank (Corporatisation) Bill 1994. Secondly, it reiterated that the superannuation arrangements have been endorsed by State Bank Finance Sector Union members on the understanding that the members' fundamental employment rights will not be subverted by the legislation. Thirdly, it detailed the two main employment concerns of its State Bank members; that is, first, that the existing employment rights of those members remaining with the bank are not prejudiced in any way; and, secondly, that a member's employment rights are preserved in a case where the member is transferred on a non-voluntary basis from the State Bank to a position in BankSA which is not of equivalent status.

Consultations have occurred with the Finance Sector Union in relation to the proposed amendments to the legislation relating to superannuation arrangements and the transfer of staff, and they are tabled with the full support and endorsement of the union.

In negotiations with the Finance Sector Union it has been agreed that bank employees who are contributors to the SA Superannuation Fund will be able to remain in the fund for a period of up to five years; that is, up to and including 30 June 1999. The arrangements that have been negotiated will continue to apply to these employees throughout this period and this will be independent of any changes that may be made to the State fund with respect to other organisations or contributors.

In other words, other than changes of a technical nature that may be made to the Superannuation Act 1988, such as formulae changes of a corrective nature or wording changes to facilitate interpretation of the Act, the Government will not be introducing any amendments to the Act which would have any adverse effect in relation to employees of the State Bank or BankSA who are State fund contributors during the period from the commencement of this Act up to and including 30 June 1999. The only other exception would, of course, be any amendments which might be put forward on an agreed basis with the union.

The superannuation legislative arrangements for State Bank employees who are members of the State Superannuation Pension Scheme may be summarised as follows:

(a) Members can continue to contribute to the State scheme until 30 June 1999 and that this would be independent of any changes that might be made to the scheme during this period;

(b) At any time between 1 July 1994 and 30 June 1999, members can elect to stop contributing to the State scheme and either:

- (i) preserve their pension benefits as if they had resigned (that is, preservation option); or
- (ii) quit the scheme and accept a lump sum credit (equal to the present value of the preserved resignation benefit calculated using a real discount rate of 3 per cent per annum) to the bank fund or another complying superannuation fund (that is, lump sum credit option). Where a contributor accepts a lump sum credit prior to 31 December 1994, the lump sum credit will be augmented by a factor of 20 per cent plus an additional contribution of 20 per cent of salary (for non-packaged officers only).

(c) In the event of retrenchment for contributors under the age of 45 years, they can elect to either:

- (i) accept a lump sum credit plus the amount payable under the Redeployment and Redundancy Agreement (that is, lump sum, credit option); or

(ii) accept a deferred pension available from the age of 55 years plus the amount payable under the Redeployment and Redundancy Agreement (that is, deferred pension option).

(d) In the event of retrenchment for contributors 45 years and over, they can elect to either:

(i) accept a lump sum credit plus the amount payable under the redeployment and Redundancy Agreement plus an extra redundancy lump sum payment for retrenchments on or before 30 June 1999 (calculated as 20 per cent of salary for each year remaining until 60 years after expiration of the number of severance weeks payable under the Redeployment and Redundancy Agreement) (that is, lump sum credit option; or

(ii) accept a deferred pension available from the age of 55 years plus the amount payable under the Redeployment and Redundancy Agreement plus an extra redundancy lump sum payment for retrenchments up to and including 30 June 1999 (that is, deferred pension option).

(iii) accept a pension equal to the preserved age 60 resignation benefit commencing after expiration of the number of severance weeks payable under the Redeployment and Redundancy Agreement (only available for retrenchments on or before 30 June 1999) plus the amount payable under the Redeployment and Redundancy Agreement (that is, immediate pension option).

(e) For all SA Superannuation Fund contributors retrenched on or before 30 June 1997, an additional lump sum based on salary (up to a maximum superannuation salary of $75 000) will also be given phased down as indicated below:

(i) 20 per cent of salary if retrenched on or before 30 June 1995;

(ii) 15 per cent of salary if retrenched on or before 30 June 1996;

(iii) 10 per cent of salary if retrenched on or before 30 June 1997.

With the support of the Council, that is the statement which it was agreed with the unions should be inserted in *Hansard* to give reassurance as to the approach which the Government is taking and which has been agreed. I note that the Hon. Terry Roberts has an amendment on file, which seeks to preserve some benefits beyond the agreements which have been reached with the union. I signal at this stage that, whilst we will spend a bit more time debating it, it is not acceptable to the Government, particularly because the new State Bank SA is moving into the private sector fully corporatised, and the benefits which the Hon. Terry Roberts' amendment seeks to preserve and the rights it seeks to give under a public sector superannuation scheme are totally inconsistent with the operation of a private bank except, of course, in respect of the agreements which have presently been reached. Again, I thank members for their indication of support for this important piece of legislation.

Bill read a second time.

In Committee.

Clauses 1 to 18 passed.

Clause 19—'Transfer of staff.'

The Hon. K.T. GRIFFIN: I move:

Page 11, lines 3 to 13—Leave out this clause and insert—

Transfer of staff

19.(1) The Treasurer may, by order in writing, transfer an employee of SBSA or an SBSA subsidiary to a position or another position in the employment of BSAL or SBSA.

(2) An order under this section must be made before, or within the period of six months beginning on, the appointed day (but this period may be reduced by proclamation under this section).

(3) If an order is made under this section on or before the appointed day, it takes effect (subject to any contrary provision in the order) on the appointed day.

(4) An order under this section may be varied or revoked by the Treasurer by further order in writing made before the order takes effect.

(5) A transfer under this section does not—

(a) affect the employee's remuneration; or

(b) interrupt continuity of service; or

(c) constitute a retrenchment or redundancy.

(6) A transfer under this section must not involve—

(a) any reduction in the employee's status; or

(b) any change in the employee's duties that would be unreasonable having regard to the employee's skills, ability and experience; or

(c) any change in the employee's place of employment unless the new place of employment is within reasonable commuting distance from the employee's former place of employment.

(7) For the purposes of subsection (6), responsibility for the same or similar business operations that are smaller in scope as a result of a reduction of the business operations, or responsibility for a lesser number of staff, does not of itself, constitute a reduction in status.

(8) A person who is transferred from one body corporate to another under this section is taken to have accrued as an employee of the body to which the person is transferred an entitlement to annual leave, sick leave and long service leave that is equivalent to the entitlements that the person had accrued, immediately before the transfer took effect, as an employee of the body from which he or she was transferred.

(9) A transfer under this section does not give rise to a right to any remedy or entitlement arising from cessation or change of employment.

(10) For the purposes of construing a contract applicable to a transferred employee, a reference to the body from which the person is transferred is to be construed as a reference to the body to which the person is transferred.

(11) The Treasurer may, by order in writing, re-transfer employees from the employment of BSAL to SBSA or any SBSA subsidiary.

(12) An order under subsection (11) must be made within the period referred to in subsection (2).

(13) The provisions of this Act relating to transferred employees (including the provisions relating to superannuation) apply in a reciprocal way in relation to employees re-transferred under subsection (11) with such modifications and exclusions as are necessary in the context and such further modifications and exclusions as are prescribed by regulation.

(14) The Governor may, by proclamation, reduce the period within which an order under this section must be made.

(15) In this section "employee" includes officer.

Clause negatived; new clause inserted.

New clause 19A—'Superannuation.'

The Hon. T.G. ROBERTS: I move:

Page 11, after line 13—Insert new clause as follows:

19A. (1) Where a person was, immediately before the commencement of this Act—

(a) an employee of SBSA; and

(b) a contributor within the meaning of the Superannuation Act 1988,

the person is entitled to continue to make contributions as a contributor under that Act for the period of the person's employment by SBSA or BSAL.

(2) Despite the provisions of the Superannuation Act 1988—

(a) the arrangement under section 5 of that Act between the South Australian Superannuation Board and SBSA, as in force immediately before the commencement of this Act, will—

(i) in relation to a person referred to in subsection (1) who is an employee of SBSA—continue as

such an arrangement between that board and SBSA in relation to that person for the period for which the person continues as a contributor within the meaning of that Act; or

(ii) in relation to a person referred to in subsection (1) who is an employee of BSAL—continue as such an arrangement between that board and BSAL in relation to that person for the period for which the person continues as a contributor within the meaning of that Act; and

(b) the arrangement may not be varied, and the provisions of that Act may not be modified under that section in their application to such a person, so as to affect detrimentally the rights or prospective rights of the person in respect of superannuation.

I explained during my second reading speech my reasons for doing this. I understand that neither the Democrats nor the Government support it, but I still move it.

The Hon. K.T. GRIFFIN: I indicated during my reply that this was not acceptable to the Government. Basically, it is inconsistent with the arrangement which has already been agreed. It seems to me that, if an agreement has been reached, whilst the Parliament is not bound to accept the agreement or to accept it as is, nevertheless in something such as this corporatisation program for the State Bank there would have to be some very good reasons for why we should make changes to the agreed package, whether they be a variation to the package *per se* or some addition to the benefits or obligations which have been imposed.

It seems to me that there are no compelling reasons why we should diverge from the arrangement which has been agreed, remembering that the agreement was reached after some extensive negotiation, much of it in private but some of it in the public arena, and following meetings with members. In those circumstances, I think we ought to accept the package which has been agreed and which is now being included with the amendments that I am moving having also been put into the context by the statement I made in my reply.

The Hon. M.J. ELLIOTT: I do not support the amendment simply because of the existence of the agreement between the union and the Government. I made it plain that without the existence of such an agreement I would have insisted that all rights be preserved. I am not aware and have not had the time to investigate the full contents of the agreement, but the very fact that it exists, that the employees have been told that I was willing to support them to make sure that their rights would be guaranteed, and that they have said they are satisfied with this (and I have not had a significant complaint made to me) means that I will not support the amendment. Once again, when other questions of corporatisation, such as the SGIC, etc., come forward, the first question again must be that rights must be preserved absolutely. I will support the employees in any negotiations they may enter into.

New clause negatived.

Clauses 20 to 26 passed.

Schedule 1 passed.

New schedule 1A.

The Hon. K.T. GRIFFIN: I move:

After page 17—Insert new schedule as follows:

SCHEDULE 1A

Superannuation

Definitions

1. In this schedule—

"age of retirement" has the same meaning in relation to a State Scheme contributor as in the *Superannuation Act 1988*;

"BFC Fund" means the Beneficial Finance Corporation Limited Staff Superannuation Fund No. 2 constituted by the trust deed dated 30 July 1971 made between Beneficial Finance Corporation Limited and the then trustee of the Fund, as amended from time to time and in particular by the trust deed dated 29 May 1989 made by Beneficial Finance Corporation Limited;

"BSAL Fund" means the SBSA Fund as renamed by this schedule the "Bank of South Australia Superannuation Fund";

"complying superannuation fund" means a complying superannuation fund within the meaning of Part IX of the *Income Tax Assessment Act 1936* of the Commonwealth, as amended from time to time, other than the Fund under the *Superannuation Act 1988*;

"date of retrenchment", in relation to an employee, means the date on which the employee's employment ceases on account of retrenchment;

"employee" includes officer;

"fixed establishment officer" has the same meaning as in the Second Schedule of the *State Bank of South Australia Act 1983*;

"interim period" means the period beginning on the appointed day and ending on 30 June 1999;

"packaged officer" means an officer of SBSA or BSAL (as the case may be) who has agreed as part of the terms and conditions of his or her employment to be remunerated by reference to a total remuneration package reflecting the cost to the employer of cash salary, nominated benefits and associated fringe benefits tax;

"SAAMC Fund" means the BFC Fund as renamed by this schedule the "South Australian Asset Management Corporation Superannuation Fund";

"salary" of a contributor or employee means—

(a) in the case of a State Scheme contributor (except a contributor whose accrued superannuation benefits are preserved)—the contributor's salary for the purpose of calculating contributions under the *Superannuation Act 1988* (expressed as an annual amount); or

(b) in any other case—the employee's salary for the purposes of the trust deed governing the BSAL Fund or the SAAMC Fund, whichever of those Funds is the Fund of which the employee is a member (expressed as an annual amount);

"SBSA Fund" means the State Bank Superannuation Fund constituted by the trust deed dated 15 December 1987 made by SBSA;

"State Scheme" means the Scheme within the meaning of the *Superannuation Act 1988*;

"State Scheme contributor" means a contributor within the meaning of the *Superannuation Act 1988*;

"Superannuation Board" means the South Australian Superannuation Board;

"transferred" means transferred under Part 5 or a corresponding law.

Bank of South Australia Superannuation Fund

2. (1) On and from the appointed day—

(a) the SBSA Fund is to have the name "Bank of South Australia Superannuation Fund" subject to any further change of name made by amendment of the trust deed governing the Fund; and

(b) BSAL replaces SBSA as the Employer for the purposes of the governing rules of the BSAL Fund and will perform all the obligations that would have fallen due for performance by SBSA under the governing rules on or after the appointed day; and

(c) a reference in the governing rules to SBSA is taken as a reference to BSAL.

(2) Nothing done by or under this Act constitutes an event bringing about the operation of clause 15 of the governing rules of the BSAL Fund.

South Australian Asset Management Corporation Superannuation Fund

3. (1) On and from the appointed day—

(a) the BFC Fund is to have the name "South Australian Asset Management Corporation Superannuation Fund" subject to any further change of name made by amendment of the trust deed governing the Fund; and

(b) BSAL is taken to be an Associated Employer within the meaning of the trust deed governing the SAAMC Fund and the provisions of the trust deed apply as if BSAL had been duly admitted as an Associated Employer under clause 8.01 of the trust deed.

BSAL Fund members not transferred to BSAL

4. (1) On the appointed day, an employee who—

(a) is a member of the BSAL Fund; and

(b) is not transferred to a position in the employment of BSAL,

is taken to have become a member of the SAAMC Fund if not already a member of that Fund.

(2) As soon as practicable after the appointed day, the trustee of the BSAL Fund must transfer the interest of the employee referred to in subclause (1) in the BSAL Fund (as determined by the trustee) to the SAAMC Fund for the benefit of the employee.

(3) On the transfer of the interest under subclause (2)—

(a) the trustee of the BSAL Fund is discharged from its obligations as trustee of the BSAL Fund in respect of the employee concerned; and

(b) the employee ceases to have any entitlement to a benefit from the BSAL Fund.

SAAMC Fund members transferred to BSAL

5. (1) An employee who—

(a) is a member of the SAAMC Fund; and

(b) is transferred to a position in the employment of BSAL,

is, on a day fixed by the Treasurer by order in writing, taken to have become a member of the BSAL Fund if not already a member of that Fund.

(2) As soon as practicable after the day referred to in subclause (1), the trustee of the SAAMC Fund must transfer the value of the employee's accrued benefit in the SAAMC Fund (as determined by the trustee), together with such additional amount as may be determined by SBSA, to the BSAL Fund for the benefit of the employee.

(3) On the transfer of the amount or amounts under subclause (2)—

(a) the trustee of the SAAMC Fund is discharged from its obligations as trustee of the SAAMC Fund in respect of the employee concerned; and

(b) the employee ceases to have any entitlement to a benefit from the SAAMC Fund.

Fixed establishment officers

6. (1) As soon as practicable after the appointed day, SBSA must transfer the accrued entitlement under clause 10 of the Second Schedule of the *State Bank of South Australia Act 1983* of an employee who—

(a) is a fixed establishment officer; and

(b) has not been transferred to a position in the employment of BSAL,

to the SAAMC Fund for the benefit of the employee.

(2) As soon as practicable after the transfer of an employee who is a fixed establishment officer to a position in the employment of BSAL, SBSA must transfer the accrued entitlement of the employee under clause 10 of the Second Schedule of the *State Bank of South Australia Act 1983* to the BSAL Fund for the benefit of the employee.

(3) On the transfer of the entitlement under subclause (1) or (2)—

(a) SBSA is discharged from its obligations under clause 10 of the Second Schedule of the *State Bank of South Australia Act 1983* in respect of the employee concerned; and

(b) the employee ceases to have any further entitlement under clause 10 of that Schedule.

Superannuation Act and State Scheme contributors

7. (1) An employee of BSAL who, immediately before becoming an employee of BSAL, was a State Scheme contributor, may continue as a State Scheme contributor during the interim period.

(2) The Treasurer must, by order in writing, specify arrangements under which the employees of BSAL may continue as State Scheme contributors during the interim period and the Treasurer may, at any time, with the agreement of BSAL, vary the order by further order in writing.

(3) An order under subclause (2) is taken to be an arrangement between the Superannuation Board and BSAL under section 5(1) of the *Superannuation Act 1988* and, as such, may modify the provisions of that Act as authorised by section 5(1a) of that Act.

(4) The following provisions apply in relation to any arrangement under section 5(1) of the *Superannuation Act 1988* between the Superannuation Board and SBSA or BSAL (including an order under subclause (2)):

(a) no such arrangement may have an effect that is inconsistent with the provisions of this schedule;

(b) no variation of such an arrangement may have an effect that is inconsistent with the provisions of this schedule;

(c) despite section 5(3) of the *Superannuation Act 1988*, no declaration may be made under that provision that benefits will cease accruing to State Scheme contributors in respect of employment with SBSA or BSAL.

(5) At any time during the interim period, an employee of SBSA or BSAL who is a State Scheme contributor may elect, by notice in writing to the Superannuation Board, that benefits under the *Superannuation Act 1988* cease accruing in respect of the State Scheme contributor and that either—

(a) his or her accrued superannuation benefits under the *Superannuation Act 1988* will be preserved; or

(b) his or her accrued superannuation benefits under the *Superannuation Act 1988* will be carried over to a complying superannuation fund nominated by him or her.

(6) On the making of an election under subclause (5)*(a)*, the State Scheme contributor—

(a) is taken, for the purposes of the *Superannuation Act 1988* (but for no other purpose), to have resigned from his or her employment and to have elected under section 28 or 39 of that Act (whichever may apply to the contributor) to preserve his or her accrued benefits; and

(b) if not already a member of the SAAMC Fund or BSAL Fund, is taken to have become—

(i) in the case of an employee of SBSA—a member of the SAAMC Fund; or

(ii) in the case of an employee of BSAL—a member of the BSAL Fund.

(7) On the making of an election under subclause (5)*(b)*, a payment must be made as if it were a benefit under the *Superannuation Act 1988* on behalf of the State Scheme contributor to a complying superannuation fund nominated by the contributor of an amount calculated in accordance with clause 8.

(8) On a payment being made under subclause (7), the State Scheme contributor—

(a) ceases to be a State Scheme contributor; and

(b) if not already a member of the SAAMC Fund or BSAL Fund, is taken to have become—

(i) in the case of an employee of SBSA—a member of the SAAMC Fund; or

(ii) in the case of an employee of BSAL—a member of the BSAL Fund; and

(c) ceases to have any further entitlement under the *Superannuation Act 1988*.

(9) Subject to subclause (10), at the end of the interim period, an employee referred to in subclause (5) who has not made an election under that subclause—

(a) ceases to accrue benefits under the *Superannuation Act 1988*; and

(b) is taken, for the purposes of the *Superannuation Act 1988* (but for no other purpose), to have resigned from his or her employment and to have elected under section 28 or 39 of the *Superannuation Act 1988* (whichever may apply to the contributor) to preserve his or her accrued benefits; and

(c) if not already a member of the SAAMC Fund or BSAL Fund, is taken to have become—

(i) in the case of an employee of SBSA—a member of SAAMC Fund; or

(ii) in the case of an employee of BSAL—a member of the BSAL Fund.

(10) Where at the end of the interim period an employee referred to in subclause (5) who has not made an election under that subclause is receiving a disability pension under section 30 or 36 of the *Superannuation Act 1988*, subclause (9) only applies to that employee on the day after the disability pension ceases, but does not apply at all where the disability pension ceases on or immediately before the termination of the employee's employment on the ground of invalidity.

Amount of payment on behalf of State Scheme contributor to complying superannuation fund

8. (1) The amount of the payment to be made on behalf of a State Scheme contributor under clause 7(7) as a result of an election under clause 7(5)*(b)* is to be calculated in accordance with this clause.

(2) Where the State Scheme contributor is a new scheme contributor under the *Superannuation Act 1988*, the amount is equal to the greater of the following:

(a) the amount of the payment that would have been made had the contributor resigned at the date of his or her

election under clause 7(5)*(b)* and had section 28(5) of the *Superannuation Act 1988* applied;

(b) the amount calculated as the sum of—

(i) an employee component equivalent to the amount standing to the credit of the contributor's contribution account; and

(ii) the employer component calculated as follows:

ERN = (K x EC x DF)+ PSESS

Where-

ERN is the employer component

K is-

(a) where the election under clause 7(5)*(b)* is made on or before 31 December 1994—1.2;

(b) in any other case—1.0

EC is the employer component that would have been calculated in terms of section 28(4) of the *Superannuation Act 1988*—

(a) had the contributor—

(i) resigned at the date of his or her election under clause 7(5)(b); and

(ii) elected to preserve his or her superannuation benefits under section 28 of the *Superannuation Act 1988*; and

(b) had a superannuation payment been made in accordance with section 28(2)*(a)* of the *Superannuation Act 1988* at the date of the contributor's election under clause 7(5)*(b)* as if he or she had reached the age of 60 years at that date

DF is the amount of 1 discounted at the rate of 3 per cent per annum for the number of years (including any fraction of a year measured in days) in the period from—

(a) the date of the election under clause 7(5)*(b)*; to

(b) the date of the employee's sixtieth birthday

PSESS is the amount standing to the credit of the contributor's account under section 32a(6) of the *Superannuation Act 1988*.

(3) Where the State Scheme contributor is an old scheme contributor under the *Superannuation Act 1988*, the amount is equal to the greater of the following:

(a) the amount calculated as follows:

TV = K x CF x 26.1 x P x DF

Where—

TV is the amount

K is—

(a) where the election under clause 7(5)*(b)* is made on or before 31 December 1994—1.2;

(b) in any other case—1.0

CF is—

(a) where the contributor's age of retirement is 60 years—10.5;

(b) where the contributor's age of retirement is 55 years—11.5

P is the amount of the pension (expressed as an amount per fortnight) that would have been payable—

(a) had the contributor-

(i) resigned at the date of his or her election under clause 7(5)*(b)*; and

(ii) elected to preserve his or her accrued superannuation benefits under section 39(5) of the *Superannuation Act 1988* assuming for this purpose (and for no other purpose) that the contribution period is more than 120 months; and

(b) had a retirement pension commenced being paid in accordance with section 39(5)*(a)* of the *Superannuation Act 1988* from the date of the contributor's election under clause 7(5)*(b)* as if he or she had reached his or her age of retirement at that date.

DF is the amount of 1 discounted at the rate of 3 per cent per annum for the number of years (including any fraction of a year measured in days) in the period from—

(a) the date of the election under clause 7(5)*(b)*; to

(b) the date on which the employee would reach his or her age of retirement;

(b) the amount that would have been calculated in accordance with section 39(3) and (4) of the *Superannuation Act 1988*—

(i) had the contributor—

(A) resigned at the date of his or her election under clause 7(5)*(b)*; and

(B) elected to preserve his or her accrued superannuation benefits under section 39(2) of the *Superannuation Act 1988* assuming for this purpose (and for no other purpose) that the contribution period is less than 120 months; and

(ii) had a superannuation payment been made in accordance with section 39(2)*(a)* of the *Superannuation Act 1988* at the date of his or her election under clause 7(5)*(b)* as if he or she had reached the age of 60 years at that date.

Supplementary contribution where State Scheme contributor elects prior to 31 December 1994

9. (1) Where a State Scheme contributor who is not a packaged officer makes an election under clause 7(5)*(b)* on or before 31 December 1994—

(a) in the case of an employee of SBSA—he or she is entitled to receive an additional credit in the SAAMC Fund equal to the amount of the supplementary contribution determined in accordance with subclause (2); or

(b) in the case of an employee of BSAL—BSAL must make a supplementary contribution to the BSAL Fund for his or her benefit of an amount determined in accordance with subclause (2).

(2) The amount of the supplementary contribution will be equal to 20 per cent of the contributor's salary as at the date of the election under clause 7(5)*(b)*.

Retrenchment benefits for State Scheme contributors

10. (1) This clause applies to an employee of SBSA or BSAL—

(a) who, at any time after the commencement of this Act, is or was a State Scheme contributor; and

(b) whose employment is terminated by retrenchment on or before 30 June 1999.

(2) Neither section 29 nor 35 of the *Superannuation Act 1988* applies to an employee to whom this clause applies.

(3) Where an employee to whom this clause applies—

(a) has not made an election under clause 7(5); and

(b) is a new scheme contributor under the *Superannuation Act 1988*,

the employee may elect, by notice in writing to the Superannuation Board—

(c) to preserve his or her accrued superannuation benefits under the State Scheme in accordance with section 28 of the *Superannuation Act 1988* as if he or she had resigned from employment; or

(d) to receive—

(i) a lump sum as if it were a benefit under the *Superannuation Act 1988* equal to the amount calculated in accordance with clause 8 that would have been payable in respect of the employee had the employee made an election under clause 7(5)*(b)* at the date of retrenchment; and

(ii) where the date of the retrenchment is on or before 31 December 1994, a supplementary payment—

(A) in the case of an employee of SBSA—from SBSA; or

(B) in the case of an employee of BSAL—from BSAL,

equal to the amount that would have been payable in accordance with clause 9 had the employee made an election under clause 7(5)*(b)* at the date of retrenchment.

(4) An employee referred to in subclause (3) who fails to make an election under that subclause (3) within three months after the date of retrenchment is taken to have made an election under subclause (3)(c).

(5) Where an employee to whom this clause applies—

(a) has not made an election under clause 7(5); and

(b) is an old scheme contributor under the *Superannuation Act 1988*; and

(c) has not reached the age of 45 years at the date of retrenchment,

the employee may elect, by notice in writing to the Superannuation Board—

(d) to preserve his or her accrued superannuation benefits under the State Scheme in accordance with section 39 of the *Superannuation Act 1988* as if he or she had resigned from employment; or

(e) to receive—

(i) a lump sum as if it were a benefit under the *Superannuation Act 1988* equal to the amount calculated in accordance with clause 8 that would have been payable in respect of the employee had the employee made an election under clause 7(5)*(b)* at the date of retrenchment; and

(ii) where the date of the retrenchment is on or before 31 December 1994, a supplementary payment—

(A) in the case of an employee of SBSA—from SBSA; or

(B) in the case of an employee of BSAL—from BSAL,

equal to the amount that would have been payable in accordance with clause 9 had the employee made an election under clause 7(5)*(b)* at the date of retrenchment.

(6) An employee referred to in subclause (5) who fails to make an election under that subclause within three months after the date of retrenchment is taken to have made an election under subclause (5)*(d)*.

(7) Where an employee to whom this clause applies—

(a) has not made an election under clause 7(5); and

(b) is an old scheme contributor under the *Superannuation Act 1988*; and

(c) has reached the age of 45 years at the date of retrenchment but not the age of retirement,

the employee may elect, by notice in writing to the Superannuation Board—

(d) to receive a retrenchment pension in accordance with clause 11; or

(e) to—

(i) preserve his or her accrued superannuation benefits under the State Scheme in accordance with section 39 of the *Superannuation Act 1988* as if he or she had resigned from employment (whether or not he or she is under 55 years of age); and

(ii) receive an additional retrenchment lump sum in accordance with clause 12—

(A) in the case of an employee of SBSA—from SBSA; or

(B) in the case of an employee of BSAL—from BSAL; or

(f) to receive—

(i) a lump sum as if it were a benefit under the *Superannuation Act 1988* equal to the amount calculated in accordance with clause 8 that would have been payable on behalf of the employee had the employee made an election under clause 7(5)*(b)* at the date of retrenchment; and

(ii) where the date of the retrenchment is on or before 31 December 1994, a supplementary payment—

(A) in the case of an employee of SBSA—from SBSA; or

(B) in the case of an employee of BSAL—from BSAL,

equal to the amount that would have been payable in accordance with clause 9 had the employee made an election under clause 7(5)*(b)* at the date of retrenchment; and

(iii) an additional retrenchment lump sum in accordance with clause 12—

(A) in the case of an employee of SBSA—from SBSA; or

(B) in the case of an employee of BSAL—from BSAL.

