LEGISLATIVE COUNCIL

Thursday 5 May 1994

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

CRIMINAL LAW CONSOLIDATION (FELONIES AND MISDEMEANOURS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave to introduce a Bill for an Act to amend the Criminal Law Consolidation Act 1935 and to make consequential amendments to other legislation to provide for the abolition of the classification of offences as felonies and misdemeanours; and for other purposes.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

Adjourned debate on second reading.
(Continued from 21 April. Page 638.)

The Hon. CAROLYN PICKLES: The Opposition has put on the record already its views in general on this Bill in another place and I do not intend to go over that ground as I understand that later in this second reading debate a number of other members will deal with the Bill in some detail. However, I wish to highlight some of the areas of this legislation which will have an adverse effect on women. Women workers are often disregarded in the process of legislation and political change. The existing system of industrial relations in South Australia provides for the maintenance of comprehensive minimum wages and conditions via the award system. Awards have a force of law and cannot be displaced by individual agreements between workers and their employer. Under the current legislation awards are the basic minimum. The philosophy underpinning this system, and one which the Labor Opposition supports, is one of the imperatives of public regulation of employment in which awards are the minimum standard against which any proposed changes are assessed.

The Bill currently before Parliament is a rejection of public regulation of employment. Awards are replaced as a basic vehicle of employment conditions by enterprise agreements. Awards are no longer the yardstick against which enterprises are assessed. As such, the integrity and effectiveness of the award system is completely undermined. This is done by the undermining of the status of awards and the push to minimise the scope and content of awards.

All available information suggests that women are more likely to benefit from the public regulation of employment—by awards—and are more likely to suffer in an industrial system which is deregulated. ABS data indicates that there has been a significant increase in women's average weekly award rates of pay as a percentage of the equivalent male rate. This has been matched by an increase in women's average weekly ordinary time earnings. As such, the award system has assisted, to some extent, in closing the gender wages gap. The greatest area of gender differential is in the area of over-award payments, where women continue to earn less than men.

Research done by the Working Women's Centre of South Australia on the rates of pay of women in various sectors indicates that in the areas where there is no award coverage the wages paid to women workers are far lower than in the areas with award coverage. These facts suggest that women tend to be disadvantaged in areas where freedom of contract operates as a basis of wage determination.

ABS statistics (1992) show that the award rate of pay component of the weekly wage of non-managerial employees was 96 per cent for women and 88 per cent for men. This indicates that women are far more reliant upon awards than are men for a greater proportion of their weekly wage. Any move towards a more decentralised system of wage fixation, such as enterprise bargaining, therefore requires safeguards to ensure that women workers are not disadvantaged. I suggest that this Bill does not establish appropriate safeguards.

I would like to turn now to the criteria relating to the approval of enterprise agreements as set out in section 75 of the Bill. Section 75(1)(a) provides that the commission must approve an agreement:

> . . . that consideration as a whole. . . in the context of all relevant industrial, economic and commercial circumstances affecting the enterprise, does not substantially disadvantage the employees to whom it is to apply.

The focus here is on the enterprise, not the employees. Disadvantage is therefore assessed in light of what the employer needs are; thus disadvantage is linked to the economic circumstance of a particular firm and not the employee. This flies in the face of our established practice of recognising economic, social and equitable imperatives in establishing minimum award conditions.

We have always accepted that there are minimum standards to which employees are entitled. At least, those of us on this side have always accepted that; I am not saying that those on the other side have always accepted that—they probably have another agenda. This Bill clearly rejects that concept. Section 75(h) states that the agreement must be registered without coercion. How is this provision to be enforced? How can it be established that coercion took place? What will constitute coercion? In a non-union shop how would an employee report or prove coercion? Women, young people or workers from a non-English speaking background have different social experience which often impacts upon their ability to bargain. There is no requirement for the commission to take a proactive or investigative role. The Federal Industrial Relations Act requires parties and the commission to consider the interests of certain groups, including women. The final test for approval is that the agreement complies with other provisions of the Act.

This Bill includes certain so-called minimum standards. These relate to sick leave, annual leave, hourly rates of pay and parental leave. Two issues arise in relation to these standards. First, they are not absolute minima. Section 75(2) of the Bill allows for the approval in certain circumstances of employment agreements which are inferior to the minimum standards. Secondly, those standards are not in themselves comprehensive nor consistent with contemporary industrial standards. The annual leave provision does not include the 17½ per cent loading. Similarly, the minimum hourly rate prescribed is the relevant award rate exclusive of penalty rates, shift loadings, allowances, overtime rates and so on.

This would exclude casual loadings and other allowances. I suggest that this would have a particular impact upon women. Any removal of penalties or allowances has a proportionately greater impact on low paid workers. A greater

proportion of women than men in the work force would fall into the low paid category. More specifically, the majority of casual workers are women. Any removal of the casual loading would significantly reduce the rate of pay of many women in the paid work force. Section 67 of the Bill requires that the rates of pay fixed by awards or enterprise agreement must be consistent with the convention concerning equal remuneration for men and women workers. This convention dates back to 1951. I do not believe that this section will enable the delivery of real wage justice for women in the context of a deregulated enterprise bargaining system. The fragmented and deregulated nature of the system proposed by the Bill would not sustain any comprehensive or wide-ranging increase in women's rates of pay.

Let us turn now to the issue of sick leave entitlement. The Bill provides that enterprise agreements must allow workers to use their sick leave if required for leave to care for family dependants. These provisions already apply in a number of agreements and some agreements have managed to obtain paid extra leave in addition to that proposed in this Bill. That would be my preferred option. Given that women still have the predominant care of sick family members and indeed for the aged members of their family, this will disadvantage women in that they will be more likely to use up their sick leave for this purpose. Studies have shown that this already occurs, albeit presently on an *ad hoc* basis. Some surveys have been done in South Australia to determine how many women use their sick leave for that purpose. Personal sick leave is lessened—

The Hon. A.J. Redford: What was the result?

The Hon. CAROLYN PICKLES: The survey showed that women were using their sick leave illegally because there was no other provision. I am suggesting that there should be a provision other than sick leave. The personal sick leave is lessened and women are more likely to report for work sick because they have used up all their sick leave, as their entitlement has been used up caring for others.

The ACTU test case on the provision of family leave in addition to other entitlements is the proper way to proceed and not, as this Bill does, to further disadvantage women. Currently before the Social Development Committee is a term of reference looking at the whole issue of family leave provisions. It is rather a pity that this Government has not waited for the results of that inquiry before moving ahead on this issue. It is a very big issue in this country. We have had a lot of evidence, which I cannot discuss at this point because it has not been tabled in Parliament. I suggest that, if this clause goes through, the Government should look at this whole issue that has been brought before the Social Development Committee and rethink it in light of the evidence that will come from that committee and from its final report to the Parliament. I am quite sure that the ACTU test case will have a very illuminating effect on some members of the committee, not only those from this side of the House.

A number of changes proposed to the unfair dismissal clause will impact adversely upon women. The Bill limits the options open to workers who have been dismissed. Workers will be prevented from taking action under the Equal Opportunity Act when they have taken an application for unfair dismissal. This would be so, even if the worker was unaware of the remedies available under the Equal Opportunity Act. It arguably limits any ability the worker has of having discrimination dealt with by the Equal Opportunity Tribunal, even where the dismissal was found to be unfair or fair on completely different grounds. I refer to the Equal Opportunity Tribunal as it exists now. Goodness only knows what will happen to it after the Attorney-General has finished with the inquiry he has initiated.

The public benefit in preventing access of workers to the remedies available under equal opportunity legislation is questionable. Such barring of access has a greater impact on women than men, given that women make up most of the applicants under the Equal Opportunity Act. The Bill also allows the commission to determine the application at the conference stage, that is, prior to a hearing, without the need to call evidence. This will mean that the conference procedures, etc. are likely to be more formalised. This will prejudice those applicants who are not represented whether by a union or a lawyer. Given the lower level of unionisation amongst women and their lower paid status, they are less likely to be represented.

I have just highlighted some of my concerns with this Bill regarding women. That is not to say that I do not have a raft of other concerns. The concerns that I have about this Bill will be put forward by the Hon. Ron Roberts and have already been put forward in another place by Mr Clarke. I am sure that members on this side of the Council at least will consider the views of women in the work force when dealing with this legislation.

The Hon. T. CROTHERS: I have considerable concerns about the Bill before us, which was introduced into this place by the Government. This is the biggest write-up and revamp of industrial relations which, to my knowledge, has ever taken place within this State Parliament, certainly over the past three or more decades. There are a number of salient features in the Bill that disturb me greatly. I read much about what the Government is saying about enterprise bargaining—and let me say that I do not oppose enterprise bargaining—but what concerns me is the way in which the safety net, the failsafe, the 'John amend all' clauses are going to be removed if the present Bill goes through in the form in which it has been presented in this Council.

I have considerable hands-on experience in what occurs in small businesses where perhaps two, three, four or five employees are exposed to the ruthless predations of their employer who endeavours to strike an enterprise bargain by putting pressure on the workers in those jobs to yield to enterprise bargaining. Coupled with that is the manner in which I believe the Bill seeks to interfere with the independence of the industrial courts, particularly in respect of the commissioners and the judiciary who sit on the bench of the State Industrial Court. I, for one, have an absolute concern in respect of our maintaining the independence of all our 'justiciaries', whether it be in the field of industrial relations, civil law or common law. This Bill would, in that jurisdiction in particular, put some pressure on the individuals who make up the industrial bench of the State Industrial Court by the manner in which in future they are to be appointed to those positions.

I will come back, if I may, to enterprise bargaining, which is a major concern of mine. Where unions have membership in large and medium to large businesses, enterprise agreements will be struck and, in the main, accepted and put into practice by both the employer and employee groups involved. Of course, one of the other things with enterprise bargaining (and I am not opposed to it, provided that there is some appeal mechanism in the Bill with respect to enterprise bargaining, and there is not) to which I am opposed is the fact

that, now that enterprise bargaining can spread right throughout the work force of South Australia, the workers on a job site, if they so choose to have representation, might not have that representation in putting forward their point of view whilst the enterprise bargaining is being agreed to. I find that quite appalling, because I know the pressures that can be put on people who are banded together in groups of two, three, four or six and who work for bosses. Some bosses are fine people, and they do the right thing, but others are not. That leads to the Government hindering small business instead of helping it. That means that the *bona fide* employer, who will endeavour at all times within the compass of his economic capacity to do the right thing by his employer, is disadvantaged by the ruthless employers. Make no mistake, employers are much the same as humanity all over the place: there are some good ones, some middle of the road ones and some bad ones. That is much the same with humanity anywhere you go.

Of course, for example, if you have an unscrupulous employer within the hotel industry who squeezes the last drop of blood out of the workers and who puts in place an enterprise agreement, which is not what the workers want but what they are being forced to accept under the threat of termination of employment, that mitigates against the larger employer or other employer who seeks to do the right thing. It is rather like the position we used to get in the hotel industry with respect to the discounting of beer. The discounting of beer simply did not work, because when we checked the time and wages records of a number of those discounters—and I was an organiser of the union at the time—we found that they were under paying thousands of dollars. So, the *bona fide* hotelier, club operator, motel or restaurant operator was put in a position where they could not match the charges that were then being put in place by the unscrupulous employer who was discounting.

That is parallel to the present situation. If the Attorney in this place, acting as the spokesperson for his Government in this matter, believes that the manner in which they propose to deal with enterprise bargaining is something of benefit, then let me tell him that in the long term they will rue the position relative to employers in general in this State.

There are, of course, many other matters relative to the Industrial and Employee Relations Bill which I would wish to contemplate, and I will do so later. The changes to the Bill proposed by the Government are enormous. For instance, it has not said, 'Let's endeavour to change this and see whether it works.' It has changed the whole issue of industrial relations in this State. Over the past 30 years or more, this State has, by and large, enjoyed fairly harmonious relationships between employers and employees, much to our benefit.

I cannot repeat often enough how much I agree with the Leader in the statement that he made to attract Motorola to this State. I will repeat again what he said. He said that we were able to attract Motorola and its subsequent potential for 400 more new jobs in South Australia by virtue of the fact that South Australia, in respect of the other mainland States of our nation, had a significant cost competitive edge. Obviously, there is some inconsistency here, when we hear the Leader and the Deputy Leader of the Government in this Chamber being at variance on the cost of labour in this State. Of course, one of the assertions being made, particularly in this and the other two related Bills, is that this will lead to a more cost competitive South Australia. I do not think that is the case.

I think the Government's inexperience in matters industrial (because of the time it has spent out of office, with one three year period since the 1960s) is clearly showing through in the manner in which it has presented its thoughts in this and the other two related Bills. I wish the Government well, because much later today I will be asking a question on unemployment. I wish the Government well—

The Hon. K.T. Griffin: Signalling, are you?

The Hon. T. CROTHERS: I will be directing it to the Hon. Mr Lucas. He represents the Hon. Mr Olsen, doesn't he?

The Hon. K.T. Griffin: I'll tell him.

The Hon. T. CROTHERS: Tell him to bring his 16 ounce gloves, because I intend to strike some very heavy body blows during the question. However, in relation to the Government's Bill, I really believe that some Government members are trying to do the right thing. Some others would seek to pat their mates and supporters on the back for the support they were given during the last electoral fiesta in December. If that is the case, that is no way for any Government to address a Bill—no reason, no rationale. I am assuming it might be so; I do not know whether it is. But I say to the Government that, if it is so, it has to broaden the width of its vista and ensure that it truly is endeavouring to act for all South Australians and not just for a choice few.

The other matter I touched on and which I wish to touch on again quite briefly (and no doubt I will be on my feet during the Committee stage of this matter) is the independence of the judiciary. Far be it from me to make judgments about the judiciary, but I would like to relate to the Council some of the experiences I had when I had to front its members as Secretary of the Liquor Trades Union. I had to front the commission and/or the industrial judges on particular matters that are imprinted on my memory. In no way did we ever, as is assumed at times by some members of the Liberal Party, get favourable treatment. Each case we took was treated—as it should be—on its merits.

I well recall, in fact, one particular time when we had won a test case, when the current Premier was Liberal Minister for Industrial Affairs. We had taken a test case on the subject of sick leave being substituted for annual leave; a person who was on annual leave took sick, and we won the test case. The then Minister very hastily introduced a Bill into the 1979-82 Parliament so that sick leave could be sought and obtained if a person was on annual leave, but not the full quota: not the 10 days, only five. So, there is a track record of the Government Party in this Parliament being somewhat biased, in my view, in respect of one element of the industrial community.

It is quite clear to anyone who thinks as to who that element is. But there is certainly not a position where the Industrial Court and the magistracy of this State are biased in any of the judgments they give, and it is foolhardiness in the extreme for the Government to put in place a position which is the thin end of the wedge and which undermines the justiciaries of this State, for a start, which undermines the independence of the Industrial Court, and God knows where that leaves us—I should not profane the Lord's name, as an agnostic—but heaven help us. Let us forgive them for assuming that the Industrial Court and the magistracy does not work in an even-handed way.

The manner in which this Bill, maybe not directly but most certainly by implication, seeks to take the independence away from those men and women who constitute the State Industrial Court is a recipe for absolute disaster, because in my view you will get the sorts of decisions that either party may be strong enough to take. It can only lead to unneces-

sary, uncalled for and unwarranted industrial disputation, the like of which this State has not seen in a long time.

One of your more thoughtful predecessors in this place, Sir Thomas Playford, in spite of the fact that it is alleged that he gerrymandered the South Australian electorate, at least had enough commonsense and nous to understand that an industrial partnership is just that: it is a partnership where all elements of it can function and can feel free to function without fear of favour from anyone. I hope that this industrial relations Bill will not get through in this form. I believe that I have a mandate from my constituency in South Australia to ensure that they get fair representation. I saw an item on television in respect of voluntary versus compulsory voting, which is included I would guess in those parts of the Bill that deal with union election, where the learned independent journalist was saying, 'Of course, there is a fear that there will be an enormous fall-off in voter turn-out because snow has been forecast.'

So, I will leave it at that. But, for heaven's sake, I appeal to the Attorney and the ministry he represents: let us not walk down the path of industrial confrontation. No-one wins out of that—not the employer, not the employee and most assuredly not the State and the welfare that flows to the other non-working inhabitants of this State from having a suitable industrial mechanism to deal with any dispute. There is no provision for appeal in this Bill against enterprise bargains once they are struck. People feel that under this legislation they will be pressured by unscrupulous employers—and thank God a lot of employers are not unscrupulous—into signing up into an industrial enterprise agreement, which really has devalued the currency of their employment position, and that will act to the detriment of *bona fide* employers. I oppose the IR Bill in its present form and I will have much more to say in Committee.

The Hon. T.G. ROBERTS: I also rise to oppose this Bill. I am quite surprised at the determination of the Government to make so many changes to an industrial relations Act that has been working reasonably well, quite well or very well, depending on where you stand, for many years.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: If the intentions of the Bill are to solve unemployment it is going to miss its objective because the only thing that can solve unemployment in this nation and any other nation is a lift in activity at a national and international level to be able to supply goods and services to people broadly throughout Australia and the world generally in a fair and equitable way. The system has never worked like that. The economic systems under which Governments operate tend to be either flood or famine: it is boom or bust. And that does not take into account what brand of Government is in power; it could be a conservative progressive Government or it could be a Labor or Liberal Government in Australia. Internationally the brands and the names change but the economic system seems to deliver those periods of high economic activity through to recession and depression and they are the cycles under which most Governments have to manage.

So, I suspect that the intention of the Bill is not to help solve the problem of unemployment. The Federal Government is doing something about that at the moment and again I must say that it is not doing enough, but with the economic tools that it has available to it, it is a step in the right direction. However, the Bill itself does not go any way to solving unemployment but it does change the power relationship between employer and employee and if there is something that does not need to be changed out there in the community it is changing the power relationship between the powerful and the powerless.

The current award system and agreement system on which we operate in this State has either a Federal or a State focus. You work under either a Federal or a State award. You can work under Federal agreements. In my personal dealings as an organiser with the Metal Workers Union I have not come into contact with many State agreements but some do exist. You occasionally come across them. Most of them are not registered with the commission but most of them are honoured by the employer and employee as an indicated rise above the minimums of the State awards.

Traditionally that is how people have handled business in this State. There are the odd hiccups from time to time. However, if you look at the Federal industrial relations system as being the umbrella of the climate in which the industrial relations operates at a State level, you will see that the Federal Government has, via the ACTU and the Government, an industrial and social package put together called the Accord which is designed to deliver stability into the wages and industrial system which delivers equity and social justice to both working people, salaried people and people on social services. It is not just a wages conditions agreement; it is a broad social agreement, and its intention is to cover not just working people but also people on social services such as retired people, unemployed etc.

That is a broad economic document which has delivered stability to the nation as a whole in relation to how business has been able to operate over the last 10 years and which has added a social platform for people to feel that they are a part of the economic, political and social process. Had that document not been put in place at that time, in the lead-up to a boom period in the 1980s and then the bust in the 1990s, the social dislocation which one might have expected in this country due to the high figures of unemployment which we have and which has occurred in other countries may have been much higher. However, the safety net has kept the lid on those people who would otherwise feel isolated out of the process and who would resort to a political expression that is not one traditionally used in Australia, and that is violence, which has been used in European countries, in Britain and in America.

If people want to make some comparisons, I think they ought to take a look at some of those countries that have industrial relations and economic systems that do not deliver social justice and equity through either their Federal, State or national policies in terms of delivering some form of equity to the powerless in the community to prevent that social dislocation to which I alluded earlier. If members look at countries that have an industrial relations system and delivery of that system based on the expression of the philosophical position included in the Liberal's Bill, they will find that those countries that have similar sorts of industrial relations systems without the minimum safety nets have the most problems in relation to managing their industrial and social affairs.

In the 1970s and 1980s there was a lot of debate about what industrial relations system Australia would use in the lead-up to the rapid social change that would be running parallel to the rapid industrial change that was being brought about by the introduction of and high use of technology. It was acknowledged in the mid to late 1970s that technology would become the key focus for social change and dislocation

in relation to where we would be in the 1980s and 1990s. Of those predicting massive social change and dislocation, some have been seen to be right and others have been seen to be partly right. On each occasion since 1974—through each recession, back into boom and then back into recession again—we have picked up some 2 to 3 per cent which has been added on to each recessionary period, and as we have moved out of those recessions into growth cycles again that 2 to 3 per cent has aggregated and remained as an unemployed pool within the community.

When the people in the 'industrial relations club', as it may be termed—the employers, unions and Governments—were discussing what sort of industrial relations system they should use, there were people winging their way all around the world to have a look at various industrial relations systems to see whether there was a model that could suit Australia's changing needs and requirements. In 1982, at about the same time that Bill Hayden met his untimely demise as Leader of the Opposition, there was a lot of discussion through Mr Hayden in the lead-up to the change-over from the Fraser Government to the Hawke Government. A whole range of changes that were the preliminary lead-up to the Accord were being discussed at the Federal level.

People had looked at the Swedish system, which is basically a high interventionist system, where employers and employees, unions and employers work out their programs in a harmonious way and anticipate change and build it into their industrial relations systems. Through a respect for each other's position and a respect for their nation's direction, they work out in an orderly way the social implications of change within their industrial system and build that in. It is a social document that takes into account the nation's needs as well as individual needs within that system. That has worked very well for them, and certainly a lot of attention was paid to the Swedish model by employers and the ACTU.

Norway has a very good model as well, which has a national expression that prevents social dislocation from massive social change through technology use. Most of the Scandinavian countries have a history of social responsibility in relation to how technology was to be introduced and how social change would be managed. These programs had a high education component. A lot of thought was put into preparing for social change and for changes in industry and commerce in relation to the use of technology. They did not have a piecemeal approach to it: they had a policy that knitted in gender and age and took into account young people entering the work force—their requirements such as training and education.

Basically they came away with a system which had a whole-of-life education process and which melded into their industrial relations their job compacts and retirement. It had a taxation component that took into account the needs of ageing and they were able to prepare their people for a whole range of problems that would emerge with the changing nature of work and the changing nature of their economy through that period. I will not say that it has been all beer and skittles in those countries, because they went through the same recessionary problems as the rest of the world did. But at least they had prepared themselves and had discussions with their constituents and anticipated the change that was about to occur.

When the Accord was put into place in 1984-85, a lot of material was gathered from those Scandinavian countries and that model was argued in Australia as the way to proceed. It did not have just an industrial relations component: it had a social justice strategy built into it, which was to take into account the change that Australia would go through in preparation for rapid and accelerated change. As I have said, 1973-74 was the period where full employment meant 1.5 per cent of people being unemployed, but we are now talking about five per cent at a national level. The best that the Federal Government can do is five per cent of people permanently unemployed with no hope of getting a job.

The nature of work and change has to be established so that all people can participate. It is not just a matter of having an industrial relations Bill, as the Liberal Government has done: it is a matter of having a whole range of Bills that take into account the social justice programs that need to be built into not just work but the definition of work: what is 'work'? Federally, I think the levels of understanding are much higher, which has been indicated by some of the changes at that level. However, at the State level, I am afraid I do not hold up any hope at all for Victoria, Western Australia, South Australia and, to some extent, New South Wales. However, I do not think that New South Wales has gone to the extent that Western Australia and Victoria have gone in changing the nature of industrial relations. As I said, this will not create any more jobs: all that will happen is that there will be a power shift to the powerful away from the powerless, and it will be much more marked.

At the moment, 45 per cent of our work force operates under the State industrial system, which includes about 300 000 workers. They are represented by their awards and, in some cases, agreements registered with the State Industrial Commission. When they have a dispute, their appeal process is the State Industrial Commission. Australia's model has been taken away to be used in other countries. I know that a lot of Asian countries are looking at our industrial relations model now. There have been European countries looking at it as well. If we examine some of our major competitors and the way in which they handle their industrial relations we can get some idea of what may work for one culture and what may work for another culture and then pick out what can perhaps be regarded as the best way to operate.

It is quite clear that the Liberal Governments at a State level have decided that the historical use of the awards system and the Industrial Commissions is not the way they want to go, so they have decided to opt for another model. If we look at some of our major trading partners, such as Japan, in which the Leader of the Government in this place is interested (he probably has a working knowledge of the Japanese system), we find that they have a three tiered network where workers in major car plants are on good wages and conditions. They have a lifetime guarantee of a job. If they are displaced they have an orderly redundancy package. They are looked after from the cradle to the grave in relation to the requirements and needs of major exporting industries in Japan. They need highly educated, highly skilled workers, so they invest in those human resources and get those results.

Internationally Japan's problem at the moment is not recession through under-achieving: they have over-achieved and have been locked out of many markets internationally. I have some sympathy for them, but unfortunately the Americans who work under an entirely different industrial relations system, which is almost mirrored or matched by the Bill before us, are under-achievers in relation to their industrial system. To some extent their industrial relations programs are to blame for their inability to be able to compete internationally. If we look at the way in which the second or third tier of workers operate in Japan, we find that they have

little or no protective legislation. In the case of those who are not covered by awards or agreements, they tend to be almost working and living in third world conditions, alongside people living in first world conditions. That is basically the intent of this legislation before us.

To some extent the intentions of the legislation that has been introduced in other States has a tiered development. Some people will benefit, there is no doubt. The intentions of the Bill, as indicated by the Minister for Industrial Affairs in another place, give that as an objective. We see a move towards a system where people will get increases in their salaries or pay, but there are many more who will be left isolated from the protection of awards and agreements and will ultimately suffer on the basis that they will not be able to negotiate anything through their relationship with employers because the power weight relationship and the high pool of unemployment we have in the community will put downward pressure on wages and there will be no social justice delivery at all.

In Australia we will develop a parallel program, with those in industries that are competing internationally and delivering export dollars at the high tech end of the value added system in terms of their enterprise doing well, and those who are trying to compete on the domestic market in highly competitive areas and undercapitalised in terms of technology driving wages down in order to survive. It is those people for whom I have those concerns. As the Hon. Mr Crothers said, there is nothing wrong with enterprise bargaining as a principle. It has been used here for years. Many awards and agreements have used enterprise bargaining as a method of delivering in a competitive work environment for skilled people. They have left open enterprise bargaining. They have had awards for minimums, but have also had collective bargaining arrangements and in some cases were registered with commissions or had agreements signed by both unions and employers, honoured and renegotiated at given times.

We have had that mixture of enterprise bargaining and awards available to us in this State for a very long time. If the intentions of the employers and power groupings in this State were to change the industrial relations systems to suit the needs, requirements and objectives of the Bill, I say to the Minister that those mechanisms have been available to him since day one and he did not need to change the Industrial Relations Act to get the recommended changes for the outcome he requires. I doubt whether the intentions stated are the real intentions of the Liberal Party. It wants to change the power relationship between an employer and employee and change the negotiating climate to accommodate what it sees as a shift of power from wages to profits. That is basically the intention of the Bill.

The power relationship between labour and capital changes through recession, depression, boom and bust. In recessionary periods there tends not to be a need to have big sticks in negotiations because in the main wages are driven down by demand and competition, and inflation tends to be very low during those periods with wage pushes tending to be very slow. In periods of high economic activity and inflation you need the flexibility for change and for changing awards and agreements because the demands for wage push inflation are much higher. We are moving into a period of low inflation.

Under the Federal industrial relations system we have moved into a period of low industrial activity and at a State level our record is good, so why change? The change would only have to be to change that power relationship. The position generally is that those in key industrial areas such as Mitsubishi, General Motors and ICI—those Federal employer bodies and organisations registered under Federal awards—would laugh at the content of the industrial relations reform package because they would see it as totally unnecessary because they have the expertise within their own industries to negotiate the whole range and gamut of the intention of this Bill without changing any Acts. Some employers insist on registering every change in the commission. Others have documents held on site to indicate collective bargaining positions between workers and management on site. Other employers such as BHP have a whole history where, as soon as an indicated change, even to the size of the crib room, is mentioned it has to move to the commission for rubber stamping and to get it registered as it is fearful of being able to negotiate anything outside an award with their employees. That means that there is either a lack of trust by management of employees being able to maintain those agreements or bulk ignorance of their ability to work cooperatively with their employees.

It is interesting to see the whole gamut of industrial relations when you are organising in different premises, based on different philosophical conditions that various managers have. It is not so hard to see the impact that it has on employees. If you walk into premises with an industrial relations program based on mutual respect for each other's position and for the power relationship between labour and capital, you generally get a work force that is content, quite prepared to be innovative, to bring about change, and put in the extra in terms of quality and respect for their employer's position in meeting the targets and demands of their industry. You then go into these places where there is a Dickensian attitude by employers towards unions and you will end up being amazed at the total lack of respect for each other's position and the total lack of motivation.

It is a system that leaves you cold. As I said, we now find that we are moving into a growth period. I would say that most employers in this State would like to have some sort of industrial stability, some certainty as they move into an area of increased economic activity. But what do we have? We have three Bills that are changing the course of occupational health and safety and WorkCover and one industrial relations Bill, which is not just a minor but a major matter involving 232 clauses and over 100 amendments. I would not like to be an industrial relations manager of an enterprise in this State trying to understand what the changed legislation will mean in the next three months. I can see that a seminar will be held every day to analyse the changed position and that, by the time the employer organisations familiarise themselves with the changed nature of the Bills and the Acts with which they deal, the boom will probably be over. By the time they introduce the changes that are required into their industrial relations program, the recessionary process will have set in again.

The competitive edge that the Government is trying to get for this State over other States in order to attract business is not laudable but laughable. It has mirrored the legislative programs of New Zealand, Victoria and Western Australia, I suspect that it has looked at New South Wales, and Tasmania. So, when it gets down to it, all States are competing to drive down wages and conditions and to change the power relationship between employers and employees. Figures that I have seen in Tasmania regarding the transfer of workers to State awards under that State's new system shows, I think, that it has been able to pick up in its net about

770 people, because there has been resistance to the transfer to State Acts and there has been a move by people away from State Acts to the Federal system.

If that happens, I will applaud the Government's initiative in pushing all State registered awards into the Federal arena, because that will accelerate the process of Australia having a national focus towards industrial relations. If the only thing that the Liberals' Bill does is to accelerate the move by people from State awards to Federal awards, the Government will have achieved something, but if it expects people to operate under this State award and to build up an industrial relations system that will improve wages, conditions, productivity and training, I am afraid this Bill has missed the mark.

The aim at a Federal level is to get us to compete with our major trading partners, not with Bangladesh, Kashmir or Burma but other people in the industrial relations arena who are our true competitors. As I said, the best way to do that is with a model of mutual respect for each other's position and for the nation's position in relation to delivering export quality goods and services, with a public sector that can be structured efficiently and effectively and a taxation system that will allow an effective and efficient public sector to operate in this nation. Unfortunately, what we have now is a Federal system that is working towards a clear objective and a series of State systems that are trying to compete with each other in order to look attractive to prospective investors who are coming into this country.

If international investors were to use as a model for international competitiveness the industrial relations systems of some of those countries I have mentioned such as Bangladesh, Burma and Thailand, which we seem to be heading for, you would expect to find that they are booming miracles of economic activity. I understand that Thailand is starting to pick up, particularly in its major cities, but you cannot find wages any lower than in Bangladesh or a more subservient work force, and I do not see any international money flooding into that country. What industrialised countries need now is a sophisticated, highly educated, skilled and motivated work force flexible enough to change as technology changes. You will not get that from a confrontationist style industrial relations package which has no respect for anyone else's position.

