LEGISLATIVE COUNCIL

Wednesday 11 May 1994

The PRESIDENT (Hon. Peter Dunn) took the Chair at 2.15 p.m. and read prayers.

LEGISLATIVE REVIEW COMMITTEE

The Hon. M.S. FELEPPA: I bring up the fifteenth report 1994 of the Legislative Review Committee and move:

That the report be read.

Motion carried.

The Hon. M.S. FELEPPA: I bring up the sixteenth report 1994 of the Legislative Review Committee.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. CAROLINE SCHAEFER: I bring up the report of the Environment, Resources and Development Committee on regulations under the Development Act 1993.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Education and Children's Services (Hon. R.I. Lucas)—

Review of the State Supply Act 1985—Report, March 1994.

By the Minister for Transport (Hon. Diana Laidlaw)—

South Australian Council on Reproductive Technology—Report, 31 March 1994.

SAGASCO

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement on behalf of the Minister for Mines and Energy in another place in relation to SAGASCO resources.

Leave granted.

The Hon. K.T. GRIFFIN: As it has been made in the other place, I seek leave to have the ministerial statement inserted in *Hansard* without my reading it.

Leave granted.

SAGASCO Resources have advised that their Hazelgrove No. 1 well located approximately three kilometres south of Penola flowed gas this morning during a drill stem test of an interval of 2871 to 2894m at rates of over 4 million cubic feet per day on a half-inch choke. The gas was produced from the Pretty Hill sandstone, the same geological horizon which produces gas from the Katnook field, four kilometres to the west.

Following completing of the test the well will drill ahead to around 3250m when logs will be run and the extent of the gas discovery further evaluated. This discovery is particularly encouraging and follows tantalising flows of gas, condensate and oil from the Wynn No 1 well in March a few kilometres to the north.

It is not possible at this early stage to make any definitive statement concerning reserve levels or the economic nature of the Hazelgrove discovery. Nevertheless, I am extremely encouraged and hope that sufficient reserves can be proven to enable further gas-based developments to be located in the south-east.

My department considers that the gas potential of the South Australian portion of the Otway Basin is considerable. In fact, they estimate there is a potential that 900 billion cubic feet of gas will eventually be proven in the onshore section of the basin alone. Reserves of this magnitude would be sufficient to supply South Australia's needs for 10 years at current gas consumption levels. I am sure all members will agree with me in congratulating SAGASCO and their partners on the Hazelgrove discovery and hope that the department's optimistic assessment for the basin is realised.

QUESTION TIME

TELEPHONE INTERCEPTS

The Hon. C.J. SUMNER: I seek leave to make a brief explanation before asking the Attorney-General a question about telephone intercepts by police.

Leave granted.

The Hon. C.J. SUMNER: Yesterday the Attorney-General provided an answer to a question asked by me on 10 March this year about police taping a telephone conversation with the former President of the Legislative Council, Mr Bruce.

The answer given by the Attorney-General confirms that a telephone conversation between the South Australian police and the former President was taped without the consent of Mr Bruce being obtained. This conversation occurred in the context of the police investigation of allegations relating to the former Hon. Ian Gilfillan's use of the country living allowance. The answer given, however, does raise further questions, which I now wish to put to the Attorney-General. It is worth noting that this question was asked initially on 10 March. Surprisingly, it has taken the Government nine weeks to deal with this matter—clearly unacceptable in a matter such as this.

On 21 April, in another place, the responsible Minister (Hon. Wayne Matthew) said that he had signed an answer a week before that. This means that the Attorney-General has had the issue before him for some four weeks and, indeed, when asked on 3 May indicated that he had sought to supplement the information provided to him by the Hon. Mr Matthew. It is clear, given the length of time that the Attorney-General has had this information before him, that he was closely involved in the preparation of the answer—indeed, he obtained further information about it—and, accordingly, should be in a position to answer further questions about the matter today.

The answer given does raise further questions. I want to say that I am astonished that the police would tape a telephone conversation with the President of the Legislative Council, in the investigation of a criminal offence, without advising him. I am also not convinced by the answer that there was no breach of privilege involved in this taping. I note that the Attorney-General has denied that there has been a breach of either the Commonwealth Telecommunications Act or the South Australian Listening Devices Act in the taping of this conversation.

Indeed, most people in the community would be surprised with that answer, because it is the general view that it is illegal to tape telephone conversations without consent. Laws relating to telephone intercepts and listening devices have been introduced to protect privacy. It is quite clear that the law and practice in relation to these matters does need to be clarified in the public interest. My questions to the Attorney-General therefore are as follows:

1. What method did the police use to tape the telephone conversation with the Hon. Gordon Bruce, and what is the method used in other cases where telephone conversations are taped by the police?

2. Who provided the advice that there was no breach of the Commonwealth Telecommunications Act and the South Australian Listening Devices Act, and what information was given to the people who provided that advice as to the circumstances of this taping incident?

The Hon. K.T. GRIFFIN: The Leader of the Opposition has sought to make some play on the answer by the Minister for Emergency Services in another place as to when he may have signed off on the answer to this question. The fact of the matter is that, as the Leader knows, it takes a few days for matters to get—

The Hon. C.J. Sumner: Four weeks?