(8) An employee referred to in subclause (7) who fails to make an election under that subclause within three months after the date of retrenchment is taken to have made an election under subclause (7)*(e)*.

(9) Where an employee to whom this clause applies—

(a) has made an election under clause 7(5)*(a)*; and

(b) is an old scheme contributor under the *Superannuation Act 1988*; and

(c) has reached the age of 45 years at the date of retrenchment but not the age of retirement,

the employee may elect, by notice in writing to the Superannuation Board—

(d) to forego his or her preserved benefits under the State Scheme and, in their place, to receive a retrenchment pension in accordance with clause 11; or

(e) to—

(i) retain his or her preserved superannuation benefits under the State Scheme; and

(ii) receive an additional retrenchment lump sum in accordance with clause 12—

(A) in the case of an employee of SBSA—from SBSA; or

(B) in the case of an employee of BSAL—from BSAL.

(10) An employee referred to in subclause (9) who fails to make an election under that subclause within three months after the date of retrenchment is taken to have made an election under subclause (9)*(e)*.

(11) Where an employee to whom this clause applies—

(a) has made an election under clause 7(5)*(b)*; and

(b) was prior to making that election an old scheme contributor under the *Superannuation Act 1988*; and

(c) has reached the age of 45 years at the date of retrenchment but not the age of retirement,

the employee is entitled to receive an additional retrenchment lump sum in accordance with clause 12—

(d) in the case of an employee of SBSA—from SBSA; or

(e) in the case of an employee of BSAL—from BSAL.

Retrenchment pension for old scheme State Scheme contributors

11. (1) This clause applies where a retrenchment pension is payable as a result of an election by a State Scheme contributor under clause 10(7)*(d)* or 10(9)*(d)*.

(2) A retrenchment pension commences on a date determined by taking the date of retrenchment and adding to that date—

(a) the number of days in the period of any entitlement to recreation leave in lieu of which a lump sum is paid on retrenchment to the contributor; and

(b) the number of days in the period of notice in lieu of which a lump sum is paid on retrenchment to the contributor; and

(c) the number of days in the period in respect of which a lump sum is paid to the contributor under a redeployment or redundancy agreement.

(3) Where, before the retrenchment pension commences, the contributor—

(a) dies; or

(b) satisfies the Superannuation Board that he or she has become totally and permanently incapacitated for work,

the benefits payable will be the benefits that would have been payable had the retrenchment pension commenced immediately before the contributor died or became totally and permanently incapacitated for work.

(4) Where a retrenchment pension is payable as a result of an election under clause 10(7)*(d)*, the amount of the retrenchment pension is the same as the amount of the pension that would have been payable—

(a) had the contributor—

(i) resigned at the date determined by taking the date of retrenchment and adding to that date the number of days in the period of any entitlement to recreation leave in lieu of which a lump sum is paid on retrenchment to the contributor; and

(ii) elected to preserve his or her accrued superannuation benefits under section 39(5) of the *Superannuation Act 1988* assuming for this purpose (and for no other purpose) that the contribution period is more than 120 months; and

(b) had a retirement pension commenced being paid in accordance with section 39(5)*(a)* of the *Superannuation Act 1988* from the date on which the retrenchment pension first became payable as if the contributor had reached his or her age of retirement at that date.

(5) Where a retrenchment pension is payable as a result of an election under clause 10(9)*(d)*, the amount of the retrenchment

pension is the same as the amount of the pension that would have been payable—

(a) had the preserved benefits under the State Scheme in accordance with clause 7(6) not been foregone as part of the election under clause 10(9)*(d)*; and

(b) had those preserved benefits been provided under section 39(5) of the *Superannuation Act 1988* assuming for this purpose (and for no other purpose) that the contribution period of the contributor is more than 120 months; and

(c) had a retirement pension commenced being paid in accordance with section 39(5)*(a)* of the *Superannuation Act 1988* from the date on which the retrenchment pension first became payable as if the contributor had reached his or her age of retirement at that date.

(6) A retrenchment pension will be indexed.

(7) The *Superannuation Act 1988*, apart from section 35, applies to a retrenchment pension as if it were payable under section 35 of that Act.

Additional retrenchment lump sum for old scheme State Scheme contributors

12. (1) This clause applies where—

(a) an additional retrenchment lump sum is payable as a result of an election by an employee under clause 10(7)*(e)*, 10(7)*(f)* or 10(9)*(e)*; or

(b) an additional retrenchment lump sum is payable under clause 10(11).

(2) The additional retrenchment lump sum is calculated as follows:

ALS = 0.2 x n x FS

Where—

ALS is the additional retrenchment lump sum

n is the number of years (including any fraction of a year measured in days) in the period from—

(a) the date determined by taking the date of retrenchment and adding to that date—

(i) the number of days in the period of notice in lieu of which a lump sum is paid on retrenchment to the employee; and

(ii) the number of days in the period in respect of which a lump sum is paid to the employee under a redeployment or redundancy agreement;

to

(b) the date the employee would reach his or her age of retirement

FS is the employee's salary as at the date of retrenchment.

Extra lump sum payable on retrenchment of State Scheme contributors before 30 June 1997

13. (1) This clause applies to an employee of SBSA or BSAL—

(a) who, at any time after the commencement of this Act, is or was a State Scheme contributor; and

(b) whose employment is terminated by retrenchment on or before 30 June 1997.

(2) An employee to whom this clause applies is entitled to receive an extra retrenchment lump sum—

(a) in the case of an employee of SBSA—from SBSA; or

(b) in the case of an employee of BSAL—from BSAL,

calculated as follows:

ELS = K x FSM

Where—

ELS is the extra retrenchment lump sum

K is—

(a) where the date of retrenchment is on or before 30 June 1995—0.2;

(b) where the date of retrenchment is after 30 June 1995 but on or before 30 June 1996—0.15;

(c) where the date of retrenchment is after the 30 June 1996 but on or before 30 June 1997—0.1.

FSM is the employee's salary as at the date of retrenchment, subject to a maximum of $75 000.

Non-entitlement to receive immediate benefit

14. Neither—

(a) a transfer or re-transfer under Part 5 or a corresponding law; nor

(b) anything done under clauses 1 to 9 (inclusive) of this schedule,

gives rise to an entitlement on the part of an employee to receive an immediate payment of a benefit under the BSAL Fund, the SAAMC Fund or the State Scheme or to receive payment of an entitlement under clause 10 of the Second Schedule of the *State Bank of South Australia Act 1983*.

The schedule is part of the agreement which was reached with the union and employees, and again that is reflected in the statement I made during my reply.

New schedule inserted.

Schedule 2.

Clause 6—'Change of corporate name.'

The Hon. K.T. GRIFFIN: I move:

Page 18, after line 35—Insert subclause as follows:

(2) Despite the change of name, the bank may, with the approval of the Treasurer, carry on business under the name 'State Bank of South Australia' on such terms and conditions as the Treasurer specifies.

Again, this is part of the agreed package.

Amendment carried.

Clause 12—'General functions of the bank.'

The Hon. K.T. GRIFFIN: I move:

Page 19—

Line 29—Leave out 'subsection' and insert 'subsections'.

After line 33—Insert subclause as follows:

(1a) For the purpose of performing its functions, the bank may carry on the general business of banking.

Amendments carried.

Clause 14—'Capital or advances provided by SAFA.'

The Hon. K.T. GRIFFIN: I move:

Page 20, line 20—Leave out 'determination or requirement under this section' and insert 'requirement under subsection (3)'.

Amendment carried; schedule as amended passed.

Schedule 3 and title passed.

Bill read a third time and passed.

WORKCOVER CORPORATION BILL

In Committee (resumed on motion).

(Continued from page 581.)

Clause 17 passed.

Clause 18—'Audit.'

The Hon. M.J. ELLIOTT: I move:

Page 10, lines 28 and 29—Leave out subclause (6) and insert:

(6) An auditor's statement made in the course of carrying out duties involved in, or related to, the audit of the corporation's accounts is protected by qualified privilege.

The instruction I gave to Parliamentary Counsel was that I wanted a provision that would pick up a serious neglect of duty, or perhaps some malicious intent. So, this is the amendment I have been given. Parliamentary Counsel said that the effect of this is basically the same as not having the clause at all, but it actually puts more responsibilities on the auditor than the clause.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: That's right. In any event, those were the things that I was trying to pick up and that is the reason for the wording Parliamentary Counsel has prepared for us.

The Hon. K.T. GRIFFIN: I am happy to accept the amendment. It does make sense that the auditor cannot make a defamatory statement regardless of his or her responsibility in respect of making that statement. Qualified privilege means that the statement made by the auditor is protected if it is made in the course of his or her duty and made without malice. I am happy to accept that that is an appropriate provision.

The Hon. R.R. ROBERTS: We will be supporting this for all the same reasons.

Amendment carried; clause as amended passed.

Clause 19—'Annual reports.'

The Hon. M.J. ELLIOTT: I move:

Page 11, after line 2—Insert:

(ab) information required under the Workers Rehabilitation and Compensation Act 1986 and the Occupational Health, Safety and Welfare Act 1986;.

I am trying to ensure that we have a comprehensive report coming before the Parliament, and I believe that we should be receiving from the corporation information that is required under both Acts to be included within the report.

The Hon. K.T. GRIFFIN: It is not necessary, but we will not raise any objection to it. It is implicit that if one of the Acts requires information to be made available in the annual report or publicly, that is where it will be. But I raise no objection to it.

Amendment carried; clause as amended passed.

Clause 20 passed.

Clause 21—'Other staff of the corporation.'

The Hon. K.T. GRIFFIN: I move:

Page 12, lines 28 and 29—Leave out all words in these lines after 'without' in line 28 and substitute 'prejudice to accrued or accruing rights in respect of employment'.

This amendment is similar to amendments moved by the Australian Democrats. Employees transferred from the Department for Industrial Affairs to the corporation are protected under the Government's Bill. However, it is not appropriate to provide that there is no prejudice to remuneration or any conditions, given that future wage movements and conditions will be determined by industrial relations tribunals which govern WorkCover employees and over which WorkCover has no control. The amendment that I am moving adequately safeguards an employee's position.

The Hon. M.J. ELLIOTT: I move:

Page 12, line 29—

Leave out 'loss of' and insert 'prejudice to'.

Leave out 'leave' and insert 'employment'.

It appears from what the Attorney-General said that he will accept the second of those but not the first. To some extent the debate is not dissimilar to the one we had in relation to the State Bank and in other places. I guess it is a question of philosophy, so I will not extend the debate further.

The Hon. R.R. ROBERTS: I am prepared to accept the amendments moved by the Hon. Mr Elliott.

The Hon. K.T. Griffin's amendment negatived; the Hon. Mr Elliott's amendments carried; clause as amended passed.

Clauses 22 to 27 passed.

Schedule.

Clause 2—'Staff of SAOHSC.'

The Hon. M.J. ELLIOTT: I move:

Page 15, line 13—After 'will occur' insert 'without reduction in remuneration and'.

Where a person has particular conditions in place, I do not believe the Government should be simply taking those away because it is moving the section they are involved with out of the Public Service and into the corporation. In those circumstances their rights should be maintained.

The Hon. K.T. GRIFFIN: We have already had the argument about this. I can add nothing more than I have already indicated. The amendment is not acceptable to the Government and we will oppose it.

The Hon. R.R. ROBERTS: We will be supporting the amendment moved by the Hon. Mr Elliott.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 15, line 17 to 19—Leave out subclause (4) and insert—

(4) A person who is transferred to the corporation under subclause (1)(c)—

(a) continues, while he or she remains an employee of the corporation, to be entitled to receive notice of vacant positions in the Public Service and to be appointed or transferred to such positions as if he or she were still a member of the Public Service; and

(b) must not be disadvantaged in any other way by the transfer.

This amendment again covers the same sorts of issues we have been debating in the previous clauses so I urge the members to support the motion.

The Hon. K.T. GRIFFIN: This amendment is very wide and what 4(a) suggests is that a person is actually going to receive notice of vacant positions in the Public Service. My understanding of the way the Public Service job vacancies operates is that they go out in a bulletin every week. They go out, not specifically to individual public servants but to offices and they are posted on notice boards and things like that. I would be very concerned if this proposes, as I think it does, that a person who is transferred is entitled to receive notice of vacant positions in the Public Service and to be appointed or transferred to such positions, if he or she was a member of the Public Service.

I think that still applies; there is still that transferability, but the receipt of the notice is a problem. Personally I oppose it; the Government opposes it. If it gets up it is certainly something that has to be re-examined. The other difficulty is that the person who is transferred must not be disadvantaged in any other way by the transfer. Is that at the point of the transfer or is it later or is it forever whilst employed with WorkCover? It is capable of a very wide interpretation and it is not very clear exactly what is intended. So for both of those reasons the Government opposes the amendment.

The Hon. M.J. ELLIOTT: At this stage I do not think we need protract the debate further. The intent in the first instance is to protect the rights which people have and which they are going to lose simply because of this legislation, where we are going to take them out of the Public Service and put them into the corporation. So it is about preservation of rights. If the Government feels there is a better way of doing it I may or may not be persuaded. However, at this stage I am quite satisfied with what is here.

The Hon. K.T. GRIFFIN: I have just one point of clarification. I must confess that I am trying to keep pace with everything that is happening at the moment and I had not realised that it was really just paragraph (b) that was the major change in direction. But I still have the same question mark about paragraph (a) even though I think it is in the Government Bill, but we will have a look at that and try to sort it out. I just did not want it to appear on the record that I had completely misunderstood the issue that was involved.

The Hon. M.J. Elliott: It is only a little bit.

The Hon. K.T. GRIFFIN: Yes, but in relation to paragraph (b) it certainly needs clarification because it is not clear at all what it means.

The Hon. R.R. ROBERTS: We will be supporting the amendment because, after a closer examination, it can be a bit of belt and braces in respect of the issues that I was concerned about, which were covered in speeches in the other place and about which I received advice. This in one sense covers those concerns. I accept that the Government wants to have a look at it and perhaps tidy it up, but as long as it

achieves the aims expressed by the Hon. Mr Elliott and me I do not think there should be any problems with a sort out later on.

Amendment carried; schedule as amended passed.

Title passed.

Clause 9—'Members' duties of honesty, care and diligence'—reconsidered.

The Hon. R.R. ROBERTS: I move:

Page 4, lines 15 to 20—Delete subsections (3), (4) and (5) and insert—

(3) A member of the board who, as a member of the board, acquires information of a commercially sensitive nature, or of a private confidential nature, must not divulge the information without the approval of the board.

Penalty $4 000

During the course of the conduct of the committee this issue was recognised. I am really seeking to pick up a provision that the Hon. Mr Elliott has lodged in his amendments in the companion WorkCover administration legislation. The words are in identical language, and this is to do with actions of members of the board. It provides what I believe to be sufficient coverage as is fair and equitable in the circumstances, and I would ask the Committee to agree with it. I point out that it is a mirror image of the provisions in the administration Bill.

The Hon. K.T. GRIFFIN: I suppose we will revisit the debate on this matter when we consider the next Bill. I have some reservations about the provision, because it leaves open to question what is information of a 'commercially sensitive' nature or of a 'private confidential' nature. There are questions of definition which leave the matter wide open. Even if it is possible to define those terms, it would make it very difficult to get a conviction, on the one hand; or, on the other hand, it may certainly intimidate members of the board. It is quite possible that the Chairman, for example, in communicating to the Minister would be prevented from making information available without the approval of the board where it might be of a so-called commercially sensitive nature.

If the board wants to enter into a contract in relation to a particular activity, which at the time might be commercially sensitive because there may be elements of competition involved, then it is my view that the Minister must have that information. It may be commercially sensitive, but even though it relates to the affairs of the corporation this amendment would prevent that information being made available. I do not know what 'private confidential nature' means.

Of course, the other problem with it is that I suspect it even creates a problem for the courts. It means that, even on the basis of a subpoena, at least it is possible to argue—I have not had time to research it, having just received the amendment—that the board must give its approval if so-called commercially sensitive material or material of a private confidential nature has to be divulged. That is quite obviously contrary to the public interest, and for those reasons we ought not to support the amendment.

I draw the attention of honourable members to the provisions in clause 9, in any event. A member does have to act honestly in the performance of official functions; the board has to act with reasonable care and diligence in the performance of official functions; a member or former member must not make improper use of information acquired because of his or her official position to gain, directly or indirectly, a personal advantage for himself, herself or another, or to cause detriment to the corporation; and a member must not make improper use of his or her official position to gain, directly or indirectly, a personal advantage for himself, herself or another, or to cause detriment to the corporation.

So, in those circumstances I would suggest that impropriety or improper use of information is most likely to be covered by the provisions already in the Bill. For those reasons I oppose the amendment.

The Hon. R.R. ROBERTS: In my ambition to be brief, I tried to do it in a shorthand way. I will read my explanation, which will allow the Minister to consider this when the Bill is somewhere else and we might revisit it.

Clause 9(3), (4) and (5) are intended, in our belief, to be gagging provisions directed against past, current and future board members, and provide for a prison sentence for members or former members of the board who make improper use of information acquired through the position to gain 'direct or indirect personal advantage for himself, herself or another, or to cause detriment to the corporation'.

There is no definition of 'improper use'; there is no exception for information that might have been available from other sources; and there is no suggestion that 'advantage' must be financial. Prospective board members may be concerned that this provision could limit their capacity to engage in legitimate policy debate during their appointments, or for years after their appointments have expired, depending on the interpretation of 'advantage' and/or 'detriment', neither of which is defined.

Not dissimilarly, a board member who sought unsuccessfully to raise and resolve issues of concern—for example, financial impropriety—within the confines of the board and subsequently resigned, and in doing so alluded to these issues, could end up in gaol. I am not aware of similar provisions in any other comparable legislation in relation to directors in either the private or public sectors. In light of the foregoing observations, clause 9(3), (4) and (5) are opposed by the Opposition.

In moving this alternative proposition to deal with the issue of confidentiality of board proceedings, I believe that the amendment put forward by the Hon. Mr Elliott in relation to the proceedings of the advisory committees as proposed in one of the companion Bills to this one is the way to go. Commercially sensitive information, or private confidential information, for example, concerning aspects of a worker's claim for compensation acquired by board members in their capacity as such should not be made public other than in special circumstances approved by the board as a whole.

However, in keeping with Labor's view that the operations of the Government and the bureaucracy should generally and as far as possible be open to public scrutiny and that public debate on important policy issues should be encouraged rather than stifled, we believe that this amendment strikes the right balance between an appropriate need for confidentiality and the public's right to know.

The Hon. K.T. GRIFFIN: I must confess that I have only had this amendment a short time, and I did not realise that what the honourable member was seeking to do was delete subclauses (3), (4) and (5). I must confess that I thought subclause (3) was just an additional provision. I am appalled that there is a proposition to delete provisions which are common to most legislation relating to statutory corporations, particularly where they have provisions for imprisonment as well as fines.

This is an appalling development, and for a Party that professes to be interested in ensuring the utmost propriety of

behaviour in Government and its agencies the Opposition, in moving this amendment, is taking some most surprising action. I am just looking now at the Passenger Transport Bill, which I think has the same sorts of provisions in it; and certainly the Public Corporations Act which will apply to the Ports Authority has similar provisions.

This really does worry me. We have identical provisions in the Passenger Transport Bill relating to the way in which the members of a passenger transport board should operate, and that has been passed through the Council without amendment. There, of course, you have members of the relevant corporation who also have access to very sensitive information, yet it was not deemed necessary to put it into that Bill. As I say, the Public Corporations Act, which we passed in the last Parliament, details the same sorts of obligations on those corporations to whom that Act applies.

In the past it was always judged that the standards set for members of statutory corporations is appropriately addressed by provisions similar to those in clause 9. I therefore even more strongly and vehemently oppose the amendment, maintaining that clause 9 as it stands is a well-accepted provision in statutes which we pass relating to statutory corporations, particularly those which have access to sensitive information and sometimes personal information. I think that it is more than adequate to deal with any problems which members may perceive in the way in which this corporation operates.

The Hon. M.J. ELLIOTT: I was aware that there was an intention to move an amendment, but I had not seen precisely what it was to do. The first observation I make is in relation to the amendment I am moving in respect of another Bill. The honourable member has picked up the same wording, but I am not sure whether it is appropriate in the way he has done it.

My concern in relation to the administration legislation that we will debating later today is that the advisory committee had a confidentiality clause which was all-encompassing. It forbade the members of the committee to talk about almost anything. I was merely saying that I felt that, in relation to that particular committee, where matters were not of a commercial or personal nature in respect of a certain individual, in all other circumstances it was reasonable, where information could be discussed publicly, that should be encouraged.

However, what the Hon. Mr Roberts has done is take a clause which was replacing another clause, which I found extremely draconian, and apply it to this Bill against a quite different set of clauses. That is not to say that some of his concerns do not relate to this, but I think that some of what he is knocking out he really does not want to knock out, either. I would doubt that the—

The Hon. K.T. Griffin: His amendment says so.

The Hon. M.J. ELLIOTT: I know that that is what it says. I am just making the point to the Hon. Mr Roberts so that he has a chance to think about this on the run. At the moment he wants to knock out a clause which says that a member must not make improper use of their position to gain directly or indirectly a personal advantage. I presume that that is largely perhaps a personal pecuniary advantage. I doubt that he would really want to see that in itself knocked out.

There are some interpretations of subclause (3) that I doubt he would want to knock out again, particularly where a person is seeking, out of corrupt purposes, to make a gain, and that should be penalised. They can be passing on information which gives other people some form of advantage in one way or another.

However, I will ask a question of the Minister in relation to interpretation, particularly regarding some of the wording in subclause (3). This subclause refers to improper use, whatever that means—although it is then defined as being something that will be used either directly or indirectly for personal advantage. I can understand an advantage that might be financial, but what other forms of advantage might that clause pick up?

There is mention of causing detriment to the corporation. Again, 'detriment' is a fairly wide term. If a person makes a criticism of the corporation that can be seen by some people, I would think, to be detrimental. Yet, if the criticism is deserved that does not seem to be covered. First, what interpretation will we have in relation to 'personal advantage'? Secondly, what interpretation will we have of 'detriment' to the corporation?

The Hon. K.T. GRIFFIN: It is very difficult to address those issues, considering that the concepts have been incorporated in the criminal law in amendments we passed in the last Parliament dealing with public offences.

The Hon. M.J. Elliott: I have not been involved in those debates.

The Hon. K.T. GRIFFIN: I will try not to take much time in addressing the questions. Under the criminal law, 'impropriety' is that which is judged by the court or by the jury to be improper in the context of what a reasonable person would do and what is believed to be usual standards within the community. But it has to be related to the gaining of a personal advantage.

Personal advantage is not necessarily pecuniary; it may be appointment to a particular position; or it may be to scrub out a competitor—and that may be a competitor not just in the business sense but in the personal sense of competition for a job or even for favours. So, I think it is broader than just dealing with pecuniary interests and benefits. It encompasses a whole range of other things and consequences which probably cannot be measured in money terms but which nevertheless create an advantage for the person who is making use of the information.

In terms of causing detriment to the corporation, I suppose one can generally look at that in terms of financial outcomes. It may be in relation to a court case. Let us say that the WorkCover Corporation is pursuing a court case. A member of the board is privy to the information and feeds it out to the defendant. It may be that there is some monetary advantage. It may be that there is some other personal advantage. It may help to bring down the corporation because there is a personal vendetta.

There is a whole range of those sorts of circumstances that one can develop. I am just reacting off the top of my head to some of the possibilities. It is very wide and it is intended to be wide. It is already a provision in the Public Corporations Act. As I said, it is already included in a variety of other pieces of legislation relating to statutory corporations.

As I recollect it, it embodies the sort of principle which is also included in the Corporations Law, but I do not want to be held absolutely to that because I am not quite certain about it, but certainly it is in the Public Corporations Act. It endeavours to ensure that people act with propriety when they are members or former members of the board in the recognition that detriment can be caused to the corporation or to other people by the use of information which is gained in the course of that person's official position. It may well be that

the Criminal Law Consolidation Act duplicates some aspects of this in terms of public offences involving impropriety, but there is no harm done in that.

So, that is my explanation of what I see as the scope of subclause (3), which I think is a perfectly proper provision to include. It does address the leaking of information by a board member and acts like that without specifically getting involved in even more difficult concepts of determining what is commercially sensitive or what is privately confidential.

The Hon. R.R. ROBERTS: We certainly do not condone people acting improperly. We certainly do not condone the practice referred to in subclause (3). Most of my concerns, when I read the explanation more closely, involve subclause (4). I suppose one would expect that the provisions of honesty, due diligence and proper care should be exercised by all directors. It could be argued that any director has that responsibility under the law, anyway. This clause is a shorthand version which covers our position on subclauses (3) and (4). We say that a member of the board who acquires information of a commercially sensitive or private and confidential nature must not divulge the information without the approval of the board. This is a shorthand way of saying that he must do those things.

I understand the concern if it is felt necessary to lay it out step by step, but I am certain that, if we wanted to stipulate all the things a director cannot or should not do, we could make a much longer list. This clause in its current form provides that the director or past director must at all times act with proper care and in accordance with their responsibilities. Any information they may make available to other members of the community or groups should only be done with the approval of the board. So I do not envisage the enormous problems that have been outlined by the Attorney-General. I think our amendment has the same effect. The Government's amendment goes a longer way about saying it, whereas ours is a shorthand version.

If the Attorney-General has some concerns, he has already said that the Government will be looking at this Bill much more closely. The concerns we have about matters such as 'improper use' and 'for personal advantage' for himself or another, or whether it will 'cause detriment to the corporation' are obviously concerns for the Hon. Mr Elliott. They are concerns of the people who have lobbied us and what they mean are of concern to the Opposition. This clause, as we propose it, covers the whole gamut of the areas of concern that we are talking about in a much more precise way than the way it is worded in the Bill. I think we have achieved what we need by way of this Bill, because the words 'must not divulge the information without the approval of the board' indicate a clear responsibility—the director cannot act unilaterally. If the board agrees with his action, the director is able to make those revelations; if the board does not agree, he has a legal responsibility not to make those revelations under this Act.

The Hon. M.J. ELLIOTT: It is a bit of a juggling act with all these pieces of legislation as we jump from clause to clause, but I moved amendments to the occupational health and safety Bill and the administration Bill and not this one because I was reacting to different clauses. The clauses in the administration Bill and in the occupational health and safety Bill were quite draconian and essentially put a total gag on members of the committee. I do not tolerate that in any sense, and that is why I moved my amendments.

I do not believe that the provisions in this piece of legislation provide the same sort of a gag. They are much more specific in terms of what board members can and cannot do than are the confidentiality clauses that caused me concern in the other two Bills. These subclauses do other things as well—it is not just in relation to simple confidentiality; it covers a range of other sins. I believe it would be a real mistake to delete subclauses (3), (4) and (5), because I think they are the sorts of requirements that would be placed on a board that is operating predominantly in the commercial area. So, I do not support the amendment.