If people do an assessment 18 months after this Bill has been passed and enacted, they will be able to walk around the city, visit Mitsubishi, GMH, ICI and other places where Federal awards are operating, talk to the employers, the unions and the employees and gauge their attitude towards each other, then visit a small South Australian business that is operating under a State registered award that is disadvantaging young people, that is rorting the Federal system of youth wage subsidies, that has a power relationship based on Dickensian Britain, and do their comparisons about which one works and which one does not. I see a cynical smile on the face of the Hon. Mr Lucas. There will be others in the middle that will operate quite well under the enterprise bargaining arrangements that are to be provided by way of this Bill, but they would have survived anyway. They would have had an industrial relations system under whatever circumstances were available.

Mention has been made of women who will be disadvantaged by this Bill. This Bill will not disadvantage only women but young people and men as well. Women have been disadvantaged over time through many awards and agreements that have operated in various industries. It gets back basically to the power relationship to which I alluded earlier in relation to the entry of women into many industries. There was a marked reluctance by employers in many cases to employ women in many industries, because it would have meant a marked change in the way they managed, invested and conducted their industrial relations programs. However when, over time, they worked out that it was an advantage to have women in the work force, there was an accelerated rush to introduce women into many industries that were traditionally male dominated, and there was an improvement in award wages and conditions because women had the same industrial power in those collective bargaining or award negotiating systems as many people had in male dominated industries. However, this was brought about through collective bargaining power rather than individual power or lack of power when you are trying to negotiate as an individual.

That is what this Bill tries to do: move the power relationships away from groups to individuals. We all know the forces that employers can muster using lawyers, solicitors, industrial relations officers and personnel officers. They can use a whole gamut of people who are trained and skilled in their jobs and who can pit themselves against individuals who are trying not only to earn a living but also to raise a family. Their own personal circumstances become tied up in the negotiations, and the power relationship between those groupings is certainly far from fair. With no umpire to whom to appeal, the power relationship is just way out of kilter.

As I said, women were just starting to organise themselves in similar ways to those which the male-dominated industries had, that is, into groupings. That is one way in which the power relationship between capital and labour can be maintained: its unity of purpose, through either respect or muscle, under which the industrial relations system has operated for many years. In some cases the industrial muscle brings the respect; in other cases, the respect is there to start with. The power relationships are fair and equitable through education, and the delivery, either at a social or an economic level within an industrial relation system, becomes more equitable. I will say again that the reforms that are being contemplated have nothing to do with productivity or with employment in terms of numbers but have everything to do with those power relationships to which I referred.

Before I conclude, I will give examples of how other countries handle their industrial relations. In Japan they have what is called the spring push. Its industrial agreements all run out at around the same time. Every Spring you can turn on your television set and, instead of seeing what would normally be a beautiful Spring scene in Japan with cherry blossoms and people going about their business, you would see almost a war zone, with helmeted protected police battling people who in the previous 12 months had been leading what was regarded as a normal family life, going about their business, doing their work and enjoying themselves. You would see pitched battles between employers and police because their awards had run out, and a lot of the Japanese companies take a hard line in altering the awards.

Australia has never done so. We have never had a circumstance that has resulted in pitched battles over industrial relations in the streets of Australia. I just cannot understand the mentality of those people who want to change it to some other form. Korea is a highly developed industrial nation. To all intents and purposes, on most days of the year, Koreans go about their work and business in an orderly fashion. When their agreements run out, their negotiators go in, the same as they do in Australia and, if you look at the

way in which the Koreans handle their industrial relations, you see that you do not want to be within 1½ miles of any demonstration that is set up in South Korea, because they are totally violent situations.

The PRESIDENT: Is the honourable member suggesting that we ought to add a bit of colour to negotiations from now on?

The Hon. T.G. ROBERTS: I would hope not. That is the point I am making. Australia has not had a history of developed confrontation: it has had a history of negotiation and conciliation. But we are moving away from that now. What I am saying is that the history of the negotiating climate in Australia and South Australia has been very good, but we are now moving into a period of unknowns, and I certainly would not like to be an employer contemplating a move into a growth period while all this changed legislation was on our plate. I find if unnecessary. I also find unnecessary the number of amendments that are placed on file, but we must go through the process of dealing with them.

The Hon. ANNE LEVY secured the adjournment of the debate.

ACTS INTERPRETATION (MONETARY AMOUNTS) AMENDMENT BILL

Adjourned debate on second reading.
Continued from 13 April. Page 441.)

The Hon. ANNE LEVY: The Opposition supports this Bill. As everyone knows, 1¢ and 2¢ coins no longer exist. Although calculations can be done in financial matters using single cents, when it comes to handling money, sums other than those ending in a round 5¢ are impossible to deal with in cash. This Bill is saying that, when any fee, tax or charge is being calculated, if it does not come to a round 5¢, the sum should be changed so that it is a round 5¢. While it would not make any difference for people who may pay such tax, fee or charge by cheque, it will make it far more convenient for people who pay such sums using cash. I am certainly pleased to see that the Government is saying that the sum should always be rounded down rather than being rounded up, as happens in many stores. The customer will always benefit in any such calculation, even if it is only by a few cents. It is a very sensible measure and, as I said, the rounding down is an indication of goodwill on the part of the Government. The Opposition supports the measure.

Bill read a second time and taken through its remaining stages.

DEBITS TAX BILL

Adjourned debate on second reading.
(Continued from 13 April. Page 443.)

The Hon. ANNE LEVY: The Opposition supports this measure. It is putting into State law the whole question of debits tax, which used to be a Federal tax governed under Federal law but which was handed over to the States a few years ago. In the interim the Commonwealth Government has collected the tax on behalf of the States and returned it to the States. That arrangement will cease and the Federal law will no longer have any validity and, as a consequence, it is necessary for the State to enact its own provisions rather than merely saying that we accept the Federal law in this regard. This Bill is putting into State law what was in the Commonwealth law and to which we made reference but, as the Commonwealth law will no longer exist, we need to have it in our own statutes as part of our law. We are very happy to support the legislation.

Bill read a second time and taken through its remaining stages.

STAMP DUTIES (SECURITIES CLEARING HOUSE) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 13 April. Page 445.)

The Hon. ANNE LEVY: The Opposition supports this piece of legislation also. As I understand it, it is a question of ensuring that proper stamp duties can be collected in the transfer of shares and other activities through the stock exchange but it is taking account of modern technology in that many operations through the stock exchange are now electronic; there are not pieces of paper on which stamps can actually be placed. This Bill is to give effect to stamp duty being payable, taking into account the modern technology which is used and which is called CHESS (Clearing House Electronic Subregister System).

I have one query, which is only indirectly related to this legislation. With the modern electronic transfers that are occurring with stock exchanges, I have noted that many companies in Australia are no longer keeping their registers in stock exchanges around the country and that they are closing their registers in all but one stock exchange, which is usually either Sydney or Melbourne. It is still, of course, possible electronically to buy and sell shares quite readily, but my query relates to the fact that this will obviously downgrade the importance of the Adelaide Stock Exchange. Far fewer companies will have registers in Adelaide.

I do not know whether this will affect the amount of stamp duty that the Government will receive from share transfers, as all the transfers will be occurring in either Melbourne or Sydney. This is, I imagine, of concern to the Government, which obviously needs to have regard to the revenue of the State. The Minister may not be able to answer this question at the moment, and I certainly do not want to hold up the legislation, but perhaps he could undertake to get me some information on this point.

Obviously these electronic advances will continue and the share registers will become concentrated in two places in Australia rather than the current six or seven. I would be interested in the future implications of this for the State revenue in terms of the stamp duty payable.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I am pleased to respond to that question. Certainly, I will refer the detailed question to tax officers and have a reply forwarded to the honourable member as soon as possible. It is an important issue that the honourable member has raised, but my experience—and I am sure that the honourable member's experience as a Minister—is that tax officers and departments are a little like magpies and they very jealously guard their nests as best they can.

The Hon. Anne Levy: But they cannot stop the companies from having only one register.

The Hon. R.I. LUCAS: I understand the problem that the honourable member has outlined and I will certainly refer it to the Tax Office for response. However, my experience with tax officers and the Tax Office is that they do jealously guard,

as magpies do, their nest and they are also very ingenious in trying to get around problems which we may envisage exist and which certainly do exist. My recollection is that this issue had been raised at some stage when we were in Opposition and when the honourable member was part of the Government. The detail of the explanation certainly escapes me at this stage. It is not within my portfolio responsibilities.

The Hon. Anne Levy: It was not within mine, either.

The Hon. R.I. LUCAS: I will certainly refer the question and have a written response forwarded to the honourable member as soon as we can provide it.

Bill read a second time and taken through its remaining stages.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

Adjourned debate on second reading.

(Continued from 13 April. Page 413.)

The Hon. C.J. SUMNER (Leader of the Opposition): The Opposition has no objections to this Bill. Most of the matters were in a Bill that I introduced prior to the election. One other additional matter has been added relating to the Subordinate Legislation Act and the system of tabling regulations. I take it that the only change proposed there is that, in addition to dealing with the issue of what happens if a regulation is not tabled, the 14 days is altered to six sitting days, and that will have no effect other than to ensure that the 14 days does not run out during a session without the House having sat during that period.

When I first read it I wondered whether or not it was designed to bring regulations before the Parliament when the House was not actually sitting, but on careful reading I see that that is not the case. The House will need to be sitting for regulations to be put before it, that is, those regulations will still have to be tabled. It just clarifies the time within which they must be tabled and ensures that the legislation can be complied with because, as it is at the moment, there is a chance in some circumstances that with the best will in the world the Government could not comply with the legislation because the 14 days might pass without the Parliament actually sitting. That is my understanding of it. The Attorney-General has nodded his assent so that is good enough for me on that point. I have no further comments to make on the other aspects of the Bill.

The Hon. K.T. GRIFFIN (Attorney-General): I thank the Leader of the Opposition for his support for the Bill. He is correct that the amendments to the Subordinate Legislation Act are designed to tighten up some provisions which relate to the tabling of regulations and by-laws and also to ensure that there is a mechanism in place if, for some reason, the regulations or by-laws are not tabled as they should be under the Act. Certainly that is an addition to the Bill. The other issue, which the Leader of the Opposition may not have recognised as an addition is, as far as I can recollect, the one relating to the DPP and contempt proceedings. But it really is just a matter of ensuring that what are doubts about the powers of the DPP related to contempt proceedings are actually clarified and put beyond doubt. Again, I thank him for his indication of support for this Bill.

Bill read a second time and taken through its remaining stages.

STATUTES AMENDMENT (COURTS) BILL

Adjourned debate on second reading.

(Continued from 14 April. Page 456.)

The Hon. C.J. SUMNER (Leader of the Opposition): The Opposition supports this Bill. The courts package, which was introduced in 1991 by me on behalf of the former Government, was probably the most extensive revamp of legislation relating to the courts that had been done in this State, certainly in the past few decades. It was perhaps the most extensive revamp since various pieces of legislation were first introduced. Nevertheless, the reality is that it was a very extensive rewrite of the relevant legislation and a revamp of the structure of the courts in South Australia. As is indicated in the second reading explanation, it is not surprising with such significant change that finetuning is necessary after a period of experience of working with the legislation.

In some respects I am surprised that the finetuning has turned out to be so fine. In the sense that the legislation was large, complex and extensive, it would not have been surprising to me if further finetuning had been necessary. However, I would like to suggest that the fact that there are only relatively minor amendments being made is a tribute to the consultation process that occurred with the courts prior to the introduction of the legislation—and that, I must say, went on for some considerable time—but also a tribute to the work done by the officers in the Attorney-General's Department who worked on this complex package. I have no objection to these amendments, which all seem very sensible.

However, there is one matter to which I wish to address my attention; that is, the issue of resident magistrates. I will be seeking, subject to the concurrence of the Council, if necessary, an instruction from the Council to the Committee to consider extra clauses relating to the Courts Administration Act 1993. The purpose of my doing that will be to enable the Committee to consider additional clauses relating to resident magistrates. This issue has been before the Parliament for some time. A private member's Bill was introduced by my colleague in another place, the Hon. Frank Blevins—the Courts Administration (Directions by the Governor) Amendment Bill 1994. Although it has been introduced in another place, it has languished there until the present time without the Government's responding to it.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, the Attorney-General says that it will be respond to; that is fine. No doubt we will hear the Government's response to it. However, as we are dealing in this Council with a Government Bill in relation to the courts, I think it is appropriate to address this issue in the context of this Bill as well. The Hon. Mr Blevins' amendment provided that the Governor could, by notice in the *Gazette*, give directions to the Courts Administration Authority on a number of matters relating to where courts were to be established and how those courts were to be staffed by judicial officers. This was to overcome the problem which has arisen because of the Courts Administration Authority's decision to dump the system of resident magistrates, which has operated in this State for the past 15 years or so, which was an important initiative of the Labor Government in the late 1970s, and which has operated unchanged until the present time.

It is no secret that the Chief Justice has strongly opposed the system of resident magistrates, for reasons which I am on

the record as saying, and which I repeat, are spurious. The arguments are something that I cannot understand and, indeed, seem somewhat strange, particularly in light of the fact that most other States in Australia seem to be able to operate a system of resident magistrates in their key country locations. There is no doubt that if resident magistrates are removed then the service provided to those country districts—Whyalla, Port Augusta and Mount Gambier—will be reduced. I simply do not accept the propositions from the Chief Justice, and presumably those that will come from the Attorney-General, that the services will not be reduced. The reality is that if you have to service these courts by a magistrate from the metropolitan area then the service will be reduced.

There will not be the same immediate accessibility to a magistrate in those towns or cities as there is currently. The legal profession will not have the same presence because the amount of work will not be there. Again there will be another reduction in services available to country people because of the lesser number of legal practitioners operating in those cities. This is an issue about which the Government should take a stand. It should not be allowed to simply say that it is a matter for the Courts Administration Authority and to wash its hands of it. It will affect services to country people and the Government should make its views known and if necessary take action to intervene with the Courts Administration Authority to ensure that this system is maintained in place.

The Liberal Party, as we all know, in Opposition made much of the infrastructure available to country people. I recall in this Chamber on numerous occasions contributions from you, Mr President, on behalf of country people as well as contributions from other country members, including the Hon. Mrs Schaefer, exhorting the then Labor Government to upgrade services to country people. With the new Government in power we have not an upgrading of the services but a reduction in them. We are just seeing the beginning. Resident magistrates will no longer exist. We are seeing the proposal from the Minister for Emergency Services, the Hon. Wayne Matthew, to apparently close prisons in country areas. Perhaps prisons are not the best service to have in regional centres, but the reality is they provide jobs and work and a situation in which people can be imprisoned if they need to be in circumstances where they are closer to their families.

There is now a proposal to close Cadell and the Port Lincoln Prison. Cadell is a low security prison—a prison where agricultural pursuits are engaged in and, as a low security prison with work involved, a useful staging post for prisoners coming from higher security prisons to be reintegrated.

The Hon. K.T. Griffin: Very run down facilities.

The Hon. C.J. SUMNER: It may be a run down facility, but if that is the case it should be upgraded. I do not believe it ought to be abolished, given its function and importance. It should not be abolished and replaced with a whiz-bang prison in the metropolitan area which could not have the same ethos and culture as Cadell with the emphasis on low security rehabilitation and constructive work.

In the case of Port Lincoln, we know that regrettably the rate of imprisonment of Aboriginal people in South Australia and Australia generally is much higher than for the general population. If that prison is closed, many Aboriginal people who live on the West Coast or in Port Lincoln would have to be transported even farther from their traditional homes and imprisoned in Adelaide. However, apart from those arguments based on the administration of justice and the desirability of rehabilitation in the prison system, if these prisons—Cadell and Port Lincoln—are closed, there will be a reduction in services to country people and a reduction in work employment in those towns. It will be a quite significant reduction, make no mistake.

Before the election the Liberal Party was very strong on improving the infrastructure in country towns, rather than taking it away. In its agriculture policy the Liberal Party said that it would review the structure of the administration and consider further decentralisation of the public sector. That is what they were on about, yet here in the few short months of this Government we are seeing at least two examples, within only my areas of shadow responsibility where—

The Hon. K.T. Griffin: You have prisons, do you?

The Hon. C.J. SUMNER: Roughly—they are connected. I did have them before the election. Rather than further decentralisation of the public sector, we are seeing centralisation of prison services and centralisation of the administration of justice by doing away with resident country magistrates. I would have thought that they were issues about which country members such as the Hons Mr Irwin and Caroline Schaefer and you, Mr President, and others would be gravely concerned. I am surprised they have not sat on the Government and got it to reverse the decision. They will now have a chance to do that because I will introduce an amendment to this Bill to see whether the Government is prepared to put its pre-election policies to the test and support the retention of the resident magistrates.

When the Courts Administration Bill was before the Parliament originally, there was much discussion about how we overcome the potential conflict of the independence of the judiciary and ministerial responsibility. The Attorney-General quite rightly raised that issue. Indeed, he referred it to the Legislative Review Committee to be examined and it was examined. It heard from the Chief Justice, and the committee and the Parliament ultimately were of the view that that possible conflict had been adequately resolved.

The Hon. K.T. Griffin: It still didn't resolve it in practice.

The Hon. C.J. SUMNER: That is interesting. The Attorney-General interjected that it was not resolved in practice. I am inclined to agree with him because there were examples. He can search the files (it will make interesting reading for him) and see some of the correspondence I had with the Chief Justice over this issue, where I thought that insufficient consideration was being given to the views of the Government in areas such as judicial travel and the like. The argument essentially was that the question of ministerial responsibility could be resolved through the budget process, that is, that the Government and the Parliament was responsible for allocating funds to the authority and the Government effectively would have a say on what went on within the authority in major areas of policy through control of the budget.

But, it now appears with this example of resident magistrates and other examples such as the one I have mentioned—judicial travel and the like—that the courts are taking a different view of the independent Courts Administration Authority's responsibilities and powers from that which was intended by the Parliament. That seems to be conceded by the Attorney-General.

In that context the Labor Caucus wants to raise the question of whether or not there should be in this area some system to ensure that the responsible Minister and the

Government have power to direct the Courts Administration Authority in relation to matters of administration and expenditure of funds. There is a precedent for that with the Police Regulation Act and the Police Commissioner.

The Hon. K.T. Griffin: A bit different from what you were arguing when you were pushing it all through.

The Hon. C.J. SUMNER: I thought that the issue could be resolved by sensible commonsense discussion between the Courts Administration Authority and the Government. I did not think that the courts would snub their nose at the wishes of the democratically elected Government or indeed the Parliament. The fact is that this and other issues that have come up have highlighted this question of the conflict between the independent courts administration and the independence of the judiciary that run it and the question of ministerial responsibility.

The Hon. K.T. Griffin: I made that point at the time.

The Hon. C.J. SUMNER: I acknowledged that three or four minutes ago. I said that you raised the point, and quite rightly it was referred to the Legislative Review Committee, which considered the matter and heard from the Chief Justice. The committee was satisfied with it and, in the end, the Parliament was satisfied with it, but I am not sure whether that has, in fact, resolved the issue. This is an example of it; there are others. As I said, I suggest the honourable member look at his files and check. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

[Sitting suspended from 1.2 to 2.15 p.m.]

STATE BANK

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement on the subject of State Bank legal proceedings.

Leave granted.

The Hon. K.T. GRIFFIN: On 21 June 1993, Cabinet approved the establishment of the Bank Litigation Section of the Crown Solicitor's Office. The section was to consider and advise on any civil claims arising out of the Auditor-General's inquiry or the Royal Commission reports. It was agreed and arranged that the section would act for the State Bank and its subsidiaries and for the Government. Instructions to the section are given by the Attorney-General. Any 'net' recoveries made by the Bank Litigation Section are payable to the account of GAMD.

The Bank Litigation Section was subsequently established. Mr Tom Gray, QC and Mrs Cathy Branson, QC have been engaged as senior counsel. Mr Paul Slattery is responsible for managing the legal work of the section. Lawyers have been or are seconded to the section from the Crown Solicitor's Office and from a number of Adelaide law firms including Norman Waterhouse, Fisher Jeffries, Michel Sillar Lynch & Meyer and Baker O'Loughlin as well as from the Adelaide bar. Consulting accountants have been engaged from a number of Adelaide, interstate and overseas accounting firms. The cost of the Bank Litigation Section up until the end of April 1994 was just under $2 million.

Members will recall that the Government has already instituted proceedings against some of the former directors of the bank and against their insurers. These proceedings were instituted on the advice of the Bank Litigation Section. On the advice of the Crown Solicitor the Government has adopted the principle that, except in the case of a breach of a fiduciary duty, legal action for civil recovery should not be instituted unless there is a reasonable prospect of recovery of sufficient moneys to justify the costs involved in the legal action.

The Government has received written advice from the Bank Litigation Section and its counsel respecting the possible legal actions that might be available. That advice is supported by the opinions of the expert accountants. That advice is that there is a *prima facie* case against the former auditors of the bank, KPMG Peat Marwick. It is likely that the claim will be for a very significant amount, but work is still progressing to finalise the extent and nature of the claim. In the light of that advice, Cabinet has authorised the issue of proceedings against KPMG Peat Marwick, subject to the approval of the Attorney-General. The proceedings will not be issued until the work is finalised. It is expected that this will be done in the next two to three months.

The advice also supported the issue of proceedings against Mr John Baker in respect of a particular transaction. It is expected that those proceedings will be issued at the same time as proceedings against KPMG Peat Marwick. The Government has also received advice in respect of the possibility of legal action against Price Waterhouse, the auditors of Beneficial Finance. Preliminary work has been done on that matter and some expert opinions have been obtained. The work in respect of Price Waterhouse is not as complete as that in respect of the bank's auditors. The Bank Litigation Section has sought further information from Price Waterhouse as to a number of matters. If that information is not forthcoming then it may be necessary to issue proceedings for the purpose of obtaining the information. Cabinet has authorised the issue of proceedings for this purpose, subject to the approval of the Attorney-General.

I have made this statement at this time because proceedings may issue when the Parliament is not sitting and because it seems to the Government that the Parliament and the public should be informed of the progress of these matters. There are a number of aspects of these matters that members should be aware of:

First, once the proceedings have issued they will be subject to the usual rules and conventions governing comments on legal proceedings. Members should be aware that the Government may not be in a position to fully detail the progress of the proceedings, or the Government's views in respect of them.

Secondly, the cost of these proceedings may well be very large. The Government has been advised that its costs of these proceedings may well be in excess of $20 million and that some of these proceedings may well take more than four years before they are finally resolved. The Government is of the view that all appropriate and commercially justifiable steps to recover the losses suffered by the people of this State must be pursued, and have approved a budget of $3.5 million for the Bank Litigation Section next financial year.

Thirdly, in addition to these legal proceedings being undertaken by the Bank Litigation Section there are a number of actions that have been instituted by GAMD in respect of particular transactions where the bank suffered loss.

Fourthly, members and the public are reminded that the legal proceedings that may be instituted generally relate to actions and omissions that occurred in the 1980s. They do not relate to the present bank which has been significantly restructured and is about to be corporatised. They do not relate to the present bodies which formerly had been custom-

ers or subsidiaries of the bank. Many of these have been significantly restructured or are now better run than they were. The proceedings do not relate to the present performance of those that are alleged to have performed poorly in the past.

The Government will continue to take all available steps to maximise the recoveries that can be made so as to reduce the impact upon the finances of the State of the bail-out of the State Bank.

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 and judicial separation packages.

Leave granted.

The Hon. C.J. SUMNER: The issue of judicial independence has been a matter of considerable debate recently. This followed, in particular, the decision of the Kennett Government in Victoria to disband the workers compensation tribunal in that State and not to continue the tenure of the judicial officers appointed to it. Tenure until a fixed retiring age is considered to be one of the fundamental characteristics of judicial independence. The extent to which judges can be removed by Governments, either directly or by indirect pressure, is a factor in lessening the independence of the judiciary.

The issue of judicial independence has also come up in the context of the industrial relations Bill, which is currently before the Council. The Chief Justice has criticised the provisions in the Bill relating to the Industrial Court and the Industrial Commission. Presumably, the Government's attitude to the Chief Justice's submissions on this topic will be revealed during the debate on the industrial relations Bill. There can also be a threat to judicial independence by indirect pressure. I understand that some judges in South Australia are now being offered a separation package. This, of course, is inconsistent with the concept of judicial independence, because the dangling of a separation package carrot before a judge could influence or be seen to be influencing their attitude to Government regarding matters before them.

If the Government is in a position to affect a judicial office holder's position by offering a separation package as an inducement to retire early, then judicial independence is compromised. The Government could be seen to be influencing the judge in the independent exercise of his or her judicial functions. My questions are:

1. Does the Attorney-General believe as a matter of principle that it is appropriate and consistent with principles of judicial independence for separation packages to be offered to judges, given that judges are appointed until a fixed retiring age?

2. Will the Attorney-General advise the Council whether any judicial officers and/or commissioners of tribunals have been offered any separation packages?

3. Will the Attorney-General advise the Council whether separation packages have been discussed by any Minister of the Government with any members of the judiciary?

The Hon. K.T. GRIFFIN: I do not agree that, as a matter of principle, discussions with judicial officers of offers of separation packages compromise judicial independence. The fact is that if such an offer is accepted that cannot be taken as influencing that judicial officer's independence, because that officer ceases to be a member of the bench. In those circumstances, I do not believe that that, in any way, could be seen to be compromising the independence of that judicial officer. Of course, the corollary of that is that if an offer is made, then it may—

The Hon. C.J. Sumner: It is the same principle as having conditions determined by an independent tribunal.

The Hon. K.T. GRIFFIN: With respect, I don't agree with the Leader of the Opposition. I was going to say that the corollary is that, if there is a discussion with a judicial officer that he or she wishes to retire early and is looking at the targeted separation packages that are offered by the previous Government and offered by this Government, one has to ask the question—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: No, to the public servants, I said. It really is a question whether judicial officers see these offers being made to public servants and they wish to take advantage of them; then I would have thought that they were perfectly entitled to do so. If they decide that they do want to have some discussions, the question is with whom do they have those discussions. They certainly cannot have them with the Remuneration Tribunal because that fixes levels of salary. The Government, as the executive, does have the responsibility for administering the funds of the State, and I would have thought that, as with the administration costs of running the courts, it was quite proper for judicial officers to discuss those sorts of matters with members of the Government.

The Hon. C.J. Sumner: It could be administered by a tribunal. If you are going to have a means of separation, it should be. If you as a Government are negotiating with judges, offering money for retirement, then that impacts on judicial independence.

The Hon. K.T. GRIFFIN: With respect, I do not agree with that. Before I got onto something else, I was going to say that the corollary is that, if they are offered a package as a result of discussions with them, then they would do so freely and of their own accord.

The Hon. C.J. Sumner: They would be negotiating about certain amounts.

The ACTING PRESIDENT (Hon. J.C. Irwin): Order!

The Hon. K.T. GRIFFIN: They're entitled to that, surely.

The Hon. C.J. Sumner: While they're hearing cases and while they're in government.

The ACTING PRESIDENT: Order! The Leader of the Opposition can debate this matter at another time.

The Hon. K.T. GRIFFIN: The point is that if they decide not to participate I would not have thought that that was a serious problem. So, I do not have the same view as a matter of principle as the former Attorney-General in relation to this matter. I can indicate that as I understand it there are several judicial officers who have indicated that they would wish to discuss this issue and, as I said, I have no reason to believe that there is anything improper in that in the context of those discussions, because whom else would they discuss that sort of issue with?

The Hon. C.J. Sumner: They might be hearing cases involving the Government.

The Hon. K.T. GRIFFIN: They're not.

ROAD SIGNS

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Transport a question about advertising on road signs.

Leave granted.

The Hon. BARBARA WIESE: Recently I read an article in the *Age* of 7 April, entitled 'Today's road signs: will we like them like that?' This article was about a new innovation introduced by the Kennett Government in Victoria to raise revenue for VicRoads, the Government's road making authority. The article began like this:

> It's Mactime for Victoria's road signs. Or, It's Got to Be KFC if you are driving along the Great Ocean Road. And for tourists motoring down the South Gippsland highway to visit Leongatha or Wilson's Promontory, Kodak is the only film. Victoria's road signs are going commercial as VicRoads and local councils boost their budgets with paid advertising on highway and street signs. In metropolitan Melbourne, the era of illuminated street signs topped by adds for local pubs and fast food restaurants is about to begin.
>
> The move follows VicRoads' decision to provide more road signs—the brown tourism boards—to alert tourists to popular attractions and scenic spots. The idea was tested last year with Coca-Cola advertising along the Geelong freeway on tourist signs to Werribee Park. Now, following talks with other companies, VicRoads looks set to make more than $5 000 a year for each road sign.

Apparently this new revenue raising measure is not only limited to VicRoads but is also available to local councils, who may also allow advertising in return for a fee. If this idea catches on, then one can imagine that Victoria could very soon resemble a mini Las Vegas, which is noted for its extensive and garish advertising signs. My questions to the Minister are: is she aware of this development in Victoria, and does she contemplate having to introduce such advertising in South Australia in order to fund the Government's extravagant pre-election road funding promises?

The Hon. DIANA LAIDLAW: I am aware of the initiative, and my view is that it is a good idea. I do not share the honourable member's view that such endorsement on signs would make South Australia a mini Las Vegas and that they would be extensive or garish. I do not accept that it is environmental pollution. However, I do accept that it is one measure that should be explored to generate further sources of funds for road building and other transport initiatives in this State. I do not accept that simply exploring this and other measures to generate more funds for roads and other transport initiatives arises from any extravagance in terms of our promises.

However, what we are faced with is a huge backlog in maintenance on our roads due to the cuts by the former Government in fuel franchise fees to the Highways Fund. I have said this before, but I will repeat it: when the former Labor Government came to power in this State, 100 per cent of fuel franchise fees went for road construction and maintenance purposes. When it left Government 10 years ago only 19.8 per cent of those funds went for road maintenance and construction purposes. Over that 10 year period, we have built up a big backlog of maintenance needs, let alone construction needs, in this State. They were clearly outlined in the Commission of Audit. So, we need to raise more funds because the condition of our roads is a road safety issue.

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: We must look at measures to generate more funds that will not cause further costs to consumers, the motorists, because South Australia, as members know because of the fuel franchise fees imposed by the former Government, has the highest fuel franchise fees of any State capital city, and we will not impose further costs on motorists or on business. So, if we can fund other ways of generating funds, such as this way, I would endorse such initiatives.

WILPENA POUND

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister representing the Minister for the Environment and Natural Resources a question about the Wilpena tourist development.

Leave granted.

The Hon. Anne Levy: Kentucky Fried Wilpena development.

The Hon. CAROLYN PICKLES: Yes, that would be a good one. Yesterday, I raised the issue of the Audit Commission's failure to recognise national parks as an asset. The Government has decided to assist financially Flinders Ranges Tourist Services Pty Ltd, which runs the facilities at Wilpena.

This assistance is part of an upgrading of facilities by granting a 20 year lease of Wilpena to the company, and also a financial undertaking, which the Government estimates to cost $2.5 million, by upgrading the Hawker air strip; relocating and upgrading the existing Wilpena facility; upgrading the roads in the region of the Wilpena facility; upgrading the existing water supply and effluent disposal system at Wilpena; redeveloping the Wilpena Station as an interpretive centre and Aboriginal culture centre; and entering into a guarantee with Flinders Ranges Tourist Services Pty Limited for the major refurbishment and capital expenditure on the existing Wilpena facilities and the development of 20 additional motel units at Wilpena. My questions to the Minister are:

1. Once completed does he consider this facility to be a financial asset for the Government or is it part of the Government's black hole—or brown ditch?

2. Is the Government able legally to terminate the existing arrangements with Ophix?

3. If the answer is yes, will there be any cost implications to the Government? If so, what is the amount the Government will have to pay legally to terminate the existing arrangement?

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

FISHERIES MANAGEMENT

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister representing the Premier a question about fishing management in South Australia.

Leave granted.

Members interjecting:

The Hon. R.R. ROBERTS: Watch and see, and all will be revealed. I see you have taken the bait already. In the past couple of weeks we have experienced a pretty saddening experience in the history of fishing management in South Australia. Over many years (as you, Sir, coming from the West Coast, would realise) there has been much controversy in the fishing industry in South Australia with competing interests often at times almost violently opposed to one

another. The previous (Labor) Government, in response to that, set up an Integrated Management Committee. This was not done easily; it took some time and much heartburn. The result quite clearly has been probably the best integrated management system that is around, and some would argue that it is possibly one of the best fishing management techniques in the world.

That Integrated Management Committee takes into account all fishermen's views (those of amateurs, recreational fishermen and professionals) and the views of people in the processing industry. It was the view of the previous Government that the fishing industry is part of the public estate and that Government's role in that ought to be to properly manage that facility on behalf of the State, to allow all principal players in those industries to have access on an equitable basis and to provide a situation where there is a long-term fishery for the benefit of this State.

Since the election, in addition to the Integrated Management Committee, the present Minister for Primary Industries set up what he calls the Net Fishing Review Committee. This, one assumes, was to provide advice on the history and the processes involved in netting and where netting ought or ought not to take place in South Australia. I might point out that this committee was not set up in the usual way that composite committees are established, where sectional groups are invited to make nominations, sometimes multiple nominations, for the Minister to appoint people to serve; this was a committee appointed by the Minister himself.

Before those two arms of advice were accessed we had the disappointing decision made recently by the Minister to close Coffin Bay to net fishermen. At the time that declaration was made, the Minister pointed out on radio and in the press that he had made the decision on the advice of the member for Flinders (Ms Penfold) in response, one assumes, to a promise that was made during the election that netting would be stopped in Coffin Bay. The professional fishermen obviously are very concerned about that, but they are more concerned about the denial of natural justice and the opportunity to put their case. In recent days protests have been lodged with the Minister for Primary Industries to try to convince him that he ought to take some cognisance of the view of the Integrated Management Committee and of the Net Fishing Review Committee.

In fact, the Net Fishing Review Committee had had its first meeting and not had the opportunity to give any advice, so not only did the Minister not accept its advice, but also he did not even seek it. What we have here is a unilateral decision made, in my view, on the basis of political grounds—made not on the basis of the biological researches of SARDI (Fisheries Branch) but purely on the whim of the Minister, on the advice of his local member. I am told that there is some support from the local council on the basis of tourism and, in my view, it does have a right to express a point of view. A number of negotiations have taken place in the past few days urging the Minister to allow at least some access to the advice of the Net Fishing Review Committee, which has met and done some extensive research into the matter, and put a proposal to him as late as yesterday to allow limited access to the waters around Coffin Bay.

As late as last night, when I had an interview with a delegation from SAFIC, the Minister was refusing to alter that situation. Fortunately, since then an approach has been made to the Premier and, obviously, the Premier has intervened. A demonstration was held on the steps of Parliament House today, where 200-odd fishermen, who could be out preparing for the fishing season, had to travel to Adelaide to try to access the democratic process. Fortunately, it was announced today that there would be limited access to the Coffin Bay area, and the people at that rally were most appreciative. My question to the Premier is:

Will he instruct the Minister for Primary Industries to consult with the Integrated Management Committee and his own appointed Net Fishing Review Committee and pay due respect to the advice of those committees and that of SARDI before implementing future netting closures throughout our fisheries, thus avoiding the embarrassing situation experienced today where he has had to pull the reins on the Minister and pull him into line just to allow hard-pressed fishermen from all around our State to access the right to basic democracy and respect?

The Hon. R.I. LUCAS: I will be pleased to refer the honourable member's question to the Premier and bring back a reply as expeditiously as possible.

STATE BANK

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Leader of the Government in this place a question about the State Bank.

Leave granted.

The Hon. M.J. ELLIOTT: Not too long ago in this place we were debating the State Bank Corporatisation Bill, and currently the Federal Parliament is debating complementary legislation. At the time the debate was going on in this place I had been offered a briefing with a State Bank officer and, although I did not see a need for a full briefing (because most of the facts had been before me), I spoke with this officer outside this Chamber in relation to one matter, that is, unfunded superannuation liabilities and their tax deductibility.

I had been told that the liability of some $50 million—of course, we had no tax liabilities while it was State Bank—could reduce the value of the State Bank if sold, but I was assured by this officer that the figure was nothing like $50 million but was more like $8 million. A memorandum has been circulated in the Federal Parliament which contains the following sentence:

> The amendments for unfunded superannuation liabilities deny deductions worth about $45 million to ensure that these expenses, which are currently non-deductible to Savings Bank of South Australia or a tax exempt subsidiary of Savings Bank of South Australia, will remain non-deductible to the Bank of South Australia Limited.

So, in other words some $45 million will have to be paid by whoever buys the new bank. One of the Democrat Senators, I believe Senator Curnow, asked a question of Senator Nick Sherry, who said the figure is at least $45 million and it could be as much as $60 million. I have a couple of concerns, one being that I asked an officer of the bank how much it was going to cost; I had been offered a briefing, and he told me about $8 million, and that did have some impact and I now regret not asking the question in the Chamber. The other matter of concern is that this is a significant figure—$45 million to $60 million. It could be as much as 10 per cent of what we end up getting for the bank and, in those circumstances, I ask the Leader in this place if he can confirm that there will be an impact of at least $45 million and perhaps as much as $60 million in relation to the new buyer and that that will have a significant impact on what the State will receive when the sale goes ahead.

The Hon. K.T. GRIFFIN: On behalf of the Leader of the Government in the Council I will have that question referred to the Treasurer in another place and bring back a reply.

AMBULANCES

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Emergency Services, a question about ambulance services.

Leave granted.

The Hon. G. WEATHERILL: Some ambulance officers have told me that rumours are running riot in the ambulance service about what Mr Kennett has done interstate with his ambulance services, and we have all read about people dying on footpaths and so on because they do not have enough ambulance services there. These rumours have been running rampant in the service and management has created a lot of these problems itself. A meeting of all the ambulance services was to be called last night in order to explain what the Government had in mind. The Audit Commission report came down and apparently the Minister instructed that meeting to be cancelled. So these people are still hanging in the air wondering what is happening in the ambulance services. My question is: is the Government going to make any changes at all to the ambulance services and, if it is, would it please call a meeting of these people and let them know what is happening, because at the present time they are not able to concentrate fully on their very important job and they would like answers instead of rumours running around the place?

The Hon. K.T. GRIFFIN: The Government cannot be responsible for rumours that are running around in relation to the ambulance service. One has to remember that it was the previous Labor Administration that moved towards removing the volunteers from providing ambulance service in conjunction with paid ambulance service officers, so it took a significant decision to move away from what had been the traditional well-proven provision of services. The other point is that it is not much use making comparisons with what is happening in Victoria, but even if there are comparisons one has to be sure that the comparison is a fair and reasonable one. I am told that in Victoria the so-called dispute in the ambulance service is very much a beat-up by members of that ambulance service. I will refer the question to the Minister for Emergency Services in another place and bring back a reply.

The Hon. G. WEATHERILL: Mr President, I have a supplementary question. After what the Attorney-General says about the volunteers, does he not consider that the ambulance service, with the courses that officers now take to be virtually paramedics, is more an advantage to the injured people in South Australia?

The Hon. K.T. GRIFFIN: I am not going to be led into making an observation on that issue. I will let the Minister for Emergency Services make that observation.

COURT SECURITY

In reply to **Hon. A.J. REDFORD** (22 March).

The Hon. K.T. GRIFFIN:

1. On Monday 14 March 1994 a person was reported for possession of a loaded firearm in a public place. This report related to an incident which occurred on Sunday 13 March 1994 in Pirie St, Adelaide.

I have been informed that the person in question did not have a pistol or any other potential weapon on his person when he attended court in the matter of Perre on 12 March. The person in question underwent a body search by metal detector scan and physical 'pat down' by security staff prior to entering the courtroom.

It is unknown if this firearm was taken into the City Watch House in Adelaide but a vigorous statement by the person in question, who was licensed to carry firearms, asserts that he did not take a firearm into the City Watch House and that it had been left out of sight in his motor vehicle.

2. Security procedures at the City Watch House are constantly reviewed. As a direct result of the incident referred to, an analysis of City Watch House Standing Orders was undertaken to minimise the likelihood of future similar occurrences.

As a result, the Police Department is investigating the use of passive scanning devices. These will be tested in the stairway and reception areas that are used by members of the public and solicitors who access the Watch House.

The Minister for Emergency Services has advised that he is satisfied that present security arrangements for visitors to the City Watch House are such as to ensure police/prisoner safety against foreseeable risks.

MAGISTRATES

In reply to **Hon. C.J. SUMNER** (22 March).

The Hon. K. T. GRIFFIN: In relation to part 3 of the question I advise as follows:

Section 26 of the Courts Administration Act 1993 provides:

(1) The Council must ensure that proper accounting records are kept of its receipts and expenditures.

(2) The Council's accounting records must conform with any applicable instructions issued by the Treasurer under section 41 of the Public Finance and Audit Act 1987.

(3) The Council must ensure—

(a) that expenditures are not made out of money under the Council's control without proper administrative authorisation; and

(b) that proper control is maintained over the Council's property or property in the Council's control.

Section 41 of the Public Finance and Audit Act 1987 provides:

(1) The Treasurer may issue instructions—

(a) requiring accounts to be maintained and records to be made and kept by the Treasurer and public authorities and setting out the form and content of those accounts and records;

(b) setting out the form and content of financial statements that must be prepared by the Treasurer and public authorities pursuant to this Act;

(c) requiring that procedures, set out in the instructions, be followed in the course of financial administration by the Treasurer and public authorities;

(d) requiring that procedures, set out in the instructions, be followed in the operation of special deposit accounts.

It follows, as a clear matter of statutory interpretation, that it would not be possible for a Treasurer's instruction to be issued in respect of the matter of country magistrates.

MEAT HYGIENE

In reply to **Hon. T.G. ROBERTS** (29 March).

The Hon. K.T. GRIFFIN: The Minister for Primary Industries has provided the following response:

The Government will make essential changes to the existing meat hygiene legislation to help the domestic meat industry develop in line with most industries (including food industries) worldwide through introduction of total quality management. It is essential to bring all South Australia's meat hygiene controls under consistent national standards to ensure continued interstate trade under mutual recognition.

Deregulation is not a feature of the new system—in fact company quality assurance programs, closely audited by the Government, will increase the effectiveness of regulations by building quality into meat processing systems in all sectors of the industry. Further, several classes of secondary meat processors (smallgoods manufacturers, boning operations, game meat processors and other wholesalers, for example) will now be covered by specific legislation, whereas at present they are not. As well, the many country slaughterhouse operators throughout South Australia will have opportunity to train and develop quality assurance programs which have the potential to further improve the excellent record of safety of their products.

Consultation on essential reforms in meat industry controls, with all key industry and government (Federal and local as well as State Government) agencies has been going on for over 12 months, with the vigorous support of the previous Government. All concerned industry and community groups, including consumer groups, have had ample opportunity to comment. The Government's position paper was circulated for final amendment in March 1994.

I agree with the honourable member's comment that the industry's confidence and support at consumer level is vital for the State's economy and it is important we do not get it wrong. I must assure the honourable member that the industry itself has strongly guided this process to date and is very satisfied with the direction we are taking. There has been no criticism from the Consumers Association, which has been assured that the quality of meat in the marketplace can only be improved by these changes and not compromised.

In summary this proposed legislation is progressive and overdue in the meat industry. It is consistent with developments in other States; it introduces consistent controls in industry sectors not currently under those controls; it provides opportunity for outsourcing of inspection and audit services, thus minimising costs to Government as well as meat processors; it has the potential to substantially reduce costs in major industry sectors while actually improving the level of public safety through introduction of total quality management and greater industry self-determination.

Both Government and industry recognise the importance and urgency of these reforms. The Bill will be introduced for passage during the current session.

AGED PERSONS

The Hon. ANNE LEVY: I seek leave to make an explanation before asking the Minister representing the Minister of Health a question about age policies in hospitals.

Leave granted.

The Hon. ANNE LEVY: I have been approached by a constituent whose elderly mother was recently rushed to Flinders Medical Centre in a serious condition. After she had been admitted and various tests had been done she was informed that her condition could only be satisfactorily treated by major surgery but because she was over 70 years of age the hospital would not undertake such surgery on her. She was admitted as a public patient in an emergency situation. My constituent made various inquiries at the hospital and this hospital policy of not undertaking certain categories of surgery on anyone over 70 years of age was confirmed to her by several staff members. Luckily her elderly mother, who had private health insurance, inquired whether she could have it done as a private patient and was told, 'Yes, of course you can.'

She proceeded to have the surgery as a private patient and is now hail and hearty and resuming her very active and energetic life following complete success of the surgery. This surely raises very serious ethical questions on the part of hospitals and on the part of the Government, which is responsible for these hospitals. It is reminiscent of the triage system apparently adopted in emergency situations in the First World War where on a battlefield people were divided into three categories: those that were hopeless and left to die, those who could cope and who were left to find their own way back and those in the middle who might survive and so would be given attention. However, we hardly have a First World War battlefield situation in our South Australian hospitals, or one would well hope not, yet. My questions are:

1. Is this in fact the policy of Flinders Medical Centre?

2. Is it the policy of any other hospitals in South Australia?

3. Is it the policy of the Health Commission that hospitals should refuse certain categories of surgery to people over 70 years of age?

4. Is it the policy of this Government that such a policy should be adopted in South Australian hospitals? If that is the case, how will the Government reassure all people over 70 years of age that their health needs will be taken care of, even if they do not have the means to have private health insurance?

The Hon. DIANA LAIDLAW: I am pretty sure I can confirm that it is not the policy of the Government, because the Minister for Health, like me and all members of the Liberal Party, has not supported age discrimination in such matters, and we were the first ones to introduce measures to eliminate age discrimination in this State, in fact it was the first such legislation in Australia. It is certainly not part of Liberal Party policy that was approved by the Party prior to the election. I suspect that if there is any such policy practice by Flinders it is something we have inherited from the days of the former Labor Government.

The Hon. Anne Levy: It was not Labor Party policy.

The Hon. DIANA LAIDLAW: No, well in the days of the former Labor Government. I suspect that it may be a policy adopted by Flinders, if it applies at all, from times past—those dark days of Labor Government.

The Hon. ANNE LEVY: As a supplementary question, Mr President: will the Minister refer my question to her colleague in another place and bring me back a considered reply from the Minister who is responsible, instead of merely supplying her own meanderings on the topic?

The PRESIDENT: Order! Opinions are not required. The Minister for Transport.

The Hon. DIANA LAIDLAW: Yes.

DETENTION FACILITIES

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Attorney-General representing the Minister for Correctional Services a question about prison and remand centre administration arrangements.

Leave granted.

The Hon. SANDRA KANCK: Following my question to the Minister in this place yesterday, a number of parties have raised with me their concerns about conditions inside the Adelaide Remand Centre and Yatala Prison. For example, I am informed that one remandee in the Adelaide Remand Centre is telling other remandees that he has the HIV virus, and is making threats to remand centre staff and other remandees that he is going bite his lip and spit blood at them. I am also informed that the prison industries at Yatala were closed down last weekend due to lack of staff supervision and that inmates were not allowed into the exercise yards for the same reason. I am concerned that changes the Minister is making to prison and remand centre administration will deny prisoners and remandees access to basic living conditions and facilities.

I have also been informed that as well as the under utilisation of the Adelaide police lockup, which I referred to yesterday, there are facilities at Holden Hill Watch-house and Port Adelaide Watch-house which remain empty much of the time. It was suggested to me that the Department of Correctional Services should take over the operation of these facilities to allow more police to go back on active duty, which is consistent with the Government's election policies. My questions to the Minister are:

1. What police resources are being unnecessarily tied up supervising empty or near-empty holding facilities at Holden Hill Watch-house and Port Adelaide Watch-house as well as

the Adelaide Watch-house, as I asked yesterday? Does the Minister believe that allowing correctional services personnel to take over the operation of police detention facilities is a viable proposition and, if not, why not?

2. How many detainees at the Adelaide Remand Centre and at Yatala have communicable diseases, and what time elapses between when remandees are screened for communicable diseases and the results of these screenings being available? Are detainees placed in contact with other detainees and staff before the results of screenings are available?

3. Is it true that an HIV positive remandee has been threatening other remandees and staff with spitting blood at them? If so, what measures are being implemented to ensure that detainees and officers do not contract communicable diseases from other detainees?

4. Does the Minister still stand by his comments in today's *Advertiser* that he is not concerned about security at the Adelaide Remand Centre?

The Hon. K.T. GRIFFIN: I will refer those questions to my colleague the Minister for Emergency Services in another place and bring back a reply. In relation to the assertion made in respect of the prisoner who was HIV positive spitting blood at other prisoners, I must say that I think from the way in which the honourable member framed her question it was drawing a long bow to relate that particular matter to any allegations of so-called overcrowding. In any event, I will refer the questions and bring back a reply.

JOBS PACKAGE

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister representing the Premier a question about the Federal jobs and growth statement.

Leave granted.

The Hon. T.G. ROBERTS: The jobs and growth statement put forward yesterday by the Federal Government as an initiative to come to terms, in part, with some problems associated with unemployment was met by what appeared to me to be a cold response by the Premier. In the public statements that I have perused, his response basically was that South Australia was left out in the cold in relation to the overall initiatives being put forward by the Federal Government and that the targeted assistance appeared to be going more to the eastern seaboard than to Western Australia, South Australia, Tasmania and the Northern Territory—I think those were the States he named.

I have been taking more than a passing interest in the Federal Government's initiatives, because I have been working with trade unions on labour adjustment programs and trying to get allocations of funds to regional areas through those funds via the Federal Government. Although I have had personal frustrations in being able to loosen some of the purse strings at the Federal level, I suspect that now that part of the industry statement has been made, along with the infrastructure statements and the jobs growth and training statements, that those purse strings will loosen and that we would be foolish as a State to be making negative statements about unfair allocations. Is the Premier prepared to set up a tripartite committee consisting of Government, unions and employers to explore and pursue Federal money allocations through the jobs and growth statement for South Australia? I am concerned that the statements made might send negative signals to the Federal Government.

The Hon. R.I. LUCAS: I will be pleased to refer that question to the Premier. I would note for the benefit of the honourable member that the Leader of the Opposition has been very critical of the Government and the Premier for establishing committees and inquiries before taking any action in any particular area.

Members interjecting:

The Hon. R.I. LUCAS: The honourable member says that action committees are all right; others are not.

An honourable member interjecting:

The Hon. R.I. LUCAS: Is that right? I take it that he has his Leader's dispensation for the establishment of this particular committee and should the Premier be of a mind to support it there would be no criticism from his Leader and other members of the Party about another committee having been established by the Government. With that dispensation in mind, I will be delighted now to refer that question to the Premier and bring back a reply as soon as possible.

UNEMPLOYMENT

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister representing the Minister for Industry, Manufacturing, Small Business and Regional Development a series of questions about unemployment.

Leave granted.

The Hon. T. CROTHERS: Much has been said in this State and indeed interstate over the past 10 years or more on the subject of unemployment in Australia. The type of unemployment here, it is said by many commentators, is not unique. They say that our recession is global by nature and I find it difficult to disagree with their assertions. The same commentators also say that, as bad as Australia's position is, the unemployment position in like nations is very much worse. Some of the same commentators also say that the type of unemployment we have is different from that of any other recession that the world has experienced both now and in times past since the commencement of the Industrial Revolution which began in Europe sometime in the mid eighteenth century.

They say as many as 30 million jobs in the industrialised west are gone forever, never to come back. In fact, they base their assumptions on the speed and pace with which new technologies are being introduced into industry, particularly computerisation. We in South Australia have seen thousands of jobs lost forever in the fields of public transport, service stations, clerical and banking industries as well as our health services, to name just a few, all brought about by the introduction of computers. Obviously this means that those jobs are lost forever, never to return. It seems that Governments everywhere, whatever their political persuasion, are not informing their electorates of the dire consequences that must obviously flow from these effects, if not addressed by Governments, for what they are.

The fact is that the world's manufacturing industries are producing much more with much less labour than was previously the case. This in turn surely must mean that many previous practices used by Governments to address the problems of unemployment are now redundant. The present Government in this State must surely realise that, left to its own devices, in spite of elegant promises made by it, there is not a great deal that it can do to assist unemployment in South Australia. In light of the foregoing (my questions are

by no means exhaustive on the matter), I therefore ask the Minister the following questions:

1. Does he think that, given the structure and nature of our present unemployment, some radically different approaches are absolutely necessary in order to meaningfully address this horrendous problem?

2. Given the Federal Government's recent commitment via the white paper to additional expenditure on the unemployed, how does the Minister believe that these extra moneys can best be used to assist the plight of South Australia's unemployed?

3. Does the Minister agree with the experts who have said that unemployment is global by nature and that a significant affecting element is brought about by the rapidity with which new technologies, particularly computerisation, are being introduced into present-day industries both within our State, our nation and indeed globally?

The Hon. R.I. LUCAS: I will refer those questions to the Minister and bring back a reply.

CONFERENCE BROCHURE

The Hon. ANNE LEVY: I seek leave to make an explanation before asking the Minister for the Arts a question about advertising.

Leave granted.

The Hon. Diana Laidlaw: On signposts?

The Hon. ANNE LEVY: No, I am not talking about vandalism of South Australia but rather about misrepresentation.

Members interjecting:

The Hon. ANNE LEVY: Would you like to see my list of possible questions?

The PRESIDENT: Order! The honourable member is advised to ask her question.

The Hon. ANNE LEVY: Thank you, Mr President: I was waiting for silence. I received a brochure for a world summit on television and children, which appears to be an extremely interesting and worthwhile conference to be held in Melbourne early next year—in March 1995. This brochure has been put out for it, encouraging people to register and attend. If I could afford it, I would feel very interested in attending, but it is $700 to register. What really concerns me—and I hope would concern every member of this Chamber—is that part of the blurb about the conference has a paragraph on Melbourne. In part it states:

> Melbourne is the most remarkable of Australian cities, leading the way in the arts and culture, entertainment, culinary excellence, sporting spectaculars, shopping and business. Recently voted the world's most livable city, it is vibrant and cosmopolitan, with more than half of its 3.5 million population either born overseas or descendants of those born overseas. About 170 languages are spoken in this city—

and so on. Further down it states:

> On any given week in this city, it is possible to select from 30 stage plays, 20 classical concerts and dance performances, 50 rock acts, 25 cabarets and at least 20 comedy shows.

I interpose that my reading of *This Week In Melbourne* does not confirm those figures. It further states:

> Melbourne's restaurants are second to none, offering every cuisine from Afghanian to Zimbabwian. Victoria is the home of more than 180 wineries, some of the best right on the city's doorstep.

I will not take up the time of the Council in detailing the entire puff on Melbourne, which has been put forward in this pamphlet. Obviously these people opposite are not concerned about the false impression being given about Melbourne and, by implication, the denigration of our State. Will the Minister examine this puff on Melbourne, do what she can to correct the mis-statements being made and take up with the organisers of the conference the fact that their advertising should be factually accurate and not falsely inflate Melbourne to the detriment of other cities in Australia?

The Hon. DIANA LAIDLAW: I am not sure who judged Melbourne to be the most livable city in the world, but if I had been asked I would not have given such an answer. Certainly it does not seem from the pamphlet itself that there is any acknowledgment of those who did the survey and came to such a conclusion. If the honourable member wishes, I am happy to have the pamphlet submitted in terms of false advertising. Some of the claims seem to be over the top, although I am not able to judge the validity of all of them. In my experience, tourism brochures tend to inflate an impression of a town or city, which is—

The Hon. L.H. Davis interjecting:

The Hon. DIANA LAIDLAW: Well, yes. I think that is one of the strengths and weaknesses of many tourism campaigns. Notwithstanding my personal views and suspicions about the claims made in the pamphlet, I am happy to have the matter checked.

RED GUMS

The Hon. T.G. ROBERTS: I seek leave to ask the Minister representing the Minister for the Environment and Natural Resources a question about revegetation in the South-East.

Leave granted.

The Hon. T.G. ROBERTS: In the latest issue of the *Bush Chronicle*, a widely read newsletter on farming and conservation, an article on the second page states that the red gum is under threat in the South-East because of various farming methods and, I guess, competitive use for the land on which the red gums grow. The casual observer would note that many of the older red gums are dying back with very little new growth coming through, because in most cases the land is grazed and the new growth is not protected. Some farmers have made efforts to put up protective barriers around the new red gum shoots but in most cases sheep and cattle, etc. knock them over and chew them to the ground.

I think the suggestion has been made by conservationists that resources should be made available for education programs to try to get the red gums back into vogue and to make sure they are protected so that they can survive. The other problem concerns the competitive use for the land. Large areas in the South-East are now being used for viticulture. While growing vines for the wine industry is to be applauded, there is now competition for the best land for the vines, and in most cases they are competing with the old stand of red gums. My question is: Will the Minister make funds available for a red gum and varied species revegetation program in the South-East, and will a competitive land use study be undertaken to prevent the loss of these magnificent trees to a death by a thousand decisions?

The Hon. DIANA LAIDLAW: I will refer the honourable member's to the Minister and bring back a reply.

SOUTH ROAD TRAFFIC LIGHTS

In reply to **Hon. SANDRA KANCK** (30 March).

The Hon. DIANA LAIDLAW: The Department of Transport was aware of the potential problems cited by the honourable member

when it decided to install the traffic signals at the intersection of Lander Road and Candy Road, O'Halloran Hill.

The department's investigation into the need for traffic signals stemmed from concerns expressed by Sheidow Park and Trott Park residents with respect to Lander Road access to and from Main South Road.

The investigation found that traffic signals were required to control traffic movements. The only alternative would have been to grade separate the roads, which is not warranted.

The traffic signals turn red for Main South Road traffic to allow motorists from Lander Road to enter/cross Main South Road in safety. The signals have been programmed to operate in such a way as to reduce the likelihood of delays, and therefore pollution, caused by Main South Road traffic. However, I am aware of complaints from motorists using Main South Road who are concerned about traffic build up at the lights in question. These complaints have been referred to the Road Transport Agency to assess whether adjustments can be made to the traffic light program.

It is acknowledged that there can be detrimental outcomes arising from heavy vehicles moving off from a standing start on an incline. However, since the commercial vehicle content of the traffic stream is approximately 6 per cent in this vicinity, and since not all commercial vehicles are fully laden semi-trailers, this aspect is not seen to be critical at this location.

CRIMINAL LAW CONSOLIDATION (FELONIES AND MISDEMEANOURS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) introduced a Bill for an Act to amend the Criminal Law Consolidation Act 1935 and to make consequential amendments to other legislation to provide for the abolition of the classification of offences as felonies and misdemeanours; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

At common law, crimes developed as felonies and misdemeanours. In general terms, it might be said that, at least until relatively recent times, felonies were more serious crimes than misdemeanours. There are a number of exceptions to this, however, even of quite early date. One of the more obvious is that the ancillary offences—incitement, conspiracy and attempt to commit murder, for example—are misdemeanours, although murder is, of course, a felony and there are many felonies less serious than those misdemeanours. In general, the classification of common law offences is determined at common law.

The major significance of the division between felonies and misdemeanours originally lay in punishment. A felon forfeited all his or her property to the Crown, while the person guilty of a misdemeanour did not. Further, the felon was almost invariably subject to the death penalty whereas the person guilty of a misdemeanour was not. Neither of these consequences is remotely true in South Australia today.

South Australia inherited the distinction between felonies and misdemeanours in 1836. It remains in South Australian criminal law. But in the last century, the key classification of offences, which is all-important from a procedural point of view, has moved from the felony/misdemeanour distinction to that between indictable and summary offences and, latterly, major indictable, minor indictable and summary offences. It is these classifications which determine, for example, mode of trial, procedural steps and, to a degree, penal consequences.

It is quite clear that the designated classification of crimes as felonies or misdemeanours at common law no longer makes any sense at all. For example, murder is a felony, but attempted murder is not. Manslaughter is not a felony, but attempted manslaughter is (by statute). A second example—one of the many possible—suffices to make the point. All larcenies are a felony—even the stealing of $2 worth of sweets from a shop, but an act of gross indecency with a minor is a misdemeanour.

These anomalies have been aggravated by the statutory designation of certain indictable offences as felonies by section 5(2) of the Criminal Law Consolidation Act. This section was inserted by the Criminal Law Consolidation Act, No. 90 of 1986. The principal purpose of this Act was to make large-scale reforms to ancient offences dealing with assaults and the like and damage to property. The addition of section 5(2) was a shorthand way of preserving the existing felony status of many of the repealed offences for other purposes. It may have achieved that aim in a rough way—but it leads to further difficulties and anomalies.

The South Australian criminal justice system does not need the felony/misdemeanour distinction. One reason is its irrelevance. It outlived its reason for existence a century ago. There is simply no reason for its continued existence. A second reason is that its current form gives rise to what can charitably be called anomalies. Not only is the distinction irrelevant but also it no longer makes sense. A third reason is that the vestiges of the distinction left in South Australian law affect the operation of other laws in a way that is counter-productive and that makes no sense. South Australian criminal law can do without these unproductive disputes.

Of all Australian jurisdictions, only New South Wales and South Australia retain the terms. It is more than time they were abolished. Abolition of the distinction requires more than the mere replacement of the terms in question—although it involves at least that. That kind of routine and uncontroversial amendment may be found in the two schedules to the Bill. But the abolition of the distinction also requires the examination of some areas of substantive criminal law. They fall under the following headings.

1. The Felony Murder Rule

The felony murder rule goes back a very long time in the history of the criminal law at common law. In general terms, it is murder if a person kills another by an act of violence committed in the course of the commission of a felony involving violence. The point of the rule is that an accused will be guilty of murder in such a case even if he or she has not had the fault elements (such as an intention to kill or cause grievous bodily harm) normally required for conviction for murder. This rule applies only in relation to felonies.

It was abolished in England in 1957, and is no longer law in the ACT. It has been declared to be contrary to the Charter of Rights in Canada. It was recommended for abolition by the Mitchell committee, the Victorian Law Reform Commissioner, the Victorian Law Reform Commission, the Queensland Criminal Code Review Committee and the Canadian Law Reform Commission.

Against this unanimity of professional opinion, there can be no doubt that the doctrine has been employed in recent highly publicised cases in South Australia, and it has a certain popular appeal. When Victoria abolished the distinction between felonies and misdemeanours in 1981, it enacted a provision retaining the rule to a large degree.

This Bill adopts the latter course, despite a number of submissions to the Government that sought to have the rule

abolished entirely. The reason is that such a reform would be controversial, and that controversy would be destructive of the main aim of the Bill—which is to abolish the anachronistic distinction.