Amendment negatived; clause passed.

Bill read a third time and passed.

WORKERS REHABILITATION AND COMPENSATION (ADMINISTRATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 April. Page 517.)

The Hon. G. WEATHERILL: A significant feature of this Bill is to amend the Workers Rehabilitation and Compensation Act 1986 and to amend section 42 of the Workers Rehabilitation and Compensation Act. Section 42 of the Act provides that the ongoing weekly payment of income maintenance received by an injured worker to compensate them for the loss of income for injury, in effect, can be rolled up and taken as a lump sum. This process is known as commutation. At present, commutation is available on application by the worker if they can meet three criteria, that is: they have received a lump sum for pain and suffering under section 43 of the Act; they have a permanent incapacity for work; and the amount they are seeking to commute does not exceed certain preset amounts. Provided there is no other good reason why they should not receive commutation, then they have an entitlement to a lump sum which reflects their ongoing weekly payments.

The objectionable parts of the amendments that are being sought by the Government are two-fold, namely: the absence of the right to review any decision not to commute weekly payments by the corporation; and the absence of any right to a review of the level of lump sum awarded by the corporation. It is unthinkable that injured workers should have a right to compensation which is dependent upon the goodwill of a large bureaucracy which, for its own reasons that may not necessarily be good reasons, can decide whether or not it awards that entitlement. It seems strange to me that a Party calling itself the Liberal Party or even a Party calling itself a Democratic Party could contemplate handing such broad powers to a statutory corporation without the right to review them.

The unfortunate experience with the WorkCover Corporation is that it has not on all occasions exercised properly the powers it has been given by this legislation. On occasions, this means that it must be subject to review before a tribunal set up by the Parliament and often even by the Supreme Court. One of the Government's proposals to amend section 43 provides for the corporation and the worker to agree the amount of the commutation. It is ridiculous to expect that workers who have a limited amount of bargaining power could enter into negotiations with a large corporation and get a fair outcome in relation to the amount of these lump sum payments. The truth of the matter is that those workers, if they are desperate enough, will simply accept the best offer that is given to them.

Many workers face financial problems and find the process of rehabilitation and endless trips to and from the

doctor as stressful, causing them to want to get out of the system altogether. The corporation will use its powers to decide whether or not to grant commutation and will pressure workers into agreeing on the corporation's view of the correct amount. For these reasons we oppose the Bill in its current form and support amendments to section 42 which will provide a worker the right to review both the availability of commutation to injured workers and the amount of any lump sum which is commuted by the corporation.

I wonder what these alterations to this Bill do, because they certainly do not assist the injured worker. In 1978 I received a back injury at work. I went to the doctors and the specialists and had X-rays taken. According to all the experts, there was nothing whatsoever wrong with my back. It had torn fibres. That is what I was told, and that is what I was believed. I was very gullible, apparently. So, I put up with the stress and the pain for many years—until last year, as a matter of fact. When I got to the stage where I virtually could not walk, I asked a doctor in this place, Dr Ritson, whether he could arrange for me to get some X-rays taken, because I thought it was worse than these so-called torn fibres. I had the X-rays taken, and Dr Ritson looked at the X-rays, as did other doctors to whom I showed them, and they said that there was nothing at all wrong with me. I was told again that it was probably torn fibres. That is what the black and white X-rays showed.

If I had been on WorkCover, I probably would have been sent back to work, because there was nothing wrong with me, according to the X-rays. But, unlike a lot of these people who are on a small salary, I was able to insist on getting a CAT scan done. The CAT scan photographs showed not only that I did not have torn fibres but that I had a disk that was broken into three pieces, and one of the pieces was sticking into the nerve, in between the disks. I am saying this because I wonder how many times these doctors and specialists who work for these firms and for WorkCover itself send a worker along to have a CAT scan to make sure that the matter is not as serious as the pain obviously indicates to these people.

Unless you have a gaping wound and the blood is pouring out, nobody will believe it. If anyone has a bad back, people will think that they are bludging on the system. That is total rubbish. The difference is that some people can stand more pain and stress than others. I put up with that pain from 1978 to 1993. If I had been advised by these so-called specialists who looked at these X-rays—and I might add just recently, last year—and said that there was nothing wrong that I could have a CAT scan, I would not have had to put up with that agony for all those years. I agree with much of what people are saying: that some people, about ½ per cent, might be ripping off the system, but there are a hell of a lot who are not ripping off the system.

The Hon. T.G. ROBERTS: I support the foreshadowed amendments. When the WorkCover Corporation Bill came in I indicated that it was the first of the trilogy, and this is the second of the trilogy that seeks to restructure workers' rights and to limit the benefits and the areas in which workers can claim. It basically fulfils the dreams and ideals of the now Government. When members opposite were in Opposition their daily stories to the press while the select committee was running were basically directed at the changes that they are now foreshadowing in the Bill.

It is a major change in workers rehabilitation and compensation, more in philosophical direction than perhaps in the substance of the changes that are indicated. But I suspect that this is stage 1 of a staged development of wearing away at the benefits not only in this Act but in the other two. We have the big brother one coming in a bit later, the IR Bill. According to the strategists in the Liberal Party, it is all designed to present a more streamlined view of industrial relations. It is quite clear that the objects of the Act are to change the formal structure of the board and the advisory committee and to restrict the claims for journey accidents, which has been a bone of contention for conservatives over a long period of time.

When it was first introduced and accepted as a principle, conservatives under previous Administrations did not find it a problem. It has been in there for some time. It has been subject to pressure for change, but there has always been an acceptance of responsibility for workers travelling to and from work. With the claims that have gone to court for settlement, some have come down on the side of the injured workers and some on the side of the employers; there has been no prejudice or formal programs that have come down on the side of the workers on each and every occasion. On some occasions it has been shown that workers have deviated from their normal paths home and the cases have gone against them. The odd cases have been shown to be a bit harsh in relation to the employer's being responsible for some of the deviations, but it is the same with all aspects of workers rehabilitation and compensation: there are always questionable claims.

It is not only under this Act, but under the previous Act these same sorts of cases fell into grey areas, and it was up to courts and tribunals to determine whether or not the claim went through. I do not accept the argument that has been put forward to limit claims in journey accidents. We took evidence on the select committee from 1991 to 1992 and it was not a major part of the claims. It was one of those that had a philosophical principle that conservatives wanted to attack: they felt that it was not their responsibility to cover workers outside working hours and away from their premises.

One of the problems that we have in covering workers in this State is that there is no universal coverage for workers if the removal of these journey claims applies. I would like people to reflect on the case of a nurse on night shift walking from her car in a car park to her place of employment. She may fall over, she may be attacked; anything could happen. It is off the side of the premises and what we would regard as an accident on the way to work. If the nurse was not working night shift she certainly would not be walking the darkened streets of Adelaide (or anywhere else), and it is therefore the responsibility of the insurance provided through workers rehabilitation and compensation to provide some sort of cover.

The alternative is to have private cover or to fall back onto social services. In the case of an attack, there may be some provision for victims of crime but, in many cases we have heard in this Chamber, victims of crime money is not available either, because the perpetrator of the attack in many cases is never revealed or charged. So, you have a difficult situation where little or no compensation at all is made available. The attacks on the benefits within WorkCover relate to arguments in many areas that are very difficult to sell to people out there in the community, not because they are not genuine and not because they are not claims that should be covered under the Act; it is just that, with the propaganda campaign that has been waged by the media generally, not just on journey accidents but on stress and drug and alcohol related claims, it is very difficult for the counterclaims to be

placed before the community to even up the ledger in relation to these aspects of the Act.

Stress is one area that not even the medical profession is prepared to agree on in relation to a formula that should apply to the application of compensation. It is quite clear, from the figures that have been quoted in this Chamber and the other place, that a high proportion of stress claims that have been made exist in the public sector. If one read the local media and listened to some of the attacks on the system about stress related claims, one would think that they occupied 90 per cent of the claims being made on WorkCover. That is not the case. The information on stress from 1992-93 shows that only 12 stress related claims were contested before review officers in that period. Six stress claims were granted on the evidence put before the review officers and six rejected.

So, in that case, where the evidence was not predominantly weighted in favour of the claimant, the cases fell even-handedly. It was not that the review officers were coming down on the side of the claimant in every case, but a matter of weighing up the evidence that was put before the review officers, and the decisions being handled even-handedly. One of the problems with stress, as I indicated in my previous speech on the WorkCover Corporation, is that bad management and bad handling of stress claims at a workplace tend to be the predominant problem and not the problem of identification of stress itself.

Good management can tell when people in the work force are coming under pressure. It happens in all premises; it happens in both the public and private sectors. At present there is a lot of stress in restructuring. The Liberal Government at the moment is corporatising and it is changing many of the traditional ways in which Government services have been provided, such as the transport service. Nearly every service that has traditionally been provided by the government is under review or undertaking major change. Some of those changes began under the previous Administration, and with change comes stress and worries. People's futures tend to be clouded. Changes in work related programs tend to increase pressure, and if we look at the past five years particularly we will see that most places have been shedding labour, going into labour-saving forms of redirecting the way in which they work, and much of the work load has been placed on fewer and fewer people.

There is a whole swag of potential stress claims in the community now because of the rapid change that has been instituted through both the public and private sectors. On speaking to some middle-management people last week I found that a particular company had cut back its work force levels. It had fed all its computer software, and much of the work responsibilities of middle-management were beginning to change. They were not sure what their future would be. They were putting in far more hours than they normally would, and in actual fact they were working themselves out of a job. Once their roles and responsibilities could be picked up by fewer people on the site and once computers were able to handle some of their responsibilities they could see their present role coming to an end, and that was putting them under stress. They will not be recognised, there will not be any claims and they will drop out of the work force, and that is happening more and more.

[Sitting suspended from 5.58 to 7.45 p.m.]

The Hon. T.G. ROBERTS: Before the dinner break I was raising some issues in relation to stress-related claims and the difficulty of recognising and diagnosing claims being managed by claims managers. With the rapid change that is taking place in the real world, a lot of stress is being put on people at all levels. I was referring particularly to middle management difficulties that are occurring due to the changing nature of work and the use of technology and computers in day-to-day business management. Some of the insecurity that is built into that change, particularly with middle management, is starting to have an effect on those who have to pick up the extra work responsibilities that go with the nature of change that we are trying to manage.

Senior management positions tend to be dictating the rate and pace of change, but middle management and those at the coalface, so to speak, and who are facing those changes have to adjust. Although there is a lot of pressure and stress in those areas, in many instances they do not manifest themselves in claims on WorkCover, nor are they being recognised by management as potential claims. The point is that there is the potential for a broadening of claims, yet WorkCover changes are narrowing the application for eligibility at a time when the nature of the claim has not been recognised and is not being managed properly. We have narrowing criteria based on ignorance and the potential for massive mismanagement of stress in the workplace over the next few years.

The move by the Liberal Government to provide for management to self manage claims management will be a difficult arena for WorkCover to come to terms with. I think that the potential and the intention are there to turn claims management away from WorkCover claims management to workplace claims management.

Under the old Act, and to some extent under the new Act, self-insurers were put in the place of claims management managers. Under the old Act it was with private insurers; under the new Act it was with WorkCover. Under the old scheme, with self management of claims management for workers' occupational health, safety and rehabilitation, it was in the interests of management to get workers back onto the job as quickly as possible, regardless of the nature of their injury.

As a union organiser and shop steward on the floor I came into daily contact with workers who were wheeled back into workplace premises with plaster casts, broken legs, broken arms, etc. and who were a part of the hidden wounded. They did not appear in the statistics, and they did not have lost time injuries that necessitated reporting to the Department of Labour and Industry, which from memory had a three day time limit by which a report had to be made for a lost time injury. They did not show on those statistics, although in many cases they were serious injuries. There was very little assistance with rehabilitation, and I suspect that we are heading almost in the same direction again where we are reinventing the wheel.

The point that was made by the Democrats yesterday that many of the problems that have emerged with WorkCover were due to the changes that were being made at a legislative level. I made the point in my original contribution that, just as people became familiar with the application of the Act and were working through the problems at a local level, they had to familiarise themselves with changes that were being made not only to the way in which claims were being determined but also to how they were being managed.

Rehabilitation was not part of the psyche of most rehabilitation structures, which operated basically on a risk management strategy whereby, if it would cost more to manage or rehabilitate a claim than not to make the claim or sack the

injured worker, risk managers' advice to managers was that they would sack those workers. I am not saying that this is a guarantee that we will return to that system, because unions and management have come some way towards trying to overcome that, but again it is legislation for bad management. Good managers overcome that, but I suspect that we are heading towards paying less attention to prevention and paying more attention to how to minimise risk in managing claims in order to minimise the financial detriment that comes from paying higher insurance levies or higher WorkCover levies, whichever way it turns out.

With respect to the management and detection of claims around drug and alcohol related problems, I guess the questions I would ask of the Minister are: how will provisions be made to measure quantities of alcohol in injured workers' blood, etc.; and, if it is to be a fault-related scheme, how will it be determined? There are a number of industries where people take alcohol as part of the duties for their job, particularly in the hospitality industry when on some occasions, associated with work, people have small amounts of alcohol.

Another problem is related to cough mixtures and prescription drugs, because I found in the workplace that, if people were being treated not for life threatening illnesses but for ordinary illnesses, many of them would show traces of drug in their blood due to the prescription drugs that they were taking to enable them stay at work. If we were to get to a position where anybody with any drug at all in their blood is seen as being part-contributory to that accident or claim, then I think we will find a lot of absenteeism and many people being written off and losing time unnecessarily.

Many people out there are being treated for alcohol-induced illnesses as part of good management programs. There are some enlightened employers who are prepared to rehabilitate their workers who have alcohol problems. There are not very many, but in the mid to late 1980s and in the early 1990s some enlightened employers were starting to come through who were prepared to rehabilitate workers who had alcohol problems. Some of those programs might be put on ice. I would like an answer to the question of how the Government will deal with employers who run programs like that. I suspect that not much effort and energy will be put into drug and alcohol rehabilitation at a workplace level. Again, it will be a shift from the broader responsibility of the community back on to Governments to try to come to terms with those problems.

I also suspect that what we are doing now is working away from a system that I would class as a humanitarian application of the principles that should be involved in workplace management to a system that does not have the worker's best interests at heart in relation to managing the best skill levels and achieving the best output from people in the work force. It will all be finance-directed, and accountants will determine the industrial relations and occupational health and safety programs on work sites. Unfortunately, with the direction in which we are going, much of the good work that has been done during the 1980s and the 1990s will be frustrated. The norm for the management of workers' rehabilitation, occupational health and safety and injury management will be based on the lowest common denominator that has always existed. It was there before the 1972 Act; it was there before the changes to the 1986 Act; and it was there when the amendments went through in relation to the 1991, 1992 and 1993 changes.

Those employers now will be seen as the epitome of good, sound management: that any potential problems within the work force are not managed out, nor does one use a humane form of management. One eliminates most of the problems by, first, not letting them past the interview stage—and that is something no legislation can stop. However, if the problems that I have alluded to do emerge in the workplace, they will be swept under the carpet or dismissal will be the solution and not management. They are my concerns.

I would like the Minister to provide some answers on the issues that I have raised in relation to drug and alcohol claims and in respect of stress claims and journey accidents. The three issues are difficult problems. Certainly, there have been some rorts. I must say that today's *Advertiser* report about a rort certainly kept me at bay. My blood boils like the Hon. Mr Elliott's when one picks up the newspaper just to see another one, because we all know that every system has programs that some people will rort—and it does not matter whether it is the private system or the public system.

One can look at the third party insurance scheme. SGIC and other insurers are continually trying to weed out problems associated with claims that are, in many cases, less than fair. In WorkCover claims and with accidents and injuries at work there will always be claims that are less than genuine. It is not a matter of writing legislation and drawing up programs to deal with the lowest common denominator. One draws up claims to manage a fair and equitable scheme that allows for adequate compensation for workplace injuries. One allows workplace injuries to be defined and administered in a way that does not eliminate large sections of those claims. One has a humane and a fair way of allowing both unions and employers to keep in touch with injured workers so that they can be rehabilitated, brought back on to the job and have a feeling of self worth.

The proposed legislation amounts to overkill; it is frustrated legislation in response to a pay-back scheme to those who supported the Government in attaining the Treasury benches. The changes do not go a long way towards fostering and harmonising a good workplace in terms of industrial relations. In fact, it will probably end up the other way around. Therefore, I will be supporting many of the amendments that have been outlined rather than supporting the Bill. I seek answers to the questions that I raised in my contribution.

The Hon. R.R. ROBERTS: I oppose the second reading of the Bill, and I refer members to the remarks I made in respect of this package of Bills during the second reading debate on the preceding Bill. I want to cover some of the areas raised by other members in this place. The Opposition opposes the Bill. I borrow a quote from the Hon. Mr Elliott, who said that the Bill is a 'dog's breakfast'. The Opposition is concerned about the absolute dishonesty of the Government in putting this Bill forward. Let me look at what it really wants to do in the Bill. It wants to abolish stress claims and all journey claims, and it wants to take away workers' rights to an independent review of decisions made by an insurer.

The Government wants to take away the rights of widows, widowers and dependants of deceased workers killed in their employment. It wants them to give away their rights and take a lump sum as opposed to being provided with a weekly pension. The Government wants to hand back premiums to employers and its mates in the private insurance sector, despite the lack of employer support for such a change and despite the fact that these people blew the cost of insurance

on a yearly basis year after year. This required the former Labor Government to drastically intervene in workers compensation in 1986.

The Government wants to deny workers with minor hearing loss—less than 5 per cent—the right to a measly entitlement and, most disconcertingly about this and the two other Bills, is that the Government does not have the honesty and decency to tell the South Australian public what it wants to do and why it wants to do it. Quite mischievously, the Government has peppered the press with the odd tale, the bizarre case and the strange claim that falls between the cracks, trying to create the public view that all injured workers are nothing but rorters of the system. Not once have we heard of the rorts of the medical and legal professions and of employers. We have heard half-baked reasons for these amendments.

We were first told that the amendments were necessary to hold levies as they were. The Government claimed that, if we did not pass the amendments, employers' levies would increase. However, I am advised that the WorkCover Board was faced with these facts and unanimously endorsed no change to levy rates in 1994-95. That action dispels the big lie. Other Government members have told us that the Bills will reduce the premiums so that we can be competitive with other Australian States. Even that is dishonest because of the different way in which entitlements are paid and the direct liabilities of employers in other States, such as make up pay, having to pay the first week's expenses and hundreds of dollars in medical expenses.

This is not cost compared with cost. Let us say for argument's sake that we reduce employers' levies in this State to what the Government thinks is competitive, then his sensitive colleague in Victoria, Mr Kennett, suddenly realises that compensation premiums are on a level playing field in South Australia, only, I point out, on the actual cost of the premium. So he decides to reduce his premiums further. Will the Minister and his colleagues come back in here and ask for a further reduction? Then, for argument's sake, his colleague, Mr Court, decides that he has to drop his levies to get an edge in this particular race. What happens then? Do we come back and reduce it? The answer is probably 'Yes', because the real agenda of this Government is that it does not believe employers should compensate workers who are injured on the job. They want PAYE taxpayers to pick up the liabilities of their employer mates. That is what members opposite are about. They do not have a mandate for it, and they know that. They lie and mischievously dress up what they are really on about.

We are getting leaks that the Industry Commission has recommended that all journey claims be removed. We could all selectively pick out things that suit our argument on the day. This is the old argument of convenience. The Hon. Mr Redford tells us that people ought to be on the dole because employers should not have to pay as they provide jobs so that people can pay taxes. What a twisted argument. According to *Hansard*, he believes that:

> . . . low paid workers are dumb if they stay on WorkCover and seek rehabilitation and not burden the community with social security payments.

What would Mr Redford say if the Industry Commission said that there is far too much employer liability transfer and that it ought to be stamped out? What would Mr Redford say if the Industry Commission said that some of the schemes, such as in New South Wales and Queensland, are bludging on the taxpayer? Would he get up and trumpet the findings of the Industry Commission then? I think not.

The Government is being very opportunistic and dishonest. These Bills are dishonest and opportunistic. The Government does not have a mandate for dishonesty and deceit. Members opposite will not tell the truth about most of what they allege. I allege that most of what they say is nonsense. The truth is that they want to abolish compensation or make it so unattractive that people go on the dole so that their mates, the employers, can injure people with virtual impunity and dump them onto the taxpayers of this nation. Most workers compensation schemes in this country still cover journey accidents and so they should. One only has to stand on West Terrace between the hours of 7 a.m. and 9 a.m. to see that travelling to work can be a perilous occupation. I know when I would rather be travelling along West Terrace or any other major arterial road in this city or this country, and that is at 10 a.m. when everyone is at work. Clearly it is far safer and less hazardous to be on the roads once people have arrived at their workplace.

The Attorney-General (Mr Griffin) made snide and defamatory remarks regarding review officers in this Council. Again, he does not have the guts to tell this Council the truth of the matter. He believes that the judiciary is too kind to workers when it comes to workers compensation claims. He does not mention that any decision of a review officer is subject to review by the judges of the appeal tribunal, and that a further review if they are wrong in law can be made to the Supreme Court. When he insults review officers he in fact insults every judge who sits on the Workers Compensation Appeal Tribunal and every judge in the South Australian Supreme Court. That is what these people are about. They do not like an independent judiciary; they do not like the umpire's decision.

When we had full employment in this country many years ago they were always saying, 'You ought to go to the independent tribunal.' Now, of course, they want to do away with awards and conditions and weaken the ability of the Industry Commission to settle disputes between workers and employers. I challenge the Opposition to look at how many review officer decisions on appeal are overturned. What percentage is appealed compared with those that are overturned? I suspect the Minister has probably already had a look but does not like the answer.

In their efforts to give some credence to the myths about WorkCover, the Government pulled out its big guns. In fact it decided to turn on Queen's Counsel, no less. I cannot let the remarks of the Hon. Mr Lawson escape some criticism in this area. We were grateful that he did not speak for too long, as he set about giving this Council an education in the authorities of the courts, none of which were in South Australia, I am advised. The Hon. Mr Lawson began his contribution as follows:

> I only wish to speak on the subject of journey accidents.

He then went on with his speech, which was more of a recital of cases. He quoted *Hatzimanolis v. ANI Corporation*, where the worker was injured driving whilst on a three month contract at Mt Newman in Western Australia. For the benefit of the Hon. Mr Lawson, the journey in the vehicle was not the deciding factor in the case but the required locality of the worker by the employer. This meant the injury was seen to have arisen in the course of his employment, not because it was a journey accident or in the course of a journey.

McCurry v. Lamb was another case that he quoted, where the employer provided accommodation for the workers, one of whom was sharing a bed with a roustabout when he was injured. Again I point out to the Hon. Mr Lawson that the worker succeeded in his claim due to the required locality of the worker by the employer. The work was indeed in the course of his employment, not in the course of a journey, no matter how far the injured worker had got down the track at the particular time. He also quoted *Inverall Shire Council v. Lewis*, where a worker was injured in circumstances similar to that of the previous case, except that this worker had not yet got into the bed. Again it was found to be in the course of his employment, not due to any part of the journey, that determined the liability.

Then we come to the *Workers Compensation Board of Queensland v. McKenzie*. McKenzie was working, as the Hon. Mr Lawson pointed out, on a particular education program. Therefore, when he suffered his injury he was found at law to be in the course of his employment—again nothing to do with the journey. McKenzie would have been covered, according to the Minister for Industrial Affairs in his contribution in another place, when he said, 'Where the employer requires the worker to travel, the worker will be covered.' I think he used the analogy of the Coca Cola salesman required to travel to the bush by his employer; so you see, even the Hon. Mr Lawson QC sometimes gets it wrong.

The existence of a journey was not the determining factor in all or any of the cases he outlined, but merely one factor of many which, together, provided sufficient evidence to enable the injured workers to succeed in their claims for compensation. The Hon. Mr Lawson does not agree with any of the judges involved or any of the courts, including the High Court of Australia. It seems that, like the Attorney-General, he simply does not like the umpire's decision. One wonders whether in fact he may have been the losing counsel in some of these cases.

The truth is that Government members have been running scared on this Bill since it was introduced in the Lower House. They are running scared because they have been dishonest and peddled untruths and half truths and distorted versions of events through their friends in the media, but the truth will out. We have had comments that some of the things the Hon. Mike Elliott has said seem to be almost consistent with ours. If that is the truth, I would hope so. I would hope so because we are certainly not getting the truth from the Government of the day in this State. For all those reasons, we oppose this Bill. We will move some amendments and try to alleviate the hurt and harm that the Government seeks to wreak upon injured workers in this State, and we urge Mr Elliott to join us in doing that. I will have more to say on this matter during the Committee stage of the Bill.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contributions to the debate. Quite obviously, there will be some further spirited debate in Committee. It is an important Bill and deserves careful attention. It is important that I address some of the issues which have been raised by members and, whilst not doing so as extensively as perhaps I ought, at least some response from the Government will be important.

First, I will deal with the contribution of the Hon. Mr Elliott. He said, among other things, that the Government has done little to pursue the major area of potential savings, that is, the area of safety. The only response I can make to that is that it is quite wrong. Prevention and workplace safety remains an essential priority of the Government's policy. For this reason, the Government is proposing to streamline the delivery of prevention programs by reducing duplication and creating greater efficiencies between the current activities of the Occupational Health and Safety Commission and those of WorkCover.

The Government has committed, as I said when we were considering the WorkCover Corporation Bill, an additional $2 million of extra funds in the next financial year to targeted prevention programs in small business areas and high risk industries. This is in addition to specific programs being conducted by the WorkCover Corporation such as the safety achiever bonus scheme and the new workers scheme. The pilot program on self-managed employers also will lead to greater workplace priority on safety and prevention, as generally the greater the involvement of employers in the rehabilitation and compensation system, the more incentive there is for employers to minimise workplace injuries. That is just a reiteration of the point I made when we were debating the WorkCover Corporation Bill, namely, that employers are concerned about issues of safety, and many of them are very much interested in taking a greater level of responsibility for management of claims and rehabilitation. Their object is to keep their premiums and other costs down and to ensure that their employees are productive individuals as well as enjoying a safe environment. It is a nonsense to keep talking about employers not being interested in high levels of workplace safety. That just ignores the reality of the situation and the benefits which most employers recognise will come from a safe and pleasant work environment.

The Hon. Mr Elliott focuses on the current debate on journey and stress claims and implies that there is widespread dishonesty, yet he says there is no evidence of fraud in the examples given by the Minister. The examples given by the Minister of rorting and abuses of the system have been factual examples, and it is entirely proper for the Minister to do so. The examples do not suggest that all journey and stress claims are fraudulent. Rather, the fact that many of these claims are capable of being accepted under the legislation indicates that, rather than fraud, the claims should not be compensable on policy grounds. For that reason, the Parliament has the obligation to vary the provisions of the Act to prevent these excesses. Journey accidents are clearly beyond the control of the employer, and it is unreasonable, on policy grounds, for those journey accidents to be compensable through the WorkCover system, which is funded by employers.

Stress claims by their very nature lend themselves to abuses of the system because of the difficulty of distinguishing between domestic related stress and employment related stress. Tightening these definitions and removing these excessive and unjustified claims from the system, whether or not those claims are fraudulent, is the responsibility of this Parliament. This Parliament has a long history of expressing concern about stress and journey accidents. Certainly, the area of journey accidents has been a topic of debate in this Parliament for as long as I have been a member.