2. Burglary and Allied Offences

South Australia has a very ancient structure of offences of dishonesty. It derives from the time at which the distinction between felonies and misdemeanours was central to the classification of offences. In many cases, it is possible to abolish the distinction quite simply. But in the cases of sections 167 to 171 of the Criminal Law Consolidation Act the irrationality of the ancient distinction still retains full hold.

The object of the Bill is to abolish the procedural distinction while retaining the *status quo* in terms of the substantive law so far as is possible. Literally, such an objective would require the Bill to restate the old distinction in modern legislative form. But such is the anomalous state of the law that that is neither wise, nor desirable—nor indeed possible. Hence, the offences have been re-enacted with a scope as close as is possible to their intended scope.

3. Complicity

The common law rules are described by a noted authority as follows:

> At common law the rules of complicity are exactly the same for both felonies and misdemeanours but different words describe them. If D instigates the commission of a felony, and the felony is in fact committed, he is called an accessary before the fact and what he has to do to become an accessary before the fact is counsel or procure the commission of the felony. If D participates in the commission of the felony he is called a principal in the second degree, as opposed to the person who actually commits it, who is called the principal in the first degree. To become a principal in the second degree D has to aid and abet the commission of the felony. If the crime is a misdemeanour, D's liability to conviction is still described in terms of counselling, procuring, aiding and abetting, but he is not called either accessary before the fact or principal in the second degree, and the person who actually commits it is not called principal in the first degree. Indeed, neither of them is called anything in particular as a matter of established custom. These categories. . . are quaint and have no significant bearing on the principles of responsibility for the promotion of crime.

The Bill deals with all of this by simply enacting the common law formula of 'aid, abet, counsel or procure' and applying it to all offences.

4. Power of Arrest

Currently, sections 271 and 272 of the Criminal Law Consolidation Act contain a statutory version of the common law power of arrest. Because it pre-dates the creation of the Police Force, it vests powers in private citizens. It is arguable whether or not sections 271 and 272 could simply be abolished without replacement. Certainly, section 75 of the Summary Offences Act provides police with a comprehensive power of arrest without warrant. Section 272 is an anachronism, and there appears to be no recent record of its use. However, in the interests of caution, and taking into account the fact that this Bill is not intended to constitute a review of powers of arrest, it has been decided to re-enact the effect of section 271.

SUMMARY

The eminent criminal jurist, Sir James Stephen, writing in 1883, strongly advocated the abolition of the felony misdemeanour distinction on the ground that it had then grown to be irrational and no longer served any useful purpose in the criminal law. In 1994, in South Australia, that is all the more true because it is now causing anomalies and quite unnecessary complexities in the criminal law. The distinction simply does not belong in a modern criminal justice system. The home of the common law, England, abolished the distinction in 1967. In Australia, only New South Wales still has it (apart from this State). It is time that South Australia caught up with the rest of this country. I commend this Bill to the Council and indicate that this it is not the Government's intention that we should proceed with this Bill before the end of this session but that it should lay on the table for public exposure and be dealt with in the next session. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

Clauses 1 and 2 are formal.

Clause 3: Amendment of s. 5—Interpretation

Clause 3 substitutes a new subsection (2) in section 5 of the principal Act. The current subsection (2) deems certain offences to be felonies for the purposes of the Act. The abolition of the distinction between felonies and misdemeanours makes such a provision inappropriate. New subsection (2) specifies that notes written in the text of the Act form part of the Act. This consequential amendment is necessary because of the drafting style used in new sections 12A, and 167 to 171 and the amendments to 270b(1) and (2).

Clause 4: Insertion of s. 5D

Clause 4 abolishes the classification of offences as felonies and misdemeanours.

Clause 5: Insertion of s. 12A

Clause 5 inserts a new section 12A into the principal Act. New section 12A provides that a person who causes death by an intentional act of violence committed in the course or furtherance of a major indictable offence punishable by imprisonment for ten years or more is guilty of murder. This provision may be seen as providing a statutory replacement for the common law "felony-murder rule", although the scope of the statutory rule is somewhat different as it applies only to serious crimes. There is, however, a specific exception for causing death in the course or furtherance of an illegal abortion, to preserve the common law leniency in relation to this offence.

Clause 6: Substitution of s. 75

Clause 6 substitutes a new section 75 in the principal Act dealing with alternative verdicts on trials for rape or unlawful sexual intercourse. New section 75 does not effect any substantive change but removes all references to felonies and misdemeanours and is in modern drafting style.

Clause 7: Repeal of ss. 134 and 135

Clause 7 repeals sections 134 and 135 of the principal Act which prescribe the penalty on conviction for larceny after a previous conviction for a felony and after a previous conviction for a misdemeanour, respectively.

Clause 8: Substitution of ss. 167—172

Clause 8 substitutes a number of new sections in the principal Act. New sections 167 to 171 cover the same ground as the existing sections 167 to 172 but use modern language and delete the references to felonies. The offence created by the current section 171 is incorporated in proposed section 170.

These sections of the principal Act deal with the offences of sacrilege, burglary, housebreaking, breaking and entering and various offences at night which involve being in possession of an offensive weapon or instruments of housebreaking, being in disguise, or being in a building. Most of these offences are currently triggered by the intent to commit, or the commission of, a felony. The proposed sections delete the references to felonies by having these offences triggered by the intent to commit, or the commission of, an offence of larceny, or an offence of which larceny is an element, an offence against the person, or an offence of property damage which is punishable by imprisonment for three years or more.

Clause 9: Substitution of ss. 267 and 269

Clause 9 repeals sections 267 and 269 of the principal Act and replaces them with a single provision on aiding, abetting, counselling or procuring an offence. The abolition of the distinction between felonies and misdemeanours means that it is no longer necessary to have two separate provisions dealing with accessorial liability. New section 267, like the sections it replaces, provides that an accessory may be prosecuted and punished as a principal offender.

Clause 10: Substitution of ss. 271 and 272

Clause 10 repeals sections 271 and 272 of the principal Act, which deal with the citizen's power of arrest in two different circumstances, and replaces them with a general power of arrest. New section 271 would allow a citizen to arrest and detain a person found committing, or having just committed, an indictable offence, larceny, an offence against the person or property damage.

Schedule 1

Schedule 1 consequentially amends all other provisions of the principal Act which mention felonies and misdemeanours. This schedule does not make any substantive changes to the law but amends the terminology used in keeping with the abolition of the classification of offences as felonies and misdemeanours.

Schedule 2

Schedule 2 consequentially amends all other Acts which mention felonies and misdemeanours. This schedule does not effect any substantive changes to the law but amends the terminology used in keeping with the abolition of the classification of offences as felonies and misdemeanours.

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

STAMP DUTIES (CONCESSIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 April. Page 446.)

The Hon. C.J. SUMNER: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. ANNE LEVY: The Opposition supports the second reading of this Bill although, as indicated, we have on file amendments which will be relevant in the Committee stage. Basically, this Bill does two major things as well as deals with other small matters on which there is no argument.

First, the Bill is designed to assist primary producers, and we have no argument with their receiving some sort of assistance in certain circumstances. The two areas where primary producers are to be given stamp duty relief are when refinancing and intergenerational transfer of farms occur.

With regard to the first matter, the Government claims that in many cases primary producers who are in difficulties are not able to undertake refinancing packages of their properties, which would be of assistance to them, because of the cost of the stamp duty that would be involved in settling one mortgage and arranging another on more beneficial terms. The Government claims that granting an exemption in this case will be revenue neutral because such refinancing packages are not able to be undertaken at the moment, so it is not a question of the Government's forgoing revenue simply because it is not gaining it from stamp duty on refinancing packages.

The second area where relief is being given to primary producers is in the situation of intergenerational transfers of property. It is not strictly intergenerational: it is transfer to members of the same family, which includes spouses, brothers and sisters and subsequent generations. There has been concern that the average age of farmers is rising. According to various reports it is as high as 57 at the moment. Consequently, there is an ageing sector of the economy that is perhaps less likely to be innovative and imaginative.

Many farmers would wish to retire and pass the property on to their sons or daughters (probably sons, but let us not be sexist about it) but are prevented from doing so because of the high stamp duty that would be involved. Again, the Government claims that this would be revenue neutral: that stamp duty would not be lost to the Treasury because these transfers are not occurring at the moment. This is perhaps a little ingenuous in that, if the transfer does not occur now, it will presumably occur at the time of death of the primary producer, so it is revenue deferred at the moment, whereas with the introduction of this measure it will be completely forgone.

The argument from the Opposition is not that there are not people in primary production who could benefit substantially from these two measures but that the exemptions do not go far enough. It is not only primary producers who have difficulties at the moment: throughout the rural sector there are difficulties. Some small businesses in country towns have difficulties commensurate with those of the primary producers nearby. When one section of the rural economy suffers, they all do. Many small businesses could benefit enormously from refinancing packages, thereby relieving some of their debt burden, but they are probably unable to take such remedial action because of the high stamp duty that would be involved. The Opposition considers that this exemption from stamp duty on refinancing packages should be available to many industries and businesses in South Australia, not just to those in the rural sector.

It seems unnecessary favouritism to pick out one particular group who we admit may be in difficulties in some cases when they are no orphans in this; there are many small businesses which could benefit from a similar exemption of stamp duty if the re-financing of their considerable debt problems is possible. Likewise, why limit the inter-generational transfer of property where there is a business relationship to primary producers? Where there is a business relationship between parents and children this concession should not be limited to primary producers; it should be available in other situations such as, for example, the transfer of private residences from one generation to another, which does not occur at the moment.

That transfer would be revenue neutral at the time in the same way as the primary production inter-generational transfers will be revenue neutral through exempting them from stamp duties. Some of my amendments on file are to address this problem. It is not only primary producers who have these problems and who can benefit from this stamp duty exemption, but other cases are equally deserving and these exemptions should be extended to other categories of people rather than be limited simply to primary producers.

Another area of concern is that it is felt that the Bill, as worded, would enable such transfers or re-financing to be exempt from stamp duty for any land under primary production, whether or not the owner is principally a primary producer. There could well be so-called 'Rundle Street farmers', who have a small hobby farm of some sort—and .8 of a hectare is set at the minimum size in the legislation—which is a nice little interest for them but which is certainly not their main source of income and certainly not relied upon for their living. There is no reason whatsoever why people in this category should receive exemptions in stamp duty should they re-finance their mortgage on the land or should they decide to pass it on to the next generation.

Some of my amendments are designed to ensure that these concessions for primary producers are only available to those for whom primary production is their main source of livelihood and that the 'Rundle Street' primary producers will not be eligible for these concessions. I repeat that we certainly support the second reading of this Bill. We recognise that there are situations where people need assistance in these difficult times and exemption from stamp duty in

certain circumstances can be of considerable assistance. Hence, we support the second reading although I will be moving amendments to see that the benefits are not limited solely to primary producers and that those primary producers who do benefit are more tightly defined.

The Hon. M.J. ELLIOTT: I rise to support the second reading of the Bill and in doing so make a comment that I had not realised that there were amendments on file. Recognising that they are on file, I would like to address a few issues that are covered within this legislation, ask some questions and suggest that the debate be further adjourned to give me a chance to consider those amendments. I would like to be actually considering amendments on industrial relations, among other things, which the Government seems keen for me to do and then have me back in here on other matters, but that is another subject.

I would ask a question to which the Minister might care to bring back a reply to this place. How many Liberal Party members of Parliament or members of their families stand to benefit in the future from this piece of legislation, which is relatively generous? I note that the Liberal Party policy talked about stamp duty exemptions for inter-generational farm transfers. Inter-generational is usually understood to be from grandfather/grandmother to father/mother to son and to daughter; it does not normally include brothers and sisters, as they are covered by 'intra-generational'.

It is interesting to start off with that this Bill facilitates not only the transfer down through the family but also the transfer across the family. On many occasions I have complained about the lot of farmers and I think that farmers have had appalling treatment from Federal and State Governments over recent times. So, when I am asking these questions I am not reflecting on the difficulties that farmers have but really wanting to explore the relative merits of this particular Bill

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: At this stage, I am simply asking questions. I had no idea there were any amendments on file. So there is a question first as to why the inter-generational has now become across the generation as well, something which has gone beyond the policy. I do not have any difficulties with stamp duty exemption in relation to re-financing because in fact financing has been a major difficulty for farmers. Federal Government deregulation policies, although admittedly supported by the Federal Opposition throughout that time, were largely responsible for the blow-out in interest rates, and in fact the interest rate blow-out was probably the biggest single damaging thing that farmers in South Australia have had to confront. They could have survived even the droughts and the mice had they not been carrying such high interest rates. You cannot tighten your belt with no crop coming in if you have a high interest rate running on an existing debt.

That is something that was not of the farmers' making but to be able to re-finance their debts to go to a lower interest rate regime is a good thing and there is no question at all that exempting any costs, in this case stamp duty costs, is a fair and reasonable thing. The Hon. Anne Levy put an interesting point: if we are going to exempt the farmer who wants to pass something on down through the family, what do we do about the storekeeper at Cowell, at Naracoorte or at Loxton who wants to pass on their country store to their son and/or daughter, because things have been pretty tough for them too? For that matter a few delis around Elizabeth have not had a good time lately, either. What do we do about them? In fact, the amount of correspondence I am getting from small shop owners at the moment shows that we have absolute disaster in small business at the moment. What about them?

The Hon. R.I. Lucas: We can get rid of the whole tax.

The Hon. M.J. ELLIOTT: Well, that seems to be the way that you people are heading: get rid of stamp duty, abolish all taxes.

The Hon. R.I. Lucas: We won't have any schools, we won't have any hospitals—

The Hon. M.J. ELLIOTT: I thank the Minister for Education for that interjection, 'Well, let's not have any more schools.' Only a couple of days ago in this place, we were told about the great difficulty that the whole State is currently in. It has already been quite clearly intimated that there will be a great deal of belt tightening.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: Wait a second; let me finish. There will be a great deal of belt tightening going on in South Australia. In fact, the Liberal Party has already been very vague. It has let the Audit Commission come out recommending that everything in sight be cut, and has said that it has not made up its mind. However, I think it is fair to say that we all know that there will be a lot of belt tightening all around. As long as it is fair, I think we will find that most South Australians will accept that. However, in the light of realising that the State finances are in fact very tight—

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: No, I didn't say that they should not get it. Let me finish. I was going to say that if we are going to do this, we will have to create a justification which says that the State Government feels that this is a matter of such urgency that, while we will be tightening belts all around, and everyone will have a tough time of it, another group having tough time really needs some help now. That is the case that has to be justified. The Leader of the Government in this place knows very well how often I have been in here complaining about policies of the previous Government which have hurt farmers a great deal. I have been the first one to defend them, and I have not stated a position on this Bill. What I have done so far is ask a series of questions which I believe deserve to be answered if we are going to pass this legislation, not just in terms of the context of the impact on farmers but also in terms of the context of the Statewide effects that we know we will face following the Audit Commission. At this stage, I conclude my remarks. As I said, not having realised that the amendments were there, I think that it is only fair that certain of those issues be raised, that the questions be answered and we can return to this matter at a later stage in Committee.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

STATUTES AMENDMENT (COURTS) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 759.)

The Hon. C.J. SUMNER (Leader of the Opposition): When I sought leave to conclude my remarks on this matter, I was talking about the country resident magistrates issue and had canvassed the problems of resolving the principles of the Independent Courts Administration Authority with ministerial

responsibility. If the Parliament thought that we had not got this right on the previous occasion then it would be possible for the Act to be amended to include the power to give a Governor's direction to the Courts Administration Authority.

The Labor Caucus does not have a view on this issue at this stage. However, it would be possible to ensure that ministerial responsibility is adequately provided for by having a provision inserted in the Act which gave the Governor in Council the power to give directions to the Courts Administration Authority in a similar way as the Governor can give directions to the Police Commissioner. I appreciate that the Police Commissioner is not in the same position *vis-a-vis* the Government as are the courts, because the Police Commissioner and the Police Force are in fact a part of Executive Government.

However, the courts get their responsibility for the expenditure of funds through a Minister, or a Minister has to take responsibility for the expenditure of those funds and has to answer questions in the Parliament about it. So, it would be possible to insert in the Act a provision for directions by the Governor to be given. If that were to occur, public notice would need to be given in the *Gazette* and there would have to be copies of the directions laid before each House of Parliament within six sitting days so that the directions by the Government to the Courts Administration Authority were open and clear and there could not be any suggestion of secret influences.

Of course, the directions would have to be confined to the expenditure and the way in which moneys are expended or dealing with matters relating to the provision of administrative facilities and services; that is, the directions would have to relate to matters of administration. I think it would be prudent, if the Parliament thought that this was an option, to provide that directions could not be given which would affect the exercise of judicial powers or discretions.

As the original architect of this legislation, or at least the Minister who brought it into this Chamber, I do not indicate at this stage that I support general directions being able to be given by the Governor on matters of administration to the Court Administration Authority. However, I do think the current example of country magistrates has highlighted a problem, the very problem that the current Attorney-General highlighted during the debate on the Bill. There are other examples of potential difficulties, which I am sure the Attorney will find in correspondence in his department if he cares to examine it as there are a number of other issues where it appeared to me that ministerial responsibility could not properly be exercised because of the lack of power that the Minister has in relation to administrative acts and actions of the Courts Administration Authority.

One case I recall related to the issue of travel. Theoretically, the judges could decide to give themselves a first-class overseas trip every year and, as I understand the current situation, there would be no power in the legislation to direct the judges on that matter. Indeed, that was one issue that came up after this legislation was passed and while I was still Attorney-General. There were other issues as well which indicated to my mind that there was conflict between principles in the Courts Administration Act and principles of ministerial responsibility.

When this matter was debated in the Parliament when the Bill was introduced, it was my view (and I think also the view put by the Chief Justice to the Legislative Review Committee) that the principle of ministerial responsibility for the operations of the courts and expenditure of moneys in the courts could be adequately accounted for or dealt with through the budget process, that is, by the Parliament allocating funds to the courts for specified purposes and for the Government to be able to deal with what the courts were doing by control over the purse strings. It was put to me (and the Attorney again might like to look at this issue) that, in relation to the expenditure of funds, directions could be given by the Minister or at least by the Treasurer under the Public Finance and Audit Act.

That was certainly the view of the Chief Executive Officer of the Attorney-General's Department and a matter canvassed during the preparation of this Bill. It was considered that there was a fail-safe mechanism in place to protect the Minister and ensure that he could properly take responsibility for the expenditure of moneys within the Courts Administration Authority. Now, I find that in answer to a question today on country magistrates and powers which exist in the Public Finance and Audit Act it is the view of the Attorney-General that there is nothing in the Public Finance and Audit Act that would allow a Treasurer's instruction to be issued in respect of the matter of country magistrates.

The question of country magistrates clearly involves the expenditure of funds. Whilst the situation may not be exactly the same now as it was a couple of years ago, certainly when the matter was assessed at that time it was clear that the withdrawal of country magistrates and servicing of these cities by circuit from Adelaide was more expensive. So, there is an issue of the expenditure of funds in the withdrawal of country magistrates. It is, on the face of it, more expensive. If the Government cannot intervene in a decision like this with the Courts Administration Authority in some way, we then have a real problem because it then means that the Courts Administration Authority can add expenditure (presumably within its global budget, but it can set priorities for its expenditure) in issues that might be politically sensitive or affect service delivery, and the Government cannot do anything about it.

I would like the Attorney-General to look at the issue because, while the answer to the question is, to say the least, cryptic, I was under the impression and always advised that there was that fail-safe mechanism where the expenditure of funds was involved. The expenditure of funds is involved here. It will probably cost more to withdraw country magistrates and yet, from what I am being told, according to the answer from the Attorney-General, nothing can be done about it by the Government. If that is the case, there is a problem.

The Bill was passed on the assumption that a capacity existed for a ministerial responsibility to be reflected through the budget process and through the Public Finance and Audit Act. If that cannot happen under the legislation, to my way of thinking there is no way that the Minister can be called to account for the expenditure of funds or for the operations of the Courts Administration Authority. If that is the case, we have a real hiatus in the chain of accountability that ought to exist in our constitutional structure.

It seems that the matter can be resolved in two ways: first, a general Governor's direction could be put in the legislation, limited in the way that I have outlined, thereby giving the Minister clear responsibility. If an issue such as this cropped up and the Government was concerned about the reduction in services to country people, it could direct the Courts Administration Authority openly, in the Parliament and in the *Gazette*, to expend the funds in a certain way and to maintain the country magistrates position. That would be fine. However, in this case the courts have made a decision, the

Government is washing its hands of it and there is no way the Parliament can call anyone to account for the decision—no way at all—because the Attorney-General says that it is not his problem, it is all our problem because we passed the Act or that it is the judges' problem. That is not acceptable.

The only other way of dealing with the issue of accountability is this: to take the courts administration completely out of the current procedures for funding, that is, you take the Minister totally out of the equation, which would mean that there should be a system whereby the appropriation to the courts is done by the Parliament, where the application for appropriation by the courts is made by the Courts Administration Authority directly to the Parliament. It is then the Parliament, probably through a committee, that would scrutinise the estimates of the Courts Administration Authority and the committee of the Parliament would recommend the appropriations. It would then be the Courts Administration Authority—either the Courts Administrator or the Chief Justice—who would have to appear before a committee of the Parliament to answer questions about the appropriation.

If that was the situation and if an issue such as this arose, it would then be up to the Chief Justice to go to a committee of the Parliament and justify this decision. In other words, the Minister would not have a role in it. This current situation, on the face of it and in the light of the attitude that has been taken by the Courts Administration Authority and the judges to this piece of legislation, is most unsatisfactory. It is all care and no responsibility. What we have is a situation where judges administer the courts through the Courts Administration Authority. They are not subject to any direction whatsoever in relation to that, apparently—although that was never intended; they can expend the funds how they like—that was never intended either; and the Government then comes along and says, 'We can't do anything about it, so there's no point in asking any questions about it; we can't get to the Chief Justice to get his views on the topic because we can't bring him before the House or before the Bar.' Presumably, that would not be considered a very acceptable method of dealing with the matter.

The Hon. K.T. Griffin: You could bring him before a committee of the Parliament because we provide for that in the Act.

The Hon. C.J. SUMNER: Sure, but not as a matter of course; we would have to give a specific reference.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That's what I'm saying. You have a situation where either the Minister is part of the equation or he is totally out of it and the courts relate directly to the Parliament. That latter scene exists in a number of States in the United States of America. However, what we have here is a hybrid which leaves the Minister hanging with no power but with, on the face of it at least, the responsibility. It leaves the Parliament with no-one to question or call to account for actions within the State Courts Administration Authority. Therefore, in my view it is an entirely unsatisfactory situation.

How we resolve this matter I do not know; it is something to which the Government will have to give consideration. On reflection, and given the attitude the courts have taken to these matters, I do not think that the current legislation is right. I do not think that it resolves that problem which I have outlined, and I think it should, because the lines of responsibility and accountability are now quite unclear. If we are going to have a Westminster model, then we ought to have a Westminster model. That does not mean that you cannot have an independent Courts Administration Authority, but there still must be the power for the responsible Minister to direct in relation to expenditure of funds or the administration of the authority, particularly where it affects the delivery of services to the community.

You must have that situation based on the Westminster model, modified of course by the fact that because it is an independent courts administration you need to have open and clear directions if they are going to be given, to avoid any suggestion of interference with judicial independence. If that is not acceptable to the courts, it seems to me that they have to go to the other model, which provides that the courts relate directly to the Parliament. That would not mean, of course, that the Government would not have any say in the Parliament as to the budget, but at least the Minister would be out of the equation and the court would have to deal directly with the Parliament. It may well be that that is more consistent with the principles of judicial independence than having a Minister in the equation, but it seems to me that what we have now is an unsatisfactory hybrid. In my view, it really needs to be resolved.

As I said, I thought the matter had been resolved, but it looks to me as though the Chief Justice is in a situation where the Minister must take all the flak while he (the Chief Justice) makes all the decisions. I do not think that is a satisfactory situation. I will not move to include a general power of direction in my amendment, but I will move during the Committee stage to include the provisions that were in the Hon, Mr Blevins's Bill at that time. That would give the power of direction to the Governor relating to the registries of courts, where they can be and how they should be staffed.

That will test the situation. In doing that, it will no doubt test the general principle to some extent, because the courts will probably not be happy about this. However, I have had to think about this issue. I acknowledge the warnings given previously by the Attorney-General but I have come to the conclusion that the current situation may need to be examined and modified in some way.

The Hon. K.T. GRIFFIN (Attorney-General): I thank the Leader of the Opposition for his indication of support of the Bill. I will go so far also to thank him for his observations about the Courts Administration Authority in the context of his intimation that he will seek to move an amendment to the Courts Administration Act. He acknowledged that when the Courts Administration Act was before the Parliament I raised a number of issues about the way in which this structure would relate to the Westminster system and particularly the extent to which the Attorney-General, as the responsible Minister in the Parliament, would be able to, or should, be held accountable for the actions of the Courts Administration Authority.

It was at my urging that finally the Australian Democrats agreed that the Bill should be referred to the Legislative Review Committee for examination. For the first time, a Chief Justice appeared before a parliamentary Committee. That has set the scene for further appearances by the Chief Justice as the Chairman of the Judicial Council.

I would expect that during the Estimates Committees, because the Judicial Council is the body responsible for the administration of the Courts Administration Authority and because the Chief Justice is the Chairman of that council, he would be present that when the estimates for which the Attorney-General has the responsibility are being considered.

I would expect also that the State Courts Administrator would be present to answer questions and that the Chief Justice would be available to answer questions of the committee as well.

I think that is important because, as the Leader of the Opposition has indicated, there are problems in the way in which the Courts Administration Authority is structured and operates in its relationship to the Executive Government. I said at the time of the debate on this Bill that I support strongly the principle of judicial independence, but I endeavoured to focus upon a distinction between judicial independence in so far as it related to judicial decision making on the one hand and administration on the other. I indicated that I did not see that there was ever a threat to the independence of the judiciary in respect of its judicial decision making responsibilities. Nor did I see the provision of services by the Executive arm of Government to enable the courts to provide its judicial decision making services as in any way a threat to the principle of independence.

I know that there are those who argue that independence of judicial decision making theoretically could be threatened by pressures brought by an Executive Government through the provision of services or the lack of the provision of administrative services. I do not think that has happened. It certainly has never happened in this State, and I do not think it has happened in other States, at the Commonwealth level or in the Territories of Australia. So, the enactment of the Courts Administration Act was very much related to questions of theory as much as arising out of issues of grave concern and of practical importance where judicial independence was under threat. The Courts Administration Authority heard evidence from the Chief Justice and from me and took other evidence.

The Hon. C.J. Sumner: It couldn't have been very convincing.

The Hon. K.T. GRIFFIN: Well, the Chief Justice must have been fairly convincing. But I put to the Legislative Review Committee that there ought to be a number of amendments. A number of those amendments did get in the Bill finally, and at the third reading I did still indicate a reluctance to see the Bill pass. But I recognise that the Legislative Review Committee had indicated its support for the Bill, and that was a bipartisan committee; and we were prepared, in those circumstances, reluctantly to let the Bill pass with a view to seeing how it worked in practice.

As the Hon. The Leader of the Opposition has said, the practice is different from the theory. A number of issues do need to be addressed in respect of the relationship between the Executive arm of Government and the Courts Administration Authority. Of course, as the Leader of the Opposition said, it is for the Minister to cop the flak, even though the Minister has not made a decision which has created that flak, and the question of the residency of country magistrates is one of those issues.

The Hon. C.J. Sumner: You shouldn't have to cop the flak unless you can do something about it.

The Hon. K.T. GRIFFIN: Yes, sure. You can cop the flak if you have made the decision or if you have been accountable for it and in other ways agreed to it, allowed it occur or prevented it as the case may be. There is not that power, in my view, for the Executive Government or the Attorney-General to do that.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: The advice that I had, which is reflected in the answer to the question, is that that does not help. So, that is not an avenue. The only way the Attorney-General can have any involvement is to approve the budget. The budget process is interesting in itself, because in certain areas of Government agencies consult with Treasury at the very earliest point of developing a budget for the year, but that does not occur. What has happened is that, at the end of April, a proposed budget is presented by the Judicial Council, after it has approved it, to the Attorney-General, who is then able to discuss it with Treasury. So, it is really four months into the budget preparation process.

The Hon. C.J. Sumner: If they are not prepared to do it earlier, don't give them an increase.

The Hon. K.T. GRIFFIN: Maybe that's the solution. But I am just trying to explain the process at the present time. That is unsatisfactory, and it is not conducive to a proper examination of the budget. For a Government to be able to make an appropriate decision in the light of the available resources and its own priorities, there is another difficulty, that is, that it relates to access to Courts Administration Authority staff. They are public servants, but there is a question whether they are in fact public servants under the GME Act, and I am having—

The Hon. C.J. Sumner: They are.

The Hon. K.T. GRIFFIN: Well, that's my view. But there has been a—

The Hon. C.J. Sumner: But subject to the courts administrator.

The Hon. K.T. GRIFFIN: There is an issue about their status and the line of responsibility. So, that is a matter that is currently being looked at. There is a question of an Attorney-General who would normally visit, for example, agencies for which the Attorney-General has either direct or indirect responsibility, not with a view to doing anything other than being available for contact. That is not possible within the courts' staff unless the Judicial Council gives its approval.

The Hon. C.J. Sumner: Did they knock you back?

The Hon. K.T. GRIFFIN: I haven't applied yet. The Attorney-General is not legally entitled to go direct to the State courts administrator for information, but that information must come through the Chairman of the Judicial Council.

The Hon. C.J. Sumner: It doesn't sound to me like a very commonsense approach to the administration of the Act.

The Hon. K.T. GRIFFIN: There are difficulties. But with respect to my relationship with the Judicial Council, there is a regular monthly meeting with the Chief Justice and the State courts administrator with me and my chief executive officer, and my chief executive officer is in a position of maintaining contact with the State courts administrator. In terms of expenditure of money, whilst I have not yet got to this point, as I understand from the Leader of the Opposition there is a question mark about the extent to which the Attorney-General, having approved the budget and the expenditure, can then be involved in the way in which that is applied, recognising that there is some flexibility in a budget to move between lines. However, one would have to have a very detailed budget to be able to constrain a body such as the Courts Administration Authority from moving between some of the items that are in the budget. So, that is a process that I am still currently going through.

It is interesting to have the response of the Leader of the Opposition to the options which are available, to ensure either accountability of the Courts Administration Authority to the Parliament directly or for the Minister to have the necessary

accountability under our Westminster system. In relation to the former model, whilst that may be constitutionally appropriate, there are difficulties that, unless there is one person, for example, in the Parliament designated to have special responsibility for monitoring what happens—

The Hon. C.J. Sumner: It can go to the committee.

The Hon. K.T. GRIFFIN: It can go to the committee, that's fine. Unless you have that direct relationship, it is—

The Hon. C.J. Sumner: The committee would permanently monitor what is going on.

The Hon. K.T. GRIFFIN: That may be the appropriate course, but even with a committee, unless you have within that committee several people who are very much on top of budgeting and all the other issues that relate to that particular authority, it is unlikely that there would be the same measure of accountability as there would be with a Minister whose officers and himself or herself has a specific responsibility, knowing that questions can be asked in the Parliament and the Minister can be accountable for the decisions which are taken.

In respect of the budget estimates committees, it seems to me under the present structure—and, of course, there is provision in the Act to require the members of the council as well as their officers to appear—the way I would presently see that operating is that, even though the Attorney-General approves the budget for the day-to-day administration, one would have to have the Chief Justice and perhaps other members of the Judicial Council present to be the subject of questioning. Because all the Attorney-General can do is say, 'Look, I approved the budget; this is my information. But for the day-to-day administration you, the Estimates Committee, have to inquire about those issues from members of the Judicial Council.' That is not a particularly satisfactory way of handling it, but for the moment that is the way it is to be handled. I agree with the Leader of the Opposition that the relationship constitutionally, as well as from a practical administrative point of view, has to be examined.

I am in the process of doing that, and it may well be that amendments will be recommended to address some of those issues. It is in that context therefore that, whilst I appreciate that the Leader of the Opposition has given the Government an opportunity (as has the Hon. Mr Blevins in another place) to grasp this nettle immediately, in the light of what I have indicated about my review of the Courts Administration Authority Act I would want not to accept the amendment at the present time. It may be that something akin to that becomes necessary, but it needs to be looked at not just in the context of the issue of resident country magistrates but in the broader context to which I and the Leader of the Opposition have referred.

In relation to the specific issue of resident magistrates, I have been asked questions by the Leader of the Opposition during this session already. Whilst I hold a view that, in terms of the quality of justice, what the Acting Chief Magistrate has implemented has some attraction, I recognise that in the areas of Mount Gambier, Port Augusta and Whyalla there have been concerns. Certainly, there have been very fierce debates in Mount Gambier, and the local member (Hon. Harold Allison) has had to put the point of view from the constitutional perspective. I think he has done that very well, but some people down in Mount Gambier will not accept that a good quality of justice can be delivered by the circuit—

The Hon. C.J. Sumner: Service is bound to be lessened. It must be.

The Hon. K.T. GRIFFIN: Not necessarily. Let us take Port Augusta and Whyalla. I know that on a previous occasion the Leader of the Opposition has interjected and said that the magistrate coming back on weekends is his problem, his expense, but I suggest that is irrelevant to the issue, because in that area the magistrate (Mr Grasso), I am informed, is back in Adelaide if not every, then almost every, weekend. Certainly, he travels at his own expense.

The Hon. C.J. Sumner: In his own time?

The Hon. K.T. GRIFFIN: He is certainly not there on weekends. He probably comes home to the metropolitan area on Friday afternoon and goes back on Monday morning, but the fact is that there is not a resident magistrate there over the weekend. Even after hours, it may not always be possible to get that resident magistrate, so justices—

The Hon. C.J. Sumner: They don't all do that.

The Hon. K.T. GRIFFIN: No, but some do. There is a limit to the extent to which one can control the personal habits of magistrates, other judicial officers and others in the community. The fact is that in that area the magistrate is commuting and there will be a good quality service from visiting circuit magistrates, and in those circumstances there will still be a reliance on justices for minor matters such as remands on weekends, and so on, so there is no distinction between the levels of service.

However, I understand the concerns that residents have that you do not have a magistrate who is part of that community. But as the Acting Chief Magistrate has said, even that has problems if you live in the same street as someone you will put down for a few weeks or months as a result of an offence; or if you are coming in contact with police officers in the local football club; or if you are becoming familiar with the records of people who appear before you. All those things can detract from the quality of decision making that is offered.

So, there are arguments both ways about that issue, and I am not insensitive to those arguments. It is interesting to note that in Port Augusta and Whyalla letters have been received from the two councils saying that they accept the decision that the Acting Chief Magistrate has made. Certainly, most of the fire is in Mount Gambier.

The Hon. C.J. Sumner: Under protest.

The Hon. K.T. GRIFFIN: That is not my information. They have written to the Chief Magistrate saying, 'We find this acceptable.' That is the background to it. The Government has decided, in relation to the Hon. Mr Blevins' Bill, to refer it to the Legislative Review Committee, and discussions with the Presiding Member have indicated that priority will be given to the consideration of that Bill when it is referred. That will mean that in Mount Gambier, Port Augusta and Whyalla, in particular, there will be an opportunity for those with an interest in this matter to make submissions. Certainly, I will be encouraging the committee to visit those locations.

Also, I will be writing and making representations to the Chief Justice and to the Acting Chief Magistrate to reinstate the residencies, at least for the period during which the Legislative Review Committee is considering the matter.

The Hon. C.J. Sumner: Hear, hear! Very statesmanlike. Should have done it weeks ago.

The Hon. K.T. GRIFFIN: So, that is something I am putting in place, and I would hope that that might see a careful analysis of the arguments for and against the resident country magistrates and circuit magistrates.

I just draw the Council's attention to one other issue in relation to this. It may be that, even if this amendment is passed (and we can debate it again in Committee), it may not have the result that the Leader of the Opposition and the Hon. Mr Blevins expect it to have.

The Hon. C.J. Sumner: Because you won't do it.

The Hon. K.T. GRIFFIN: No. Let me say that that is not the issue. The issue is this: that the Courts Administration Authority under its Act has responsibility for providing or arranging for the provision of the administrative facilities and services for participating courts that are necessary to enable those courts properly to carry out their judicial functions. A participating court remains, however, responsible for its own internal administration. So, the Courts Administration Authority has a limited authority over magistrates. Under the Magistrates Act—

The Hon. C.J. Sumner: We'll amend it, then.

The Hon. K.T. GRIFFIN: Well, the Magistrates Act provides that the Chief Magistrate is the principal judicial officer of the court. The Chief Magistrate is responsible for the administration of the court. Now there is a conflict. Who makes the decision that resident magistrates or visiting magistrates will be the order of the day? Certainly the Courts Administration Authority provides resources but in terms of deployment of magistrates it is the Chief Magistrate or the Chief Magistrate's deputy who has the responsibility for actually deploying the resources. If the Leader of the Opposition acknowledges that that is an issue any amendment to the Magistrates Court Act for example has to very firmly come to grips with the issue of directions to the Chief Magistrate in relation to the administration of the Magistrates Court and that, I would suggest, is much more a problem in terms of the independence of the judiciary than the sorts of directions which are envisaged in the amendment to the Courts Administration Authority.

So I have a concern about the mechanism which is being sought to be used by the Leader of the Opposition. I have indicated the course of action which the Government proposes to take in relation to the Hon. Mr Blevins' Bill and resident country magistrates, and I have indicated also that I am in the process of reviewing the relationship between the authority, the courts and the Executive arm of Government and would prefer that that should be examined rather than pushing ahead with the amendments which the Leader of the Opposition has on file because they may not necessarily achieve the objective and, being made in isolation from a consideration of the broader issues, may be inadequate to address the philosophical and constitutional positions. Mr Acting President, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. K.T. GRIFFIN: So, again, I indicate my appreciation for the contributions made and I look forward to a further consideration of the amendment in Committee.

Bill read a second time.

The Hon. C.J. SUMNER (Leader of the Opposition): I move:

That it be an instruction to the Committee of the Whole that it have power to consider new clauses concerning an amendment to the Courts Administration Act 1993.

Motion carried.

DOMESTIC VIOLENCE BILL

Adjourned debate on second reading.

(Continued from 21 April. Page 593.)

The Hon. C.J. SUMNER (Leader of the Opposition): I support the Bill. I think it could be said that this Bill is a culmination of a number of years of attention being given to the issue of domestic violence in this State. It is generally acknowledged that, despite the complexities and difficulties of the issue, South Australia has attempted to tackle it in a comprehensive way over recent years. The Attorney-General's second reading explanation refers to the Liberal Government's beliefs relating to domestic violence being the ultimate betrayal of trust and unacceptable and requiring criminal justice intervention. I am sure the Attorney would concede that those sentiments are equally shared by the Labor Party and that our actions over the past few years would be evidence of that.

The Bill contains some useful amendments, some useful tidying up of existing legislation, some reforms which are important, although I would suggest that the extent of them has perhaps been blown up. The reality is that, in addition to some useful reforms and tidying up, there is a degree of window dressing in these proposals. In particular, one has to raise the question as to whether or not a separate Domestic Violence Act is necessary. The Bill being introduced to set up the new Domestic Violence Act basically picks up the provisions in the current Summary Offences Act dealing with summary protection orders and it renames them 'restraining orders' and deals with them in the Domestic Violence Act in the context of domestic violence.

One underlying philosophical issue I would like to deal with here is one that has been debated in the community and in the women's movement, for instance, to quite a considerable extent. The argument has always been that domestic violence is a crime; that it should be treated as a crime; that whatever the social and psychological factors which operate to give rise to domestic violence are that should not excuse the violent action in the domestic circumstances in any way; and that it should be amenable to attention from the criminal law.

I had always thought the argument was that domestic violence, or violence in the home, should be dealt with in the context of the general law. In other words, that a distinction should not be made between domestic violence and other sorts of violence. In fact, I understood that to be the whole argument of the women's movement over many years, that the problem was that the judiciary, in sentencing, for instance, did take into account the fact that the violence occurred in a domestic relationship and sometimes reduced the sentence that was imposed. I know that in sentencing males convicted of murder, where the murder occurred in the domestic violence relationship, one of the factors that has been quoted by judges in mitigation of the sentence was that it was a domestic, that the circumstances of the murder occurred in a domestic situation. I cannot remember the case at the present time, but I know that former member of the Supreme Court bench Justice Jacobs expressed this view in a case that I refer to. In other words, if it was a domestic the judiciary discounted the penalty, at least in some cases.

That position was not accepted in general by the women's movement, by those promoting the view that domestic violence should be treated more seriously. Yet, here we have a situation where we are separating out domestic violence from the general law. There seems to me to be some inconsistency in that approach when looking at it from a broad philosophical position. It is also why I say that there is a

degree of window dressing in these proposals, because what is in the Domestic Violence Bill is to a considerable extent already in the Summary Offences Act. Having said that, I again acknowledge that there are some useful reforms and tidying up reforms in the new Act, but it cannot be presented as a major new initiative because, as I said, it is to some extent a question of nomenclature, a question of naming, and there is window dressing involved in it.

It would appear that some people speaking on behalf of women's groups have accepted this, despite their oft-expressed view that domestic violence is violence and that it should be treated as violence, that it should be treated within the general law and that it should not be taken out of the general law and given a special place and, in particular, a special place that lessens its seriousness. However, the Opposition certainly will not oppose the Bill on that basis: it is just an interesting commentary on perhaps a change of attitudes that has occurred over the years.

I want to raise a couple of issues in respect of the definition of domestic violence. Of course, where you separate out certain categories of people to whom certain offences will apply you run the risk that there will be some problems in demarcation, and the prosecutors will have to decide whether to take action under the Domestic Violence Act or under the Summary Offences Act. There is, as one would always expect with definitions, the capacity for there to be argument at the edges, a capacity for there to be some uncertainty. It is interesting to note that 'member of the defendant's family' or 'family member' means a number of things, but it means also 'a child who normally or regularly resides with a spouse or former spouse'.

Immediately, of course, you have a definitional argument. You have the capacity—and undoubtedly the lawyers will take those points—for a legal argument to be raised in the case of a domestic violence charge or a charge for assault under the Domestic Violence Act as to whether or not the child normally or regularly resided with the spouse. I think that is a potential for problems in the future, a potential for demarcation disputes and a potential problem in the way these matters are prosecuted.

I am not sure whether the Attorney-General or his advisers have given any attention to that issue, but there is not much doubt in my mind that someone will get off one of these charges one day because they have been charged under the wrong Act and they do not come up to proof. That is one of the risks of window dressing and taking out provisions of the law and applying them to particular categories of people. You then have to prove your case; you have to establish the relevant categories of people that are being referred to. It is a charging problem, obviously, but my guess is that at some point one of these things will not stand up because of that problem. That is only one example of where a demarcation problem could occur.

The other problem is that it is interesting that the definition of 'family' does not include elderly members of the family. I know that the Commissioner for the Ageing, for instance, and other groups that represent aged people in the community have become increasingly concerned about violence within the family which involves aged people—so-called 'granny bashing'. It is not an area about which I have a great deal expertise, I must say. However, there does seem, within the context of domestic violence, to be not only violence spouse-and-spouse or parent-to-child but an increasing incidence of the reporting—whether it is an increase of incidence is another matter—of violence involving other members of the family and, in particular, older members of the family. That is excluded from the definition of domestic violence, even though the older person may be living with the rest of the family. In other words, it does not apply to grandparents and the like, and uncles or whatever.

There is a situation where one group, which by some accounts is in a vulnerable position, is being excluded from the benefits, assuming that there are benefits, of this legislation. The Opposition does not intend to move an amendment on the topic, at this stage, at least. However, this highlights the point that I was making earlier: that we are here creating, to some extent, an artificial situation by setting aside part of the criminal law to deal with a particular category of victims, and here 'victims' are spouses and children who normally or regularly reside with the spouse but not older people, for instance. Of course, the benefits of this Bill are not available to other people, generally.

The Hon. K.T. Griffin: A real debate has been developing over a long time about whether you refer to it as 'domestic violence' or 'family violence'.

The Hon. C.J. SUMNER: That may be. I suppose that a change in the nomenclature could occur. But whether there is a change in that—

The Hon. K.T. Griffin: It broadens the scope.

The Hon. C.J. SUMNER: I guess, but whether or not you change the name, it does not affect the underlying points I am making about this sort of legislation. I point out to the Attorney-General that I sent off this matter to some people. Certainly the Women's Electoral Lobby is generally in support of it. It probably thought it was a bit wimpish in some respects, but generally support it. I mean by that that it did not go far enough. The Law Society has not responded, although I did indicate that it would probably be dealt with today. Rather than hold up the Bill, I advise the Attorney that, if I get any comments, I will refer them to him and he can take them into account before the matter is dealt with in another place. That situation relates also to the Courts Bill and the Attorney-General's portfolio Bill that we dealt with earlier today.

There has been a change to the provisions in the Bail Act and I point out that South Australia already has more prisoners held on remand than most other States. One of the things pointed out by the comparative criminal statistics, and people in such institutions as the Australian Institute of Criminology is that, for some reason, South Australia has a higher proportion of prisoners on remand than most other States and certainly higher than the national average. It is an extraordinarily higher rate than exists in Victoria, for instance.

We know that the truth in sentencing legislation will lead to an increase in prison populations and most certainly to overcrowding. It may be that this amendment to the Bail Act will further exacerbate the problem of the rate of remand of prisoners in South Australia. The amendment to the Bail Act, which is included in this Bill and accompanies the package, provides that the need the victim may have or perceive to have for physical protection is not just one of the factors that has to be taken into account, but under the amendment is to be given primary consideration. It is a perceived need for physical protection of the victim which is to be given primary consideration. That, presumably, is whether or not those perceptions are realistic, reasonable or not.

Whether one perceives something is presumably subjective. There may be no realistic threat of physical abuse, but if the victim perceives that a need exists for physical protec-

tion in the victim's subjective view that is enough to override all other criteria in the Bail Act, as I understand it. If that is intended, fine—the Opposition will not move an amendment on it. However, I point out that it could in some situations work injustice. If it is strictly applied by the courts it will almost certainly lead to further people being remanded in custody and further exacerbate something for which South Australia has been criticised in the past, namely, its very high rate of remand of prisoners.

The final point I make is that the telephone application for a restraining order cannot be made without a police presence. In effect, the benefit of enabling the victim to make an application to a magistrate for a restraining order is lessened to some extent because the victim has to have a police person present to make the application by telephone.

The Hon. K.T. Griffin: It is a question of identification.

The Hon. C.J. SUMNER: I understand that it is a question of identification or that you need some means of identifying to the magistrate the person on the phone, but there would be other ways of identifying the person. It would not have to be just the police person who identifies the victim for the purposes of a telephone application. Presumably, it could be a lawyer acting on behalf of the victim. The victim might go to a lawyer, who could do it and properly identify. You could go beyond that if you wanted to. It could be a justice of the peace or some other people with an official position in the community who would therefore be in a position to identify. I have no amendment on that, but it is worth while pointing out that the telephone application cannot in effect be made by the victim.

The Hon. ANNE LEVY: I, too, support the second reading of this Bill. My joy at seeing the Bill is not completely unalloyed. I certainly share some of the queries raised by the Leader of the Opposition. In general, South Australia has had an excellent record in terms of dealing with domestic violence. We have not solved the problems of domestic violence, but have certainly done a great deal about them and in many respects have led the nation. We were the first to introduce stalking legislation. We were one of the first places to introduce the obtaining of restraining orders by phone. We were one of the first places to make mandatory confiscation of firearms and removal of firearm licences concurrent with a restraining order.

The Hon. K.T. Griffin: We were also amongst the first to bring in restraining orders in any event.

The Hon. ANNE LEVY: I am going backwards. We were very early in introducing the whole concept of restraining orders, making them available by telephone, making firearm confiscation concurrent and recognising restraining orders from other jurisdictions. One thing we have not yet done (and I do not think that any State in Australia has done it but I would like to see it looked at) is recognition of restraining orders issued in New Zealand.

Numerous cases have been brought to my attention and to that of other people where partners have split up as a result of domestic violence and the victim has moved to Australia—not often to South Australia perhaps but I know of at least two cases where that has occurred and doubtless there are many more who have moved to New South Wales, Victoria, or Queensland. They have obtained a restraining order in New Zealand, but of course that restraining order is of no avail should their previously violent partner follow them to this State. There is, of course, concern that some of these violent partners can enter Australia so readily, that there is no passport stop or no action taken through immigration. People with restraining orders issued against them do not have this recorded in any way through passport control. This would not necessarily prevent such people entering this country, but at least the victim could be warned that her previously violent partner with a restraining order issued against him has come to Australia, so that she could perhaps take action to seek a restraining order where she happens to live.

There certainly have been cases where the violent partner has followed the victim to Australia. The victim has not known that he was coming until he suddenly appeared at the door and proceeded to continue with his violent behaviour. Any restraining order issued in New Zealand is of no use here. I realise that that may involve discussions with the Federal Attorney-General, as obviously it relates to international relations.

The Hon. K.T. Griffin: It may not. I'll have a look at it.

The Hon. ANNE LEVY: However, I think there are other situations in our law where we do give recognition to the New Zealand law, such as some commercial matters and various other matters. I am not a lawyer, as I am sure everyone is well aware, but if it were possible for one State to give such recognition to New Zealand orders I think this would be of assistance to a number of victims of domestic violence. I am grateful to the Attorney-General for his interjection that he will look at whether this could be accommodated within our law.

Opposition to domestic violence has not been just at the legislative level. To pass laws without the resources or activity to support them is fairly meaningless, but South Australia has enthusiastically joined with the Commonwealth following the release of the report of the National Committee on Violence Against Women and so far has cooperated fully in implementing the recommendations of that report. We support 13 women's shelters and give special support to women of non-English speaking background. One women's shelter is devoted entirely to Aboriginal women who are victims of domestic violence. We have ensured that there is speedy access to housing for domestic violence victims who have to flee not only their violent partner but the roof which was over their head.

The police have set up three special police domestic violence units which contain both male and female officers who have received special training to be able to handle with sensitivity the explosive situations they are called to. From all I have heard, these police domestic violence units are highly regarded throughout the women's movement, by the women's shelters and by the victims of domestic violence themselves. The same cannot be said of all members of our Police Force, but there is, and I hope continues to be, training on domestic violence issues as part of the training which all police officers receive so that they understand the situation and know the appropriate action to take when called to a domestic violence situation.

Through our justice statistics system we have collected probably some of the most comprehensive data on violence against women, including domestic violence. We have better data than can be produced by any other State. Collecting data may seem fairly dry and uninteresting to some people—it can be regarded as the sort of thing which can readily be dispensed with if times are tough—but without adequate data and information it is not possible to devise relevant strategies. Working on a hunch is never as efficient as working on actual data. I hope that the excellent statistics which have been

collected on violence against women will continue to be collected and made readily available.

The data for 1992, which was issued earlier this year, showed that of all violent offences reported in 1992 nearly half (46 per cent) of victims were female and that in respect of female victims over half the violence against them occurred in a private dwelling. This is not the situation for male victims, but for female victims more than half the reported violence committed against them occurred in a private dwelling. Females are far more likely to be at risk of being victimised by a member of the family, a spouse or a friend. The data shows that for females 58 per cent of all violent incidents committed against them occurred in a private dwelling, whereas only 30 per cent of violent incidence against males occurred in a private dwelling. For females there is a very high probability that the violence against them will come from a spouse or a *de facto* spouse, an ex-spouse or an ex-*de facto* spouse or some other relative, friend or acquaintance. In fact, nearly three quarters of all violent incidents against women are perpetrated by someone they know and someone they know well, with over 30 per cent of such violence coming from a spouse or an ex-spouse.

The police data shows that domestic violence incidents occur at an annual rate of 3.4 per 1 000 married, separated or divorced South Australian women. On the other hand, there was a huge difference between violence against women who are in a current relationship as opposed to those who are separated or divorced.

The annual rate of physical domestic violence is 2.0 per thousand women who are in a married or de facto relationship but 42.7 per 1 000 separated or divorced women. Of course, this reflects the fact that violence does not occur in every married relationship—far from it—but where separation or divorce has occurred that violence has very frequently been a factor in that separation or divorce, and the ex-spouse or ex-*de facto* spouse is frequently vindictive, frequently follows the ex-partner and inflicts violence on her.

Ironically, it could be said that the woman is safer if she stays with the violent man than if she leaves him. One would hope that is not the case, and certainly the stalking laws, which this Parliament has introduced, we hope should help to cut down the violence inflicted on women who have separated or left their violent partner.

Another thing the State has done is to set up the whole domestic violence resource unit in the Health Commission. This was done a number of years ago. It has done extremely valuable work. I note that in January this year it published in its newsletter the expansion of its work to the southern, northern, north-eastern, western and eastern regions, with different initiatives being undertaken. Much of the work it is doing in regional areas is to support victims of domestic violence, but work has also been done with perpetrators of domestic violence.

It is fairly useless to try to work with the perpetrators unless they are prepared to admit that they are committing violence and that this is something they should not be doing. If they can accept that they are committing an offence, they are sometimes happy to receive help to control their violent approach and learn other ways of expressing frustration or anger rather than inflicting acute violence on their spouse or partner.

Of course, the Domestic Violence Resource Unit has done considerable work in training trainers, counsellors and a vast number of people in the whole problem of domestic violence so that they are able to assist victims and provide appropriate support and counselling when they encounter it.

This practice will probably continue for a long time because these people are needed to support local groups which are helping survivors and perpetrators of domestic violence. We also need far more in the way of community awareness programs. The Federal Government has recently undertaken a community awareness program with some excellent posters, drawing the evils of domestic violence to the attention of Australians. There have been television commercials on the topic. Unfortunately, these programs have not continued long enough. I would certainly like to see them continued and expanded, and the placing of the posters is perhaps not always in the best possible locations. I would like to see posters—the very effective posters, which have been produced to raise awareness of the evils of domestic violence—put up in all front bars. It would seem to me that that is the most appropriate for them. Putting up posters in women's health centres is rather like preaching to the converted and will not necessarily affect the attitude of males to domestic violence.

If domestic violence is ever to be stamped out, it will obviously have to be done by changing the attitudes of many males, seeing that most domestic violence is perpetrated by males. Domestic violence will have to be made socially unacceptable, in the same way as in recent years drink driving has been made socially unacceptable, through legislation, through all sorts of public awareness campaigns, through—

The Hon. Sandra Kanck: Peer group pressure.

The Hon. ANNE LEVY:—peer group pressure, posters and education campaigns. It has not been just legislation to penalise the drink drivers, although that is doubtless important, but changing the whole approach to drink driving has involved a great community education program. To eliminate domestic violence legislation by itself to penalise the perpetrators will not be sufficient. We need to change throughout society the attitudes to domestic violence, which means great community awareness programs.

I would certainly hope that the very good work of the Domestic Violence Unit can be continued and expanded so that full-scale community awareness programs and community education programs on domestic violence, if continued long enough, coupled with legislation, will have the effect, as with drink driving, of changing attitudes.

I do not want to take up the time the Council, but I would like to echo some of the remarks of the Leader of the Opposition which I suppose are queries as to how effective the legislation before us will be. This is a Bill devoted entirely to domestic violence, and we are in this way separating it from other forms of assault. Despite the fact that the Summary Offences Act has covered domestic violence, a complaint has been that for many years neither the police nor the courts have treated domestic violence in the same way as they have treated other assaults: the penalties have been less, the attention paid by police when called out has been much less, and there has been a greater tolerance of domestic violence than of other forms of assault.

Putting domestic violence into a separate Act, it is hard to know whether that will change that view or intensify it. It certainly is making domestic violence different from other forms of assault. Whether that means it will continue to be treated differently—and by differently I mean more leniently—than other forms of assault by the police and the courts, or whether this will highlight it and make the courts treat it

more seriously, at least as seriously as other forms of assault, at this stage it is hard to say.

Certainly, I would hope that once the Bill becomes law justice statistics people will be able to make comparisons between sentences for assault under the Summary Offences Act and those for assault under the Domestic Violence Act. Only in this way will we learn whether separating domestic violence from other forms of assault is in fact beneficial or whether it continues and even increases the view that domestic violence is somehow a lesser crime than other assault, and penalties are lesser accordingly.

The Hon. K.T. Griffin: The problem is you won't be able to make comparisons with what has happened in the past, because they are all sort of lumped together. That is part of the problem. But you have to start somewhere.

The Hon. ANNE LEVY: I agree, but it will certainly be possible to separate out sentences under domestic violence and sentences for assault under the Summary Offences Act to see whether domestic violence will be taken seriously or whether separating it out will continue its being treated as something different and less serious.

I also share the concerns of the Leader as to who is involved in domestic violence. As he indicated, violence against older members of the family is not covered, nor is violence between a homosexual couple, whose family relationship can be, as far as they are concerned, very much the same as that between members of a heterosexual couple, and violence inflicted by one partner on another will be treated differently, according to whether they are the same sex or different sexes.

Again, statistics may in the future be able to tell us whether the penalties being imposed are different or the same where it is a single sex couple as opposed to a heterosexual couple. I am not a lawyer, but I note that the Bill before us does not define '*de facto*'. It says that spouse includes a *de facto* spouse but does not tell us what is to be classed as a *de facto* spouse. Obviously, it is not the same as the putative spouse in the Family Relationships Act.

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: I appreciate that it would not be appropriate to use the definition of a putative spouse in the Family Relationships Act, but there may be situations, although I hope they do not arise, where a couple may not have been together for more than perhaps a few days or weeks and the decision would have to be made as to whether to prosecute under the Summary Offences Act or under the Domestic Violence Act. Then the lawyers can have a field day in trying to work out whether or not in fact it was a *de facto* relationship, in trying to get the defendant off on the basis that the wrong charge is being laid; you cannot prosecute him under the Domestic Violence Act because it was not a *de facto* relationship, and try to prove that. Then people may slip through the net because the defendant's lawyer obviously will try to prove that the charge has been laid under the wrong Act.

That may be a further disadvantage of having domestic violence separated out in its own Act, but that is quite a separate question as to what the effects are of separating it out from other assaults, in terms of attitudes of courts, magistrates, judges, police and all those involved in dealing with the victims of violence. Despite these caveats, I support the second reading of this Bill. It can be said that for many years there has been a bipartisan policy on domestic violence in this State. A great deal was done during the terms of the Labor Government, as I am sure the Attorney-General would recognise.

I hope that, not only in legislation but also in support for victims, help for perpetrators and particularly community awareness programs, South Australia can continue to lead the way in trying to solve the dreadful problem of domestic violence.

The Hon. SANDRA KANCK: The Democrats believe that this Bill is a step forward in our society. We have come a long way in recent years at least to be able to give lip service to the concept that domestic violence should not be tolerated. This legislation is welcomed because it is going that little step further past the lip service. Until laws are altered by Parliaments, little is achieved other than lament.

It has not always been easy for people to come to terms with domestic violence. It is sometimes hard to understand that the family which our society holds sacred could be a haven for such crime. It has been hard for many non-violent men to understand why a woman would stay in this situation, putting up with such battering year after year.

But the understanding is slowly coming, and I believe this Bill is testimony to that. While I am very happy to be supporting the Bill, I raise a few matters regarding the content, on which I would like to hear a response from the Attorney at some stage. Under clause 7, I acknowledge that it is an advance that the person on the receiving end of the violence, as well as the police, can lay a complaint, but I wonder whether there will be a court cost to the victim. If there is, although this creates a legal opening to lay a complaint, costs might actually put it out of the reach of victims.

Clause 11 requires that a restraining order must be served on a defendant personally. The Women's Electoral Lobby has brought to my attention one case of a man who has continued to avoid having a restraining order served on him and who has managed successfully to continue harassing his former wife.

As the Women's Electoral Lobby points out, this man could attempt to kill the woman concerned at some stage, and none of his actions would be able to be noted as a breach of a restraining order as he has never had one served on him. I am sure this must be something that has occupied the Attorney's mind in preparing this legislation, and I wonder whether any approach to some solution has been able to be found at this stage. It may not have been; otherwise, it would be in the Bill. However, I would be interested to hear if we are approaching some sort of solution.

Clause 12(3) provides that all parties must be given a reasonable opportunity to be heard when a domestic violence restraining order is to be varied or revoked. Given the emotional and psychological impact that could be involved in this for the victim or victims, will it be possible for the court to hear the parties separately if it is deemed necessary?

Clause 14 deals with interstate domestic violence restraining orders but, unlike clause 12(3), it does not appear to require that variation or revocation of an order should involve all parties having that same opportunity to put their point of view on the matter. If a victim has fled interstate and is unable to argue her case in making a decision, will the court be required to take into account the level of the victim's fear, shown by the fact that she has fled interstate?

I then have a general question about the legislation when it becomes law, and the Hon. Anne Levy also indicated her concerns about this. While the Bill provides that the court

must give priority to domestic violence restraining orders, will the Attorney-General's Department be undertaking any monitoring of this and other aspects of the legislation to determine its effectiveness, and will there be any reporting back to Parliament?

I commend the Government for introducing this legislation because it has given it priority by introducing it in this its first session after assuming Government. Commendation also has to be given to the former Government for the initiatives which it took and which have set us on the right path. I also wish to give thanks and acknowledgment where they are due because the Women's Electoral Lobby, in its submission to me on the legislation, said:

> Thanks to the Parliamentary Counsel whose work in making legislation clear is remarkable. We are very grateful for his expertise and his commitment to simple language.

We must also thank the men in our society who have said that domestic violence has to stop because such violence will not stop if the message is only coming from the women and children who are on the receiving end. The message has to come from their peer group to be effective. More than anyone else, thanks has to be given to the many brave women who have plucked up the courage and gone public over the last few years and said, 'Yes, this has been happening to me.' It has not been easy for such women, particularly when some people have queried their motives and veracity. Those women really must be acknowledged for their courage. The Democrats are very pleased to be supporting the second reading of this Bill.

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

SUMMARY PROCEDURE (RESTRAINING ORDERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 April. Page 594.)

The Hon. C.J. SUMNER (Leader of the Opposition): The Opposition supports this Bill, which deals with restraining orders for the rest of the community; that is, those who are not in a domestic violence situation. The principles are similar, although I notice that the second reading explanation refers to some differences in drafting relating to the grounds upon which a restraining order can be obtained etc. I would like the Attorney-General to identify those differences and to explain why it has been necessary to have somewhat different criteria in this Bill compared with the Domestic Violence Bill. I assume there is some reason related to the content of the Bills but it would seem to me that, as far as possible, they should be the same word for word. Otherwise we will end up with potentially two lots of interpretation and I think that would be unfortunate.