Over the years (certainly under the previous Labor Administration, supported by the Australian Democrats) there has been a significant relaxation of the provisions relating to journey accidents and a greater impost upon employers even though, as I say, employers had no control over the employee in the circumstances in which many of these accidents occurred and, in fact, had no legal authority to dictate to the

employee what the employee should or should not do once the employee had left the workplace. The Hon. Mr Elliott says that travel accidents should be covered by some form of insurance. If they are taken out of workers compensation, they should be covered by a compulsory no fault vehicle insurance scheme.

I suggest that that is no justification for requiring changes to the compulsory fault-based third party insurance scheme as a condition precedent for the removal of journey accidents from the WorkCover scheme. The objective of this legislation is to exclude employees' domestic journeys to and from work from the WorkCover scheme because such accidents are beyond the control of the employer and should not be funded by the employers. Road accidents in these circumstances should be the general community's responsibility. This legislation simply puts employees in exactly the same position as any other user of the road, whether they be the unemployed, the housewife or individuals driving during their leisure time on weekends.

If there is an argument for change to the compulsory fault-based third party insurance scheme, this should be assessed on its own merits at a community level, not simply as a knee-jerk reaction to frustrate the removal of employees' journeys from the WorkCover scheme. It is impossible to understand or justify how an employee's motor vehicle accident should be dealt with on a no-fault WorkCover scheme, whereas the housewife's motor vehicle accident, involving precisely the same injuries and precisely the same incident in out of work hours, is dealt with under a fault-based compulsory third party insurance scheme.

SGIC has provided a brief indication of the issues that would arise if the current fault-based scheme were to be translated to a no-fault insurance scheme. SGIC's advice is that a substantial premium increase would be necessary to cover the additional number of claims and administrative costs. In addition, issues such as the appropriate level of benefits would need consideration. The Government's Bill seeks to do no more than was recently done in Western Australia, where journey accidents were removed from the WorkCover scheme, which was a no-fault scheme, and employees' journeys are in that State now assessed according to the compulsory third party insurance scheme, which is a fault-based scheme.

The Hon. Mr Elliott also notes that his amendments will create a legally complex situation, which he claims is necessary to provide fairness. This, I must say, is a significant and disconcerting admission by the Australian Democrats. Their amendment specifically in relation to journey accidents will effectively reinclude most journey accidents into the WorkCover scheme whilst, at the same time, promoting a new body of litigation which will for many years create great uncertainty as to how the law is to be applied. This could hardly be said to be a good or responsible legislative amendment.

The Hon. Mr Elliott says that the Democrats believe that the previous changes on stress have not had sufficient time to work through the courts. The response to this is that the previous changes on stress have been in operation for some 15 months. While they have had some positive benefit, the current provisions remain too broad and the reality is that review officers in the Workers Compensation Review Tribunal have no option but to apply and interpret the languages as determined by the Parliament. This means that the Parliament needs to ensure that its legislation reflects its policy intention so as to ensure that the courts do not construct remedial legislation so broadly as to exceed the legislative intent.

The Hon. Mr Elliott expressed concern about the country police officer attending the horrific road accident and suffering post traumatic stress. In response to that I say that it is the intention of the Government that a police officer in these circumstances will be covered. The stress would be considered to exceed the level that would be normally and reasonably expected in employment of the relevant kind. The Hon. Mr Elliott says that consultations with employers have indicated that employers are not too hung up about the stress issue. That is not correct. Employers are fully supportive of the Government's amendments, including the amendments in relation to stress.

Employers are frustrated by the open-ended nature of the current stress provisions, which do not clearly limit the capacity for domestic stress to be incorporated into a work related injury and effectively become the liability of the employer. The Hon. Mr Elliott should be aware, simply as a consequence of the strong representations made to him in recent days, both in correspondence and personally by employers, that stress remains an ongoing problem for employers. He also says that removing the capacity to claim stress does not remove the stress itself: it simply denies the ability to make a claim. I suggest that this is a very superficial argument.

The legislation must deny claims where the stress is not caused by the employment—it must be cause related. The Government's Bill seeks to do this by requiring the stress to be compensable if, and only if, the stress is wholly or predominantly arising out of the employment. The mere fact that a worker is stressed whilst he or she is at work does not mean that work is actually causing the stress. Many social factors can give rise to stress, including domestic factors. The law must be unequivocal in requiring the courts to reject claims which are not clearly founded upon workplace causes.

The Hon. Mr Elliott makes the point that the role of stress is a secondary psychological component to WorkCover injuries, and it is not to be ignored. My response to that is that the Government's Bill does not ignore stress as a secondary psychological component to WorkCover injuries. The Government's Bill however does require the stress claims to meet appropriate tests in order for such claims to be compensable. The Hon. Mr Elliott also asserts that the commutation amendments threaten the right of the worker or dependents in the case of death to seek commutation under the Act. He says it will become the absolute and unfettered discretion of WorkCover for which no appeal will be available.

It is clear that the right to seek commutation is unaffected by the amendments. The worker retains a right to request commutation, with the amendment going to the obligation of the corporation to grant that request. This amendment is to give effect to the original intention of the Act when it was introduced by the Labor Government in 1987. The right of the corporation to refuse commutations is required to combat interpretations recently by the courts where WorkCover was forced to grant commutation, which was counter-productive and contrary to the good management of claims.

The Hon. Mr Elliott also says that the Bill does not provide a method of calculating a commutation lump sum. The response is that providing for lump sum commutation to be determined by a rigid calculation method leads to flexibility to agree on a figure when the worker wishes to take a pay-out and get off the system, and the corporation believes the lump sum is excessive. The Hon. Mr Elliott says that non-

economic loss payments should not be taken into account in commutation; they should be separate issues with separate dollar limits.

The present legislation provides for the commutation to be limited to the prescribed sum after taking into account non-economic loss lump sums. The Government's amendments here do not seek to change the amounts or the monetary limits for commutations. The amendments submitted by the Hon. Mr Elliott will lead to higher costs for the scheme for those cases where commutation is appropriate. While limiting the cases in which the corporation can offer commutations the end result is likely that many workers who wish to get off the system through commutations will be unable to do so. He also says that the Democrats' position on retrospectivity is that, if the intent of the law was clear but the courts have misinterpreted it, retrospective changes might be acceptable. On this basis the Australian Democrats should have no difficulty with the Government's amendments in relation to commutation as they clearly reflect the original policy intention of the 1986 Act, notwithstanding court decisions in 1993, which place a construction on the commutation provisions never intended by employers or employees at the time.

The Hon. Mr Elliott says that it is important that once passed all three pieces of WorkCover legislation be proclaimed to start at the same time. There has already been an amendment in the WorkCover Corporation Bill, which we have accepted, acknowledging that that is the intended position of the Government. The Hon. Mr Elliott expresses concern on the removal of advisory committee members where there are serious irregularities. I should say that it is not clear what he is specifically referring to in this comment. The Government's Bill in clause 9(2) gives the Minister power to remove a member of an advisory committee from office for breach of or non-compliance with the condition of employment or for other sufficient reasons. This is not an uncommon provision. For example, it is similar to provisions relating to the appointment of members to the existing Industrial Relations Advisory Council under the Industrial Relations Advisory Council Act 1983.

The Hon. Mr Elliott says that committee proceedings should be similar to those which applied to the former board and be freely available to the public. I should point out that the advisory committee is a ministerial committee dealing with important and, in some cases, confidential matters. Clause 10 of the Government's Bill requires members of the advisory committee or subcommittee not to divulge information obtained as a member of the committee without the committee's approval. It is inappropriate for advisory committees, if they are to perform their function properly, to be open to the public or for members of the public to have automatic access to details of the advisory committee's operations.

It should be noted that the Industrial Relations Advisory Council Act 1983 specifically provides that the views of members expressed at meetings of that council should be kept confidential with no public announcement of any decision or view of the council unless the members of the council unanimously agree, and that is referred to specifically in section 9(7) of that Act. It is difficult to see why the advisory council under the Government's Bill should operate on a different basis. In fact there is more likely to be a greater requirement for confidentiality when dealing with workers rehabilitation and compensation policy given that specific cases of employers and employees are likely to be discussed by that committee.

The Hon. Mr Elliott seeks to treat workers who suffer serious and permanent disablement or death differently from less serious injuries in the case of serious and wilful misconduct or alcohol abuse. I respond to that as follows: there is no justification for this distinction. It is an important principle of workplace safety that the voluntary consumption of alcohol and drugs be positively discouraged and, indeed, not in any sense rewarded by the rehabilitation or compensation system.

If the Hon. Mr Elliott was serious about giving priority to workplace safety he would not be seeking to qualify the Government's proposals on this clause. He then reiterates that the Australian Democrats are supporting the legislation in general. I should say in response that that is in a fairly general context because his amendments, which we will debate in more detail, do not enable the major features of the Government's reform package to be implemented with the consequent savings to the scheme as proposed by the Government. I refer particularly to journey accidents and the limitations on private sector insurers.

The Hon. Mr Weatherill criticises the Government for making commutation non-reviewable. The fact of the matter is that section 42(a) commutations already are not reviewable and this was the Labor Party/Australian Democrat amendment. The Government is simply applying this principle to section 43 commutations. He also says that the system is unfair to the worker; that there is no power to take on the corporation. All that I can say in relation to that is that there are certain review rights which the worker has in respect of that matter. The Hon. Terry Roberts deals with journey accidents, suggesting they are not significant to the scheme. All that I can say is that they are in fact significant in terms of cost. They represent, I am told, $20 million or thereabouts.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: I do not think the percentage matters: it is the quantum. If I had $20 million I would be happy, too. The Hon. Terry Roberts claimed that the Government Bill is preoccupied with having either WorkCover or private insurers reduce levy rates. It is crucial that levy rates are reduced over time to become nationally competitive. I think it is important to pause here for a moment and look at the whole sphere of Government and private sector in South Australia and the focus nationally which has been placed upon competition policy. We have the Trade Practices Commission making major proposals in relation to competition, the Hilmer report focusing upon Government inefficiency and lack of competitiveness and seeking to adopt a national policy which will remove some of the rights of States, particularly in relation to public trading enterprises and statutory corporations.

It is important that monopolies and other Government agencies become nationally competitive, particularly in respect of South Australia, for which, if we do not become competitive nationally and internationally, there is not much future. WorkCover levy rates do play an important role in that whole focus. The Government's Bill is based on the concept of balancing fairness with the scheme's affordability to industry. Again, I make the point that if there is no industry there are no jobs, and it is important to try to balance the need to ensure that our business enterprises are nationally and internationally competitive against the consideration that, if they are not so competitive and there are such on-costs that we become uncompetitive, our children and grandchildren will significantly miss out on the benefits of real competition.

The honourable member does misunderstand the proposed role of private insurers. I think it ought to be stressed that they are not going to set levy rates. Employers will still be paying the levy rates paid by WorkCover. The insurer will manage the claims and collect the levies, not set them. Therefore, there is no parallel to the pre-1986 role for private insurers.

The Hon. Ron Roberts, I think repeating the claims that have been made by other Opposition members, said that the legislation is an attack on the benefits of injured workers. All I can do is reiterate that that is wrong. The scheme will continue to provide the highest benefit levels in Australia for employees and will continue to do so for all genuine injuries at work.

The Hon. R.R. Roberts: You want to make it harder.

The Hon. K.T. GRIFFIN: I just want to make it fair. I think that covers most of the matters raised by members and I can now summarise the Government's position. The Bill provides for necessary and balanced reform. It provides for new and appropriate structures for the formulation of policy advice to the Minister on workers rehabilitation and compensation. This structure will improve the level of political accountability for the development of policy.

The Government clearly had these reforms and workers safety policy on the table prior to the election in December 1993 and it provided, as I have already indicated in relation to the WorkCover Corporation Bill, that routine journeys to and from work will be excluded from the WorkCover system. The Federal Government's Industry Commission report into workers compensation in Australia has endorsed in an unqualified manner the exclusion of journey and free time accidents from workers compensation schemes. If members need a reference for that, they need to look at page 29 of the Industry Commission's final report and pages 70 and 71 of the earlier draft report.

The Government's amendments in relation to stress have also been well known as a matter of Liberal Party policy since the parliamentary select committee established in 1991 considered this issue. The Bill is justified both on fairness and equity grounds, as well as the fact that savings to the scheme in consequence of these changes will enable the corporation to hold levy rates at their existing level.

Members should not lose sight of the broader picture: that, even if all the Government's amendments are implemented, South Australia will still have a workers compensation scheme which provides the most favourable level of benefits for employees of any comparable scheme in any Australian State or nationally. I thank members for their contributions.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. M.J. ELLIOTT: I move:

Page 1, after line 15—Insert—

(2) However—

(a) the day fixed for the commencement of this Act must be the same as the day fixed for the commencement of the WorkCover Corporation Act 1994 and the Occupational Health, Safety and Welfare (Administration) Amendment Act 1994; and

(b) all provisions of this Act must be brought into operation simultaneously.

This amendment is similar to one that I moved in relation to the WorkCover Corporation Bill, and that was accepted by all Parties. While speaking to this clause, I will note a few other things in terms of overview comments as we work our way through this legislation.

Today the Industry Commission released its report on workers compensation in Australia. From time to time the Minister has quoted from the draft report and indeed I will quote from the report from time to time as we move through the legislation today, because I think that what it has to say is instructive. I found particularly important that, after looking at all the schemes around Australia, the commission came up with what it thought a national model should look like, and in fact it strongly recommends the need for a national model.

One of the most important needs for a national model is to stop the States playing this cost competition game which they play and which sometimes creates pressure simply to reduce benefits. I do not know whether it is justified for any reason other than the economic reasons that are put forward. The commission notes that then there is a transfer of costs. If the employers do not pay the costs someone else ends up with them. The most significant transfer of costs in other States (and it is critical in other States) is to the Government by way of social security and in some States—Queensland more than other States—the transfer is also to the workers themselves due to the level of benefits.

While this report recommends a number of changes—and we will get to those at the relevant clauses, including journeys etc.—it is interesting to note that the model it came up with most closely resembles what we have in South Australia. I will quote a couple of sentences from the report at this stage, as follows:

> After assessing the possible implications [in South Australia] the conclusion on likely short term impacts was: we believe that 2.5 per cent to 3 per cent of wages could be taken as a broad indication of the average premium level required to fund the commission's proposals. While the commission accepts that premiums would have to rise in some jurisdictions, [obviously the Eastern States] in the short term, over the longer term it is confident that with appropriate incentives in place for both employers and employees the incidence, severity and average duration of work related injury and illness will be significantly reduced over the longer term.

It spends quite a lot of time talking about occupational health and safety and being one of the major tools by which that will be achieved, as well as many other tools. The point that the Industry Commission is making (and I must say that I usually find the Industry Commission a highly conservative body and do not agree with many of its reports) is that the level of cost in South Australia is about the sort of cost that it might expect nationally in a proper scheme where the costs are attributed correctly. That does not mean it does not believe there should not be changes in the South Australian scheme. We will get to those later on.

I hope that the Federal Government takes note of this report. Certainly I have been talking to our senators over some weeks now about the need for the Federal Government to put pressure onto the Eastern States and the irresponsible way in which they are behaving in this area generally. Having said that, where there are real savings to be gained by real efficiencies and proper attribution, we will look at those, but we will not look at provisions where the burden falls unfairly.

The Hon. K.T. GRIFFIN: We have previously not opposed a similar provision in the WorkCover Corporation Bill and that will be the position here, too.

Amendment carried; clause as amended passed.

Clause 3—'Substitution of s.30.'

The Hon. R.R. ROBERTS: I move:

Page 6, line 16—Leave out from paragraph (b) "attendance at the worker's place of employment during".

I am mindful of the discussions that took place on the other Bill in respect of this matter. Members would recall that it was the view of the Labor Opposition that the objectives of the Act ought to have been put in the principal Act, that is, the Corporations Act, and set as a mantle over the whole structure.

In fact, I said on that occasion that I believed it was a question of culture. In view of the arguments that were put and the resolutions made on that, I am not confident. However, I do wish to put the Opposition's view on this on the record so that we can refer back to it.

The objects of the Bill proposed by the Government serve no useful purpose. The Acts Interpretation Act exists to serve as a tool for the judiciary in interpretation of statutes and has been used previously to authorise the objects of the current Act. The Minister in his second reading speech in another place sought to have the Parliament believe that he was providing value to a proper understanding of the purposes and policy objectives of the Act. Yet the objectives put before the Parliament would serve only to vary the objective now established by the courts.

Further, the objectives attempt to create an imbalance by ensuring that compensation is paid in accordance with the Act, but only if such costs are contained so that the impact on South Australian business is minimised. The Act either provides compensation or it does not. The Government is trying to make compensation payable a condition under the guise of balance.

I find the last clause and subclause (2) particularly offensive, and I address my remarks to them. The Government goes further in subclause (2) in insulting terms. It compels the judiciary and quasi judiciary to the same conditional provisions of entitlements. However, not satisfied with that, it alleges by the very nature of the subclause that bias has been exercised by the Full Bench of the Supreme Court, the Supreme Court judges, the Workers Compensation Appeal Tribunal and the review panel members.

It is the Opposition's view that this clause should be opposed and removed. However, I understand the position as laid out by the Hon. Mr Elliott in his contribution, and I look forward to hearing his remarks on this occasion.

The Hon. K.T. GRIFFIN: I am surprised at the approach taken by Hon. Mr Ron Roberts. It has long been the view of a number of people that legislation, and particularly important legislation, ought to have set out the objects of the Act as an aid to interpretation. Certainly, Mr W.J.N. Wells QC, former Crown Solicitor, Solicitor-General and Justice of the Supreme Court, has promoted over many years the desirability of every piece of legislation of some importance having objects, because from a judicial point of view it makes it a bit easier to interpret where there is any difficulty in the interpretation of specific sections of an Act. It is important that by looking at the Act one can discern the objects which are sought to be achieved.

I would not have thought there was anything offensive about any of the provisions in clause 3 and even in proposed subclause (2). How that can that be offensive when all that is being sought is to reflect, as part of the objects and the interpretation of the objects in the Act, a provision that a person exercising judicial or quasi judicial powers has an obligation to interpret the Act in the light of the objects? That is a normal rule of statutory interpretation without bias towards the interests of employers on the one hand or workers on the other. Why would one want to interpret them with bias? I think that the honourable member knows that when these matters get to court they are generally interpreted more liberally in favour of employees than employers. That is evidenced by the extension of the interpretation and application of the legislation relating to stress and even journey accidents. The courts will still endeavour, where there is any doubt, to give the injured person the benefit of that doubt rather than the other way around. I would not have thought there was anything objectionable in the clause.

The Hon. R.R. ROBERTS: I do not intend to pursue this all night. I take on board the advice that has been given by the Attorney. I will not pursue this with any great vigour now. At the outset I said that this position was taken in view of our assertion that the best place to put the objectives of the Bill was up front, but they have not come in that way. It is well accepted that the Bills will be revisited. My position will not prevail but I still expect the Hon. Mr Elliott, although he has no amendment on file, to seek some provision for the matter to be reviewed. The Opposition is not opposed to having objectives. The difference of opinion we have now is that I think it should have been put in the other Bill and not in this Bill, but we will have to revisit it, anyway.

The Hon. M.J. ELLIOTT: I spent much time considering whether or not to amend the clause. On balance, I decided not to because the clauses are so general that they could be interpreted widely. That can be a concern in either direction. They do not present any great problem, although having three sets of objects is somewhat unnecessary. We might have been better off, once the decision was made to bring compensation and occupational health and safety together in one piece of legislation, with one set of objectives. That has not happened thus far. After looking at the objects carefully, I do not believe that there is any real danger in them. One can get too paranoid about things and worry unduly, but I do not think that is the case here.

Clause passed.

Clause 4—'Interpretation.'

The Hon. M.J. ELLIOTT: I move:

Page 2, lines 21 to 30—Leave out paragraph (c) and insert—

(c) by striking out from subsection (1) the definition of 'journey';.

This is the first of a couple of amendments linked to 'journey'. The substantial amendment is to clause 6, but I will discuss the issue now. I am aware of the arguments put by employers that if they are not responsible for an accident they should not have to pay for it. The Industry Commission generally supports that view, but the Minister was a little over enthusiastic in his interpretation about the precise nature of the commission's view. It did comment that it saw some merit in some of the arguments in favour of retaining coverage of journey claims. Even in the commission's view it was not absolutely clear cut that there was necessarily a need to move from the current position. In one of its findings it states:

The commission found that in most cases—

I stress this—

employers have very little control over the safety of a person's journey to and from work.

Another way to read that is that the commission finds that in some cases employers have real control and influence in relation to the safety of a person's journey to and from work. On page 99 of its report, the commission recommends:

That all jurisdictions adopt a common definition of a compensable injury or illness for the purpose of compulsory workers compensation coverage to be developed by the proposed national WorkCover authority in consultation with existing schemes. The definition should ensure that a significant link between work and the injury or illness is identified and that 'normal' journey claims and injuries or illnesses occurring during unpaid breaks off the employer's premises are excluded.

The commission did not say that journey accidents should be excluded; it said 'normal' journey accidents. That, again, is the argument that I used in constructing my amendments. I said that, if the employer is responsible in a significant way for the accident having occurred, the employer must take responsibility, and I gave very real examples during my second reading speech of where the employer was responsible.

The Government may want to quibble over the wording, but I will not resile from the intent of my amendment. If the employers say that they do not want to pay for what they are not responsible for, I say that they should pay for what they are responsible for. That is essentially what the Industry Commission is saying also. The Minister is a little too quick to say that the Industry Commission supports him, because that is not what it has done at all. I hope he reads the report carefully and does not selectively quote from what the Industry Commissioner had to say. If the Government feels my amendments do not work—and, as I said, I will not resile from their intent—the challenge for the Government is to find some way which makes sure that when employers are responsible they accept that responsibility.

The Hon. K.T. GRIFFIN: Quite obviously, the Government opposes this amendment. I agree that this is the occasion on which to debate the substantive issue. It is important to recognise that the final report of the Industry Commission states on page XXIX:

The commission endorses the no fault approach of workers compensation systems in Australia and elsewhere which holds employers liable for work related injury and illness. There are, however, situations in which firms are clearly not in a position to control the working environment, such as injuries which occur while journeying to and from work and accidents happening during free time where the employee is away from the workplace. The commission considers that such situations should not be covered by compulsory workers compensation arrangements. Where the community considers that compensation should be paid for such eventualities, other arrangements should be put in place as with existing transport accident schemes.

It is quite clear from the Industry Commission's report that it does not believe it is appropriate that those sorts of accidents or injuries sustained in circumstances to which it refers should be covered by—

The Hon. M.J. Elliott: Read the last paragraph on page XLIII.

The Hon. K.T. GRIFFIN: That is all right. If you look at that, it says:

All jurisdictions should adopt a common definition of a compensable injury or illness for the purpose of compulsory workers compensation coverage to be developed by the proposed National WorkCover Authority in consultation with existing schemes. The definition should ensure that a significant link between work and the injury or illness is identified and that normal journey claims and injuries or illnesses occurring during unpaid breaks off the employer's premises are excluded.

The Hon. M.J. Elliott: I agree with that absolutely.

The Hon. K.T. GRIFFIN: Well, that is not what your amendments reflect. Let us take the Bill for a start. The Bill provides that:

A 'journey' means a passage along a reasonable, direct or convenient route to a particular destination and may include a deviation or interruption if—

(a) the deviation or interruption is not, in the circumstances of the case, substantial; and

and these are conjunctive—

(b) the deviation or interruption is made for a purpose related to the workers' employment; and

(c) the deviation or interruption does not materially increase the risk of injury to the worker.

They reflect, I would submit, the provisions of the Industry Commission report. They are conjunctive. They satisfy the criteria. If members look at the amendment which the Hon. Mr Elliott has on file to clause 6, which we will certainly get to later (but, as I said, we are dealing with it in a global context now), it provides:

. . . a disability that arises out of, or in the course of, a journey arises from employment only if the journey is. . . undertaken in the course of carrying out duties of employment—

not conjunctive—

or the journey is between the worker's place of residence and place of employment—

that is obviously included whilst we exclude it—

or the worker's place of residence or place of employment [and educational institution and receipt of medical treatment], and there is a real and substantial connection between the employment and the accident out of which the disability arises.

That connection may only be the fact that the worker was travelling to or from work.

The Hon. M.J. Elliott: That's clearly not the intention.

The Hon. K.T. GRIFFIN: It is.

The Hon. M.J. Elliott: No, it is not. You are quite capable of amending that if you want to. Let's argue intent to start off with, otherwise you will do a few journeys yourself.

The Hon. K.T. GRIFFIN: Okay. Well, in my view, the interpretation which I have given to the Government's proposal is that it reflects the provisions of the Industry Commission report and ties it altogether. The Hon. Mr Elliott's amendment does not in my view do that. There are a couple of policy differences because he includes a journey between the worker's place of residence and place of employment, which obviously we exclude. There are some substantial differences there. I will certainly not suggest amendments on the run. What I am suggesting is that the deletion of the proposal which we have in our Bill is really flying in the face of the Industry Commission report.

If one takes the principal Act definition of 'journey', there are two differences between what is in the Act at the present time and our provision in the Bill. One is paragraph (b) and the other is that paragraphs (a), (b) and (c) are not conjunctive. So what we are seeking to do is tighten it up. It does it in what would objectively be described as a fair way of doing it. It is for those reasons that I oppose the Hon. Mr Elliott's amendment.

The Hon. M.J. ELLIOTT: Quite plainly, on page XLIII, it states:

The definition should ensure that a significant link between work and injury or illness is identified.

The significant link is what I am attempting to establish when I talk about the real and substantial connection between employment and the accident. I am not saying that journey accidents generally are claimable. I am saying if there is a significant link, and that is what the industry commission is saying. I have used different words, but I am trying to achieve

exactly the same object. I gave examples which quite plainly show that the present definition in relation to 'journey' will not work.

I gave the example of oil workers in the South-East going to their drilling site. On my recollection, they had worked 12 or 14 straight 12-hour shifts. They then changed over to night shift, had worked a long shift, and were on the way to the next long night shift. One of the workers was driving the bus which ran off the road and all seven workers were killed.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: Okay. Whether or not this one ends up being caught at the end the day, there will be times when people will work those sorts of shifts where they could be travelling from their home. The finding of the Coroner was quite plainly that tiredness was the cause. It was most certainly linked to work, and I would have argued that any responsible employer in those situations had responsibility. Frankly, if I were involved in a company such as that, I would have made sure that somebody fresh was driving the vehicle, and that was the major mistake that was made. The mistake was not requiring people to work for 12 hours and then changing shifts from day shifts to night shifts—and everyone knows what that does to the old biological clock for a while. That is not what was wrong, in itself. What was wrong was that then they were expected to drive the vehicle to work, and at that point the employer did have some responsibilities. Some employers might argue that they do not and, quite clearly, they are coming from a different philosophical base. I would argue that a number of cases will fit into that sort of difficulty, which—

The Hon. T.G. Roberts: A lot of awards are being changed over to three day, 12-hour shifts.

The Hon. M.J. ELLIOTT: Yes; certainly, the definition of 'journey' as it is currently contained here does not take into account anything the employer may do other than the fact they may be requiring employees to drive somewhere on an errand. If the employer has contributed in any other way to the accident, then this does not pick it up at all. I have given a couple of examples of the sorts of things that ought to be covered within the later amendment to clause 6.

The Hon. K.T. Griffin: You are saying that your amendment includes a worker travelling between place of residence and a place of employment. In those circumstances, if there is a real and substantial connection between the employment and the accident, then that is it. So, the courts could interpret that to be 'to and from work'.