So, I suggest to the Attorney-General that if he can get exactly the same wording in relation to each of the pieces of legislation then he should because it will restrict the capacity for argument and for the legal profession to take points on behalf of their clients, which may be quite legitimate but which Parliament has an obligation to try to minimise. So, I would like some considerable thought given to that issue and I ask the Attorney-General if he can make the criteria the same in both Bills.

One interesting question not addressed by the legislation is the situation where two persons want restraint orders to be taken out against each other. This does not happen very often in the domestic violence situation, but it does happen reasonably commonly where there are disputing neighbours, and a source of dispute and complaint in those circumstances often is that the police take one side against the other. The question arises as to how police determine whether to initiate complaints in those circumstances, particularly as if the police act for one party, that party avoids paying a $64 summons issue fee in the Magistrates Court, and I suppose the situation could arise where complaints might be issued for both parties, although that would be rare, I guess. Nevertheless, there is a conflict of interest if Police act for one party but not for the other. Where this happens the party that gets the police on side first has a tactical and financial advantage which is obvious. So, I would like some attention directed to that issue as well.

It is perhaps somewhat similar to an issue which was raised by the Women's Electoral Lobby in relation to the Domestic Violence Bill. They were happy that a woman could apply on her own behalf for a domestic violence restraining order but were concerned that perhaps this proposed procedure would end in women having to pay for court costs and that it would then end up being too expensive for women to use it. I am not sure whether that problem can be overcome but perhaps the Attorney-General might like to look at that issue even though it relates to the other Bill. I overlooked it when talking on the Domestic Violence Bill earlier. Subject to those matters, I support the Bill.

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

[Sitting suspended from 5.55 to 7.45 p.m.]

PASSENGER TRANSPORT BILL

The Hon. DIANA LAIDLAW (Minister for Transport): I inform the Council that the conference on the Bill is still proceeding and that it will be necessary for the conference to continue during the adjournment of the Council and report on Tuesday 10 May 1994. This is covered by Standing Order No. 254.

JURIES (JURORS IN REMOTE AREAS) AMENDMENT BILL

Returned from the House of Assembly with the following amendments:

No. 1 Clause 6, page 2, lines 16 to 27—Leave out paragraph (b).

No. 2 New clause, page 2, after line 27—Insert new clause as follows:

Amendment of s.23—Selection of names to be included in annual jury list

6A. Section 23 of the principal Act is amended by inserting after subsection (3) the following subsection:

(3a) Where it appears to the sheriff from information contained in an electoral roll that a person whose name has been selected for inclusion in an annual jury list resides at a place that is more than 150 kilometres from the place at which the jury is to be empanelled, the sheriff—

(a) must give written notice to the person that his or her name has been selected for inclusion in the annual jury list for a particular year but that it will not be so included unless the sheriff receives, within one month of the date of the notice, a written request from the person that his or her name is to be so included; and

(b) will not include the person's name in the annual jury list unless such a request is received within one month of the date of the notice.

No. 3 Clause 7, page 2—Leave out the clause.

No. 4 Page 3 after clause 10, insert new clause 11 as follows:

Statute Law revision amendments

11. The principal Act is further amended as set out in the Schedule.

No. 5 Page 3 after clause 10, insert new clause 12 as follows:

Transitional provision

12. For the purposes of section 8(2) of the principal Act, the jury districts constituted under subsection (1) of that section will, until varied by the Governor under that section, be taken to have been declared to consist of the subdivisions of which they were comprised immediately before the commencement of this Act.

No. 6 Page 3 after clause 10, insert schedule as follows:

SCHEDULE

Statute Law Revision Amendments

Provision Amended	How Amended
Sections 5 and 6	Strike out 'shall' (twice occurring) and substitute, in each case, 'will'.
Section 7(1) and (4)	Strike out 'shall' (twice occurring) and substitute, in each case, 'will'.
Section 8(2)	Strike out this subsection and substitute: (2) The jury districts constituted under subsection (1) consist of the subdivisions declared by the Governor by proclamation.
Section 8(4)	Strike out 'shall be unaffected' and substitute 'is not affected'.
Section 11	Strike our 'Every' and substitute 'Each'. Strike out 'shall' and substitute 'is'. Strike out 'be'.
Section 12(1)(a) and (b)	Insert 'or she' after 'he' (twice occurring).
Section 12(1)(c) and (d)	Insert ',he or she' after 'relevant date' (twice occurring).
Section 12(1)(c)(i)—(iii)	Strike out 'he' (wherever occurring).
Section 12(1)(d)(i) and (ii)	Strike out 'he' (twice occurring).
Section 12(1)(e)	Insert 'or she' after 'he'. Strike out 'bound by a recognisance' and substitute 'subject to a bond'.
Section 12(1)(f)	Insert 'or she' after 'he'.
Section 13	Insert 'he or she' after 'if'. Strike out 'he' (wherever occurring).
Section 13(b)	Insert 'or her' after 'him'.
Section 13(c)	Strike out 'the third schedule' and substitute 'schedule 3'.
Section 14	Strike out 'shall not be' and substitute 'is not'. Insert 'or she' after 'he'.
Section 15	Strike out 'No' and substitute 'A'. Strike out 'shall' and substitute 'cannot'.
Section 16(1)	Strike out 'he' and substitute 'the sheriff'.
Section 17	Insert 'or her' after 'his'. Strike out 'co-partnership' and substitute 'partnership'.
Section 18	Redesignate to read as section 18(1). Strike out 'pursuant to' and substitute 'under'. Strike out 'When any such order is made, the judge shall notify the sheriff and the applicant shall be summoned as a juror in accordance with the order.'.
Section 18(2)	Insert the following subsection after subsection (1): (2) The sheriff must comply with an order made under subsection (1).
Section 19	Strike out 'any' and substitute 'a'. Insert 'or she' after 'he'.
Section 20(1)	Strike out 'shall' and substitute 'must'. Strike out 'the thirty-first day of December' and substitute '31 December'.
Section 20(2)	Strike out 'It shall be the duty of the Electoral Commissioner and his deputy, officers and servants to render' and substitute 'The Electoral Commissioner must give'.
Section 21(1)	Strike out 'Every' and substitute 'The'. Strike out 'shall' and substitute 'must'.
Section 21(2)	Strike out 'Every' and substitute 'The'. Strike out 'a jury district other than the Adelaide Jury District shall' and substitute 'any other jury district must'.
Section 24	Strike out 'Every' and substitute 'An'. Strike out 'shall come' and substitute 'comes'.
Section 25(2)	Strike out 'the first day of January' and substitute '1 January'. Strike out 'shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars' and substitute 'is guilty of an offence'. Insert at the foot of subsection (2) the following: 'Penalty: Division 8 fine'.
Section 29(1) and (2)	Strike out 'shall' (twice occurring) and substitute, in each case, 'must'.
Section 29(3) and (4)	Strike out 'shall' (twice occurring) and substitute, in each case, 'will'.
Section 29(5)	Strike out 'shall be again' and substitute 'must again be'.
Section 30(1)	Strike out 'shall' and substitute 'must'. Strike out 'the fifth schedule' and substitute 'schedule 5'.
Section 30(3)	Strike out 'Every such summons' and substitute 'A summons must be served'.
Section 30(3)(a)	Strike out 'shall be served'. Insert 'or her' after 'his'.
Section 30(3)(b)	Strike out 'shall be

	served’.
Section 31(1)	Strike out ‘shall’ and substitute ‘must’.
	Insert ‘or her’ after ‘his’.
Section 31(2)	Strike out ‘shall’ and substitute ‘must’.
	Insert ‘or her’ after ‘him’.
Section 32(1)	Strike out ‘shall’ (twice occurring) and substitute, in each case, ‘will’.
Section 32(2),(3),(4), (5) and (7)	Strike out ‘shall’ (wherever occurring) and substitute, in each case, ‘must’.
Section 33	Strike out ‘shall’ and substitute ‘must’.
	Strike out ‘the sixth schedule’ and substitute ‘schedule 6’.
Section 42	Strike out ‘Upon’ and substitute ‘On’.
	Strike out ‘shall’ and substitute ‘must’.
Section 43	Strike out ‘shall’ and substitute ‘must’.
Section 46	Strike out ‘shall’ (twice occurring) and substitute, in each case, ‘must’.
Section 47	Strike out ‘shall’ and substitute ‘will’.
Section 54	Strike out ‘shall’ and substitute ‘must’.
Section 56(2)	Strike out ‘shall’ and substitute ‘will’.
Section 57(1)(a)	Strike out ‘shall’ and substitute ‘will’.
Section 57(2)	Strike out ‘shall’ and substitute ‘can’.
Section 57(3)	Strike out ‘he’ and substitute ‘the person’.
Section 57(3)(a)	Strike out ‘shall’ and substitute ‘must’.
	Insert ‘or she’ after ‘he’.
Section 57(3)(b)(i)	Strike out ‘shall’ and substitute ‘must’.
Section 59(1)	Strike out ‘Whenever’ and substitute ‘If’.
Section 59(2)	Strike out ‘shall’ and substitute ‘will’.
	Strike out ‘deemed’ and substitute ‘taken’.
Section 59(3)	Strike out ‘shall’ and substitute ‘will’.
	Strike out ‘shall have’ and substitute ‘has’.
Section 60	Strike out ‘any such discharge’ and substitute ‘discharging a jury’.
	Strike out ‘first mentioned’ and substitute ‘previous’.
	Strike out ‘shall be qualified to’ and substitute ‘may’.
Section 60a(1)	Strike out ‘notwithstandi n g anything contained in’ and substitute ‘despite any other provision of’.
Part VII heading	Strike out ‘AND TALES’ and substitute ‘,ETC.’.
Section 61	Strike out ‘Crown’ and substitute ‘prosecution’.
Section 63	Strike out ‘Every’ and substitute ‘A’.
	Strike out ‘shall be’ and substitute ‘is’.
	Strike out ‘shall’ (second occurring) and substitute ‘will’.
Section 64	Strike out ‘Every’ and substitute ‘A’.
	Strike out ‘shall’ and substitute ‘must’.
	Insert ‘or her’ after ‘his’.
	Insert ‘or she’ after ‘he’.
Section 65	Strike out ‘shall be’ and substitute ‘is’.
Section 66	Insert ‘or she’ after ‘he’.
	Strike out ‘shall’ and substitute ‘must’.
Section 68	Insert ‘or she’ after ‘he’.
	Strike out ‘shall’ and substitute ‘will’.
Section 69(1)	Strike out ‘shall’ and substitute ‘must’.
Section 69(2)	Strike out ‘shall’ and substitute ‘will’.
Section 70(1)	Strike out ‘Every’ and substitute ‘A’.
	Insert ‘or her’ after ‘his’.
Section 70(2)	Strike out ‘shall’ and substitute ‘will’.
	Strike out ‘General Revenue of the State and substitute ‘Consolidated Account’.
Part IX heading	Strike out ‘AND PENALTIES’.
Section 78(1)(a)	Strike out ‘thrice called’ and substitute ‘called three times’.
	Insert ‘or her’ after ‘his’.
Section 78(1)(d)	Insert ‘or she’ or ‘he’.
Section 78(1)	Strike out ‘shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars’ and substitute ‘is guilty of an offence’.
	Insert at the foot of subsection (1) the following: ‘Penalty: Division 8 fine.’.
Section 84	Strike out this section.
Section 85	Strike out ‘shall be’ (twice occurring) and substitute, in each case, ‘is’.
	Strike out ‘he’ (first occurring).
	Insert ‘or she’ after ‘he’ (second occurring).
Section 86	Strike out ‘be’ (first occurring) and substitute ‘is’.
	Strike out ‘shall’ and substitute ‘may’.
Section 88	Strike out ‘upon’ and substitute ‘binding on’.
	Strike out ‘shall’ and substitute ‘will’.
Section 92	Strike out ‘shall alter or affect’ and substitute ‘alters or affects’.
	Strike out ‘coroners inquests’ and substitute ‘a coroner’s inquest’.
Second Schedule	Strike out this schedule.

Consideration in Committee.

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

That the House of Assembly's amendments be agreed to.

The Hon. Anne Levy raised several issues when the Bill was before us. One related to gender neutral language. As the honourable member will see from the message that has been addressed in the period since the Bill was first considered here. The second issue related to the list of jurors. The Government had proposed that anyone who lived beyond a radius of 150 kilometres of the location for the circuit court should be excluded automatically. The Hon. Anne Levy argued to the contrary. Whilst we had a disagreement about aspects of the issue, the Government has now provided an amendment which I think accommodates the honourable member's view, but still facilities the conduct of the selection of jury panels.

The process which is envisaged by the amendments is that, in compiling an annual jury list, if the Sheriff is aware that a person lives at a place more than 150 kilometres from the place at which the jury is to be empanelled, then the Sheriff must give written notice to that person, indicating that that person's name has been selected for inclusion for the annual jury list for a particular year. However, if there is no response from that person within one month, indicating that that person wishes to remain on the jury list, the name will be excluded. That seems to be a good way of ensuring that someone has the right to participate.

The CHAIRMAN: Order! The amount of conversation makes it difficult for *Hansard*.

The Hon. K.T. GRIFFIN: If the person does not respond, that person's name is excluded. So, it accommodates the management issue that the original provisions were addressing or sought to address. A transitional provision is consequent on amendments to section 8, which changes the way in which jury districts are described. The districts are the same; it is only the way they are described that has been altered. I commend these amendments to honourable members as a reasonable accommodation of the views originally expressed in the House.

The Hon. ANNE LEVY: The Opposition supports the motion that this amendment be accepted. It is breaking down the principle that one of a citizen's duty is to undertake jury service. We accepted it when the Bill was before us previously that someone who lives more than 150 kilometres away from the court is placed at considerable disadvantage in doing their duty as a citizen as being part of a jury. It is a long distance to travel each day or to stay overnight involves not only expense but considerable inconvenience to families. In practice, the sheriff has always agreed that people can be excused from jury service if they live such a distance from the court, under the provisions which allow a sheriff to excuse people on reasonable grounds and 150 kilometres has been regarded as a reasonable ground.

As the Attorney says, the amendment inserted by the House of Assembly maintains the important principle that, if people wish to undertake their duty as a citizen and do jury service, they will not be prevented from so doing. They will have to take a positive step of filling in a form and posting it back. I hope that the form will be a very simple one that they have to fill in and will not be complicated for them. Every encouragement will be given to them to undertake or agree that they can remain on a list of potential jurors. While this is putting the onus a slightly different way around from that which my amendment originally did, it certainly meets the criterion that people will not be excluded from a jury list who may be more than happy to undertake their civic duty.

I also thank the Attorney for having attached the schedule which updates the language and removes gender specific language that was previously in the Bill. I thank him sincerely for that.

Motion carried.

SOUTH AUSTRALIAN PORTS CORPORATION BILL

Adjourned debate on second reading.

(Continued from 20 April. Page 553.)

The Hon. BARBARA WIESE: The Opposition supports this Bill. The purpose of the Bill is to establish the South Australian Ports Corporation to operate South Australia's public commercial ports as a business enterprise and to encourage trade through those ports. This move is in accord with the recommendations of the May 1993 Industry Commission report on port authority services and is consistent with the direction that the previous Government had commenced and was intending to take. It builds upon extensive reforms commenced by the previous Government in 1990, which in turn sought to take advantage of waterfront reform, initiated nationally by the Federal Government, by boosting trade through South Australian ports, restructuring the Department of Marine and Harbors as a commercial entity and introducing more efficient work practices and competitive pricing policy.

Since the reform process began in 1990, there have been some outstanding achievements, and it is worth recording some of the successes of the past few years. As part of the development of the intermodal Adelaide project, a key element has been to achieve further development of the port of Adelaide and particularly the Adelaide container terminal. The Outer Harbour No. 6 berth at the container terminal was extended by 150 metres. This now permits continuous cargo exchange by two ships simultaneously and has significantly improved the turnaround of vessels serving South Australian container trades.

The previous Government won a significant allocation in the Federal Government's February 1992 One Nation statement for the development of rail based contained transfer facilities at Outer Harbour and the purchase of new straddle carriers to improve cargo handling at the container terminal. I understand that two of those straddle carriers were received recently. An agreement was reached with an international intermodal operator (Sea-land Containerised Freight Services) to operate the Outer Harbour container terminal from January 1993, and late last year a 10 year operational agreement was negotiated with Sea-land. This move, which had the overwhelming support of the industry and only grudging acceptance from the then shadow Minister for Transport, has been very successful.

I am sure that with Sealand's involvement and support the Adelaide container terminal and the proposed Ports Corporation will continue to achieve new business for South Australia. As an aside, it is also worth noting that Sealand last year employed six permanent stevedoring employees and 10 trainees, two of whom were women. These people were the first new employees on the wharf for many years.

In July 1992, a memorandum of understanding was signed between the port of Singapore and the port of Adelaide for the promotion of the port of Singapore as the international

transport hub and the port of Adelaide as a regional transport hub for Australia for containerised sea cargo. Direct shipping services were established between the port of Adelaide and New Zealand to serve importers and exporters in South Australia and Western Australia, and improved shipping services between Adelaide and South-East Asia, Japan, Korea and Europe were secured. In fact, for the last year ending June 1993 the number of ships calling at the Adelaide container terminal increased from 90 to 141, representing a 36 per cent increase in vessels and a 26 per cent increase in cargo volume.

The Outer Harbor No. 3 and 4 berth area was developed into an international terminal for motor vehicle imports and exports, in particular to accommodate Mitsubishi Motors' export program. The development of a new pricing policy and associated charge structure resulted in price reductions of up to 48 per cent on container wharfage rates at 1 July 1992. Further reductions took place in September 1992, during 1993 and in January 1994 as a result of decisions announced by the previous Government in November last year.

The bulk loading of grain into Australian costal ships on a 24-hour basis was introduced, with a reduction in loading times of 10 per cent. Bulk handling charges also were kept at the 1985 levels, although CPI rose by about 60 per cent during that time. Pilot productivity in the port of Adelaide increased by 50 per cent as a result of service rationalisation and improved work practices.

As far as the Department of Marine and Harbors itself was concerned, it was restructured as a Government trading enterprise in 1990. From that time and up until the end of last financial year the department had improved its overall financial position by $9.5 million, a substantial improvement on a turnover of approximately $55 million. Last year, a new financial charter was negotiated to restructure the department's cost base and to provide greater commercial flexibility.

Key objectives were to reduce the large interest burden, using retained earnings and asset disposals; establish a dividend policy based on operating results; and to fund community services on an agreed contractual basis. The move now being made by the current Government to establish a Ports Corporation to continue the process of reform is a logical next step. From inquires I have made since the introduction of the Bill, it would appear that there is broad support for this measure. However, there are a small—though important—number of questions that have been raised with me to which I would appreciate answers from the Minister when she responds to the second reading contributions.

First, as the Minister indicated in her second reading speech, the Bill does not specify the assets or ports for which the corporation will be responsible. The South Australian Cooperative Bulk Handling Limited raised with me its concern that the ports subject to indenture agreements, namely, Stanvac, Bonython and Ardrossan, may not be included as ports under the corporation's authority for administration purposes. I ask the Minister whether she can indicate what the Government's intentions are with respect to these three ports.

The Australian Chamber of Shipping expressed its opposition to arbitrary dividend payments being payable by port authorities to respective Governments. I note, too, that this is an issue that was raised by the industry commission, which expressed concern about the practices being pursued by some Governments with respect to dividends required of port authorities.

Likewise, the Australian Chamber of Shipping indicated that it believed that fixed rates of return were undesirable. So, I wonder whether the Minister would be able to indicate what the Government's intentions are with respect to any dividend payments required of the corporation in future, and on what basis such dividend payments will be struck.

I note that the Government is making a clear separation between commercial operations of ports and other functions currently undertaken by the Department of Marine and Harbors. I can appreciate the reasons for this and support them. However, I want to raise one point with respect to cost. During last year the advice provided to me on the issue of which organisation should be responsible for certain functions was that it was desirable for the new statutory corporation to retain responsibility for marine safety and marine pollution matters, even though they are not part of the commercial operations of the ports. The reason put forward for this proposed action was that there were economies of scale to be gained from retaining those operations as part of the corporation's responsibilities.

I understand that the intention now is for marine safety and marine pollution to be taken over by the Department of Transport, with the possibility that the Ports Corporation would undertake certain functions on a contractual basis. Assuming that the corporation will be seeking to make a profit on any contractual arrangement into which it enters, will the Minister assure us that the cost of providing these services to the community will not be increased as a result of those possible arrangements?

Finally, I want to raise some concerns which were expressed by the trade unions that cover the Department of Marine and Harbors and, presumably, also the proposed Ports Corporation work force. As the Minister would be aware, the trade unions generally support the legislation and recognise that a number of matters will be the subject of negotiation as to employees' rights and conditions once the corporation is established. It is acknowledged that the legislation provides for the continuation of an employee's existing rights in respect of employment, and an assurance has been given that it is not intended that any package of employment arrangements developed by the Ports Corporation for employees transferring from the Public Service be any less favourable than at present.

It is also acknowledged that a consultative committee will negotiate various issues affecting the establishment of the corporation and its work force, but the unions and the existing work force are very anxious to receive assurances about two key issues in particular affecting the work force, and they are particularly concerned about these matters following the release of the Audit Commission recommendations two days ago. The questions I ask about these issues are:

1. Will the Minister reaffirm that the current policy of no involuntary retrenchments will apply to the Department of Marine and Harbors and SA Ports Corporation employees?

2. Will employees transferring to the Ports Corporation retain existing rights to remain in the State superannuation scheme?

3. What will be the position of new employees in the light of the announcement made by the Government two days ago about superannuation funds and future arrangements?

A further issue about which the unions feel strongly is the question of board membership. They believe that at least one of the board positions should be offered to the unions

covering the work force in the SA Ports Corporation. In making this request the unions are fully aware of the responsibilities of board members under the Public Corporations Act and they maintain that, from their experience in other States where union representatives have been appointed to port authority boards, the outcome has been to produce a better informed board and work force and therefore a smoother and more cooperative approach in establishing the new port authority and in its ongoing work. I ask the Minister if she will undertake to appoint a union representative to the board of the South Australian Ports Corporation, I support the second reading.

The Hon. SANDRA KANCK: Given that many of South Australia's ports are located half way up the St Vincent and Spencer Gulfs and beyond, as well as the relatively small size of the South Australian economy, I believe that it is difficult for this State to make money out of its ports. My high school geography tells me that the cost must inevitably be higher because of the small throughput. The process of creating the corporation is a streamlining one, removing the responsibilities which specifically relate to improving the exporting and importing potential of our ports from what was formerly the Department of Marine and Harbors.

The Minister has said that the consultative process for this Bill did not reveal any major concerns about the measure, and that certainly seems to have been the case when I have telephoned various organisations to obtain feedback. However, as I read through the Bill a few queries were raised in my mind. Clause 22 (1) provides:

> The Governor may, by proclamation, vest in the Corporation—
> (c) any wharves, docks, jetties or other structures that belong to the Minister under that Act.

Would 'other structures' include the wheat silos currently operated by the South Australian Cooperative Bulk Handlers? What is the Government's intention in relation to that? Following on the issue of silos, is it the Government's intention to implement a 'user pay' system for grain handling at the silos, and would this mean an increase in costs for farmers?

Clauses 11 and 22 (2) relate to the power of the Government to acquire land compulsorily and the power of the Governor to resume land compulsorily. One assumes that because these clauses are included in the Bill the Government is considering acquiring land using those powers, and I would like the Minister to indicate just what land the Government is thinking of acquiring or at least give some examples of the circumstances where there might be the need to acquire land.

In the belief that the creation of this corporation will provide a more manageable, focused and smaller entity, the Democrats support the second reading.

The Hon. A.J. REDFORD secured the adjournment of the debate.

HARBORS AND NAVIGATION (PORTS CORPORATION AND MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 April. Page 554.)

The Hon. BARBARA WIESE: The Opposition supports this Bill, which is essentially consequential upon the passing of the South Australian Ports Corporation Bill. In large part it provides the relevant powers to undertake certain functions that the new board would require in order to satisfactorily carry out its duties in respect of the ports for which it has responsibility. In addition, there are some minor changes to the Harbors and Navigation Act, which was approved by this Parliament last year, that will bring about improvements to the operation of the legislation once it is proclaimed.

The Hon. SANDRA KANCK: The Minister has indicated that this Bill, in its draft form, was circulated at the same time as the Ports Corporation Bill and that it has received general support. Again, I have found this to be the case. However, I have one concern in relation to clause 17 and I seek some explanation for the powers that have been given to the CEO.

Clause 17 amends section 35 of the principal Act, which currently provides that vessels of 35 metres or more in length must be navigated by a pilot or, alternatively, the master of the vessel must hold a pilotage exemption certificate.

It concerns me that vessels of 35 metres or more in length could be travelling in our waters without pilotage. However, the proposed amendment in clause 17 provides still more openings for this to occur, as it allows the CEO of the Ports Corporation, subject to such conditions as the CEO thinks fit, to exempt a vessel—and I stress the word 'vessel'—from the requirements of this section. It may be that there are some ports which are safer than others which might justify this.

I have general concerns about accidents occurring in Gulf St Vincent, which is all but a closed system from an environmental point of view. An accident occurring there involving an oil or chemical spillage would be much more devastating than one at, say, Port Lincoln. I would like the Minister at some stage to explain why these further exemptions are necessary. Under what circumstances is it currently considered appropriate for a pilotage exemption certificate to be given? Why does the proposed amendment to the existing wording go further?

If it is possible, I would like the Minister to provide some facts and figures about the number of exemptions provided in previous years and the reasons for those exemptions. As I stressed, this amendment actually gives the exemption to a vessel, not even to the master of the ship. Whether or not I will be moving any amendments to this Bill will depend on the Minister's answers to me regarding clause 17. However, in any event, the Democrats support the second reading.

The Hon. A.J. REDFORD secured the adjournment of the debate.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 756.)

The Hon. A.J. REDFORD: I rise to support this Bill. I will comment in some detail on provisions later during the Committee process. At this stage I would like to make a couple of general comments on the Bill and some specific comments about specific terms for commissioners and also on the topic of unfair dismissals. There is no doubt that there is no more important piece of legislation that has come before us in this session of Parliament. Certainly, there are competing interests which we have to take into account when we deal with this legislation. I listened with interest this morning

to the contribution of the Hon. Carolyn Pickles but unfortunately I missed the comments of Messrs Terry Roberts and Trevor Crothers. I would hope that in this place, when it comes to dealing with the Bill in Committee, we do not have this childish Lower House type of debate where we have to divide every five minutes. The contributions made by members opposite indicate that there is a more reasonable attitude towards reform on this topic.

This Bill gives us an opportunity to reform industrial relations in this State. The Bill enables control of industrial relations and enterprise to be put back into the hands of those people who are directly affected; namely, the employer and the employee. Certainly, we can do that within the framework of the legislation and we can do so for a number of reasons without a great deal of fear. This legislation has enshrined in it a safety net but it does not have the notions of paternalism that we had in the 1972 legislation. I will make some comment about the 1972 legislation in a moment. The world has changed a lot since 1972 and if one—

The Hon. T.G. Roberts: Kalangadoo!

The Hon. A.J. REDFORD: Yes, Kalangadoo has changed a lot since 1972. It is about a quarter of the size it was. Back in 1972 I think the Basheers still had the pub. Back in those days the Bill was introduced by Mr McKee and contributions were made by people such as Mr Coombs and Mr Langley. At that stage I think I was 16 years old, Gough Whitlam had just come to power, we still had a steel industry, we still had a shipbuilding industry and we had only just gotten out of Vietnam. A lot of water has passed under the bridge and I think it is opportune that we revisit this area and revisit it tempered with the experience that we have had in the past but with an open mind and a confidence that we can adopt some change.

The world has changed a lot since I was 16. World trade has become much more vigorous. There are fewer trade barriers. The trade has changed and does change constantly and regularly. We constantly hear the cry for more flexibility in industry and the employment associated with that industry. We have changes in family lifestyle, we have two parent families. We have more people working part-time and we have a greater number of people working flexible hours. They may seem small but things such as extended shopping hours and things of that nature are far different to what they were back in 1972. Another significant thing that has occurred is that the unions that represented a very substantial proportion of the work force in 1972 have lost significant numbers of their membership, coming to the point where a substantial proportion of the Australian work force and the South Australian work force are not members of a union and as such are unrepresented.

One only has to look at the computer industry to see that there are large numbers of people in this rapidly growing industry that are not represented by unions. I suppose a good analogy would be to compare the 1993 computer programmer with the 1972 fitter and turner and look at where and how he fits in economically in this community. I do not think I could be criticised if I said that the standards and qualifications required in comparative terms of a fitter and turner back in those days are not dissimilar to those which we require from a computer programmer today.

But when one looks at where they fitted within the industrial system those days compared to what happens today, one wonders whether the industrial system has provided the protection to the ordinary working person that one would have hoped it could. I only need to draw the attention of members to the fact that back in those days the fitter and turner was at the bottom of the pile. He got $15 or $20 more than the basic wage. He had to go through a four or five year apprenticeship and obtain a skill. Over that period large numbers of fitters and turners left the various metal work industries. It came to the ridiculous point in the mid 70s where you saw people on assembly lines, particularly at Chryslers and Holdens, earning more money than these well qualified fitters and turners. The award and industrial system did not suit them when one looks at it from a justice point of view as well as one would have thought it might have.

If one looks at the position today, you see that the computer programmer, the equivalent of the fitter and turner, is earning a very reasonable income. It would be correct to say that their incomes range from $30 000 to $70 000 or $80 000 per annum, depending on where they work and how hard they work. The interesting thing is they have managed to achieve that without direct union involvement. I am not suggesting that unions have been of no use or of no assistance. I am not seeking to denigrate their role, but unions to a large extent have become less relevant to working environments today, and it is important that we recognise that and we do so in this legislation.

It was interesting to read the comments of the Hon. Mr McKee when I went back to the 1972 first reading speech. I concede that my quotes are selective. He said:

> Clearly, a result that is arrived at by agreement between the parties is usually a better result than one that is imposed on the parties by a third party.

I do not know think anybody in this Chamber would disagree with that proposition. When one looks at enterprise agreements, they fit comfortably within that notion. Later in his speech, he said:

> The policy of the Government that all wage earners in this State, whether or not they are subject to awards, should be entitled to a minimum standard of annual and sick leave, is given effect to by this Bill.

Again, I do not think anybody in this Chamber would disagree with that as a proposition. Certainly it is the Liberal Party's policy and the objective of this Bill to ensure that that happens. I do take issue with this next matter, and if one looks back over the past 21 years, history has proven Mr McKee and the Labor Party's view at that time to be wrong. He said this:

> We do, however, consider that it should be possible for the Industrial Commission and conciliation committees to grant preference in employment to members of registered trade unions.

He further states:

> Preference to unionists has always been part of the Labor Party's industrial policy and similar provisions have been included in previous Bills. This is not compulsory unionism, as some persons have previously asserted, but merely gives a discretion to the Industrial Commission.