The Hon. M.J. ELLIOTT: You are saying that it could be interpreted in that way. I do not think that is the fundamental point we are really trying to resolve now. There is a more fundamental issue as to whether or not there are any journey accidents at all for which the Government is prepared to say the employer might have some responsibility other than the one where driving is part of the work itself. They appear to be the only journey accidents the Government is prepared to accept. I believe that is unreasonable, and I do not believe it fits the test that the industry commission has spelt out. I do not even think it really fits into the claim that the employers were making when they said we should pay only for that which we are responsible. I am willing to agree with it.

The Hon. K.T. GRIFFIN: If you are a delivery person, you are out on the road. Any person driving in the course of his or her employment will obviously be covered by this. I presume there is no disagreement with that.

The Hon. M.J. Elliott: They are working.

The Hon. K.T. GRIFFIN: They are working, yes. If you look at our clause 6, new section 30(5), you see that a disability that arises out of or in the course of a journey arises from employment if and only if the starting point and the end point or intended end point of the journey are places at which the worker is required to carry out duties of employment—if you are an electrician, for example, working from home, and you have a radio in the vehicle; if you are called out; if you are on your way to a job. If you work from a particular location and you are moving from home, and if you divert to go to a customer's residence then on to work, I should have thought that was covered. There are areas that are quite clearly journey accidents, if accidents occurred in the context to which—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: That's right. It is very difficult then to know where the disagreement is. They seem to me to be quite logical areas that the law ought to cover. What we are trying to do is to establish if you are merely travelling from home, where you do not carry on business, to the office; you might walk to the train to catch the train to the office and you might have an accident, falling over in the railway station. Perhaps some would suggest that ought to be covered, but it is totally unrelated to work except that it is part of the transit from your place of residence to your place of work. I do not know whether the honourable member is saying that should be covered or whether he accepts that that is an accident for which the worker should not attract protection.

The Hon. T.G. ROBERTS: My advice is that the self-employed contractor working from home on his way to a job as a private contractor is not covered.

The Hon. K.T. GRIFFIN: It may not be a contractor. No, I am not talking about contractors. I am talking about an employee who works for Rawson's Electrical or Joe the plumber and who works from home; it is part of the job, being out on call.

The Hon. T.G. ROBERTS: One of the difficulties we have, regarding the wording—and I guess the courts will have the same problem of interpretation—is that there will be many problems associated with determining claims. The example I would give is that of an outworker who works from home and who may go to a sandwich shop during lunch time. Obviously that person will not be covered.

The Hon. K.T. Griffin: They are not covered; that is right. Why should that person be covered? Just ask me. It is not in any way related to work except that you have to get fuel to burn up so you can work the machine, or whatever. That is the only link, surely. Why should you be covered for that?

The Hon. T.G. ROBERTS: You are setting up classes of claims and classes of worker. Take, for instance, the wonderful canteen that we have. We are self contained. We do not have to go off the site: we go down a set of stairs, get a sandwich, come back and complete our duties. Outworkers do not have that luxury. All you are hitting is those who have a defined place of work that is clearly able to be established, or those who have a mobile brief in the way in which they carry out their normal day-to-day duties and who can put up a good argument in court.

The Hon. K.T. Griffin: That worker might be going to a supermarket on a Saturday morning. He or she might have done a bit of work in the morning.

The Hon. T.G. ROBERTS: Once the outworker finishes whatever his or her defined duties are as an outworker, they become the same as any other employer: that is my view.

There is morality in the argument that becomes clouded in relation to the application. It will be a lawyer's evening meal.

The Committee divided on the amendment:

AYES (10)

Crothers, T.	Elliott, M. J. (teller)
Feleppa, M. S.	Kanck, S. M.
Levy, J. A. W.	Pickles, C. A.
Roberts, R. R.	Roberts, T. G.
Weatherill, G.	Wiese, B. J.

NOES (9)

Davis, L. H.	Griffin, K .T. (teller)
Irwin, J. C.	Lawson, R. D.
Lucas, R. I.	Pfitzner, B. S. L.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	

PAIRS

Sumner, C. J.	Laidlaw, D. V.

Majority of 1 for the Ayes.

Amendment thus carried.

The Hon. M.J. ELLIOTT: I move.

Page 3, line 13—Leave out paragraph (g) and insert—

(g) by striking out from subsection (1) the definition of 'unrepresentative disability' and substituting the following definition:

'Unrepresentative disability' means a compensable disability that does not arise directly out of the worker's work.

This seems to be one area where the Government is offside with a number of employers. I have been lobbied by a number of employer groups which are keen to see 'unrepresentative disabilities' remain within the legislation. It covers two things; in fact one of them is not currently covered by my amendments. However, my intention is that 'unrepresentative disabilities' should include accidents which happen during breaks, and when we get to that later you will find that my definition is somewhat narrower than it is under current legislation. It could also, but does not currently, cover certain of the journey accidents of the type that I am trying to have included; not the journey accidents which are part of work but the journey accidents which are as a result of work, if I can draw the distinction between the two. I am quite aware that a number of employer groups do want to see 'unrepresentative disabilities' remain within this legislation.

The Hon. K.T. GRIFFIN: To some extent this is consequential upon the last amendment, but it is interesting to note that it is in a different form from what is already in the Act. I think it is much broader than the present provision. Quite obviously if journey accidents remain in the Bill some reference to this may need to be included, but for the present time I indicate that the Government does not intend to support the amendment.

The Hon. R.R. ROBERTS: We support the Government's position on this, Mr Chairman.

Amendment negatived.

The Hon. M.J. ELLIOTT: I move:

Page 3 line 17—Leave out 'or on the recommendation of the corporation'.

The intent of this amendment is not that the corporation should not make recommendations: the intent is simply that, before the Minister brings out a regulation under subsection (7), the Minister should consult with the advisory committee. By striking the words 'or on the recommendation of the corporation' it stops the circumstance where the corporation may make a recommendation and the advisory committee may not be consulted. So I am not trying to stop recommendations by the corporation but simply trying to ensure that, before regulations are promulgated, they should be run past the advisory committee.

The Hon. R.R. ROBERTS: I move:

Page 3, lines 16 and 17—Leave out subsection (8) and insert—

(8) A regulation may only be made under subsection (7) if the board of the corporation unanimously resolves that the regulation should be made.

This Bill seeks to water down the protections currently existing in the area which make regulations to exclude certain classes of workers from coverage of the Act. While in certain circumstances exclusion is appropriate, it is fundamental to ensure workers are not excluded unintentionally and the Bill does not provide that assurance. The amendment of the Hon. Mr Elliott, while dependent on other amendments proposed by the advisory committee, also does not provide that assurance. Our amendment fills the void. We consider that unanimous recommendation of the corporation board is required as well as consultation with the advisory committee. Given that the Government Bill recognises, to a degree, tripartisanship on the corporation board, unanimity will ensure that broad consultation, touching on all workers and employees of the State who are likely to be affected, will take place to the satisfaction of the board. This has been the past practice and I am advised that unanimity in this area has always been achieved. Whenever these regulations are going to be made to affect workers in this way, there should be proper consultation and a unanimous decision of the board of the corporation. We feel that this is more appropriate and I note that we go further than Mr Elliott. I would ask the Committee to support the amendment.

The Hon. K.T. GRIFFIN: Neither amendment is particularly satisfactory from the Government's point of view. The unanimous resolution of the corporation—

The Hon. R.R. Roberts: It has been achieved in the past.

The Hon. K.T. GRIFFIN: We never know what is going to happen.

The Hon. R.R. Roberts: That's right, you are going to change the structure aren't you?

The Hon. K.T. GRIFFIN: You are going to change it from the amendments you have been promoting. The Government is uncomfortable with both amendments. We think that if there is to be regulation made under subsection (7) then it should be able to made either after consultation with the advisory committee or, alternatively, on the recommendation of the corporation, recognising that the corporation has the responsibility for managing the operation of the scheme.

If one looks at the present subsection (7), regulations may exclude, either absolutely or subject to limitations or conditions stated in the regulations, specified classes of workers, wholly or partially, from the application of this Act. If there is a regulation it will be the subject of scrutiny by the Legislative Review Committee. It will be on the public record, obviously, because it is a regulation in the first place and it will be the subject of disallowance. One has to question why the corporation should not be entitled to make a recommendation and the Government then to act upon that recommendation rather than the matter having to be the subject of consultation with the advisory committee. The Government's preference is to retain the relevant provision in the Bill as it is and for neither of the amendments to succeed.

The Hon. M.J. ELLIOTT: I do not see the need for the amendment being moved by the Hon. Mr Roberts. It does

seem to me that any regulation which is going to cause any difficulties is open to being thrown out by either House of Parliament. The only way that it could not be is if one Party controlled both Houses, in which case they could sack the board and put in a new regulation that they wanted, anyway. By the time you have gone through that circuit—

The Hon. R.R. Roberts: Sack the TAB board!

The Hon. M.J. ELLIOTT: Yes, sack the TAB first and then move on.

Members interjecting:

The Hon. M.J. ELLIOTT: Nevertheless, what I am saying is that I do not believe that at the end of the day the amendment will achieve a great deal. However, in relation to my amendment it is a question of whether the advisory committee is just a little committee on the side that you use on an *ad hoc* basis or whether it is a for real advisory committee past which all matters of substance pass. I would have hoped that we are fair dinkum and it is not a token committee.

I do not think it is unreasonable that regulations should at least go over their table; it does not mean that they must go over it with a fine-tooth comb but if they chose to do so I would have thought that was the very purpose and reason for having an advisory committee, which the Minister can still choose to ignore any time he or she wishes.

The Hon. R.R. ROBERTS: I was not entirely clear on Mr Elliott's position. He says he favours his amendment over mine.

The Hon. M.J. Elliott: They do quite different things.

The Hon. R.R. ROBERTS: The question is: if yours fails do you support mine?

The Hon. M.J. ELLIOTT: No, I am not supporting yours either way.

The CHAIRMAN: It is necessary to take out lines 16 and 17 to allow Mr Roberts' amendment to proceed. However, if it is not deleted the Hon. Mr Elliott's amendment will be put.

Hon. R.R. Roberts' amendment negatived; Hon. M.J. Elliott's amendment carried; clause as amended passed.

Clause 5—'Substitution of Part II.'

The Hon. M.J. ELLIOTT: I move:

Page 3, lines 27 to 29—Leave out subsection (2) and insert—

(2) The Advisory Committee consists of 10 members appointed by the Governor of whom—

(a) one (the presiding member) will be appointed on the Minister's nomination made after consultation with associations representing employers and the UTLC; and

(b) four (who must include at least one suitable representative of registered employers and at least one suitable representative of exempt employers) will be appointed on the Minister's nomination made after consultation with associations representing employers; and

(c) four will be appointed on the Minister's nomination made after consultation with the UTLC; and

(d) one will be an expert in rehabilitation.

I am here giving a clear instruction as to the composition of the advisory committee. While I was prepared to see the largely representative nature of the board removed, I saw it as a *quid pro quo*. The representation that has largely been taken out of the board should be found with the advisory committees, and I expect that advisory committees will not become token committees but that they will have a real and substantial role to play under the legislation. I will move other amendments to try to ensure that that occurs.

I believe it is important that the representatives of employers and employees meet formally to discuss rehabilitation and compensation matters, and that is why I have moved for four representatives of each within the advisory committee of 10 members, with an additional presiding member and one person who is an expert in rehabilitation.

I have had the impression from a number of people to whom I have spoken in the employer and employee field that they feel that at the level of the advisory committee a great deal can be achieved. I had the impression from early discussions with the Minister that he would accept this, although I was not quite sure that that came across in the second reading debate; I am not sure whether the Minister's attitude had changed from his first reaction. Nevertheless, as I said, I really do think that this is the *quid pro quo*.

The need for a commercial board having been recognised, there also needs to be recognised the opportunity to bring together the major interested parties so that we have genuine tripartite discussions in this legislation on compensation and rehabilitation and on the relevant matters involving the occupational health and safety measure.

The Hon. R.R. ROBERTS: The Opposition will be supporting this amendment. In terms of the arguments that were put in the previous debate about the composition of the boards, the Opposition would like still more members. The reality is that this is far better than that proposed by the Government and it does have all those components of tripartism. We will be supporting it.

The Hon. K.T. GRIFFIN: I oppose the amendment for a variety of reasons. First, it is very prescriptive; there is no flexibility at all. It is limited to 10 members. The Government's provision in the Bill is for no fewer than five members. We may want to have more. There are a number of policy issues in the legislation which may need to be referred to the advisory committee, not necessarily those related to rehabilitation. It is rather curious that one of the 10 members proposed by the honourable member has to be an expert in rehabilitation.

The Government sees the honourable member's amendment as an attempt to entrench into the advisory committee the problems evident with the present board. That in itself will stifle any policy advice which might be given by the committee. The other issue which does not really take into consideration the situation in the real world is that 70 per cent of the work force in South Australia is non-unionised and not represented by the UTLC or any of the enterprise-based unions, or the shop assistants union, which of course is not affiliated with the UTLC. We have no objection to genuine consultation with employee representative bodies. However, to entrench the UTLC as the only representative body with which consultation should be had by the Minister in my view is offensive.

The whole concept of the advisory committee is to have flexibility, to ensure that it works with the best people for the job, and that it is genuinely representative of employers and employees, whether or not the employees are part of the union base represented by the UTLC.

The Hon. M.J. ELLIOTT: While I recognise that a large number of employees may not be members of unions, at the end of the day, if you want to have someone who genuinely represents employees I think it is best that an organisation that represents employees puts the names forward. Otherwise, we would end up with the sort of situation that arose in Queensland, where Albert Field was chosen to represent the Labor Party in the Senate. The same sorts of nonsense things happen. One might say that this person represents particular people, but the Minister ends up choosing people who suit his

or her own ends rather than someone who would genuinely represent the interests of employees.

In an advisory committee that does not have the powers of the corporation, I do not think there will be a union agenda in the strict sense of the word; nor do I think it would be saying things that would not be relative to workers more generally. It is not unreasonable and I had considered another amendment that the employer representative be the employer's chamber, although not all employers are members of that chamber.

The Hon. Caroline Schaefer interjecting:

The Hon. M.J. ELLIOTT: This is strictly an advisory committee. It should be not a political creature that simply reflects totally what the Minister thinks but a committee that from time to time is willing to put forward a contrary view. It cannot tell the Minister what to do: that is the Minister's prerogative and the Minister will use his or her powers that exist under the Act. To have these other views clearly expressed and argued through within the context of the committee is a healthy thing for the Minister, the Government and the State.

The Hon. K.T. GRIFFIN: The honourable member refers specifically to the UTLC without acknowledging that there are other associations representing employees. Under the drafting, consultation is required with an association representing employers, and there are a number of those. The interjection by the Hon. Caroline Schaefer brought this into focus: a number of bodies represent employers, yet the Hon. Mr Elliott referred specifically to the UTLC and does not recognise that there could be equally legitimate consultation with other bodies representing employees.

The Hon. R.R. ROBERTS: The position is clear about where we are going but I cannot let the opportunity pass. The Attorney-General referred to the proportion of unionists and the proportion of non unionists. The Attorney overlooks the fact that 90 per cent of those people about whom he speaks and who are employees are covered by award provisions negotiated not by non unionists but by unionists; it has in most cases been done on the blood and sweat of unions or their representatives in the UTLC.

An unfortunate consequence of the freedom we have in this State is that some people feel comfortable to continue in the knowledge of an award agreement. They have been in my office just as they have been in the office of all other members when they have been in trouble, and I have referred them back to the awards that have been struck and negotiated through the combined efforts of trade unionists. So, it is worth recording that the conditions under which most employees work in South Australia have been fought and won by trade unionists and their representatives.

The Hon. K.T. Griffin: Some of those unionists are not represented by the UTLC, though.

The Hon. R.R. ROBERTS: I am not interested in people who want to be involved in a social club. If people want to be involved in a participative democracy in the form of a trade union and participative representation on their behalf, I have some time for them. I recognise that the services provided by trade unionists in this State for decades have provided a comfortable working environment for people who choose not to join a union.

I understand that it is the Attorney's intention to try to hive away as many as possible of them, but at the end of the day we will need a bench mark, and bench marks have been established by trade unionists in organised activity. They spent the money to ensure that unionists were not exploited. Those facts should be recorded tonight.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 3, lines 30 and 31—Leave out proposed new subsection (3).

This is consequential on the previous amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 4, after line 11—Insert:

(ba) to investigate work-related injury and disease;

This amendment simply adds a further function to the advisory committee. It is largely self-explanatory.

The Hon. R.R. ROBERTS: I support this amendment.

The Hon. K.T. GRIFFIN: The only question I raise is whether this is not a more appropriate matter for the Occupational Health and Safety Advisory Committee. It seems a bit strange that it should be a function of this particular advisory committee. I do not intend to support it, but it may be that this is an area that is worth discussing later. Could the honourable member answer my question: does he not presume that it would be more appropriate under the Occupational Health and Safety Advisory Committee?

The Hon. M.J. ELLIOTT: I suppose that is arguable. It might also be a question of what aspects it looks at. It is one of those problems where I think there is a small overlap of the committees. In so far as injury and disease rates have an impact on matters covered by this Bill, it still has relevance.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 4, lines 28 to 35, page 5, lines 1 to 27—Leave out new proposed new sections 9 to 11 and insert—

Terms and conditions of office

9. (1) A member of the Advisory Committee will be appointed on conditions, and for a term (not exceeding three years), determined by the Governor and, on the expiration of a term of appointment, is eligible for re-appointment.

(2) The Governor may remove a member from office for—

(a) breach of, or non-compliance with, a condition of appointment; or

(b) mental or physical incapacity to carry out duties of office satisfactorily; or

(c) neglect of duty; or

(d) dishonourable conduct.

(3) The office of a member becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns by written notice addressed to the Minister; or

(d) is found guilty of an offence against subsection (5) (Disclosure of Interest) or;

(e) is removed from office by the Governor under subsection (2).

(4) On the office of a member of the Advisory Committee becoming vacant, a person must be appointed, in accordance with this Act, to the vacant office.

(5) A member who has a direct or indirect personal or pecuniary interest in a matter under consideration by the Advisory Committee—

(a) must, as soon as practicable after becoming aware of the interest, disclose the nature and extent of the interest to the Committee; and

(b) must not take part in a deliberation or decision of the Committee on the matter and must not be present at a meeting of the Committee when the matter is under consideration.

Penalty: $8 000 or imprisonment for two years.

Allowances and expenses

10. (1) A member of the Advisory Committee is entitled to fees, allowances and expenses approved by the Governor.

(2) The fees, allowances and expenses are payable out of the Compensation Fund.

Proceedings etc., of the Advisory Committee

11. (1) Meetings of the Advisory Committee must be held at times and places appointed by the Committee, but there must be at least one meeting every month.

(2) Six members of the Advisory Committee constitute a quorum of the Committee.

(3) The presiding member of the Advisory Committee will, if present at a meeting of the Committee, preside at the meeting and, in the absence of the presiding member, a member chosen by the members present will preside.

(4) A decision carried by a majority of the votes of the members present at a meeting of the Advisory Committee is a decision of the Committee.

(5) Each member present at a meeting of the Advisory Committee is entitled to one vote on a matter arising for decision by the Committee, and, if the votes are equal, the person presiding at the meeting has a second or casting vote.

(6) The Advisory Committee must ensure that accurate minutes are kept of its proceedings.

(7) The proceedings of the Advisory Committee must be open to the public unless the proceedings relate to commercially sensitive matters or to matters of a private confidential nature.

(8) Subject to this Act, the proceedings of the Advisory Committee will be conducted as the Committee determines.

Confidentiality

12. A member of the Advisory Committee who, as a member of the Committee, acquires information on a matter of a commercially sensitive nature, or of a private confidential nature, must not divulge the information without the approval of the Committee.

Penalty: $4 000

Immunity of members of Advisory Committee

13. (1) No personal liability attaches to a member of the Advisory Committee for an act or omission by the member or the Committee in good faith and in the exercise or purported exercise of powers or function under this Act.

(2) A liability that would, but for subsection (2), lie against a member lies instead against the Crown.

This amendment puts back into this legislation clauses which were in the original Workers Compensation and Rehabilitation Act. The reasons for doing so are some of those which we discussed when we looked at the WorkCover Corporation legislation last evening, so I will not canvass them further at this stage.

The Hon. R.R. ROBERTS: I support this amendment. It mirrors to a degree the current functions of the board. I note that it is fairly detailed. It makes it fairly unlikely that there will be too much Government interference in the activities of the committee.

The Hon. K.T. GRIFFIN: The Government opposes the honourable member's amendments, which seek to formalise and entrench provisions to an unrealistic extent. First, he wants to have the membership for a term not exceeding three years, whereas the Government's proposal is for a term not exceeding two years. I suppose one could argue that a Government does not have to appoint for three years but could appoint for less than two years. **The Hon. M.J. Elliott:** You could appoint for 10 days, if you liked.

The Hon. K.T. GRIFFIN: That is a possibility, but we say the maximum ought to be two years as a means by which Governments are required to give consideration to membership at a much earlier time than a three year period. If you put them in for three years, it tends to become somewhat more entrenched. I draw attention to the fact that under new section 9(3)(d) the office of a member becomes vacant if the member is found guilty of an offence against subsection (5), which is the disclosure of interest provision. However, under our amendments the office of a member becomes vacant if he or she is convicted of an indictable offence. We had that discussion on a previous occasion.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: You might have to amend it then. As I say, we debated that issue in the WorkCover Corporation Bill. Then there is the removal of our clause 10, which provides that a member of the advisory committee or a subcommittee must not divulge information obtained as a member of the committee without the committee's approval.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: I know you propose a new provision, but in a sense it is more limited, because the proceedings are to be open to the public unless the proceedings relate to commercially sensitive matters or matters of a private or confidential nature. We have already had a discussion about the confidentiality provision which the honourable member seeks to insert. My view is that it becomes an unworkable provision because it requires not only an assessment of what is commercially sensitive or what is of a private or confidential nature but it involves an offence.

Let me point out a problem in practical terms. If a committee is meeting, it must be open to the public unless the proceedings relate to commercially sensitive matters. The committee must then make a conscious decision on each issue which is before it as to whether or not the meeting should be open or closed because of the nature of the material which is to be considered. It seems to me that that puts an intolerable burden on members of the advisory committee. If they are wrong in their judgment about the nature of the material—they may take the view that it is not commercially sensitive and have their meeting in public—they have automatically committed a breach of clause 12 if someone says later, 'That was commercially sensitive' or 'That matter was of a private and confidential nature'. So, with respect to the honourable member's amendments, they place members of the committee in an intolerable position.

I suggest that the requirement that meetings be open to the public will create problems in respect of where there should be openness and frankness about particular issues being considered by the advisory committee. The other problem is that, if they are open to the public, there is no protection against defamation. So even something which inadvertently is defamatory may become actionable. I make the other point that the formalising of meetings on the basis of at least once every month is not conducive to a flexible and less formal approach which we would expect an advisory committee to take to the issues being considered.

The Hon. M.J. ELLIOTT: Looking at the issues raised, I must say the Minister tends to concentrate on what one might call the doughnut approach to debate: he does not look so much at the doughnut and anything that might be of some of merit but constantly goes picking around for other things. As a consequence, you do not really get a clear impression as to whether or not there is anything he considers to be of any merit whatsoever. That aside, he virtually answered the issue in respect of not exceeding three years, because he said, 'Well, if we do it for two years, we do it for two years.' The second issue was in relation to indictable offences. Last night during debate on the WorkCover Corporation legislation I said, 'No problems'. That issue really was an oversight then, as it is now; and it is probably in my draft amendments on the Occupational Health and Safety Committee as well. With regard to the question of proceedings and whether or not the committee meets every month, to some extent the fact that I have a subclause (8) where the committee itself decides how its proceedings are to be conducted might be enough—

The Hon. K.T. Griffin: We would still like it to be a minimum of every month.

The Hon. M.J. ELLIOTT: I am indicating that that issue may not be so important if clause 11(8) remains. I refer to the question of the proceedings in respect of whether they should

be public in their conduct, because it is something that I have been considering recently. There certainly may be times, other than when commercially sensitive matters and matters of a private and confidential nature are being dealt with, when the committee will want to go *in camera* similar to parliamentary committees. Perhaps that subclause is open to further amendment. When the final considerations and negotiations are going on, it is sometimes useful to close the door so that things can be explored fully.

The Hon. K.T. Griffin: If you have a quiet word in a corner somewhere with someone from the other party, you can often resolve something. If you do it in open public debate, it makes it more difficult to resolve.

The Hon. M.J. ELLIOTT: That's how it is done. At this stage, I am simply reacting. Despite those things, and acknowledging that there may be potential for change and a need for one or two changes there, I will insist on the amendment, because it is far superior to that which the Government has offered.

The Hon. R.R. ROBERTS: I support the amendment.

Amendment carried; clause as amended passed.

Clause 6—'Substitution of s.30.'

The Hon. R.R. ROBERTS: I move:

Page 6, line 16—Leave out from paragraph (b) 'attendance at the worker's place of employment during'.

The amendment, which is reasonably self-explanatory, deals with authorised breaks. The Liberal Bill creates inequities for workers who may or may not be entitled to workers compensation entitlements if they are injured in circumstances beyond their control. For instance, workers who are fortunate to work for an employer who has an on site canteen will be covered during lunch and meal breaks, whereas if no on site facility exists and workers have to frequent the deli to buy lunch they will not be covered under the proposals in the Bill. The situation becomes even more ludicrous with the advent of mobile carters visiting workplaces. If the driver stops the van on company property, coverage exists. If he stops the van on the road, as is the case with small business, coverage does not exist if the worker goes out to buy product. The Bill seeks to provide coverage for workers at less risk yet removes coverage for workers who are likely to be at an increased risk of injury by crossing roads to get lunch, etc. The Opposition amendment seeks to remove that anomalous, inequitable situation.

The Hon. K.T. GRIFFIN: I do not support the amendment. The Bill seeks specifically to provide that attendance at the worker's place of employment during an authorised break from work, where the site is under the authority and responsibility of the employer, is part of a worker's employment, but if the worker leaves the premises during the lunch break, for example, and goes to the pub for a counter lunch and has a couple of beers, then one has to ask the question objectively: why should the employer have a responsibility for that when the employer has no authority over the employee or the provision of the lunch facilities? Attendance during an authorised lunch break, for example, at the work canteen is covered because it is under the responsibility and control.

The Hon. R.R. Roberts: What if you haven't got one?

The Hon. K.T. GRIFFIN: So what? You can take your lunch. But if you go down to the corner pub, why should that be covered? It is not under the authority of the employer.

The Hon. R.R. ROBERTS: If a contractor is working on a remote site (he may be working in a country location) and at the meal breaks he gets his food by arrangement with the employer at a roadhouse somewhere down the road and, as part of his contract of employment, he leaves the site to go to the roadhouse, are you telling me that he is no longer covered? It is due to his employment that he is there, because of the site. Would he be covered if he left the actual site of the job to go and have meals which, in some cases, may even be paid for by the employer?

The Hon. K.T. GRIFFIN: If the employer says, 'You are working on this road site, you have five kilometres down the road to the roadhouse, and I have authorised you to go there for lunch and you will be provided with lunch between 12 and 1 by the roadhouse proprietor at my expense,' I should have thought that the worker was covered. But if there is no such arrangement or authorisation, one must ask why the employer should have a responsibility? If you are working on a site, not as a construction worker but as a shop assistant, you decide to go to the beach for lunch and you cut your foot on glass on the beach as you paddle in the water—again, you are off site for an hour, you are not under the control and the premises are not under the responsibility of the employer, so why should you be covered? It just does not make sense objectively.

The Hon. T. CROTHERS: I was not going to enter into the debate, but the answer that has just been given by the Attorney clearly shows to me his absolute lack of understanding of what can happen in a hands on position on jobs in respect of compensation. Let me give members an example, which is more often than not the case. During the vintage season at wineries and vineyards very often workers will be required to travel from one vineyard to another. Ostensibly, I suppose, because of a tax situation or whatever, the second vineyard may be registered as an entirely different company, yet in fact be owned by the primary vineyard operator. The worker may well have to transfer from that first vineyard to a second or even a third vineyard during the course of his or her day's travel. Under the proposition put forward by the Attorney, on behalf of the Government, what will occur in respect of those people?

Will they have to obtain permission from the employer in writing at all times, because if the permission is given orally then it is my experience, as a former practitioner in respect of matters compensable—I do not profess to be a lawyer—that where it is a one-on-one position, and there is a question of a significantly compensable amount of money in dispute, lies are often told, and so they are reduced to written permission. It seems to me that, because of that and other reasons, as outlined by the shadow Minister, much money will be spent in courts of law trying to determine what responsibility belongs to whom.

I have heard—and I am making a generic comment—the Attorney, and to me it is a charade, saying that all this is being done in the name of the greater good of giving us and our companies some significant financial advantage in respect of their being operational in South Australia as opposed to other parts of Australia. He says that, yet his Leader on Tuesday in this place said that the Government was able to attract the company Motorola into South Australia because in part our wage costs were lower than anywhere else in Australia. There is no consistency in the argument put forward by the Attorney.

The Attorney is a man for whom I have an inordinate amount of respect; who can marshall respect; who is a very good man on his pins, but he knows and I know, or I do now, that the rationale given in respect of all this plethora of legislation is not that which is being put up as a smokescreen.

It is a position, no less than that of the other economic ploys that are about, of maximising profitability. It is not a question of making us more cost competitive because ultimately the costs now borne by WorkCover, if the Government's Bill gets through, will have to be picked up by the rest of the community, and the taxpayer will pay.

Maybe the Government will pay through some of its revenues. Moreover, it need not think—and let me issue a warning and a caution now—that because the unions surrendered the right of access, in respect of matters compensable, to common law (the *quid pro quo* for that was this pensionable scheme of WorkCover) the matter will rest there. I believe that what the Government will do, unbeknown to it at the moment—it is maximising profitability—is shifting the cost of paying for compensable injuries elsewhere.

If a situation arises where unions seek some relief by changing the arbitration system under which the award coverage is held and they find a way to gain access to common law on a Federal level, the Government will find that it really has done South Australian business a gross disservice. We will be inundated with a whole plethora of Federal awards and the cost of expiating the litigation will follow as sure as day follows night. If enough provisions of this Bill are passed, it will force unions to look for other areas of relief, and that indicates to me that the Government's exercise is one of folly. The Government is putting up a charade. On the one hand, it says that it is making industries more cost competitive, yet on Tuesday we were told that the Government had attracted a multi-corporate company—Motorola—because our wages were down the scale. Why is it that, when I look at the wine industry, 65 per cent of all Australian manufactured wines are still manufactured in South Australia? You cannot use the argument of history and tradition—

Members interjecting:

The Hon. T. CROTHERS: I come from the industry and I know what I am talking about. You cannot use the argument of history and tradition. They are still manufactured here, because the union of which I was Secretary had a conscious understanding that, if our wages were exactly the same as the wages in the Eastern States and if you put that on top of the cost of carrying the wine into the Eastern States' markets, it could well have put us out of business. So, it is unfair of the Government to say that the unions are not conscious of the role they have to play in respect to giving South Australia a competitive edge. That has been the case since the days of Sir Thomas Playford, when he managed to attract much industry. He really should have been a member of the Labor Party given the manner in which he acted here.

Members interjecting:

The Hon. T. CROTHERS: Never mind that. I can stick it if you can. The Government's premises are falsely put and falsely based, and at the end of the day it will cost South Australian industry dearly in respect to the money that is expended as a consequence of injuries suffered on the job.

Members interjecting:

The CHAIRMAN: Order! I remind members that I would like them to keep to the clause. I am not exactly sure how relevant that speech was to the clause.

The Hon. R.R. ROBERTS: I blame the Attorney for being provocative, Mr Chairman. We have had some discussion about instances which in most circumstances appear to be reasonable. Does this very prescriptive clause exclude a genuine case of injury that occurs in the course of employment? If the Government's proposal denies the worker the opportunity to say that an accident occurred during an authorised meal break, if that situation cannot be seen as being in the course of employment, it is harsh and unreasonable.

One way around this would be to provide that an injury that occurred during an authorised work break, provided the worker was undertaking reasonable action, would be covered. In other words, if a person was working out on the road, if he had to leave the job to get food or sustenance, and if he returned with the food and drink and acted in a reasonable manner but was injured in the course of that, that ought to stand as a reasonable test of the injury being sustained in the course of his employment.

It seems to me that the effect of the clause would prescribe quite definitely that that would not be so. It is therefore imperative that the amendment I propose is carried so that that test can be applied and so that someone is not treated harshly, unjustly or unreasonably. I also draw attention to the fact that it may be better to look at this issue again in a clearer light. I for one have been here for quite a long time, and reassessing this at the moment is quite difficult. I stick by my proposition that the best way to go about this is to remove the words as suggested.

The Hon. K.T. GRIFFIN: I bring members back to the clause itself and new section 30. New subsection (1) provides:

> Subject to this Act, a disability is compensable if it arises from employment.

That is the overriding provision. New subsection (2) provides:

> Subject to this section, a disability arises from employment if—
> (a) in the case of a disability that is not a secondary disability or a disease. . .
> (i) the disability arises out of. . . or . . .
> (ii) . . . in the course of employment. . .

I emphasise those words. New subsection (3) provides:

> A worker's employment includes—

and it is not exclusive—it does not mean that—

> (a) attendance at the worker's place of employment. . .

New subsection (4) is an exclusion. It provides:

> . . . a disability does not arise from employment if it arises out of, or in the course of, a worker's involvement in—
> (a) an activity unrelated to the worker's employment; or
> (b) a social or sporting activity, except where involvement in that activity forms part of the worker's employment or is undertaken at the direction or request of the employer.

The whole focus of this clause which relates to compensability of disabilities is upon a disability arising from employment. It is not restrictive, as some members are suggesting. It provides a framework within which the disability is compensable and endeavours to crystallise, but not exclusively, the circumstances in which the disability becomes compensable.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: You are back to the common law. That is the problem with all the drafting: you go back to the courts. We might put this in and the courts will construe it in a way which is different from what we say. We have always had this argument about what the Parliament means. The courts are the ultimate arbiter of this and we will have to keep a fairly open mind about this legislation, as Parliament has over the years. It has come back on a regular basis, because for one reason or another there has been a decision about a provision by the courts which is not consistent with what the governing Party at the time or employers or

employees believe is appropriate. It is a fluid thing. In terms of what we are endeavouring to do, we are trying to focus upon the employment. As I say, in relation to the amendment that is before us at the moment, if you go off the site, if you go to the beach for an hour or if you go to the pub for half an hour, you have a couple of beers and you are injured there—

The Hon. R.R. Roberts: Or a counter meal.

The Hon. K.T. GRIFFIN: You may have a counter meal without the beer but with lemonade, as I would have.

The Hon. T. Crothers: It would be just the same as mineral water.

The Hon. K.T. GRIFFIN: Yes, mineral water would be fine; you know me. In those circumstances you are not under the control or authority of the employer, unless in the circumstances to which I responded earlier you are out on the work site, the employer says, 'You go to X place, that is where your meal will be at lunch time, I have made provision for it, you have authority to go there'. If you are injured to or from that place, in my view you are covered.

The Hon. T. Crothers: That is an oral instruction and as such and could be subject to litigation, if it's given on the basis of one on one.

The Hon. K.T. GRIFFIN: You have the roadhouse, for example: the roadhouse proprietor says, 'I have an order from that person to provide meals for his or her employees.' A lot of it is a matter of evidence, but usually you do not run a risk.

The Hon. R.R. ROBERTS: Are you saying that it is clearly and definitely not the Government's intention to exclude workers from compensation simply because they are off the site? Is the Government's intention to make very clear that if a worker is off the site he is not automatically excluded; he can be considered on the merits of each case? Is that the Government's intention?

The Hon. K.T. GRIFFIN: If it is because of the employment, authorised by the employer and a feature of the work, that person is under the authority of the employer. That is what it is all about.

The Hon. T. CROTHERS: I want to direct another question on the same lines. It often happens in the hotel industry that a casual bar person—a young married person paying off their house, an upright citizen—holds down two jobs. The Hon. Mr Davis may well understand this question, given his experience with his teahouse. This person knocks off and leaves their normal permanent employment at 4.30 p.m. They are due to start their casual job at 5 p.m. and cannot go via the house; they have to go direct so they can start their casual bar work on time. What effect would the proposed new piece of legislation have if that person sustained an injury between jobs?

The Hon. K.T. GRIFFIN: They are not covered, obviously, because that person is not under the authority of the employer: the travel is not part of the employment.

The Hon. T. Crothers: It's not fair.

The Hon. K.T. GRIFFIN: It is not fair. Neither of the employers has any authority over the employee as he or she moves from one employer to another.

The Hon. T. Crothers: It is presently covered. Under your scheme of things it will not be; that's not fair.

The Hon. K.T. GRIFFIN: I am not saying it is not covered at the moment: I am saying that under our provision it is not covered.

The Hon. M.J. ELLIOTT: The Attorney has said that a person who (with permission) left the work site to get a meal, perhaps in a roadhouse when they were working on a road construction company, for example, would be covered. Will he explain under what parts of this clause they are covered? He made the comment that if permission had been given by the employer to go to the roadhouse to get lunch because they were working on a site out in the country—

The Hon. K.T. GRIFFIN: No, I said that that would apply if the employer had arranged that you should take your meal at the roadhouse and you were authorised to go there. If the employer says, 'You go wherever you like for your lunch', that is not covered.

The Hon. M.J. ELLIOTT: Even if you claim that the employer had arranged it, under what subsection does this appear?

The Hon. K.T. GRIFFIN: The relevant words are 'arises from employment'.

The Hon. M.J. ELLIOTT: I rather suspect that if it applies there it might apply more broadly. However, then I am not certain that it applies at all. So, I think we might have an interesting time in the courts trying to work that one out. It is perhaps worth noting what the Industry Commission had to say on this matter. On page 98 of the final report reference is made to free time claims and it is stated:

> The commission accepts that the employer's ability to exert control over free-time activities will vary depending on the circumstances. The employer is able to control the level of safety in the workplace and is therefore responsible for all injuries occurring on site.

Certainly, the Industry Commission does not accept any off site responsibility, which I personally find rather strange, because I think some of these examples given are not unreasonable. I do not have an amendment which covers that at this stage, and I am not even convinced as to what the situation is on site. I will take a relatively simple but real-world example. If there is a canteen on site, which happens at some places, and a person is having their lunch break, a chair collapses and they do themselves an injury. Will they be covered under this?

The Hon. K.T. GRIFFIN: Clearly they will be covered. The reference is to attendance at the worker's place of employment during an authorised break from work. Of course, you would probably have an action for damages in any event because of a faulty chair.

The Hon. R.R. Roberts: You would probably get three times as much.

The Hon. K.T. GRIFFIN: You probably would because this would be a common law claim.

The Hon. R.R. Roberts: No, the lawyers would be involved and you would lose the lot!

The Hon. K.T. GRIFFIN: This has been fairly exhaustively debated. The interim report of the Industry Commission—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Yes, I know. I will get to that, too. The reference is to injuries occurring during unpaid breaks, such as lunch breaks being excluded from workers compensation insurance. The Final Report XXIX talks about excluding injuries which occur while journeying to and from work and accidents happening during free time where the employee is away from the workplace. Really, what we are doing in the Bill is reflecting that position and, having exhaustively debated it, covered the field by more than 300 or 400 per cent, I suggest we now vote on it.

The Hon. T.G. ROBERTS: In terms of the whole clause, by putting in areas that are compensable and those that are not, we have opened up Pandora's box and we have done that here tonight. Everyone has four anecdotal examples and we

probably have another half a dozen each in our pocket. The extension put for mobile food canteens has not been examined. In the western suburbs and other areas were blue-collar workers work there are mobile canteens, and visiting people provide food in canteen form in country areas. There is a whole range of areas where some claims will be made and won and others which, through technicalities, will not be compensable. It will be a real problem.

In relation to visiting mobile canteens at metal shops in the western suburbs, there is provision of a place for most of the canteens to pull into in order to provide pasties and so on. If those service providers cannot find a parking space on the premises they park on the other side of the road. Under this legislation, if a worker goes across the road and gets knocked over on the way to getting his or her pasty there will be no compensation. The points I am making are consistent with the inconsistency of the Act and I think it ought to be reconsidered by all of us to find some appropriate wording at a later date. I know that if we put it and defeat it it will probably have that effect. However, we need to examine it to get some consistency through it, because we are creating two classes of working people who will be able to avail themselves of the benefits or the privileges of making claims.

That is inherent in the whole of the new changes. There are sitting ducks out there who will have no hope of making any claims at all and other people, just through the quirk of being better placed in their employment, will have access to claims. It is totally inequitable and unfair.

The Hon. R.R. ROBERTS: I make one last appeal on the issue. The provisions within the existing WorkCover arrangements ensure the handling and judging of these matters on a fair basis of equity, good conscience and substantial merit. We are changing the culture and that will be reflected in the decision making. Decisions can be appealed when they go through the system. What I am proposing is not unreasonable and there will be the opportunity to change it later. Certainly, in the best interests of workers, to ensure that they are fairly treated, I commend the amendment to the Government and the Hon. Mr Elliott.

The Committee divided on the amendment:

AYES (7)

Crothers, T.	Levy, J. A. W.
Pickles, C. A.	Roberts, R. R. (teller)
Roberts, T. G.	Weatherill, G.
Wiese, B. J.	

NOES (10)

Elliott, M. J.	Griffin, K .T. (teller)
Irwin, J. C.	Kanck, S. M.
Laidlaw, D. V.	Lawson, R. D.
Pfitzner, B. S. L.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.

PAIRS

Feleppa, M. S.	Davis, L. H.
Sumner, C. J.	Lucas, R. I.

Majority of 3 for the Noes.

Amendment thus negatived.

The Hon. M.J. ELLIOTT: I move:

Page 6, after line 20—Insert—

and

(d) attendance at an education institution under the terms of an apprenticeship or other legal obligation, or at the employer's request or with the employer's approval.

Attendance at an educational institution under the terms of an apprenticeship or some other legal obligation, or at the employer's request or with the employer's approval, is a work related obligation and, as such, should clearly be covered by compensation.

The Hon. R.R. ROBERTS: I move:

Page 6, after line 20—Insert—

and

(d) attendance at an education institution under the terms of an apprenticeship or other legal obligation, or at the employer's request or with the employer's approval; and

(e) attendance at a place to receive a medical service, to obtain a medical report or certificate (or to be examined for the purpose), to participate in a rehabilitation program, or to apply for, or receive, compensation for a compensable disability.

This Bill seeks to eliminate journey and authorised break coverage for workers who are injured on such occasions. It creates inequity in that it is proposed that different classes of workers will be covered or excluded from entitlements, as the case may be. It removes compensation entitlements in a number of areas that have historically been provided. The Hon. Mr Elliott's amendment recognises the broader meaning of 'employment' to include many of the employment related activities as compensable disabilities should injury occur. Mr Elliott recognises that employment should not be restricted to the workplace or to set hours of work.

Unfortunately, the Hon. Mr Elliott's amendment does not go far enough in providing coverage for all activities which have an undoubted relationship with employment. The Opposition's amendment identifies further activities that have an employment relationship, such as those contained in paragraph (e) of my amendment. We are identifying a couple of further issues that I think are legitimate. I seek the support of the Hon. Mr Elliott and the Government.

The Hon. M.J. ELLIOTT: Subsequent to my filing of this amendment, I have been approached by both employer and employee representatives seeking something similar to that which the Hon. Mr Roberts has included as proposed new paragraph (e). They are concerned that, as part of their obligations, an employee who might be involved in a rehabilitation program could be injured and not covered by compensation. We are once again talking about something that is actually required by work, and it is only reasonable that it should also be included. I support the Hon. Ron Roberts' amendment.

The Hon. K.T. GRIFFIN: The Government is not prepared to support these amendments. Obviously, this issue will be revisited.

The Hon. R.R. Roberts' amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 6, lines 21 to 26—Leave out proposed new subsection (4) and insert—

(4) However, a disability does not arise from employment if it arises out of, or in the course of, the worker's involvement in a social or sporting activity, except where the involvement forms part of the worker's employment or is undertaken at the direction or request of the employer, or while using facilities provided by the employer.

This amendment is fairly self-explanatory. Many of the so-called rorts that the Minister has been parading over the past couple of weeks have been linked to social and sporting activities outside the work environment. There is no reason why they should not be covered unless they are actually part of the employment or if they are being undertaken at the direction or request of the employer, or if the employer actually supplies facilities which may be used by the employee.

The Hon. K.T. GRIFFIN: I oppose the proposition very strongly. It could extend to the provision by an employer of

off site social premises, and under the amendment proposed by the honourable member injury at those premises is likely to be covered. I very strongly oppose the amendment.

The Hon. R.R. ROBERTS: The Opposition will be supporting the amendment. Having read it again, I would have preferred that we had another word, at the direction, request or encouragement of the employer. Many employers who employ sports people often encourage them to take extra activities from time to time which would fall into this. However, I understand the lateness of the hour. We support the amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 6, lines 27 to 33—Leave out proposed new subsections (5) and (6) and insert—

(5) A disability that arises out of, or in the course of, a journey arises from employment only if—

(a) the journey is undertaken in the course of carrying out duties of employment; or

(b) the journey is between—

(i) the worker's place of residence and place of employment; or

(ii) the worker's place of residence or place of employment and—

· an educational institution the worker attends under the terms of an apprenticeship or other legal obligation, or at the employer's request or with the employer's approval; or

· a place the worker attends to receive a medical service, to obtain a medical report or certificate (or to be examined for the purpose), to participate in a rehabilitation program, or to apply for, or receive, compensation for a compensable disability,

and the incident out of which the disability arises is not shown to be wholly or predominantly attributable to the worker's negligence.

(6) A journey between places mentioned in subsection (5)(b) must be by a reasonable, direct or convenient route but may include an interruption or deviation if the interruption or deviation is not, in the circumstances of the case, substantial, and does not materially increase the risk of injury to the worker.

This amendment is consequential upon discussions we had previously. I do not think there is any great need to take it further at this stage. The important matter really is the principle. I am ready to acknowledge that there may be better wording, but the principle is quite a simple one. If the employer is responsible, the employer bears that responsibility.

The Hon. R.R. ROBERTS: I move:

Page 6, lines 27 to 33—Leave out proposed new subsections (5) and (6) and insert—

(5) A disability that arises out of, or in the course of, a journey arises from employment only if—

(a) the journey is undertaken in the course of carrying out duties of employment; or

Examples—

· A school employee is required to drive a bus taking school children on an excursion and has an accident resulting in disability in the course of the journey.

· A worker is employed to pick up and deliver goods for a business and has an accident resulting in disability in the course of a journey to pick up or deliver goods for the business or a return journey to the worker's place of employment after doing so.

(b) the journey is between—

(i) the worker's place of residence and place of employment; or

(ii) the worker's place of residence or place of employment and—

· an educational institution the worker attends under the terms of an apprenticeship or other legal obligation, or at the employer's request or with the employer's approval; or

· a place the worker attends to receive medical treatment, to obtain a medical report or certificate, to participate in a program of rehabilitation, or to apply for or receive compensation for a compensable disability.

and there is a real and substantial connection between the employment and the accident out of which the disability arises.

Examples—

· A worker is employed to work at separate places of employment so that travelling is inherent in the nature of the employment and has an accident while on a journey between the worker's place of residence and a place of employment.

· A worker must, because of the requirements of the employer, travel an unusual distance or on an unfamiliar route to or from work and has an accident while on a journey between the worker's place of residence and a place of employment.

· A worker works long periods of overtime, or is subjected to other extraordinary demands at work, resulting in physical or mental exhaustion, and has, in consequence, an accident on the way home from work.

· A worker becomes disorientated by changes in the pattern of shift work the worker is required to perform and has, in consequence, an accident on the way to or from work.

(6) The journey between places mentioned in subsection (5)(b) must be a journey by a reasonably direct route but may include an interruption or deviation if it is not, in the circumstances of the case, substantial, and does not materially increase the risk of injury to the worker.

In contrast to the Act, the Liberal Bill excludes all journeys that do not have a workplace as both a starting point and end point. Even travelling from work with one employer to work with another employer would not be covered if the Liberals' provisions were put through. Many unjust situations would arise under the Liberals' provisions, but most obviously where a worker travelling in the course of his employment enters into the slightest deviation, for example, to make a private phone call from a public telephone booth.

Both the Democrats and the Labor Party seek to overcome the injustice of the Liberals' journey provisions. The only difference between the Democrat amendment and ours is that the Democrat version insists on real and substantial connection between the journey and the worker's employment. Although we would not insist on such an onus being placed on a worker, we concede that compensation benefits should not be payable if the injury is wholly or predominantly attributed to the worker's negligence.

There are good reasons for not insisting on a real and substantial connection between the accident and the worker's employment; for example, the worker may be out driving and doing deliveries for an employer and, with the consent and approval of the employer, detour slightly to pick up an item of clothing from a dry cleaners or to carry out some such brief personal errand. Workers in such circumstances should not be penalised. It must be remembered that the compensation for journey injuries has been an accepted part of our workers compensation system for at least decades, and the compensation for journey injuries remains payable in most Australian States and Territories. If my amendment fails, I will support that of the Hon. Mr. Elliott.

The Hon. K.T. GRIFFIN: I oppose both amendments. I think the Hon. Mr Roberts' proposal is even more objectionable than that of the Hon. Mr Elliott, particularly because of the reference to the incident out of which the disability arises not being shown to be wholly or predominantly attributable to the worker's negligence. If you are 75 per cent or even 51 per cent negligent, that is still not wholly or predominantly attributable to the worker's negligence, so I oppose both.

The Hon. M.J. Elliott's amendment carried; the Hon. R.R. Roberts' amendment negatived.

Progress reported; Committee to sit again.

PASSENGER TRANSPORT BILL

Returned from the House of Assembly with amendments.

STATE BANK (CORPORATISATION) BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

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

The Hon. K.T. GRIFFIN (Attorney-General): 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 represents a fundamental and historic reform of the South Australian industrial relations system. There is no more important task in the rebuilding of this State than for this Government to ensure that our industrial, social and economic systems are the best possible structures upon which our State can be rebuilt.

The Liberal Party recognises that structural change to our industrial relations system is absolutely essential to the rebuilding of South Australia. After a decade of neglect by the now Labor Party Opposition, this Government has the vision and the commitment to make these changes. Indeed, the Liberal Party Government has the clear mandate of the people of this State to do so. On 11 December 1993 the people of South Australia voted for reform, for a change for the better. Through this historic Bill we deliver on each and every undertaking concerning industrial relations entrusted to us by the people of South Australia 14 weeks ago.

This Government understands, as do the people of South Australia, that the structural barriers to our productivity and prosperity must be removed. Nearly a generation of Labor Governments neglected to make essential changes to our industrial relations system because of political domination by trade unions over those Governments. The consequence is that in 1994 change to South Australia's industrial relations system is no longer an optional extra. On 11 December 1993 the people of South Australia endorsed this reform as an economic, industrial and social imperative. Today, in this historic Bill, this Government delivers on that mandate.

This Government recognises that the quality of this State's industrial relations is ultimately determined by the actions and attitudes of employers and employees in the workplace. However this Government also recognises that it has the responsibility to remove or restructure the legislative barriers to change which restrain workplace reform. In this reform Bill the Government establishes a legislative framework that will not only improve our industrial relations, but will integrate industrial relations into our overall objectives for the rebuilding of this State.

This Bill is the first fundamental rewriting of existing industrial relations laws since 1972. It represents the most significant reforms to our system in the history of this Parliament. In introducing this Bill the Government has been committed to one overriding principle, to construct, so far as is possible, the best and fairest industrial relations legislative framework for South Australia in 1994 and beyond. This Bill is not based on the principle of change for change sake nor on the principle of retaining arbitration for arbitration's sake. Rather this Bill combines the concept of collective workplace bargaining with conciliation and arbitration. It does so in a manner that will provide business with flexibility within a framework of employee protection.

The objects of this historic Bill unashamedly integrate the policy aims of employment growth and industrial productivity into the industrial relations system. Our industrial laws have not been restructured for more than a generation. Over this period the South Australian (and indeed the Australian) economy has undergone fundamental change. Over this period we have seen an unparalleled level of national and international competition for our State's industries. We have seen the elimination of high tariff barriers. We have seen an economy that has had no option but diversify and encounter the cutting edge of competition. We have seen Labor Governments mismanage our public finances and impose massive debt on the South Australian community. We have seen Labor Governments impose taxes and levies on South Australians which have rendered our businesses uncompetitive both nationally and internationally. We have seen Labor Governments create an economic recession which even now has left us the legacy of 11.5 per cent unemployment and an astonishing 40 per cent youth unemployment rate. And yet for ten years the trade union movement refused to allow these Labor Governments to reform our centralised industrial relations system in a meaningful way despite the system crying out for reform.

This State Government recognises that the highly regulated institutional centralised system to which the former Labor Government was a blind adherent must be reformed to reflect the modern realities and the modern era. The doctrinaire centralised industrial relations system with its priority on third party intervention and compulsory arbitration must be changed. Its rigidities undoubtedly limit our capacity for higher productivity and restrict our ability to provide improved living standards through greater levels of employment and higher wages and improved conditions.

In endorsing this Bill last week the South Australian Employers' Chamber of Commerce and Industry clearly described the challenge facing South Australia in the following terms:

"The cold hard fact of life is that we are faced with a dilemma. We either move ahead with meaningful but moderate reform or we entrench our position as a backwater State afraid to take any tough decisions."

This historic reform to our industrial relations system will benefit both employers and employees alike.

The essential theme underpinning this legislation is to provide an industrial relations system which gives priority to employers and employees and empowers them to make change at their own workplace.

It provides the flexibility to achieve joint benefits to both employers and employees.

In doing so, it protects those in the bargaining process with guaranteed minimum standards and access to a simpler and more efficient conciliation and arbitration system.

It also recognises and protects individual freedom of association, and requires greater accountability by industrial associations and trade unions to their members.

The Government's industrial relations framework established by this Bill will provide South Australian's with a clear and fair choice. For the first time, all South Australians in our State system will have the equal choice to engage in enterprise bargaining at their workplace in order to improve productivity and wages and conditions, or to remain under existing industrial awards established through the compulsory conciliation and arbitration system. Until now, that choice has been denied to the 70 per cent of private sector employees who have freely chosen not to become trade unionists.

This Government's industrial relations system rejects the presumption of the current law that industrial relations must be the product of conflict and that compulsory arbitration must dominate the system. Rather, this Bill incorporates the presumption that employers and employees at the workplace can, in most cases, collectively agree on industrial relations outcomes and should do so within the framework of statutory minimum standards and an award safety net.

In embarking upon this great change the Government will restore the balance of industrial relations equally between the interests of employers and employees. We recognise that employers and employees, above all other parties, must be the prime beneficiaries of the system.