Despite unions having been given that preference in the past 21 years, we have seen an increasing percentage of working people moving away from unions and not forming or being involved in them or seeking their assistance in their working relationships with their employers. That is an important matter to consider when one looks at this legislation. It is important to consider that significant numbers of people are not members of unions but need the protection of a safety net, an employee ombudsman and the system this legislation sets out.

It is important that this legislation does recognise that, particularly when one looks at article 20 of the universal declaration of human rights, which provides:

> Everyone has the right to freedom of peaceful assembly and association and no-one may be compelled to belong to an association.

The word 'compelled' begs the question, but it is my view and I believe the view of the Government that the means by which people are forced to join unions other than through their own free choice should be removed. It is pleasing that people will now have that opportunity.

It is also important to give people the opportunity to pick and choose which union they want to belong to. Unions like any other enterprise should be made to compete based on the quality of service they provide and the cost of that service. They should be made to compete, based on their ability to represent their workers and not because some Government or law makes them join a union. Any company that was eight or nine months late in presenting its financial accounts to its shareholders certainly would be open to prosecution.

That has not stopped the South Australian Institute of Teachers thumbing its nose at its members. It has been consistently late in providing important financial information to its members. It has been contemptuous of its members, and SAIT has a very dark time ahead of it if it continues to adopt a militant approach to industrial relations that it seems to want to embark upon, having regard to the news reports of this evening. It amazes me that, when a report comes out and says that the education system is not delivering and that it is expensive, SAIT takes it upon itself to call for a general strike without presenting a comprehensive answer as to why, if it thinks that is necessary, the Audit Commission is incorrect. Further, it should present some constructive suggestions as to how the process should be dealt with. However, the South Australian Institute of Teachers sits there and says, 'We'll not make any suggestions; we'll not make any changes; we'll simply go out on strike and damn the kids.'

I think that is absolutely outrageous. Only until recently teachers were forced to join that union by Government action. They had no option but to be a member of that union, irrespective of how they thought the union conducted itself. This is a union that spent $12 for every single vote it got at the last election. It spent that money without any reference to its members. I will tell members opposite how some of these unions operate, how they keep the general membership out of it and how they make themselves less accountable. One thing I would really like to see addressed in the years to come is the election of union officials and the process of staggering elections over four or five years so there is always an entrenched conservatism built into the union structure. I will explain it in these terms. If you have a 10 member executive, you might say, 'I don't like that executive. I'm Angus Redford, employee, and I don't like what my union leadership is doing.' Only two positions come up every year—

The Hon. Anne Levy: Not in the teachers union.

The Hon. A.J. REDFORD: No, but in some unions.

The Hon. Anne Levy interjecting:

The Hon. A.J. REDFORD: I haven't directed this at the teachers union. If you listen carefully you won't have to interject needlessly. This is what happens with these unions. If I want to change the system, I go and see all my brother members. They say, 'We don't like what the leadership is doing either; we'll vote for you.' So I then go and see my good friend Mr Terry Roberts and say, 'Why don't you join with me and stand?' We get overwhelming support and we get elected to the union.

An honourable member interjecting:

The Hon. A.J. REDFORD: This is what happens, and you know it. So, Mr Roberts and I turn up and say, 'We have a mandate; we have overwhelming support', and the other eight members look at us with a blank face, shake their head and say, 'These two blokes really don't know what they're doing.' The next year comes along and in the previous week Mr Roberts and I work out very quickly that we have not got the numbers. So we try to put up another two candidates at the election. In the next 12 months the balance of the union hierarchy spends the whole of that time discrediting us and using union resources to do it, cutting us out of office. There are plenty of examples of that.

The Hon. Anne Levy interjecting:

The Hon. A.J. REDFORD: Perhaps that should be the case. Certainly I think the Government at this stage would probably prefer it, but I must say that the Liberal Party on previous occasions probably would have preferred the current system. I am saying that the unions have lost touch with their membership, and that can be seen in their declining membership. If the unions are so good, so important to their workers and so effective why on earth do they need compulsory unionism? Why do they need to go to a Labor Government and say, 'Will you collect the dues for us?' If they are so good, why do they need that? Why are the unions losing up to half their members in Victoria? It is simply because the Government no longer collects their dues, and that is because they have lost touch. This Bill provides a mechanism whereby non-unionists can be properly represented and properly present their case in negotiations. It certainly provides protection for those people.

I listened with some interest to the contribution of the Hon Carolyn Pickles this morning, and I must say that there is some merit in what she says: women have been and are disadvantaged in this community. Quite frankly, the old system of inflexibility has entrenched that position. When we come to the specific clauses—and I will sit through the Committee stage—I will explain in more detail why I say that. The fact of the matter is that if you come along here and say that women are disadvantaged you must look at the old system and say that there is something wrong with it—not just that this new system will disadvantage them.

The Hon. Anne Levy: It will make it worse.

The Hon. A.J. REDFORD: It will not make it worse. Women will have much more freedom of choice as to who can represent them. They can form their own associations, and those associations—and the honourable member would agree with me on this—might actually understand how women think and what they require, because my experience is that in some unions there is no more sexist body than you would find anywhere else in the community.

The Hon. Anne Levy: Try political Parties.

The Hon. A.J. REDFORD: Yes, that too.

The Hon. Anne Levy: Both of them.

The Hon. A.J. REDFORD: We are dealing with political Parties; we dealt with that yesterday. It is time the union movement dealt with this in a far more effective way.

The Hon. Anne Levy: We did not.

The Hon. A.J. REDFORD: Yes, we did. We set up a select committee on the issue of electing more to the Parliament.

The Hon. Anne Levy: That is not political Parties.

The Hon. A.J. REDFORD: Into political Parties?

The Hon. Anne Levy: Yes, political Parties.

The Hon. A.J. REDFORD: We will deal with that.

The Hon. Anne Levy: Are you going to legislate for political Parties?

The Hon. A.J. REDFORD: No, I did not say that at all. No-one would presume to pre-empt a decision of a select committee. I know this hurts but the unions sit there and hit us with rhetoric day in and day out, but the fact of the matter is that they have not properly represented workers.

The Hon. G. Weatherill: What union do you belong to?

The Hon. A.J. REDFORD: I belong to one of the best unions: the Law Society. That is one of the few unions—

Members interjecting:

The Hon. A.J. REDFORD: —that does not have a declining membership. I would like the honourable member to stand up and explain why unions have lost members, and explain how 60 per cent of Australian workers can be properly represented under the existing system, which really only recognises workers in a negotiating situation. The fact is that if you continue to support your union mates, then you will be exposed for what you are, and that is ignoring 60 per cent of the working public in this country.

The Hon. T.G. Roberts: How many lawyers do not belong to the Law Society?

The Hon. A.J. REDFORD: I think about 30 per cent do not belong.

The Hon. G. Weatherill: How many women on the executive? One.

The Hon. A.J. REDFORD: I think there is more than one. From memory there are three or four.

The Hon. Anne Levy: No.

The Hon. A.J. REDFORD: On the council? I can check that and I will have a direct answer for you. Certainly the legal profession is moving very quickly towards involving women in the work force. The point I am making is that under the current system where unions have been given an advantage 60 per cent of people have been disenfranchised and union membership is falling. When people are given the choice, as we have seen in Victoria, they leave the unions in droves. That is what happened in Victoria. It was simply a matter of the members saying, 'The union does not look after our interests.' That is what this current campaign by SAIT is all about.

It has nothing to do with education; it has nothing to do with improving quality. It has a hell of a lot to do with keeping them in their own jobs and looking after their own mates. That is the fact of the matter. Not one constructive comment has come from the Institute of Teachers since the Audit Commission report. If that is the approach that unions adopt in this State they will lose members more quickly than they have in the past. They want to start looking after their members. The other major change that has occurred in this country since 1972 has been the increased activity of the Federal Government.

That is a healthy activity, and workers in enterprises in this State will be offered a choice. I know that we will listen to many hours of debate over the ensuing days about how workers will be disadvantaged, and how they will be exploited, and we will hear all sorts of fear and scare campaigns on this topic. What I say in answer to that is that workers and employers have a choice. If this system fails then they will move to the Federal system in droves. If one really wants to summarise—

The Hon. Anne Levy: Like Victoria.

The Hon. A.J. REDFORD: Exactly. To summarise the position: if you want to get involved in enterprise bargaining stay within the State system, because the Federal legislation is that complicated, that convoluted, and that bureaucratic you will never get an enterprise agreement or, if you want to go to the rigidity of an award system, then you take steps to move over to a Federal award. Even the moving over to a Federal award is done on an enterprise basis, so at the end of the day whatever happens we will be better off. Certainly we cannot retain the outmoded and outdated provisions we currently have in our legislation.

The Hon. T.G. Roberts: Then why have one million workers moved to the Federal award system?

The Hon. A.J. REDFORD: I will give you a very simple answer to that. There was a huge scare campaign. The South Australian Institute of Teachers and the Public Service Association started it two minutes after they got the report. The Hon. Carolyn Pickles in a question to the Hon. Robert Lucas yesterday asked why the unions were excluded from the lockup. That was simply untrue. Two unions turned up to the lockup for the media at 11 o'clock yesterday and were allowed to enter, but, typical of unions, they wanted to leave early. A lockup is a lockup. However, it is typical of their approach: one rule for us and another for everybody else. So the Hon. Carolyn Pickles was incorrect when she said that the unions were excluded from the process. Having had the report for two minutes, they come out and all they can say is, 'It is untrue and we are going on strike.' That is the only response that they have had. Who is being confrontational? The Government has said, 'Here is the information. We shall sit back for a couple of months and wait for submissions and then we will start making some decisions.' What has the union done? It has come out tonight and it is going on strike.

Members interjecting:

The Hon. A.J. REDFORD: All right, three weeks. However, there is nothing more confrontational than the union. The Government has said that it is not committed to any course and it has not made any decisions and it is prepared to listen to representations. Members may laugh, but one could be forgiven for thinking that the unions are simply reactionary and confrontational. The huge decline in membership of unions indicates that that is what the average Australian worker thinks of unions. As I said earlier, it is time that the unions got back and looked after the interests of their members.

The Hon. T.G. Roberts: You don't wait to put your head in the noose.

The Hon. A.J. REDFORD: I do not accept that. If they think there is a noose involved in this legislation, there is a simple out for them. They can apply and be registered under a Federal award and have all the protection that the new Federal legislation has to offer them. That is all in front of them. I know that certain elements do not like this, but we have a very healthy competition between the State and Federal systems. Frankly, some people—

An honourable member interjecting:

The Hon. A.J. REDFORD: And in Victoria, yes. Some groups ran a scare campaign and moved to the Federal system. I think members opposite might be surprised just how few will go. There will be the odd aggressive confrontational union like the South Australian Institute of Teachers and perhaps the Public Service Association taking what few members they have left back to the Federal system. But that does not worry us. They will not be taking many members with them, because they do not know how to service their

members. The only way they can keep their members is to get former Governments to collect their dues for them.

I want to turn to two other matters of some importance before closing. The first relates to unfair dismissals. It is pleasing to see that there are cost provisions in the legislation. For too long, particularly in this recession, unfair dismissal provisions have been used to enable payments to be made to workers in a situation where perhaps redundancy payments should have been made.

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: You know very well that a worker will come in and say, 'I have just been given the flick', and you say, 'We'll give him a wrongful dismissal application.' Members know that in a no-cost jurisdiction the employer will say, 'I will give you a couple of thousand dollars because it will cost me more than that to run the thing through the system.' Everybody knows that it has become a cash cow and a cost to the employer. Certainly, it has not done anything to give employers confidence to take on new employees. I am pleased to see that that is included, although personally I think it should have been a little stronger: the provision states that the employee must pay costs.

The Hon. Anne Levy: If they lose.

The Hon. A.J. REDFORD: No. Clause 103(2) provides:

> If an employee discontinues proceedings under this part more than 14 days after the conclusion of the conference of the parties, the commission must, on the application of the employer, make an order for costs . . . against the employee.

It is there, but most lawyers with a modicum of commonsense, if their instructions are to do so, will do a deal, and say, 'I will withdraw only if you don't ask for those costs.'

The Hon. C.J. Sumner: It will mean that more of the cases will go on.

The Hon. A.J. REDFORD: I don't think so; I think you'll find that employers will ignore it because they are as much at risk as anybody else. Certainly, unfair dismissal—

The Hon. Anne Levy: Lawyers will encourage it.

The Hon. A.J. REDFORD: You've got a thing about lawyers, and I'm not sure what happened to cause that. Lawyers generally do their best to act on behalf of their clients.

Members interjecting:

The Hon. A.J. REDFORD: Yes, although the legal profession, unlike the union movement, has grown over the past 10 years, and perhaps that is some comment. I am not here to debate the legal profession. I do not know that that clause will necessarily advance much, but at least it is a recognition that unfair dismissals have been used as a bit of a rort over previous years, and one would hope that, with a strong Industrial Commission, we will have fewer of these try-ons that we see in the courts every day.

The other matter that was quite properly raised—and I thank the Hon. Carolyn Pickles for mentioning it this morning—was the role of the Equal Opportunities Commission, and certainly her comments have some validity. Again, that is something we need to look at closely. I must say that the problem with the equal opportunities process is that it is terribly inefficient. It involves a greater use of public resources in that it is an inquisitorial process.

Members interjecting:

The Hon. A.J. REDFORD: It does. You see, what happens is that you go to the Equal Opportunities Commission, and it provides an investigator who goes out and investigates it and, generally speaking, it takes two to three times longer.

The Hon. C.J. Sumner: Some things are resolved by conciliation.

The Hon. A.J. REDFORD: I know. It still uses its inspectors to go out and investigate and interview everybody before there is even a conciliation. That basically happens with equal opportunities. The other problem that I have encountered with the Equal Opportunities Commission process is that it takes a very long time, because unfortunately it has so much work to do. Under this proposal, you will get your conference within two to three weeks of your dismissal, which tends to clear up most of the cases; only a small percentage are left after the conference, whereas, under the process adopted by the Equal Opportunities Commission, you do not get your conference for three to five months after the dismissal. Unfortunately, in the commercial world that means effectively a reinstatement option is long gone. Really, at the end of the day, you are fighting only for damages.

The Hon. T.G. Roberts: I hope the ombudsman's office is going to be comfortable, because there will be a lot in it.

The Hon. A.J. REDFORD: The ombudsman will have a big challenge. I certainly will not talk about that tonight, because I would rather deal with it during Committee. The other issue I wish to address is one that will cause a great deal of controversy (and I am sure that some of my former colleagues will be writing letters to me on this topic over the next couple of days), that is, the security of tenure of commissioners, in particular involving clauses 33 and 36.

Under those clauses, particularly under clause 36, a commissioner is appointed for a period of six years. I note that there has been some comment by the Chief Justice, by various members of the legal profession, by various interest groups and, I might add, by the Catholic Church (which wrote to me the other day commenting on this) that it does interfere with the independence of the judiciary. I must say that that is an absolute furphy. I know that there will be a significant amount of publicity over this.

The Hon. C.J. Sumner interjecting:

The Hon. A.J. REDFORD: If the Leader of the Opposition listens to my argument, he will have the opportunity to deal with it in due course. I think it is important that I put the cards on the table in this issue, because to some people it is an important matter of principle. It is said that, because they have a six year term, they lose their independence; that they are no longer independent; that they can be the subject of executive control; that it will enable the system to be fiddled with and—

The Hon. Anne Levy: You wait till you feel the difference of being in your last term. Then you will find out what Executive control is.

The Hon. A.J. REDFORD: I may well be in my last term but, fortunately, it is a long term and I am in the early stage of it. When one looks at what the commissioners do, one can classify it into three main areas. There is a very small element of a decision making function; they have an advisory function; and they have an administrative function. I know the current Chief Justice has never been backward in giving Governments of either persuasion advice. But that is not a function of his, nor should it be. When one specifically—

The Hon. Anne Levy: Including Garfield Barwick?

The Hon. A.J. REDFORD: Including Garfield Barwick. I think some of these—

The Hon. Anne Levy: Including Garfield Barwick and

Sir John Kerr?

The Hon. A.J. REDFORD: Yes. I don't think that that is a function—

The Hon. Anne Levy: That is an interesting admission.

The Hon. A.J. REDFORD: Well, I have certain views on that. It is a long time ago but, certainly, I would hold a view probably not dissimilar to your own on that issue. That is not what I am debating at the moment. What I am saying is that these commissioners are not exercising a judicial function. Even if they are, how will a six year term do it? We get this great outcry over this, and it seems to be all coming from the same area. It happened in Victoria when they actually abolished something. I do not know whether the lawyers over there wanted to have these judges sitting doing nothing, or what they wanted. Simply, it does not bear examination.

We will pick one of the most significant pieces of legislation that the Labor Party has given to this country, and I refer to the Family Law Act. The Family Law Act has registrars who perform precisely the same functions, in fact probably more judicial functions than any judicial officer, and they have no security of tenure. They do not get a lifetime appointment. But did we hear the other side, when that came up, running around saying, 'Woe is the judiciary. They have lost their independence; this is all a great plan for Executive control'? We did not see that. If one starts to examine this issue a little further—

The Hon. T.G. Roberts interjecting:

The Hon. A.J. REDFORD: You never can. What I am saying is that you do not see a great rush of letters to the editor saying, 'The Family Court registrars do not have lifetime appointments.'

The Hon. C.J. Sumner: The Government is not usually a party before the Family Court.

The Hon. A.J. REDFORD: But let us look at some other jurisdictions. I will start by looking at the United States. I am pleased to see some of the comments the Hon. Mr Elliott made in today's paper, referring to what happens in Oregon. In Oregon the Court of Appeals and the tax court have a six year term; in Alaska, judges (not registrars) have an eight year term; in California the Court of Appeal has a 12 year term; in Hawaii, there is a 10 year term and in Idaho a six year term, but no-one in the United Nations says that the judiciary in the United States is not independent. I defy anybody on the other side to say that because they have these limited terms they are not independent. That is simply not the case. I will tell you what really happens.

The Hon. Anne Levy: The Supreme Court judges in the US get life tenure.

The Hon. A.J. REDFORD: That is one of the exceptions in that country, and that does not make them any more independent than most of the appellate courts in 30 out of the 50 States of the United States, and you do not see great travesties of human rights.

The Hon. C.J. Sumner: Have you researched the United Nations view on it?

The Hon. A.J. REDFORD: I have not done any research, but I have certainly not heard any great outcry.

The Hon. C.J. Sumner: You will find that tenure is referred to in the principles of judicial independence approved by the UN.

The Hon. A.J. REDFORD: That may well be, but certainly you do not find a great deal of injustice. Let us consider what happens if we offer lifetime tenure. If we offer a 35-year-old a job as a commissioner, 30 years later he will still be there sorting out deals between workers and employers and he will have been out of the work force for 30 years. Ignorance is bliss.

We have heard enough over the past few days about the great WorkCover system that the Labor Party introduced—this great model of worker support—which took away from workers the common law rights they had before the 10 years of Labor Government. They set up a system of WorkCover review officers with no tenure at all. Now it wants to give commissioners full tenure. That is a great furphy. It is complete and utter intellectual dishonesty on the part of the Opposition to say that we must appoint for life these people who perform administrative functions. I have news for the Opposition: the world has changed. There are no guarantees any more; not for anybody.

The Hon. C.J. Sumner: Not even for judges?

The Hon. A.J. REDFORD: I am not talking about judges; that is another issue altogether.

The Hon. C.J. Sumner: You said 'anybody'.

The Hon. A.J. REDFORD: I am not talking about judges. You do not see it in this place or in the Public Service. I cannot see why commissioners who are providing advice and carrying out administrative functions should have lifetime tenure. I cannot understand this cry that the sky is falling in because they get only six year terms, when in 30 out of 50 States in the US the most important appellate courts and other operating courts, such as superior courts and circuit courts, have terms of between four and 12 years.

Quite frankly, I am not convinced that specific term tenures for judges would not in any way interfere with their independence. One thing that everyone must remember is that with complete independence comes no accountability. That has been borne out time and time again, and no doubt it will be borne out again. Frankly—

The Hon. R.R. Roberts: Which judges have no accountability?

The Hon. A.J. REDFORD: You will not find me naming commissioners in this place and putting them on the public record, but I will tell the honourable member outside this place and he will agree with me. We have already agreed on which commissioners are worthwhile and which are not. Quite frankly, their performance sometimes tails off and if they knew they had to go back out into the real world they might understand the real world just marginally better. The honourable member and I are agreed on the sort of person that has that problem and he knows that.

The Hon. T.G. Roberts: If they only have limited tenure they know how to act to get their second term, too.

The Hon. A.J. REDFORD: But you must look at the context within which they work. If they make a great mistake or if they are headed down a path of great bias the protective mechanism is the appeal process. I am not suggesting that there be tenure or a six-year term in that regard. There is a safety net there, just as you have when a public servant makes a decision that affects a life.

Public servants make some very significant decisions. One has merely to look at immigration and the sorts of things that can happen to ordinary human beings as a result of the exercise of authority by a particular person, and there are appeal mechanisms whereby their rights can be protected, and that is what is happening here. That right is still there and those people can be adequately protected through that system.

If we keep going the way we are and if we adopt this

policy right through, we will have 20 or 30 WorkCover review officers having lifetime tenure and everyone will have lifetime jobs. I have news for the Opposition: the world does not operate that way. We are actually in a far more flexible and fast moving world with much greater change taking place at a more rapid rate and, if we are to be competitive, we must recognise and understand that.

The Hon. T.G. Roberts interjecting:

The Hon. A.J. REDFORD: But you will not see a devaluation in justice. In fact, you will probably see it enhanced, because accountability is provided for in a number of different areas, and certainly my experience as an advocate is that nothing focuses the mind on fairness more than knowing that you have to deal with the people to whom you are going to be potentially unfair in the future, and that cuts both ways. If you are looking at a six-year term and a commissioner wants to be persistently favourable to one side or the other, he will certainly be pilloried by his appellate body and by the elements of the community to which he is unfair. So he is going to be held accountable, and that is important.

At the end of the day this undermining of independence and giving lifetime tenures to commissioners when one looks at their administrative and advisory role is an absolute furphy. I also would remind the members here that this policy was fairly and squarely disclosed to the South Australian public during the lead-up to the last State election. There was significant debate on it during the course of the election; there were specific unions which ran candidates in relation to this topic; a considerable amount of money was spent on advertising and discussion on this topic; and there was considerable amount of press comment.

At the end of the day, when one looks at a two-Party preferred vote of 60-40 or a bit higher than that, one has to acknowledge that this Government has a mandate to make the changes that are necessary to get this State's economy moving, to increase employment and to give all those people who have been excluded from the system such as non-unionists, the unemployed and women the opportunity to participate in this industrial system. The current system does not do that. The new system has a potential to do that. The new system has its own safety net, and at the end of the day if all the sky-falling stuff that Opposition members have promised comes to pass they can go and seek the assistance from the Federal system and move over there.

What can be better than having a good, strong competitive system? I know that might mean some form of duplication, but a good competitive system will ensue in this State, and my prediction is that, after five to 10 years under this regime, some unions will have increased their membership, some unions will have become so irrelevant they will have closed, and there will be a whole series of new associations principally representing workers, even though they may not be making contributions to Trades Hall and getting involved in $12-a-vote election campaigns. At the end of the day the first winner will be the worker, the second winner will be South Australia and the third winner will be enterprise. I commend the Bill to the Council.

The Hon. C.J. SUMNER (Leader of the Opposition): I want to intervene in the debate on the topic that the Hon. Mr Redford covered in the latter part of his speech concerning the independence of the judiciary and the implications for that principle that there may be in the Bill. It does not advance the debate on what is an important principle for the honourable member to refer to the debate in relation to industrial commissioners as a furphy and an exercise in intellectual dishonesty. I point out that the issue on behalf of the commissioners has been taken up by the courts, including the Chief Justice, and that the Chief Justice as head of the judiciary in South Australia has written expressing his views on behalf of the judiciary. It does not advance the matter to dismiss the arguments of people who have thought about this issue and who are concerned about it in such a contemptuous manner.

The second point I want to make as a general principle is that I understand the argument about the United States, where some judges are elected in some States, in other States they get appointed for a fixed term and other States have the more conventional Anglo/Australian system. I understand in the cases where they are appointed for a fixed term (I may not be absolutely correct) that in some circumstances they cannot be reappointed.

The Hon. A.J. Redford: It varies.

The Hon. C.J. SUMNER: It varies from State to State, I agree. However, in my experience where this issue has been discussed in the United Nations or through the International Commission of Jurists, the question of tenure has always been put forward as one of the indices of judicial independence. One cannot dismiss the question of tenure by reference to the United States and say that tenure is not relevant to the issue of judicial independence. There are a number of indices—

The Hon. A.J. Redford: There have been—

The Hon. C.J. SUMNER: Just a minute. There are a number of indices of whether or not one has an independent judiciary—a number of criteria. Not all those criteria are met in every country. They are met to varying degrees in different countries but there is no doubt—I do not have the documents in front of me, but from my experience in discussing these issues, including having had some association with them at the United Nations—tenure is one issue raised as relevant to the question of whether one's judiciary is independent.

The Hon. A.J. Redford: What about WorkCover review officers? Why don't we give them full tenure?

The Hon. C.J. SUMNER: The honourable member raises a fair point and it is an issue that needs to be thought through from basic principles. One has to start with the proposition of whether or not the person concerned is exercising judicial functions, that is, adjudicating on disputes between citizens and, more importantly, adjudicating on disputes that might involve the Government and the citizen.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: You may well be right. I am not going to get into that argument.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: I am not saying that every Government or Parliament is perfect with respect to these issues. When an issue comes up I think it is important, and particularly in this case where it has been raised by no lesser person than the Chief Justice, that it be given some consideration.

The third general point I want to make is that I certainly do not deny that there are issues relating to the accountability of the judiciary which should be looked at by the community and by the Parliament. Having said that, I think there are real issues relating to the question of the independence of the judiciary. The fact that people are called commissioners does not mean that they are not exercising judicial functions in the manner that I have described: they often do exercise judicial functions. They are not only called upon to conciliate; they

are called upon to sit there and hear cases in some circumstances and to make decisions.

The Hon. A.J. Redford: And provide advice.

The Hon. C.J. SUMNER: Sure, I am not saying that as commissioners they do not have a mixed group of functions. You might well say that that is something that might be inconsistent with some concepts of the independence of the judiciary as well—the mixing up of those functions.

We know that the High Court said that you could not put arbitral functions in the same body as judicial functions, at least at the Federal level. As a matter of fact, these commissioners and a number of other commissioners in various areas traditionally do exercise administrative, arbitral and judicial functions. The Equal Opportunity—

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: It is akin to a legislative function, but it arises out of a judicial process.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: Except that they hear both sides of the case and make a decision. That is what happens. The Commissioner for Equal Opportunity, for instance, does not exercise judicial functions in that sense. However, industrial commissioners traditionally, as part of their functions, have undoubtedly exercised judicial functions in some of their work. I do not think that that can be denied.

If they are exercising those functions—making decisions about disputes between citizens or groups of citizens or between the Government and groups of citizens, and particularly where the Government is involved—the reality is that the issue of judicial independence arises and has to be addressed.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: The honourable member keeps injecting with examples about Family Court registrars. I am not saying that every piece of legislation all around Australia conforms to the rigid logic that might be involved in addressing these issues. However, I do think that when you are looking at them you have to go back to the principles involved and, where possible, try to fit your legislation to those principles. We have largely done that in the Supreme Court, the District Court and the Magistrates Court, because there is a separation of administrative functions, which are performed by registrars now, and the judicial functions which are performed by masters. In the old days, those functions were not separate. The masters of the Supreme Court, for instance, used to exercise both judicial and administrative functions. Under the new court structure, because we were concerned about this issue, those functions were separated in the courts.

We did address the issues. All I am saying to the honourable member is that there are examples around and there are, I suppose, degrees of perfectibility in this area of whether the judiciary is independent or not. Given those qualifications the fact is that there are some fairly important criteria that are usually used. I think we need to look at this issue in a sensible way and apply the principles that I have outlined to the question of commissioners. I do not think it is so much a matter of tenure if you apply the strict principles relating to judicial independence. It is not a matter of life time tenure or tenure to a particular age. It may not be so much a matter of that, although that is certainly what the judges argue for and is generally considered to be the principle. The real principle is whether or not it is within the power of the Government, which is a party before the tribunal or the court, to reappoint the people that that Government appears before. That is the critical issue involved.

If you are going to have commissioners appointed for six or 10 years without the right to be reappointed, then I do not think that that necessarily is as offensive to judicial independence as six or 10 year terms with the right of appointment. I do not think the Hon. Mr Redford, if he thought about it—and assuming he characterises the decision making processes of commissioners at least as part judicial—could really seriously argue in this Parliament that judicial independence was not abused by limited term appointments with a right of renewal. If you translate that situation to the courts, would the honourable member support the Chief Justice being appointed for six years with a right of renewal by the Government? Yet daily the Government is up there putting points of view and arguing cases before the court. The DPP is up there effectively on behalf of the Executive arm of Government prosecuting. There are cases often involving many millions of dollars that the Government has to argue before the courts.

I think when it is put in that light it is not an issue that can be automatically brushed aside. I think there are gradations in this, that obviously independence for the High Court, the Supreme Court, the District court, etc. is probably more fundamental and more important than that relating to industrial commissioners or to other people that combine a number of functions. It does not matter whether you are dealing with industrial commissioners who have as part of their job exercising judicial functions or the Chief Justice of the Supreme Court and other judges of the Supreme Court whose sole responsibility virtually is exercising judicial functions. You still have the issue of judicial independence that has to be looked at.

When I raised this question about whether there should be fixed term appointments with no right of reappointment I did so in the context of another debate that we were having a year or two ago about whether or not judges today, who might have been on the bench for 20 or 30 years, are still in a position to make decisions while being in touch with contemporary social attitudes. I assume the honourable member would accept, although some people sometimes try to argue this, the notion that judges are 'value free' is in fact a real furphy. The point is that judges do bring values to the job. Their training means that they should as far as possible separate their own values from the case before them; but they cannot help bringing values and their own opinions to the job. That of course particularly applies to a court like the High Court where it is arguing about the nature of Federation and making decisions in areas that are amenable to political debate and have quite profound political implications.

It was in that context that it was put to me when this question of gender bias and the attitude of judges to women was being discussed that perhaps there ought to be fixed terms for judges but without the right of renewal, which would overcome the problem. There would still be judicial independence because the judge would know they could not be reappointed, but there would not then be the problems of judges being in the job for 30 or 40 years and getting stale and old and out of touch with contemporary society. So that may well be an issue that has to be looked at in the context of judicial independence in the future. I leave it open as to whether or not it would be a satisfactory solution. I assume that many judges would argue strongly against it, using the principle of judicial independence.

The Hon. K.T. Griffin: We have already got a precedent in the Youth Court.

The Hon. C.J. SUMNER: Yes, but the Youth Court

judge is appointed as a District Court judge, and the tenure in the Youth Court is a limited one, so it is not a complete parallel with what I was describing, which is a situation where judges are appointed for fixed terms, 10 or 15 years, without rights of renewal. I do not think the situation in this Youth Court is offensive, because the judge is actually appointed to the judicial office until the retiring age, but sits in that court for a termed period.

They are important issues and cannot be dismissed easily. It is important that Parliaments, along with the judiciary and Government, do try to identify the issues when we have them before us. The fact that we may not have done in the past or that Attorneys-General are members of Governments where decisions are made by majorities and these issues do not get the airing they should, or if they do get an airing it is a private airing and not a public one, should not in my view mean that anyone retreats from trying to identify the issues in applying the principles to legislation that is before it. I think this legislation does raise the issue fairly and squarely.

I now turn to the question of the information that the Parliament has on this question of judicial independence and express my concern that the correspondence in this matter between the Chief Justice and the Attorney-General has been kept secret. I wrote to the Chief Justice after the Government provided information to the Parliament that the Chief Justice had written to the Attorney-General. The Chief Justice replied and said that because the representations he had made were under consideration by the Government, he was not prepared to let me have the correspondence. He did, however, invite me to renew the request if the matter was not resolved. I was, as members know, able to advise the Council in any event of the gist of the Chief Justice's letter and the concerns he expressed. I had some of the information but not the whole letter.

This, in my view, is a most unsatisfactory situation for the Parliament to find itself in. We are in the middle of a debate on an important Bill involving an important constitutional principle and yet we members of Parliament, who ultimately have the responsibility for deciding on this matter, are being left in the dark. The reality is that the Judiciary, the Chief Justice and the Supreme Court are not just an ordinary old lobby group that has come along to put a few submissions to the Attorney-General about legislation. They do—

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: They do make much of their status in the constitutional structure of the State, and it is a very important status and role in our constitutional structure, that of the independent Judiciary upholding the law making decisions in accordance with the rule of law. They are an essential part of any democratic society. Therefore, they have an important—

The Hon. A.J. Redford: If they want to be involved in this process, why don't they resign and—

The Hon. C.J. SUMNER: That is too simplistic a view of the role of the judiciary. I am quite happy to engage in a debate with the honourable member about the line between judges exercising judicial functions and judges getting involved in making political decisions, but I do not think that there is the opportunity tonight—

The Hon. A.J. Redford: You started that one.

The Hon. C.J. SUMNER: What I said, and I am not retracting—

The Hon. A.J. Redford: If the Chief Justice wants to lobby and be involved in this process, let him resign from there, put his hat in the ring and be elected back here. Other than that, he should stay right out of it.

The Hon. C.J. SUMNER: I do not agree with that, because the Chief Justice and the courts have a responsibility to make submissions and statements to the Parliament and the Government on issues that affect the courts and, for instance, the principles of judicial independence. So, they are perfectly entitled to make those submissions.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: I agree that judges should be prepared to accept criticism, and I think that they do. They are entitled to make their point of view known to the Government, but my argument is that, if they rightly claim status in the constitutional structure, their views should be made known to the Parliament, which is, after all, the supreme law making body in this State. They are not simply a community lobby group in that sense, and in my view this correspondence should be made public so the Parliament can be informed of the situation. Not to do it, as we are well into the second reading debate and the Committee stage is about to start, is most unsatisfactory in my opinion.

The next and final issue in this context of judicial independence is the revelations today about separation packages having been offered or at least discussed with judges of the Industrial Court and Commissioners of the commission. This raises perhaps even more important issues relating to judicial independence than the others that have been mentioned. The judiciary has argued for a long time that judicial salaries and emoluments should be determined by an independent tribunal because, if it is the Government that sets the salaries and other perks of office, that is inconsistent with judicial independence because the Government may bring improper pressure to bear on the judiciary by using the threat of withholding salary increases and so on. That is the argument.

There we are dealing with the Government, which at one stage was responsible for setting salaries for the judiciary as a whole—all members of the judiciary. But, how more offensive is it to have a situation where particular judges can be offered separation packages by the Government? In other words, it could be that, if a Government does not like a particular judge or group of judges, it can try to encourage them to resign by offering separation packages (that is, by offering financial inducements to these people to leave their positions). I find that very offensive and I would guess offensive to most of the principles of judicial independence that have been espoused here tonight and in those sorts of forums that I mentioned previously.

It can be argued that it is happening only with respect to the Industrial Court, but the principle is the same. The point is that this Government does not like these judges in the Industrial Court and it wants to get rid of them. So it is offering them a financial inducement to resign.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: It was admitted today in another place.

The Hon. K.T. Griffin: Not in relation to the Industrial Court.

The Hon. C.J. SUMNER: Yes, it was. That is what he said. As I understand it, Mr Ingerson admitted that he had discussions with all the commissioners and judges.

The Hon. A.J. Redford: He didn't say that he didn't like them.

The Hon. C.J. SUMNER: No, but he's offering them packages because you want to appoint your own lot. That is

what I am saying. You want to get rid of these judges and put in a new lot.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: That is the point I am making about the independence of the judiciary. The use of separation packages to achieve an objective of getting judges to resign must surely run foul of the principles of judicial independence. If you applied it to the courts as a whole, if the notion of a separation package for judges came in, you would have a situation—if it was a common practice and if you are doing it in one court, why can't you offer it to judges generally—

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: It is not an academic situation. I am trying to get back to the principles that must operate here. If you have a situation where judges whom a Government wants to get rid of can be offered a financial inducement to go, I believe you have a potential problem from this point of view. It could apply to other courts. The decisions of other judges may not be satisfactory. The Government could approach them and say, 'Are you prepared to retire early? We will offer you a separation package.' Or I suppose the reverse could happen. The Government could say, 'We like your decisions; we'll offer you a more generous separation package than someone whose decisions we don't like.'

It is a major problem. If separation packages are to be offered to judges, it seems to me that they must be agreed to up front, perhaps by the remuneration tribunal or by the Government and the judiciary, before it happens so that the rules are known to everyone; the payouts are known to everyone; and the conditions, etc. are all known before the offers are made. If you can make a separation package that is tailored to a particular judge, undoubtedly in my view you have an affront to judicial independence. That is another issue that I believe needs to be looked at in this context in the Committee stage.

The Hon. ANNE LEVY: That is the longest five minutes I have ever sat through.

The Hon. C.J. Sumner interjecting:

The Hon. ANNE LEVY: I have never said that I would take only five minutes. I wish to answer some of the points made by the Hon. Angus Redford in his contribution to this debate. I remind him that he should not mistake demeanour for intensity of feeling. Whether or not the debate in this place mirrors that in the other House should not in any way be taken as an indication of a different set of feelings or a different indication of the importance and magnitude of the changes which are in the Bill or the abhorrence of members on this side to what is being proposed in completely dismantling our industrial relations system. The basis of the Hon. Angus Redford's contribution seemed to be that bargaining over industrial conditions would be left in the hands of those who are affected: the employer and the employee. That is a direct quotation from his remarks as I took them down.

This presumes that there is equal bargaining power on the two sides. It presumes that an employee comes into a bargaining situation with the same bargaining power, the same leverage, the same cards in the deck as the employer, and this is total rubbish. It is because we, as a society, have recognised the unequal bargaining powers of some individuals that we have, for instance, consumer protection laws. We do not presume that the little consumer has equal bargaining power, equal clout with the large firm, the bank, large financial company, the builder, or whomever they happen to deal with.

Because we recognise there are unequal power relationships we have our consumer protection laws, or at least we still have them though one wonders how many of them will be left after the review, which has been ordered by the Minister for Consumer Affairs. Unequal bargaining power between employer and employee particularly applies to some classes of employees. In particular, it applies to women, to people of non-English speaking background, and to young people. These three groups are particularly disadvantaged when it comes to negotiating with an employer, and to suggest that they have equal bargaining power in that situation is ludicrous, and a complete denial of the real world.

The Hon. Mr Redford carried on a great deal about unions; he indulged in what was a bit of good old fashioned union bashing. He stated that unions are reactionary. Talk about the pot calling the kettle black! It was a prime exposition of reactionary philosophy, such as I have not heard in this place since Ren DeGaris left it. There are still people who can remember Ren DeGaris, the individual who stated that this Chamber represented the permanent will of the people, as opposed to the House of Assembly, which represented only the temporary will of the people. The diatribe we heard tonight reminded me forcibly of what I had to sit through when I first entered this Chamber and had to suffer the outpourings of a real reactionary, such as Ren DeGaris.

The Hon. Mr Redford claimed that unions are less relevant today than they were, and that unions have failed. I would certainly agree with him that unions are not 100 per cent successful. Many injustices remain in the work force, but I would say that they are there because unions have not had sufficient clout to right many of the wrongs. Unions are not all powerful. Very often, even in negotiations between unions and employers, the employer has the greater clout, the greater industrial muscle and the union will not be able to achieve justice for its workers.

The Hon. T. Crothers: It is not an even playing field.

The Hon. ANNE LEVY: It is not, as my colleague says, an even playing field, even where unions are involved. It is ridiculous to blame unions because they have not achieved their aims.

I want to refer particularly to women workers who make up 42 per cent of the work force in Australia today. If the wages of women in the work force who are under award wages are compared with women in the work force who are not under award wages, those under awards have on average much higher wages than those who are not covered by awards. These are awards which have been fought for by unions. Women in the work force who are covered by awards fought for by unions have higher wages than women in the work force who are not covered by awards and who do not have coverage. That is an undisputed fact which has been documented on numerous occasions. To suggest that women will be better off without awards is a most ludicrous statement based on no facts whatsoever. The facts indicate the opposite. It is perhaps a wish or a deliberate closing of the eyes to reality to suggest any different.

The Hon. Mr Redford seemed to imply that Opposition members are opposed to enterprise agreements. That is incorrect. The Federal Government has brought in legislation which encourages enterprise agreements, though there are people in the women's movement who fear that enterprise agreements will worsen the conditions of women relative to men. The most important point is that where there are enterprise agreements there must be a safety net, and that

safety net is the award. That is the situation with the Federal legislation, but it is not in this Bill. Despite the Hon. Mr Redford saying that the contents of this legislation were discussed before the election, that is not true. Before the election the Liberal Party said that there would be the safety net of an award. Yet, when we look at the legislation we find that is not true.

The Minister has power to approve agreements which may be below award standards. Award standards can be eroded in enterprise agreements which can be negotiated under this legislation. Furthermore, there will be no public examination of a private agreement which may be completely out of kilter with the provisions of the award. Private agreements between workers and employers will not be checked as to whether people are disadvantaging themselves. The provisions in the Bill only talk about substantial disadvantage in the context of the enterprise itself. We are losing the situation of the public system through the award system of publicly placing a safety net below which no-one can go. This is being swept away in the Bill before us. It is not what was promised before the election, and I most sincerely hope that in its current form it will not be allowed to pass this Council.

If we look internationally at the situation of women, we see that all around the world that there is a gender gap in average wage rates. Everywhere in the world average male wages are higher than average female wages, but that gap is probably least in Australia, where we have a fair and equitable industrial relations system and where there are awards which offer protection to a vast number of workers—unfortunately, not all of them.

The countries where there is far more in the way of enterprise bargaining, where the agreements are secret, are not open to public scrutiny, and are in no way judged as to whether they are in the public interest, are the countries where the gender gap in wages is far larger. In Australia, the average full-time female wage is about 82 or 83 per cent of the average full-time male wage. In countries without award systems, the average female full-time wage is as low as 66 per cent of the average full-time male wage, precisely because women have less bargaining power than men and there is not the safety net of an award system. Everyone who has looked at this question from a woman worker's point of view agrees that the Bill before us removes this safety net and will strongly disadvantage women workers.

We are frequently told about the number of workers who are not in unions. But what I do not know, for South Australia (and presumably the Minister would have the resources to determine this) is what proportion of workers who are in unions are covered by Federal awards and what proportion are covered by State awards? I ask this because in Victoria prior to the Kennett Government about 55 per cent of workers were covered by Federal awards and 45 per cent by State awards, that is, of those who were covered by awards. But the ratio was nothing like the same for the two sexes. In fact, of male workers in Victoria, about 70 per cent were covered by Federal awards, whereas less than 40 per cent of women workers were covered by Federal awards. Legislation such as the Kennett legislation, legislation such as that before us, will hit particularly at those who are under State awards. Those who are under Federal awards will have no problems. They will not lose their penalty rates, their leave loadings or a whole lot of hard fought for conditions which are fairly general now in this country.

But it is those on State awards who will lose these, and amongst those on State awards in Victoria was a very much higher proportion of women. I should like to know what is the ratio of Federal to State awards not just for the whole work force in South Australia but for male workers and female workers. I am prepared to bet that we have much the same situation as that in Victoria and that the removal or the complete undermining of our State award system will in fact disproportionately hit at women workers, and that proportionately far more of them will be affected than are male workers. The Hon. Mr Redford tries to say that this legislation will particularly advantage women. I have never heard such nonsense in my life. When we hear that he may be on the select committee to see how to get more women into Parliament, I wonder at the sanity of the Government.

There has been discussion about the so-called safety net of minimum standards. They can only be called Clayton's minimum standards: the minimum standards you have when you do not have minimum standards. The Bill includes certain so-called minimum standards, which relate to sick leave, annual leave, hourly rates of pay and parental leave. However, we need to note that these are not absolute minima, because clause 75 of the Bill allows for the approval in certain circumstances of agreements that are inferior to the minimum standards. So, they are minimum standards that are not minimum standards. Secondly, of course, these standards are not in themselves comprehensive, and they are certainly not consistent with contemporary industrial standards. The annual leave provision does not include the 17.5 per cent loading, for instance. The minimum hourly rate that is prescribed is the relevant award rate without penalty rates; without shift loadings; and without allowances or overtime rates, and so on. So, all casual loadings and other allowances that have been fought for so energetically to get some pay equity for many low paid workers could go.

This is likely to have a particularly strong impact on women, because any removal of penalties and allowances proportionately has a much greater impact on low paid workers, and far more women are in the category of low paid workers proportionately than are men. Most casual workers, particularly, are women, and any removal of the casual loading would certainly reduce the rate of pay of many women in the paid work force. I have heard many examples from women in Victoria who have suffered under the Kennett industrial legislation—women workers whose pay has been cut by 30 per cent; who have taken huge pay cuts because they have lost all their casual loadings and all their overtime loadings, which they depended on to get a decent wage. Again, this applies particularly to women workers. They are undoubtedly the ones who will suffer most under the draconian provisions of this Bill.

I have received this evening a missive from the Women's Electoral Lobby expressing great concern about the Bill currently before us. It states categorically—and I would like some indication from the Minister as to whether or not this is correct—that there has been no consultation with women's groups in drawing up this legislation—no consultation with women who could look at the legislation to see what its differential effects might be on the two sexes.

As I stated in a different debate only yesterday, it is falsely assumed that much of the legislation which comes before us is gender neutral in its effects, merely because it is not stated that certain provisions apply to men and not to women or *vice versa*; but something written in gender neutral language is not necessarily gender neutral in its effects, if the result of the legislation is that it affects one class of workers more than another.

I know there was consultation with various bodies which may or may not have had their views taken into account, but at least there was consultation with a number of bodies before this legislation was drawn up. I would specifically like to ask whether there was any consultation with women's groups or anyone who could look at this legislation from the woman worker's point of view to determine whether or not she would be differentially affected.

I understand that Associate Professor Claire Williams has confirmed that, if passed without amendment, this legislation would mean that women workers could be paid less for the same work, lose penalty rates and leave loadings, and find themselves locked into secret enterprise agreements that favour male workers, with the women workers having no appeal or rights of review if they found they had been sold out by men, denied access to an award, and losing the right to union representation and the support and access to information which that represented for them.

There are many other things which are wrong with this legislation and which I am sure will be discussed in the Committee stage. I certainly do not pretend to have been comprehensive in criticising all the faults of this legislation, but I wish to stress that I am particularly concerned about the differential effects that this legislation will have on the women of this State. I am sure that many of them do not and will not realise it until it starts affecting them personally, by which time it may be too late. However, I will certainly do all in my power to ensure that the women of this State are not disadvantaged by turning back the clock in our industrial legislation.

The Hon. R.R. ROBERTS: This Bill has been passionately argued in another place by my colleague the Hon. Ralph Clarke, who spoke for some two hours on this proposal alone. I do not intend to emulate that feat tonight but, when a person like Mr Ralph Clarke who has worked for 25 years in the trade union movement and fought to provide minimum standards of pay and conditions in an independent inspectorate system and can see it all slipping down the drain, I can understand the passion he expressed. The Opposition has already tabled extensive amendments to this Bill and they will largely be repeated in the Council. This Bill is the most radical and reactionary piece of industrial relations legislation in South Australia that any honourable member will be able to recall. It is also a complete betrayal of South Australian workers.

Prior to the election the Liberal Party released a thin and flimsy policy document on industrial relations which ran to only 11 pages. The Liberal Party failed to tell the South Australian electorate that it was contemplating a complete overhaul of the State's industrial relations system. In that respect South Australian voters have been treated differently to the Victorians and the Western Australians. At least the Minister's comrades in those States had the courage to tell voters what they intended to do with the industrial relations system.

The amendments which the Opposition has tabled in the other place and which it will table in this Council will bring the Government back down from the clouds and preserve an industrial relations system for this State which has enabled South Australia to boast proudly that it has had one of the lowest levels of industrial action in this country in the last decade.

The Government has got it wrong from the very beginning. You need only to read the objects of the Bill to realise that the Government has a comprehensive lack of understanding of industrial relations. You do not have to read on very far through that Bill before you come to provisions relating to the Industrial Relations Court and the Industrial Relations Commission of South Australia. These parts of the Bill contain one of the more blatant betrayals of the South Australian people by this Government. The Government is seeking to break the mould of judicial independence which has served the South Australian industrial relations system so well for so long. The Government has absolutely no claim to a mandate for such a vicious attack on judicial independence. Page 7 of the Liberal Party's industrial relations policy states:

> The Industrial Commission will continue.

There are no ifs or buts: it will continue. South Australian workers and the South Australian business community were never told that the present commission and court would be abolished. They were never told that the existing commissioners, magistrates and judges would be reappointed only if they received the nod from this Government's executive. They were not told that members of the new commission and the new court would be on fixed term contracts.

Judicial independence should be above Party politics. One wonders whether the Minister and his advisers truly realise the significance of the change they seek to make. The mould of judicial independence can only be broken once. Breaking that mould would remove one of the major steadying influences in the South Australian system of industrial relations. It has been that independence which has enabled South Australia to boast that whilst the ALP was in government we had the lowest levels of industrial action anywhere in Australia.

Removing the independence of the court and the commission will throw industrial relations back into the jungle. The South Australian system will become one in which the weak suffer more disadvantage. It will become a system in which industrial parties fight their battles on the shop floor and the picket lines instead of under the wise counsel of the Industrial Commission and the Industrial Court on the principles of equity, good conscience and substantial merit that have been provided for in South Australia for so many years.

The Government cannot expect that the industrial parties will have the same level of confidence in a commission and in a court which compromises judges, magistrates and commissioners on fixed terms. It does not matter whether the Minister undertakes that politics will not play a part in a decision whether or not a contract of one of the members should be renewed. Judicial independence is not only important as a fact but it is also important as a symbol.

The Government seeks to destroy the image of neutrality and impartiality which the commission and the court presently project in the South Australian community. In saying this, the Opposition does not distinguish between the Industrial Commission and the Industrial Court. The independence of the Industrial Commission is just as important as the independent members of the court. The Government, as the largest employer, regularly goes before the commission as an industrial party. The Government cannot expect that the community and the public sector workers will have any confidence in approaching these bodies if it feels that members of the court or the commission are constantly under threat of not having their contracts renewed.

As such the Opposition will be pushing forcefully for the reinsertion of provisions which maintain the independence of

both the Industrial Commission and the Industrial Court. This will require that the existence of the present commission and court will be continued. It will require that, if this Bill becomes law, the Government shall not have the power to sack any member of the court or the commission. It will also require that members of the commission and the court be given proper tenure of office.

The Opposition also wishes to draw the attention of this Council to the provision of the appointment of an employee ombudsman. This is yet another example of the betrayal of the South Australian community's trust by this Government. Everyone knows that the Liberal Party promised prior to the last election to appoint an employee ombudsman.

The Minister cannot honestly think that anyone believes that the position provided for in the Government's Bill is anything approaching the definition of an ombudsman. The South Australian community is very familiar with the idea of an ombudsman. Indeed, if the Minister is aware of this, there is such a thing as the Ombudsman Act in this State. The South Australian community closely identifies certain characteristics with an ombudsman. The primary characteristic is the ombudsman's independence from the Government. The idea of an ombudsman being subject to the general control and direction of the relevant Minister is simply a nonsense. Any such person is not an ombudsman at all.

Can the Minister point out to the Council what is the difference between such a person and one of his political advisers? A true ombudsman is responsible only to both Houses of the Parliament. The essence of an ombudsman is independence from Executive Government. This is yet another example of the Government's failure to come to grips with the proper structure of government. This is perhaps understandable given that the Minister is obviously new to this game. We have seen this problem in relation to the Industrial Relations Commission and the Industrial Court, and we see it again in relation to the ombudsman.

Will the Minister ever realise that our system of parliamentary democracy does not approve of Executive Government controlling absolutely all its community affairs. There are sound reasons for establishing an independent body such as a commission, a court and, if the Government wishes, an ombudsman. The Minister might like to flick through some political textbooks that the Opposition will be happy to provide him with but, even if the Minister is not aware of the benefits of such independence, I can assure him that the South Australian community is aware of it.

The Minister might wish to tell the Council when and where the Liberal Party told the South Australian electorate that, if elected, the Government would choose to ignore centuries-old political histories. However, the Opposition is pleased to be able to help the Minister back onto the path of proper government. While the Opposition understands the Government's proposal for an employee ombudsman, we will be arguing forcibly for amendments to ensure the independence of the person eventually appointed.

The third major part of the Bill that the Opposition will seek to amend relates to enterprise agreements. The Government claims it has a mandate to introduce what is commonly known as non-union enterprise bargaining. The Australian Labor Party has accepted the concept of enterprise bargaining without union involvement, as can be seen in the comprehensive Federal reforms introduced last year to the Commonwealth Industrial Relations Act. The Minister is probably not yet completely familiar with those amendments, but I can assure the Council that the Opposition and the Government are in agreement that the time has come for the opening up of the benefits of enterprise bargaining to the non-union work force.

Where the Opposition differs greatly from the Government is whether or not workers at those workplaces are going to be provided with adequate safeguards to ensure that they are not disadvantaged by deciding to enter into an enterprise agreement. Government members will be unfamiliar with the complexity of industrial relations at the workplace. Conversely, the Opposition is well aware just how easy it is to inadvertently lose conditions that have been fought for over previous years by our unionised forebears.

The absence of experienced union officials and trade union delegates in the process of enterprise bargaining will only increase the potential for workers to become worse off through no fault of their own. The Opposition intends to introduce amendments to this area of the Bill to ensure that everyone engaged in enterprise bargaining, especially those workers who are doing so without the assistance of the union, do so without threat to their working conditions. For the overwhelming bulk of the South Australian work force, the notion of disadvantage will be judged against the relevant award. For those Government members who need some understanding of industrial relations, an award is a document approved by the independent Industrial Commission which sets wages and conditions of employment across a given industry.

More often than not existing provisions in South Australian awards are there by consent of employers, unions and employees. The South Australian community recognises this State's award system to be the main safety net it has against disadvantage and the main shield it has against exploitation. The Liberal Party, prior to the last election, recognised the importance that the South Australian electorate attaches to the award system. It recognised that to raise the issue of undermining the award system at an election would be a sure way to lose votes. For these reasons Dean Brown wrote to the United Trades and Labor Council on 22 October 1993 and said:

> A Liberal Government will adopt the award in each case as the safety net for establishing minimum conditions in enterprise bargaining agreements.

Quite clearly and unequivocally, he said that the Liberal Government will adopt the award in each case as the safety net for establishing minimum conditions in enterprise bargaining agreements. Now, in its arrogance, the Government has committed a blatant act of betrayal upon South Australian workers. Far from preserving an award safety net, the Government seeks to cut holes in it large enough for an O-Bahn bus to be driven through them.

Again, the Opposition seeks to keep the Government to its election promises. The Opposition will introduce amendments which will ensure that enterprise agreements cannot slip below the award conditions and thereby disadvantage South Australian workers. The Opposition will also introduce amendments to fortify the safety net in cases of non-union agreements. The Opposition will seek to ensure that at work sites where a union does not have members it shall be entitled to take part in enterprise negotiations and to be a party to the enterprise agreement. The Opposition will also seek to ensure that unions with coverage in the particular industry will have the right to make submissions to the Industrial Commission about whether or not enterprise agreements should be approved, having regard to the conditions of approval set out in the Act.

The Opposition will also seek to introduce amendments to ensure that workers with special needs are not disadvantaged by the process of enterprise bargaining. The Minister has chosen not to include any such provisions in the Government's Bill. A kind person would assume that to be because the Minister is not familiar with industrial relations. Some cynics, like myself, may assume that it is because the Government cares little for these vulnerable workers.

The Opposition will seek to ensure that it is a condition of approval that an enterprise agreement not discriminate against certain workers upon a range of grounds. The Opposition will also move amendments requiring employers to undertake special consultation with groups of workers with special needs, such as young workers, women workers and workers with non-English speaking backgrounds.

I wish to stress the absolute importance of taking time with enterprise agreement provisions to get them right. The Australian Labor Party accepted well before the Liberal Party that enterprise bargaining is the future path of industrial relations in this country. The process is vital to improve the productivity and efficiency of South Australian industry. The Government, on the other hand, presents enterprise bargaining as an instrument of exploitation. The Opposition is aware that the vast majority of employers in this State understand the benefits of conducting enterprise bargaining properly. However, the Opposition amendments will serve to keep that other minority of employers on the path of good industrial relations. We are confident that this is the wish of the South Australian community.

The burning desire of this Government to dismantle the award safety net is also reflected in the part of the Bill which deals with awards. The Opposition will seek amendments to the Bill to preserve the integrity of award safety nets. The interaction between awards and minimum standards is another attempt by this Government to play tricks with mirrors. The Bill provides that awards cannot be made which provide terms that are more favourable than the scheduled minimum standards.

It seems that, for the Minister, words mean what he wants them to mean. It appears that minimum standards are not minimum standards at all. Obviously, they are to be a maximum standard. The Opposition will clarify this obvious confusion on the part of the Government by ensuring that minimum standards are in fact minimum standards in the true sense.

Part (6) of chapter 3 dealing with unfair dismissals again demonstrates the ignorance of the Government in relation to industrial relations. It seems the Government is completely unfamiliar with the dismissal provisions contained in the Federal Industrial Relations Act. Instead, reading this Bill one would think that the Government does not care whether or not the State system continues to have the ability to deal with unfair dismissals. The Opposition on the other hand is well aware that the Federal Act will apply unless these unfair dismissal provisions can be said to be an adequate, alternative remedy. In section 105 of the Bill, almost as an afterthought, the Government has recognised this apparent inconsistency. I am advised and I challenge the Government to show one respectable lawyer who thinks that section 105 actually means anything.

What happens, for example, if the Federal Commission decides that the South Australian provision is not an adequate alternative remedy because there is a ceiling on compensation payments. It appears that the Government would ask the commission to pretend that the ceiling on compensation payments simply was not there. Another example is what would happen if the Federal Commission decided that the South Australian provision was not an adequate alternative remedy because the employer did not bear the burden of proof. Again, the Government would simply seek to ask the commission to read the Bill as if it did not in fact say that the worker had the burden of proof.

This again illustrates the depth of this Government's lack of understanding of the doctrine of the separation of powers. The Opposition will table amendments to the unfair dismissal provisions which will seek to ensure that the South Australian system retains its jurisdiction. Our amendments will also satisfy the South Australian community's continuing desire for a compassionate remedy against unfair dismissals.

Another feature of the Government's Bill is that it fails to pay proper regard to many realities of the industrial relations system. One example of the Government's wish to deny an undeniable problem is in relation to industrial action. The provisions dealing with this phenomena in this Bill are flimsy and based solely on rhetoric. The Opposition will move amendments to ensure that this Bill deals with relations between employers and employees when they are at their hottest. Internationally and recently at a Federal level it has been recognised that it is no longer acceptable to deal with industrial action in ways that were fashionable in the nineteenth century. This was when workers who disobeyed their bosses would be burned through the gristle of their ear or worse. I am confident that the Government would love to be able to return to those days; however, sensible industrial relations practitioners today realise that industrial action needs to be dealt with sensibly.

The amendments we seek provide for an immunity from civil liability during enterprise bargaining periods. These provisions are based upon the Federal Act because the Opposition considers them to be both sound and they can maximise the consistency in our industrial relations system. The immunity will apply equally to workers who are engaged in industrial action and employers are engaged in lock outs. Our amendments contain strict provisions relating to the correspondence between the parties leading up to industrial action and the acceptable limits of such action. The Council will find that our amendments will be a sensible adjunct to the provisions relating to enterprise bargaining.

Along the same lines the Opposition seeks to reinsert provisions from the present Act which provide procedural limitations on court actions and which protect workers against discrimination for taking industrial action, being involved in industrial procedure or participating in union affairs. The Government's removal of these sensible provisions illustrates its desire to catapult South Australian industrial relations into the nineteenth century. Another blatant attempt to undermine the unionisation of South Australian workers and facilitate exploitation by unscrupulous employers are the changes made to the right of entry provisions. Contrary to its professed ideal of deregulation, the Government refuses to allow right of entry arrangements, which have largely been by consent, to continue. The Opposition will move amendments reinstating the relevant union's ability to inspect time books and interview workers who are not members of the union. It is precisely those workers who will need these protections even more than present union members.

Yet another blatant example of the Government's lack of compassion for the disadvantaged is its abolition of remedies for unfair contracts. The Opposition recognises these

remedies as an important safety net for workers unfortunate not to be covered by an award. Recently this Parliament debated the introduction of unfair contract provisions, and during the Committee stage we will present reasons why these provisions should be retained.

The Opposition considers this to be perhaps the most significant piece of legislation which the Government will introduce into this Parliament. The fact that the Government is seeking to rush through this legislation with the minimum time for community consultation is grossly irresponsible and a reprehensible betrayal of expectations given by the shallow promises prior to the last election. Whilst professing to support South Australia's industrial ability to exploit Australia's positive economic outlook, the Government will saddle South Australia with an industrial relations system which is more the result of immature impatience than that of sensible consideration.

The Opposition considers that the breadth and complexity of this Bill requires it to be referred to a select committee for proper consideration. If this Council in its wisdom chooses not to do that, the Opposition will insist on debating all its amendments in the fullest order to do our part to preserve a workable industrial relations system for South Australia.

In closing this contribution, I just want to canvass one point that the Hon. Angus Redford, along with other members of the Government, trot out from time to time when we are talking about unions and unionised work force. They always trot out the figures in respect of the number of people in trade unions and those who are not. They never point out the fact that in almost every case where employment takes place in this or any other State, those workers are protected by awards that are enforceable under the industrial laws of this State. Those awards did not come about by accident. They were not negotiated by individuals on a one to one basis. They were in fact established and negotiated by the actions of unionised workers throughout South Australia and Australia where awards have taken place.

So, trotting out that hoary old chestnut, and pulling it out of that very cold fire, is a shallow argument that really does not stand any scrutiny at all and really has nothing to do with whether or not the award system ought to take place, because all South Australians, except those on private contracts at the present time, do have the protection not only of the award system but also the industrial courts, and should continue to have them. I support the second reading of this Bill.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

STATUTES AMENDMENT (CONSTITUTION AND MEMBERS REGISTER OF INTERESTS) BILL

Returned from the House of Assembly with amendments.

ADJOURNMENT

At 10.30 p.m. the Council adjourned until Friday 6 May at 11 a.m.