I will now outline the main elements in the Bill.

ENTERPRISE AGREEMENTS

The central focus of the new industrial relations system will be the creation of enterprise agreements negotiated between an employer and a group of employees at the enterprise level. The objects of the Bill provide for the establishment of enterprise agreements as this Government's preferred method for regulating wages and conditions of employment. The Government believes that only where the industrial relations system focuses on enterprise outcomes, is there maximum potential for improved enterprise

productivity and improved wages and conditions of employment for its employees.

The Government's enterprise agreement laws are fair and balanced in the interests of both employers and employees. They replace the failed and unworkable union only industrial agreement laws of the former Labor Government.

Unlike the Labor Party, this Government believes that enterprise bargaining must be accessible to all employees of our State, whether members of a trade union or not.

Under this legislation, enterprise agreements will be able to be made by a group of employees irrespective of their union membership. A large number of the public sector work force in this State is not unionised and less than 33 per cent of the private sector work force in this State is unionised. It is an affront to any concept of enterprise bargaining to deny employees who choose not to be union members the right to benefit from enterprise agreements. Equality of opportunity in the workplace demands that this injustice be corrected by this Parliament as a matter of urgency.

This Bill proposes that enterprise agreements can be made between an employer and a majority of employees in the enterprise or a discreet part of the enterprise. This will ensure that enterprise agreements are collective agreements entered into on a democratic basis. Enterprise agreements

. must be for a nominated period;
. must contain dispute settlement procedures;
. and must identify the award provisions being incorporated into the agreement.

No group of employees are or will be forced into enterprise agreements under this Bill. For employees who do not enter into enterprise agreements, existing awards will continue to apply.

This Government recognises that giving employees the choice to move from the centralised conciliation and arbitration system into enterprise agreements requires checks and balances to protect the interests of employees and encourage employees to make that choice. These checks and balances are clearly provided for in the Bill.

. Enterprise agreements must be lodged with the independent Enterprise Agreement Commissioner for approval.
. The Enterprise Agreement Commissioner must only approve the agreement if it has been genuinely entered into without coercion.
. Further, the enterprise agreement can only be approved if when considering the circumstances of the enterprise, the Commissioner is satisfied that there is no substantial disadvantage to the employees.
. An enterprise agreement must conform to the statutory minimum standards relating to wages, annual leave, sick leave, parental leave and equal pay for work of equal value.
. If any changes are proposed to these standards, then even though they are agreed, the Enterprise Agreement Commissioner must not approve the agreement unless satisfied that the agreement is substantially in the interests of the employees. If the Enterprise Agreement Commissioner is in any serious doubt about the approval of such agreements, the Commissioner must refer the matter to the Full Industrial Relations Commission.

In addition to these checks and balances, the Government recognises the right of employees to choose their representative agent for the purposes of negotiating or approving their enterprise agreement. The Bill confers full rights to any enterprise union or trade union to represent any of its members bound or to be bound by the enterprise agreement in the negotiation of that agreement or in any relevant proceedings before the Enterprise Agreement Commissioner or the Full Commission. Further, the Bill actually confers the right for a union to enter into the agreement on behalf of the group of employees where the majority of employees to be bound by the agreement have authorised the union to act as their agent.

The effect of these provisions is to provide clear incentives for employers and employees to enter into agreements designed to increase efficiency and productivity and thereby provide employees with improved wages and conditions of employment appropriate to the circumstances of that enterprise.

By making these statutory approval requirements mandatory conditions for all enterprise agreements, the Government has achieved a framework which gives flexibility to employers and employees whilst maintaining award provisions and minimum statutory standards as an effective safety net.

The Government expects that these enterprise agreement laws will be of real value to employees who have been disadvantaged by the rigidities and inflexibilities in awards, such as in work rosters, classifications or hours or work provisions. In particular, women in the work force will be empowered to use this flexibility to achieve improved wages and conditions which cater for the integration of working hours with other parental or social responsibilities. It is women employees caught in these circumstances who have been ignored and neglected by the current system, despite clear demand for reform. Indeed in 1989 the former State Labor Government was advised by its own Women's Advisers Unit that:

"the access of women to employment and training is directly related to the provision of child care and adequate forms of maternity and parenting leave as well as flexible forms of work organisation which allow for the ability to choose to lessen or increase involvement in the labour market for varying periods of time, depending on the demands of family responsibilities. In the interests of children, equal opportunity and a generally fairer and productive society these choices should be available to men as well as women."

The previous Government failed to restructure the industrial relations system to provide this necessary flexibility. In doing so it demonstrated how remote it was from the real needs of the workplace and the real aspirations and expectations of employers and employees. In this Bill, this Government establishes a system which provides fair and equal treatment and choices for all employees.

INDUSTRIAL AWARDS

Under these reforms the State Government continues in existence all existing industrial awards. This means that employers and employees who do not choose to enter into enterprise agreements will automatically continue to employ and be employed under their pre-existing industrial awards which will continue to govern their wages and conditions of employment. In particular, these awards will continue to be awards of the Industrial Relations Commission and will be varied from time to time through the conciliation and arbitration process.

Awards will continue to be made on a common rule basis across industries except where enterprise agreements apply. Furthermore, the Act will continue to prohibit employers or employees from individually contracting out of award provisions, except through approved enterprise agreements.

The Bill proposes that industrial awards will continue to be made or varied on the application of employer associations or trade unions. In addition, this Government will confer upon individual employers and individual employees the right to themselves make an application to the Industrial Relations Commission for the variation of an award. The Bill also provides for State Wage Cases to adopt guidelines governing the variation of awards. Awards must then be varied on a case by case basis.

In order to ensure that industrial awards are modernised and reflect the objects of the Act the Bill requires each award to be subject to an annual review by the Industrial Relations Commission. This is an important objective of the Bill and reflects the sentiment (but not subsequently the practice) of the Prime Minister of Australia when nearly 12 months ago he addressed the Institute of Company Directors in the following terms:

> "Compulsorily arbitrated awards and arbitrated wage increases would be there only as a safety net. . . Overtime the safety net would inevitably become simpler. We would have fewer awards with fewer clauses. . . We need to find a way of extending the coverage of agreements from being add-ons to awards, as they sometimes are today, to being full substitutes for awards. . . . There are lost of employees who for one reason or another don't have a Union to represent them. We need to make the system more relevant and flexible to our present and future needs."

The Labor Party even at a State level failed to deliver any reform in line with this policy. In doing so it exposed the degree of trade union control over its industrial policy. This Government has no such compact with sectional interests. This Bill will retain all existing industrial awards. This Bill will then encourage the restructuring of the those awards by the independent tribunal for the common good of employers and employees.

MINIMUM STANDARDS

This Bill recognises the need to enshrine in legislation minimum standards relating to wages and key conditions of employment. These minimum standards are necessary to provide a fair negotiating base for employees who choose to opt out of the award stream into enterprise agreements.

The minimum standard relating to remuneration reflects the Government's commitment to maintain existing awards as a safety net. The award ordinary time hourly rate of pay will be the scheduled minimum rate, as varied by the Industrial Relations Commission from time to time.

The Bill also provides for minimum standards of 10 days sick leave per year, 4 weeks annual leave per year and up to 12 months unpaid maternity leave, paternity leave and adoption leave.

In addition, and for the first time in this State's legislative history, the Government has guaranteed in our industrial laws the right for men and women be paid equal remuneration for work of equal value, whether through awards or enterprise agreements. This right will be based upon a relevant convention of the International Labour Organisation and is considered by the Government to be a proper and appropriate recognition of the principle of equal remuneration on work value grounds.

Another significant new right conferred by this Bill upon employees is the recognition of an employees sick leave being used for the care of ill children, spouse, parents or grandparents. This Bill will positively encourage employers and employees to apply this concept through the flexibility of enterprise agreements. Working women in particular will be able to tailor their employment commitments with their broader parental or social responsibilities. In this way the industrial relations system becomes more relevant and flexible to the needs of the work force.

FREEDOM OF ASSOCIATION

A theme which underpins this historic reform is the principle of an individual employees right to freedom of association, the right to belong to an association or not. This Government is concerned to protect the interests of the whole of the South Australian work force and not merely the interests of the minority of the work force who have chosen or been forced to join trade unions. Under this Government's legislative reform package, compulsory unionism is outlawed, whether at the instigation of a union or the employer. Under this Government's legislation preference to unionists, whether at the instigation of a union or the employer will also be outlawed. Any such laws in industrial awards will be immediately rendered inoperative. Individual employees who choose not to join a trade union will be guaranteed equal rights as employees who join trade unions. No trade union or unionist will be allowed to refuse to deal with or work alongside another employee simply because that employee chooses not to join a union. This Bill will encourage an employees choice of industrial representation.

This Bill will also encourage the development of enterprise associations and will confer upon enterprise unions equal status to that of trade unions for the purposes of representing their members. None of these reforms are anti union. Rather they provide equal and fair rights to all employees—unionists and non unionists. Employees who choose to join enterprise unions or industry wide trade unions will be equally protected against prejudice, discrimination or victimisation by employers or other employees.

Under this Bill, unions and employer associations will be required at all times to act in the best interests of their members. Unions in particular will need to become service oriented and directly accountable to their members. All existing registered trade unions and employer associations will become automatically registered under the new Act. Unions will retain all existing industrial rights with respect to the representation of the interests of their members, but will not have industrial rights to represent employees who have chosen not to be members of that union. Rights of entry for union officials onto business premises will continue to apply, but only in relation to premises where that union has members amongst the work force.

These principles of freedom of association will lead to a fairer and more effective industrial relations system, and are regarded by this State Liberal Government as fundamental to the implementation of real industrial democracy in the workplace.

EMPLOYEE OMBUDSMAN

In order to further protect the interests of employees in this new legislative framework the Bill establishes a new Office of the Employee Ombudsman. The Ombudsman will be conferred with extensive investigative and inspectorial powers in relation to industrial matters. In addition, the Employee Ombudsman will be available to all employees (whether members of the trade union or not) to assist those employees in claims of coercion relating to the making of enterprise agreements. The Employee Ombudsman will become a practical and accessible avenue for protecting the interests of employees when entering enterprise agreements.

In addition, the Bill specifically confers upon the Employee Ombudsman the right to investigate contracts concerning the provision of services by outworkers. The previous Government's legislative attempts to address the plight of outworkers have failed both in theory and in practice. For the first time, this Government will provide outworkers with access to an Employee Ombudsman whose powers of investigation and intervention will lead to more practical solutions in the interests of outworkers in any cases of unfair dealing by their employers.

UNFAIR DISMISSAL

The Government continues to recognise the need in our industrial laws for a specific remedy for employees who have been unfairly dismissed. However the Government has responded to concerns from employers and employees in relation to the current law and practice of the unfair dismissal jurisdiction.

In order to provide for fairer and faster industrial justice to both sides in unfair dismissal claims the Government is restructuring key elements of this jurisdiction. These changes include:

. a requirement that claims must be made within 14 days of dismissal
. providing Commissioners with greater powers at conferences to dismiss frivolous claims or claims where an employee has no reasonable prospect of success
. placing a maximum ceiling on compensation orders (including in cases of redundancy no more than redundancy standards)
. empowering the Commission to award costs where parties act unreasonably or abandon their case
. requiring Commissioners to deliver decisions within 3 months
. preventing double-dipping of remedies for unfair dismissal in more than one jurisdiction
. and to legislate for consistency between the State jurisdiction and relevant Federal laws and conventions of the International Labour Organisation.

Importantly, this Government will also legislate for two new rights for employees in relation to termination of employment. Firstly, minimum standards of notice of termination will be enshrined in the Act. Secondly, the Act will be amended to confer upon an employee the right and opportunity to defend themselves in relation to allegations of misconduct prior to any dismissal on that basis.

These important new rights for employees contained in this Bill reflect this Government's intention to restructure this unfair dismissal jurisdiction in an even handed manner, and to provide for consistency with Federal laws where consistency is appropriate or necessary.

These changes to the unfair dismissal jurisdiction are also designed to provide improved incentives for parties to settle matters at conciliation conferences. They will provide greater fairness and justice to both employers and employees in those cases which proceed to a full hearing.

INDUSTRIAL DISPUTES

This Government's Bill continues to implement a system of compulsory conciliation and arbitration of industrial disputes in relation to parties bound by awards.

The Government also requires parties to enterprise agreements to specify in their agreements a disputes settlement procedure which may confer specific jurisdiction on the Industrial Relations Commission to both conciliate and arbitrate disputes over enterprise agreement matters.

The Commission's conciliation and arbitration powers over industrial matters continue to be extensive. They are designed to provide fair and expeditious settlement of industrial disputes where the parties or the public interest requires the intervention of a third party.

The Government does not however believe that the process of compulsory conciliation and arbitration in an industrial relations tribunal should be the exclusive method of responding to or settling destructive strikes and industrial action.

Unions engaging in unlawful industrial action must be subject to the same laws as any other citizen who causes damage to an employer's commercial dealings with employees or third parties. For these reasons the State Government has introduced in this Bill boycott and secondary boycott provisions as well as a statutory offence which reflects existing industrial torts. These provisions are designed to provide clear and effective remedies for employers against those unions and union officials which engage in destructive industrial action contrary to the public interest or to the interests of that employers enterprise.

This Bill rejects outright the limitations which Labor Governments at both State and Federal levels have placed upon the right or employers to take such action. Unions should not be placed above the law by any Government. Effective remedies must be provided for. This Bill not only provides for the imposition for penalties where offences occur, but also enables the Court to grant injunctions, and

in the case of a failure by unions to meet their liabilities for penalties, to order the sequestration of assets.

SUBCONTRACTORS

Consistent with the Government's view that the industrial relations system should reflect sound commercial principles the Government does not believe that relationships between contractors and subcontractors should be regulated in the same manner as employment relationships. These relationships are fundamentally different both at law and in practice from the employer/employee relationship. Unlike the Labor Party, this Government will not introduce laws that have no commercial or industrial value but which merely provide a new vehicle for recruitment of members by trade unions. This Bill requires commercial disputes between contractors and subcontractors to be dealt with in the same legal courts as the myriad of other commercial disputes are dealt with in our community, and not in industrial relations tribunals.

INDUSTRIAL COURT AND INDUSTRIAL COMMISSION

This Bill restructures the existing Industrial Court and Industrial Commission into two new tribunals, the Industrial Relations Court and the Industrial Relations Commission of South Australia. The Industrial Relations Commission is structured into two streams, the Enterprise Agreement Division and the Industrial Relations Division. The Industrial Relations Division is comprised of Industrial Relations Commissioners whilst the Enterprise Agreement Division is comprised of Enterprise Agreement Commissioners. The delineation of functions between the Divisions of the Commission are clearly set out in the Act and reflect the Act's policy to create a system whereby employees and employers have choice. A choice to remain under the compulsory conciliation and arbitration award system administered by the Industrial Relations Division of the Commission or, a choice to opt out from that system into the Enterprise Agreements Division which is administered by Enterprise Agreement Commissioners.

The Industrial Court retains jurisdiction and power to enforce industrial awards and enterprise agreements, and to interpret legal issues arising out of awards or agreements. The Court will continue to administer an equitable underpayment of wages jurisdiction, with decisions being required to be made within 3 months of hearings being completed.

Inspectors will continue to have a key role in investigating breaches of industrial laws and in bringing matters before the Industrial Court or the Employee Ombudsman.

For the first time, the Government will enable appeals to be made from the Full Industrial Court to the Supreme Court. In addition, the Minister will have the right to refer matters of law from either the Industrial Relations Court or the Industrial Relations Commission to the Supreme Court. These mechanisms will provide for a more efficient and expeditious resolution of major legal cases, as well as providing an appropriate level of association between the industrial jurisdiction and other Courts.

RELATIONSHIP WITH FEDERAL SYSTEM

The Government's reform continues to provide for cooperation with the Federal industrial relations system by means of concurrent appointments and joint sittings of both Commissions.

This Government is, however, fundamentally committed to the retention of the South Australian industrial relations system. Unlike the Federal Labor Government, this Government believes that a State based system of industrial relations is best suited to provide benefits to employers and employees. This is particularly so in a regional economy and regional State like South Australia. Centralising industrial relations in a Federal system where policy is made in Canberra and where award matters are regulated from Melbourne or Sydney is the very opposite of a cohesive and efficient industrial relations system for South Australian employers and employees.

The advantages to all South Australians of a State based industrial relations system are self evident. The system is controlled and directed from South Australia. The system comprises local tribunals with personnel who are intimately aware of local circumstances and able to respond quickly to local issues. Costs of representation are reduced and local input into policy is enhanced. Autonomy for local branches of unions is protected, and this improves the democratic capacity of unions to respond to the expectations of their members in South Australia.

The Government is aware of recent moves by some trade unions to endeavour to seek misguided solace in the Federal industrial relations system. In enacting this legislation this Government is clearly indicating to South Australian employers and employees and their representative organisations that it is committed to the retention of a State industrial relations system that reflects the balanced policy objectives of enterprise bargaining with a safety net of award based conciliation and arbitration.

The South Australian Government will not stand back and allow our State industrial relations system to wither by a centralised Federal Government or by some short sighted union officials. We will protect the interests of this State and its historic and traditional role over industrial relations. Some 45 per cent of South Australian employees remain employed under the State system. Where the public interest needs to be protected, the Government has determined to vigorously oppose applications by trade unions to rope South Australian employers and employees into the Federal system—including taking proceedings to the High Court of Australia, if necessary.

INDUSTRIAL RELATIONS ADVISORY COMMITTEE

The Government is committed to maintaining a peak tripartite policy advisory group on industrial relations. The Bill proposes to integrate the existing Industrial Relations Advisory Council as an Advisory Committee under the one main industrial relations statute. In order to enhance the consultative process the Bill does not propose to limit by statute the categories of legislation which may have industrial significance and be subject to consideration by IRAC.

SUMMARY

This historic Industrial and Employees Relation Bill is an unprecedented opportunity to reform industrial relations in this State. It is a reform that is responsible and balanced. It is a reform that puts primary control of workplace relations back into the hands of the people most directly concerned with the prosperity and efficiency of the enterprise, that is the employer and the employees. It is a reform which implements enterprise bargaining within the context of an award safety net and historic new statutory minimum guarantees and standards.

It is a reform which provides increased rights for employees, not decreased rights.

It is a reform which empowers employees, to be involved in their industrial relations, and not be regulated by unknown unions.

It is a reform which provides for opportunity, for economic growth, and for business productivity.

It is a reform which creates a positive encouragement for employment through job growth.

It is a reform which will lead to higher wages and improved conditions of employment.

It is a reform uniquely South Australian, not modelled on any State or Federal system.

It is a reform which is balanced and fair.

It must be implemented as a matter of urgency for the betterment of South Australia and the rebuilding of our economy.

It is a reform which this Government promised to deliver in its industrial relations policy released in June 1993.

It was specifically endorsed by the people of South Australia in December 1993.

It is a reform which the community of South Australia now expects this Government to deliver.

This Liberal Government is proud of and has the vision and commitment to put this historic Bill before this Parliament.

I commend this Bill to the House.

I seek leave to incorporate into Hansard without my reading it the Parliamentary Counsel's explanation of the clauses.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will come into operation on a day to be fixed by proclamation.

Clause 3: Objects of Act

This clause sets out the objects of the Act, which are (broadly speaking) to promote goodwill in industry, to contribute to an economic climate that maximises employment opportunities and minimises inflation, to promote efficiency, flexibility and productivity in South Australian industries, to encourage the use of enterprise agreements, to provide for the resolution of industrial disputes, to promote freedom of association, and to encourage principles of democracy in representative associations of employers and employees.

Clause 4: Interpretation

This clause sets out the various definitions required for the purposes of the measure. Many of the definitions presently appear in the *Industrial Relations Act (S.A.) 1972*. The opportunity has been taken to update and rationalise various definitions.

Clause 5: Application of Act to employment

The Act will not apply to certain classes of employment. The classes are based on existing exclusions under the definition of 'employee' in the *Industrial Relations Act (S.A.) 1972*.

Clause 6: Industrial authorities

This clause describes the industrial authorities that are to be constituted by the new Act. The *Industrial Relations Court of South Australia* will be a judicial authority with jurisdiction to adjudicate on rights and liabilities arising out of employment. The *Industrial Relations Commission of South Australia* will be an industrial authority with jurisdiction to regulate industrial matters and to prevent and settle industrial disputes. The *Industrial Relations Advisory Committee* will have advisory functions. *The Employee Ombudsman*, and inspectors, will be administrative authorities to ensure that employment obligations are respected and enforced.

Clause 7: Establishment of the Court

This clause provides for the creation of the new Court.

Clause 8: Court is court of record

The Court is to be a court of record.

Clause 9: Seal

The Court will have a seal (and may have more than one seal).

Clause 10: Jurisdiction to interpret awards and enterprise agreements

The Court will have jurisdiction to interpret an award or enterprise agreement. The Court should act to give effect (as far as practicable) to the intentions of the parties to an award or agreement at the time the award or agreement was made.

Clause 11: Jurisdiction to decide questions of law and jurisdiction

The Court will be able to hear and determine questions of law referred to it by the Commission and to determine issues about the validity of determinations of the Commission.

Clause 12: Jurisdiction to decide monetary claims

The Court will have jurisdiction to hear various kinds of monetary claims.

Clause 13: Injunctive remedies

The Court will be able to order a person who acts in contravention or non-compliance of the Act, an award or an enterprise agreement to remedy the contravention or non-compliance, or to refrain from further contravention or non-compliance. Orders will also be able to be made in relation to threatened contraventions.

Clause 14: Composition of the Court

The judiciary of the Court will consist of a President, Deputy Presidents, and industrial magistrates. The presidential members of the Court will be judges of the Court.

Clause 15: The President

The President will be the principal judicial officer of the Court and responsible for the administration of the Court.

Clause 16: Appointment to judicial office

This clause sets out the qualifications for appointment as a judge of the Court.

Clause 17: Leave

A judge of the Court will be entitled to the same leave as a judge of the Supreme Court.

Clause 18: Removal from judicial office

A judge of the Court will not be able to be removed except on an address from both Houses of Parliament.

Clause 19: Judicial remuneration

The Remuneration Tribunal will determine the remuneration of the judges of the Court.

Clause 20: Resignation and retirement of judges

The retirement age for judges of the Court will be 70 years.

Clause 21: Conditions of appointment of industrial magistrates

Industrial magistrates will be appointed, and hold office, under provisions set out in a schedule to the measure.

Clause 22: Constitution of the Court

The Full Court will be constituted by two or more judges. Otherwise, the Court will, at the direction of the President, be constituted of a judge or an industrial magistrate.

Clause 23: Full Court to act by majority decision

The Full Court will act by majority decision, except that if the judges are evenly divided on an appeal, the appeal must be dismissed.

Clause 24: Establishment of the Commission

This clause provides for the creation of the new Commission.

Clause 25: Seal

The Commission will have a seal (and may have more than one seal).

Clause 26: Divisions of the Commission

The Commission will have two divisions, namely *(a)* the Industrial Relations Division; and *(b)* the Enterprise Agreement Division.

Clause 27: Jurisdiction of the Commission

The Commission will have jurisdiction to approve enterprise agreements, to make awards, to resolve industrial disputes and to exercise other statutory jurisdiction.

Clause 28: Advisory jurisdiction of the Commission

The Commission will have jurisdiction to inquire into, and report on, matters referred to the Commission by the Minister.

Clause 29: Composition of the Commission

The Commission will consist of a President, Deputy Presidents, and Commissioners.

Clause 30: The President

The President of the Commission will be appointed by the Governor and may (but need not be) the President of the Court. The President will be responsible for the administration of the Commission.

Clause 31: The Deputy Presidents

The Deputy Presidents will be appointed by the Governor and may (but need not be) the Deputy Presidents of the Court.

Clause 32: Eligibility for appointment as a Presidential Member

A person will be eligible for appointment as a Presidential Member of the Commission if the person is a judge of the Court, or has appropriate qualifications, experience and standing in the community of a high order.

Clause 33: Term of appointment

A Presidential Member of the Commission will be appointed for a term specified in the instrument of appointment.

Clause 34: Remuneration and conditions of office

The remuneration of a Presidential Member will be determined by the Remuneration Tribunal. Other conditions of office will be determined by the Governor. A Presidential Member will be able to be removed from office on the petition of both Houses of Parliament.

Clause 35: The Commissioners

The Governor will appoint the Commissioners of the Commission. A person will be appointed either as an Industrial Relations Commissioner or as an Enterprise Agreement Commissioner or both as an Industrial Relations Commissioner and as an Enterprise Agreement Commissioner.

Clause 36: Term of appointment

A Commissioner will be appointed for a term specified in the instrument of appointment.

Clause 37: Remuneration and conditions of office

The salaries and allowances of a Commissioner will be determined by the Remuneration Tribunal. The Governor will be able to determine that Part 3 of the *Government Management and Employment Act 1985* applies to a Commissioner, with modifications determined by the Governor. A Commissioner will be an employee for the purposes of the *Superannuation Act 1988*. A Commissioner will not be entitled to engage in other forms of remunerative work without the approval of the Minister, or to be an officer of an association representing the interests of employers or employees. The Governor will be able to remove a Commissioner from office on various specified grounds.

Clause 38: Concurrent appointments

This clause will allow concurrent appointments between the Commission and industrial authorities established under the law of the Commonwealth or another State (which includes a Territory by definition).

Clause 39: Powers of member holding concurrent appointments

A member who holds concurrent appointments may, in an appropriate case, simultaneously exercise powers deriving from all or any appointments.

Clause 40: Constitution of the Full Commission

This clause provides for the constitution of a Full Bench of the Commission.

Clause 41: Constitution of the Commission

The Commission, when not sitting as a Full Bench, will be constituted of a Presidential Member or a Commissioner, as determined by the President. If a Commissioner is to determine an enterprise agreement matter, the Commissioner must be an Enterprise Agreement Commissioner.

Clause 42: Industrial Registrar

This clause provides for the appointment of an Industrial Registrar. Other administrative officers of the Court and Commission will also be appointed.

Clause 43: Powers of Industrial Registrar and other officers

A Registrar or other officer of the Court or Commission will be able to exercise the jurisdiction of the Court or Commission to the extent authorised by this Act or the rules.

Clause 44: Disclosure of interest by members of the Court and Commission

This clause requires a member of the Court or Commission who has a pecuniary or other interest that could conflict with an official function to disclose that interest and, if directed to do so by the President, or if not given consent to continue by a party to the relevant proceedings, to withdraw.

Clause 45: Protection for officers

A member or officer of the Court or the Commission will have the same privileges and immunities as a judge of the Supreme Court.

Clause 46: Annual report

This clause provides for the preparation and presentation of annual reports on the work of the Court and the Commission, and on the operation of the Act. Copies of the reports will be laid before both Houses of Parliament.

Clause 47: Establishment of the Committee

The *Industrial Relations Advisory Committee* is established by this clause (and will take over the role of the Industrial Relations Advisory Council).

Clause 48: Functions of the Committee

The functions of the committee will be to provide advice to the Minister on industrial relations and policies affecting employment in the State, to advise the Minister on legislative proposals of industrial significance, and to consider matters referred to the committee by the Minister or members of the committee.

Clause 49: Principles on which Committee is to act

This clause sets out the principles on which the committee must act. In particular, the committee will be required to act on a non-political basis and seek to achieve (as far as possible) consensus on questions that arise before it. The committee must not seek to interfere with the proper performance of functions by industrial authorities or tribunals.

Clause 50: Sub-committees

The committee will be able to establish subcommittees.

Clause 51: Annual report

The committee will be required to produce an annual report, copies of which will be laid before both Houses of Parliament.

Clause 52: Membership of Committee

The committee will consist of 14 members, being the Minister, the chief executive officer of the Minister's department, six persons nominated after consultation with employee groups, and six persons nominated after consultation with employer groups.

Clause 53: Terms of office

A term of office of a member of the committee will be for a term, not exceeding two years, specified in the instrument of appointment. The Governor will be able to remove a member from office on specified grounds.

Clause 54: Remuneration and expenses

Allowances and expenses payable to members of the committee (other than the Minister and the chief executive officer of the Minister's department) will be as determined by the Governor.

Clause 55: Meetings

The committee will meet as determined by the Minister, but there must be at least one meeting per quarter. Four or more members will also be able to require that a meeting be held.

Clause 56: Proceedings

The Minister will chair meetings of the committee. A quorum will be eight members, including at least three representatives of employers and at least representatives of employees. The chief executive officer of the department will not be entitled to vote on questions arising before the committee.

Clause 57: Confidentiality

This clause sets rules as to the confidential nature of the committee's proceedings.

Clause 58: Constitution of the Office

This clause provides for the office of Employee Ombudsman.

Clause 59: Ministerial control and direction

The Employee Ombudsman will be subject to the general direction and control of the Minister.

Clause 60: General functions of Employee Ombudsman

This clause sets out the functions of the Employee Ombudsman, which are to include providing advice to employees on their rights and obligations under awards and enterprise agreements, investigating claims of coercion in the negotiation of enterprise agreements, representing employees in cases of suspected coercion, and investigating conditions under which outworkers, and certain other persons, are engaged.

Clause 61: Annual report

The Employee Ombudsman will be required to prepare an annual report. Special reference must be made to any investigations concerning outworkers (or others) under examinable arrangements. Copies of the report will be laid before both Houses of Parliament.

Clause 62: Who are inspectors

This clause provides for the appointment of inspectors.

Clause 63: General functions of the inspectors

The functions of inspectors are to investigate complaints of non-compliance with the Act, enterprise agreements and awards and, as necessary, to take action to enforce compliance.

Clause 64: Basis of contract of employment

This clause relates to the basis of a contract of employment and provides that such a contract may be for a fixed term, or on a monthly, fortnightly, weekly, daily, hourly or other basis.

Clause 65: Accrual of wages

The Act will provide that, as a general rule, wages accrue under a contract of employment from week to week. However, if an employee is employed on an hourly basis, wages accrue from hour to hour, or if an employee is employed on a daily basis, wages accrue from day to day. Allowance is also made for cases where an employee is employed on some other basis of less than a week.

Clause 66: Form of payment to employee

This clause sets out the ways in which an employee may be paid. An employer will be allowed to make certain payments on behalf of an employee. However, an employer will not be required to deduct membership fees payable to an association to which an employee belongs.

Clause 67: Minimum rates of remuneration

A contract of employment will be construed as if it provided for remuneration at a rate in force under this measure (see especially schedule 3), unless a more favourable rate is fixed by the contract, or a rate is fixed in accordance with an award or enterprise agreement.

Clause 68: Sick leave

A contract of employment will be construed as if it provided for sick leave in terms of the minimum standard in force under this measure, unless a more favourable standard is fixed by the contract, or the provisions of the contract are in accordance with an award or enterprise agreement. The Full Commission will, on application by the Minister, the United Trades and Labour Council, or the Employers' Chamber, be able to set a fresh minimum standard if it's satisfied that it is necessary or desirable to do so in order to give effect to the objects of the Act.

Clause 69: Annual leave

This clause makes provision in relation to annual leave in a manner similar to the provisions under clause 68.

Clause 70: Parental leave

This clause makes provision in relation to parental leave in a manner similar to the provisions under clause 68.

Clause 71: Nature of enterprise agreement

This clause is the first in a series of clauses relating to enterprise agreements. It provides that an enterprise agreement may be made about remuneration and other industrial matters.

Clause 72: Persons bound by enterprise agreements

An enterprise agreement will be able to be made between one employer, or two or more employers who carry on a single business (as defined), and a group of employees. An association will be able to enter into an agreement on behalf of a group of employees if (and only if) notice has been given in accordance with the regulations and a majority of employees in the group authorise the association to act on their behalf. The concept of a group of employees is dealt with under clause 4 of the Bill. One employee will be able to constitute a group in certain cases.

Clause 73: Formalities of making enterprise agreement

The regulations will set out certain procedures that must be followed in negotiating an enterprise agreement. An agreement will be required to comply with certain formalities, including the inclusion of procedures to prevent and settle any industrial dispute that may arise between the parties. An agreement will also need to address the issue of its interaction with any relevant award and the question of disclosure of the terms of the agreement to third parties. It will be necessary to submit an enterprise agreement to the Commission for approval within 21 days after its execution.

Clause 74: Enterprise agreement had no force or effect without approval

An agreement will not have force or effect unless approved by the Commission.

Clause 75: Approval of enterprise agreement

This clause sets out the various matters that the Commission must take into account when assessing an agreement submitted for approval. An agreement will not be approved if it substantially disadvantages the employees when it is considered as a whole and within specified contexts and circumstances. Special consideration

will be given to an agreement that provides for remuneration or conditions of employment inferior to the scheduled minimum standards.

Clause 76: Effect of enterprise agreement

An enterprise agreement will prevailed over a contract of employment to the extent of any inconsistency, except where the employer has agreed that more beneficial provisions under the contract are to prevail. An enterprise agreement operates to exclude the application of an award except to the extent that the award is incorporated into the agreement.

Clause 77: Enterprise agreement may invoke jurisdiction of Commission

The Commission will continue to have power to settle disputes if an enterprise agreement so provides and, in any event, will be able to exercise powers of conciliation in any case involving a dispute between an employer and employees bound by an agreement.

Clause 78: Duration of enterprise agreement

An agreement will continue in force until superseded by another agreement, or rescinded under this Part. The Commission will be required to convene a conference of the parties to an agreement before the end of the presumptive term of the agreement (that presumptive term being specified in the agreement). If an agreement cannot be reached on the terms of a new agreement, the existing agreement will continue (even after the end of the presumptive term) until superseded or rescinded.

Clause 79: Power of Commission to vary or rescind an enterprise agreement

The Commission will be able to vary an enterprise agreement at any time to give effect to an amendment agreed between the employer and a majority of employees currently bound by the agreement. The Commission will, by agreement, be able to rescind an enterprise agreement during its term. Provision is also made for rescission after the end of its presumptive term.

Clause 80: Commission may release party from obligation to comply with enterprise agreement

This clause will empower the Commission, on application by a party to an agreement, to release a party from the agreement, or to vary the terms of the agreement, if another party has engaged in industrial action. The Commission will need to be satisfied that it is fair and reasonable for it to act under this clause.

Clause 81: Limitation on Commission's powers

It is proposed that the Commission not have any power to vary or rescind an enterprise agreement apart from powers expressly conferred under this Part of the Act.

Clause 82: Confidentiality

This clause will make it an offence to disclose confidential information in breach of an enterprise agreement.

Clause 83: Special function of Enterprise Agreement Commissioner

An Enterprise Agreement Commissioner will have a duty to promote community awareness of the provisions of this Part of the Act, and of the objects of the Act in regard to enterprise agreements.

Clause 84: Power to regulate industrial matters by award

This clause will authorise the Commission to make awards about remuneration or other industrial matters. However, the Commission will not be able to regulate the composition of an employer's work force, affect rights and obligations under an enterprise agreement, or provide for leave except on terms that are not more favourable to employees than the scheduled standards.

Clause 85: Who is bound by award

An award will be binding on all persons expressed to be bound by the award, other than to the extent that rights and obligations arise under an enterprise agreement.

Clause 86: Retrospectivity

An award cannot operate retrospectively unless all parties appearing before the Commission agree.

Clause 87: Form of awards

An award must be expressed in plain English, must avoid unnecessary technicality and excessive detail, and be settled and sealed by the Registrar.

Clause 88: Effect of awards on contracts

An award will prevail over a contract of employment to the extent that it is more beneficial than the contract.

Clause 89: Effect of multiple award provisions on remuneration

This clause is relevant to an employee who is engaged in different classes of work in respect of which an award or awards fix different rates of remuneration.

Clause 90: Duration of award

An award will continue in operation until superseded by a later award.

Clause 91: Effect of amendment or rescission of award

An award may vary or cancel an accrued right.

Clause 92: Consolidation of awards on amendment

The Registrar will be able to consolidate the text of an award to include amendments. The Registrar must, in the course of undertaking a consolidation, correct clerical or other errors in an award.

Clause 93: Annual review of awards

The Commission will be required to review each award on an annual basis.

Clause 94: Adoption of principles affecting determination of remuneration and working conditions

The Full Commission will be able to adopt, in whole or in part and with or without modification, principles, guidelines or other matters enunciated by the Commonwealth Commission, subject to the requirement to maintain consistency with the Act.

Clause 95: State industrial authorities to apply principles

A State industrial authority will be required to apply Commonwealth principles that have been adopted by the Full Commission, other than in relation to enterprise agreements.

Clause 96: Records to be kept

An employer who is bound by an award or enterprise agreement will be required to keep certain records.

Clause 97: Employer to provide copy of award or enterprise agreement

An employer will be required to produce to an employee, on request, a copy of any relevant award or enterprise agreement. The employer will be required to give the employee a copy of the award or enterprise agreement, subject to certain qualifications.

Clause 98: Powers of inspectors

This clause sets out the powers of an inspector to carry out inspections, copy or retain documents, and question persons. It will be the duty of an employer to facilitate, as far as practicable, the exercise by an inspector of powers under this section.

Clause 99: Unfair dismissal

An employee who has been dismissed may, within 14 days after the dismissal takes effect, apply to the Commission for relief. An employee cannot make an application if the dismissal is subject to appeal or review under another State Act, and an employee who takes proceedings will be taken to have elected to proceed under these provisions to the exclusion of other proceedings or remedies that may be available on the same facts.

Clause 100: Conference of parties

A conference must be held if an application is made under these provisions. The purpose of the conference is to explore the possibility of resolving the matter by conciliation and ensuring that parties appreciate the possible consequences of further proceedings.

The person presiding at a conference will be able to dismiss an application at that stage if the applicant does not appear, the application is frivolous or vexatious, or the person considers that the application has no reasonable prospect of success. If an application is not dismissed or discontinued, the person presiding at the conference must make recommendations on how the matter might be resolved.

Clause 101: Question to be determined at hearing

The issue on a hearing is whether the dismissal was harsh, unjust or unreasonable, which must be established by the employee on the balance of probabilities. The dismissal of a redundant employee cannot be regarded as harsh, unjust or unreasonable if the employer has made a redundancy payment in accordance with an award or enterprise agreement. The Commission must take into account the Termination of Employment Convention and whether the employer has complied with certain procedures specified in the schedules.

Clause 102: Remedies for unfair dismissal

This clause sets out the remedies available under the Act if the Commission finds that a dismissal was harsh, unjust or unreasonable.

Clause 103: Costs

Costs will, on application, be awarded against a person who has acted unreasonably in failing to discontinue or settle the matter before the conclusion of a hearing, or who discontinued proceedings more than 14 days after the conclusion of the conference required under these provisions.

Clause 104: Decisions to be given expeditiously

The Commission will be required to hand down a determination on an unfair dismissal application within three months after the date of the hearing, unless the President allows an extension of time in a special case.

Clause 105: Termination of Employment Convention 1982

It is intended that these provisions give effect to the Termination of Employment Convention and provide an adequate alternative remedy to the corresponding remedy under the Commonwealth Act.

Clause 106: Slow, inexperienced or infirm workers

This clause continues the scheme under which the Commission may grant a licence to a slow, inexperienced or infirm employee to work at a wage that is below the prescribed minimum. The clause is similar to section 88 of the current Act.

Clause 107: Non-application of awards

This clause makes special provision for persons who have an impairment, cannot obtain or retain employment at ordinary rates, and are being trained or assisted by a prescribed organisation or body. The clause is similar to section 89 of the current Act.

Clause 108: Exemption for charitable organisations

This clause empowers the Minister to grant certain exemptions to organisations that have charitable, religious or non-profit making objects. The clause is similar to section 90 of the current Act.

Clause 109: Freedom of association

This clause establishes the principle of freedom of association.

Clause 110: Prohibition of discrimination by employers and employees

It will be an offence to discriminate against another on the basis of whether or not the other person is, or is not, a member or officer of an association.

Clause 111: Prohibition of discrimination in supply of goods or services

It will be an offence to discriminate in relation to the supply of goods or services on the grounds that an employer's employees are, or are not, members of an association.

Clause 112: Eligibility for registration

This clause sets out the criteria on which an association is eligible for registration under the Act. An association of employers must consist of two or more employers who employ, in aggregate, not less than 100 employees. An association of employees must consist of not less than 100 employees. An organisation, or a branch, section or part of an organisation, registered under the Commonwealth Act cannot apply for registration under this Part.

Clause 113: Application for registration

This clause sets out various procedural matters relevant to an application for registration.

Clause 114: Objections

A person may object to the registration of an association.

Clause 115: Registration of associations

The Commission may register an association if satisfied as to various matters specified in this clause.

Clause 116: Registration confers incorporation

An association becomes a body corporate on registration.

Clause 117: Rules

This clause sets out basic requirements to which the rules of a registered association must conform.

Clause 118: Alteration of rules of registered association

A registered association may alter its rules after complying with various procedures specified by the rules. An alteration does not take effect unless or until approved by the Commission.

Clause 119: Model rules

The regulations will be able to prescribe model rules, and no objection will be able to be taken to any rule, or proposed alteration of rules, that is consistent with the model.

Clause 120: Orders to secure compliance with rules, etc.

The Commission will be able to require a registered association, or specified officers of a registered association, to comply with the rules of the association. The clause is similar to section 119 of the current Act.

Clause 121: Financial records

A registered association will be required to keep proper accounts and to prepare financial statements on an annual basis. The financial statements must be audited. The clause is similar to section 121 of the current Act.

Clause 122: Amalgamation

Two or more registered associations may amalgamate pursuant to an appropriate resolution. The clause is similar to section 120 of the current Act.

Clause 123: De-registration of associations

The Commission will be able to de-register an association in certain circumstances.

Clause 124: Eligibility for registration

Clause 125: Application for registration

Clause 126: Objections

Clause 127: Registration

Clause 128: De-registration

These clauses provide for the registration and, if appropriate, de-registration of an organisation registered under the Commonwealth Act. The provisions are similar to Division III of Part IX of the current Act.

Clause 129: Federation

This clause is similar to section 127 of the current Act and will allow a federation of organisations recognised under the Commonwealth Act to act under this Act as a representative of the registered constituent members.

Clause 130: Restraint of trade

A purpose of an association in restraint of trade will not, for that reason, be regarded as unlawful.

Clause 131: Association must act in best interests of its members

An association will be expressly required to act in accordance with its rules and in the best interests of its members.

Clause 132: Industrial services not to be provided to non-members

An association, or an officer of an association, must not represent a person who is not a member of the association, and who has not applied to become a member of the association, in proceedings associated with an enterprise agreement or award.

Clause 133: Powers of officials of employee associations

An officer of a registered association of employees may be empowered by an award or enterprise agreement to enter premises at which one or more members of the association are employed, carry out inspections and interview members of the association about complaints. An official will be required to give reasonable notice to the employer, and comply with any other specified requirement, before he or she exercises any such power. The Commission will be able to withdraw a power in a case of abuse.

Clause 134: Register of members and officers of associations

A registered association will be required to keep certain registers and records and, on request, to furnish the Register with an up-to-date list of its members or officers.

Clause 135: Rules

A registered association must, on request, furnish a member with a copy of its rules.

Clause 136: Certificate of registration

A registered association will have a certificate of registration issued by the Registrar.

Clause 137: Service

This clause sets out the manner in which a document may be served on a registered association.

Clause 138: Saving of obligations

The de-registration of an association will not relieve it, or any member, from a pre-existing obligation.

Clause 139: Sequestration orders

This clause will allow for the making of sequestration orders against a registered association's property.

Clause 140: Exercise of powers of the Commission

The Register will be able to exercise the powers of the Commission under the provisions relating to associations.

Clause 141: Time and place of sittings

The Court and Commission will be able to sit at any time and at any place.

Clause 142: Adjournment from time to time and from place to place

The Court and Commission may adjourn proceedings from time to time and from place to place. The Industrial Registrar will be able to adjourn proceedings on behalf of the Court or Commission.

Clause 143: Proceedings to be in public

The proceedings of the Court and Commission will, as a general rule, be conducted in public. However, an Act or the Rules will be able to provide that certain matters be conducted in private, and the Court or Commission will also be vested with the power to determine that particular proceedings be conducted in private.

Clause 144: Representation

A person will be able to be represented before the Court or Commission by a legal practitioner or registered agent, or by an officer or employee of an association of which the person is a member. However, certain qualifications apply in relation to representation.

Clause 145: Registered agents

This clause continues the scheme relating to registered agents.

Clause 146: Intervention

The Minister will be entitled to intervene in proceedings if of the opinion that the public interest is likely to be affected by the proceedings. Any other person who can show an interest will be able

to intervene with leave of the Court or Commission. However, only the Minister or Employee Ombudsman will be able to intervene in relation to proceedings relating to an enterprise agreement.

Clause 147: General principles affecting exercise of jurisdiction
The Court and Commission will act according to equity, good conscience and the substantial merits of a case, and without regard to legal forms. The rules of natural justice will expressly apply.

Clause 148: Nature of relief
The Court and Commission will be able to give any form of relief under the Act (irrespective of the relief sought by a party).

Clause 149: Power to require attendance of witnesses and production of evidentiary material
The Court and Commission will have power to issue summonses requiring the attendance of any person or the production of documents.

Clause 150: Power to compel the giving of evidence
A person may be required to give evidence or produce material before the Court or Commission.

Clause 151: Issue of evidentiary summonses
The clause sets out the persons who may issue summonses.

Clause 152: Inspection and confidentiality
This clause relates to the release of evidentiary material. Special provision will be made for the protection of information relating to trade secrets or financial matters.

Clause 153: Form in which evidence may be taken
Evidence will be able to be taken on oath, affirmation or declaration, and either orally or in the form of a written deposition.

Clause 154: Orders to take evidence
The Court or the Commission will be able to appoint a person to take evidence on its behalf.

Clause 155: Witness fees
A witness will be entitled to witness fees.

Clause 156: Power to dispense with evidence
It will be possible to dispense with evidence in appropriate cases.

Clause 157: Powers of entry and inspection, etc.
This clause sets out various powers of inspection for the Court and the Commission.

Clause 158: Joinder of parties, etc.
It will be possible to join parties to proceedings, or, if no proper interest exists, to remove parties from proceedings.

Clause 159: Amendment or rectification of proceedings
It will be possible to amend any document associated with any proceedings, and to correct errors, deficiencies or irregularities.

Clause 160: Extension of time
This is a general power to extend limitations of time under the Act.

Clause 161: Power to decline to hear or desist from hearing
The Court or the Commissioner may decline to hear frivolous or vexatious proceedings, or proceedings that are not in the public interest.

Clause 162: Ex parte hearings
Ex parte proceedings may occur in certain cases.

Clause 163: Power to refer matters for expert report
A scientific or technical matter may be referred to an expert.

Clause 164: Service
This clause relates to the ability to effect substituted service in certain cases.

Clause 165: Reservation of decision
It will be possible to reserve any decision. The Registrar will be empowered to deliver reserved decisions on behalf of the Court or Commission.

Clause 166: Costs
Costs may be awarded if so authorised.

Clause 167: Power to re-open questions
It will be possible to reopen any question.

Clause 168: General power of direction and waiver
This clause gives the Court and Commission a general power to give directions about questions of evidence or procedure, and to waive compliance with procedural requirements.

Clause 169: Contempts of Court or Commission
This clause will give the Court and Commission power to deal with contempts.

Clause 170: Punishment of contempts
A contempt will constitute a summary offence. A contempt in the face of the Court or Commission will be immediately actionable.

Clause 171: Rules
This is a rule-making provision.

Clause 172: Limitation of action
Monetary claims must, as a general rule, be made within six years after the relevant sum becomes payable.

Clause 173: Who may make claim
An association will be able to make a monetary claim on behalf of a person if acting under specific written authority. A minor will be able to make a claim as if he or she had attained the age of majority. A personal representative, or beneficiary, of the estate of a deceased person will be able to claim money that should have been paid for the benefit of the deceased person.

Clause 174: Simultaneous proceedings not permitted
This clause is intended to prevent duplication of proceedings.

Clause 175: Joinder of additional defendant
It will be possible to join a principal to proceedings against an agent on a monetary claim.

Clause 176: Award to include interest
The Court will usually award interest on a monetary claim.

Clause 177: Monetary judgment
It will be possible to order that a monetary judgment be paid in instalments.

Clause 178: Costs
Limitations will apply in relation to the award of costs on monetary claims.

Clause 179: Decisions to be given expeditiously
The general rule will be that decisions on monetary claims must be handed down within three months (as a general rule).

Clause 180: Appeals from Industrial Magistrate
An appeal will lie from a decision of an Industrial Magistrate to a single Judge of the Court.

Clause 181: Appeals to Full Court
An appeal will lie from a decision of a single Judge to the Full Court.

Clause 182: How to begin appeal
An appeal will be commenced by a notice of appeal. It must be commenced within 14 days after the day on which the decision appealed against was given.

Clause 183: Powers of appellate court
It will be possible to take fresh evidence on an appeal, if the Court thinks fit.

Clause 184: Appeal to Supreme Court
An appeal will lie from a decision of the Full Court to the Full Court of the Supreme Court. Leave will be required.

Clause 185: Commission to conciliate where possible
The Commission will be required in its proceedings to attempt to conciliate, prevent impending disputes and settle matters by amicable agreement.

Clause 186: Determinations to be consistent with object of Act
The Commission's determinations must be consistent with the objects of the Act.

Clause 187: Applications to the Commission
This clause sets out who may bring proceedings before the Commission.

Clause 188: Advertisement of applications
The Commission will be required to give notice of its proceedings.

Clause 189: Commission may act on application or on own initiative
The Commission will be able to exercise its powers on its own initiative, or on the application by a party or a person with a proper interest in the matter.

Clause 190: Commission's power of mediation
The Commission will have the power to mediate in any industrial dispute.

Clause 191: Assignment of Commissioner to deal with dispute resolution
The President of the Commission will be able to assign a Commissioner to deal with disputes of a specified class.

Clause 192: Provisions of award, etc., relevant to how Commission intervenes in dispute
The Commission will be required to take into account any dispute-settling procedures specified by an award or enterprise agreement.

Clause 193: Voluntary conferences
The Commission will be able to call voluntary conferences.

Clause 194: Compulsory conference
The Commission will be able to call compulsory conferences of parties involved in an industrial dispute if it appears desirable to do so in the public interest.

Clause 195: Reference of questions for determination by the Commission
The person presiding at a compulsory conference will be able to refer a matter to the Commission for determination.

Clause 196: Representation at voluntary or compulsory conference
This clause sets out rights of representation at conferences.

Clause 197: Experience gained in settlement of dispute
This clause is intended to facilitate improvements in the dispute settling processes between parties.

Clause 198: Presidential conference to discuss means of preventing and resolving disputes
The members of the Commission must confer on an annual basis (at least) in order to promote the fair and expeditious resolution of disputes, and to ensure consistency with the objects of the Act.

Clause 199: Finality of decisions
A determination of the Commission will be final and only open to challenge under this Act. However, the Full Supreme Court will be able to hear and determine claims of excess or want of jurisdiction against the Full Commission.

Clause 200: Right of appeal
This clause relates to appeals from decisions of the Commission or Industrial Registrar when exercising the powers of the Commission. An appeal will be to the Full Commission.

Clause 201: Procedure on appeal
The rules will set out the time limit for appeals. The Full Commission will be able to exercise various powers on an appeal.

Clause 202: Stay of operation of determination
The Full Commission may stay the operation of a decision under appeal.

Clause 203: Powers on appeal
The Full Commission will be able to make consequential and ancillary orders and directions on an appeal.

Clause 204: Review on application by Minister
The Minister will be able to apply to the Full Commission if the Minister considers that a determination of the Commission is contrary to the public interest, or does not adequately give effect to the objects of the Act.

Clause 205: Reference of matters to the Full Commission
It will be possible to refer matters from the Commission constituted of a single member to the Full Commission.

Clause 206: Powers of Full Commission on reference
This clause sets out the procedures on the reference of a matter.

Clause 207: Reference of question of law to the Court
The Commission will be able to refer questions of law to the Court.

Clause 208: Co-operation between industrial authorities

Clause 209: Reference of industrial matters to Commonwealth Commission

Clause 210: Commission may exercise powers vested by certain other Acts
These clauses are based on sections 40a, 40b and 40c of the current Act and are designed to ensure greater co-operation between the Commission and industrial authorities of the Commonwealth, or of another State (or Territory).

Clause 211: References to the Full Supreme Court
The Minister may refer a question of law arising before the Court or the Commission to the Full Court of the Supreme Court.

Clause 212: Protection for officers, etc.
This clause provides personal protection to a person employed in an office or position under the Act.

Clause 213: Confidentiality
This clause relates to the disclosure of information gained under the Act.

Clause 214: Notice of determinations of the Commission
Notice must be given of any determination of the Commission that affects persons who were not parties before the Commission.

Clause 215: Industry consultative councils
It will be possible to form a consultative council for a particular industry.

Clause 216: Boycotts related to industrial disputes

Clause 217: Interference with contractual relations, etc.

Clause 218: Discrimination against employee for taking part in industrial proceedings, etc.

Clause 219: Non-compliance with awards and enterprise agreements

Clause 220: Improper pressure, etc., related to enterprise agreements

Clause 221: False entries
These clauses create various offences for the purposes of the Act.

Clause 222: Experience of apprentice, etc., how calculated
Employment as an apprentice or junior will count as experience in a particular industry.

Clause 223: No premium to be demanded for apprentices or juniors
A person must not seek a premium for employing a person as an apprentice or junior (except as approved by the Minister).

Clause 224: Illegal guarantees
It will be unlawful to require a guarantee in respect of the conduct of an apprentice, junior or employee (except as approved by the Minister).

Clause 225: Orders for payment of money
This clause provides for the enforcement of orders for the payment of money, which may be filed and enforced in a civil court.

Clause 226: Recovery of penalty from members of association
The members of an association may be liable for the payment of any penalty or monetary sum not paid by the association.

Clause 227: General defence
An employer may claim a general defence in a case where another person was responsible for the act or omission constituting the offence, the employer used all due diligence to prevent the offence, and the offence was committed without the employer's knowledge and in contravention of an order of the employer.

Clause 228: Order for payment against convicted person
A person convicted of an offence may be required to pay any amount due to an employee in respect of whom the offence was committed.

Clause 229: Proof of awards, etc.
This clause will facilitate the proof of determinations under the Act.

Clause 230: Proceedings for offences
A prosecution for an offence against the Act will be heard and determined before an Industrial Magistrate.

Clause 231: Conduct by officers, etc., of body corporate
This clause relates to the conduct of bodies corporate.

Clause 232: Regulations
This is a regulation-making power.

Schedules
The schedules set out various matters related to the operation of the provisions contained in the Act, provide for the repeal of the *Industrial Relations Act (S.A.) 1972* and the *Industrial Relations Advisory Council Act 1983*, and set out relevant transitional provisions.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

ADJOURNMENT

At 10.55 p.m. the Council adjourned until Tuesday 3 May at 2.15 p.m.