The Hon. K.T. GRIFFIN: No—from one agency of Government to another, although this Government has endeavoured to have that process speeded up because the delays in many instances in getting information from one place to another are just not acceptable.

In relation to this particular answer, I do not have the docket with me to be able to say exactly when I received the answer, but I do know that there was a delay because some further advice was being received in relation to the answers which had been provided. I would expect that the Leader of the Opposition, when he was Attorney-General, when he gave answers on behalf of other Ministers, would at least have read the answers that were provided and, if he did not believe that they either fully answered the question or were otherwise insufficient, he would then have sought some further information or clarification.

In this particular instance, as I do with all questions, I endeavoured to assess whether the information provided in answer to any parliamentary question adequately answers the question and, if it does not, then I send it back to obtain further information or clarification. So, there should not be anything unusual about that. In fact, I would have thought that members, including the Leader of the Opposition, would applaud that, because I am endeavouring to ensure, as I am sure my other colleagues in this House will do, that there is a full and adequate answer to the questions which they raise, whether it is from the Opposition, the Government side or the crossbenches. That is the first point that needs to be made in relation to this.

I have certainly not been privy to all the information which is in the hands of the police. One has to depend upon information received as to what occurred. The information which is presently before the Council in the answer I gave to the Council yesterday I believe appropriately and fully answered the question. In terms of there being no breach of the Listening Devices Act or no breach of the Telecommunications Act, that is advice from the Crown Solicitor.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: That's right. If you have someone who rings you in your office, my understanding is that you can tape that conversation, as between you and that person.

Members interjecting:

The Hon. K.T. GRIFFIN: All right, everyone is giving me advice. Perhaps they had better go out and get some. All I am saying is that it is a tricky area of the law. Look, it has been brought to my attention in Opposition, and now in Government. All I can do is rely upon the advice that I am provided with. If other members are satisfied or convinced that the advice is wrong, then I would ask them to provide me with their response so that I can in fact have that assessed by the Crown Solicitor. My understanding is that the advice is correct, but if other information is available which would show that I am wrong then I am happy to stand up in this place and say that I was wrong. At the moment, I can only act on the advice which I have been given. So, the advice comes at that level.

In terms of the question of parliamentary privilege, the advice also came from the Crown Solicitor that there was no breach of parliamentary privilege but, as the answer to the question indicates, both I and the Government think that it is quite inappropriate for an officer of the Parliament, such as the President, to have his conversation taped by investigating officers without being alerted to the fact that that was occurring. It may have been a different matter, of course—

The Hon. Anne Levy: Any of us, not just the President.

The Hon. K.T. GRIFFIN: There is a distinction between a person who is in the position of, say, the President, or other member of Parliament, who is not under investigation personally. In those circumstances, I do not think it is proper for members of Parliament to have their conversations taped. But if a member is under investigation for an allegation of an offence, then it is appropriate. I have no difficulty with that.

The Hon. C.J. Sumner: I thought you were supposed to warn them.

The Hon. K.T. GRIFFIN: You are meant to warn them; if there are conversations one to one, you have to give a warning that 'anything you say may be taken down and used in evidence against you'. That is the appropriate caution, but you certainly do not have to give a warning that the conversation is being recorded. If there is a telephone intercept, that is a different issue. There are provisions for telephone intercepts under the Telecommunications Act and for the placing of listening devices under the Listening Devices Act. With that, there have to be warrants obtained, but that is a different context from a one to one conversation between two people where a record is being kept of that conversation. If the Leader of the Opposition wants to challenge the advice, as I said earlier, I would be quite happy for him to provide me with his opinion or his other advice, and I will be happy to pursue it further.

The Hon. C.J. Sumner: Answer the question.

The Hon. K.T. GRIFFIN: You will get your answer. I will be happy to pursue that with the Crown Solicitor. So, in relation to question 2, I have answered it.

The Hon. C.J. Sumner: Have you seen the advice?

The Hon. K.T. GRIFFIN: Yes, I have seen the advice. In relation to question 1, I am not aware of the means by which the conversation was taped but I will seek to obtain an answer to that. I will see whether I can get that answer overnight but if I cannot I will undertake to provide the information to the honourable member.

The Hon. C.J. SUMNER: I have a supplementary question. How could the Attorney-General advise the House yesterday that there was no breach of the Commonwealth Telecommunications Act or the South Australian Listening Devices Act in this case when he has now admitted that he does not know the method that was used by the South Australian police to tape the telephone conversation?

The Hon. K.T. GRIFFIN: Quite easily, Mr President, because I indicated that that was the advice which I received. I have communicated to the Council that that was the advice I had received. It is quite simple; what more do you want?

The Hon. C.J. Sumner: How can they give the advice? It's bizarre!

The Hon. K.T. GRIFFIN: That interjection is worth responding to.

The Hon. C.J. Sumner: You said you saw the advice. The advice must have contained information about the nature of the devices that were used.

The Hon. K.T. GRIFFIN: It may have done. I saw the advice, but I cannot remember—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Well, don't go on about it. I have indicated that I will obtain information for you. I do not know what more you want. I have said that I have seen the advice; I have quite frankly indicated what the advice was to me. As the Leader of the Opposition knows, with the mass of advice that comes through you look at the advice carefully, whether it is in relation to this—

The Hon. C.J. Sumner: You would have seen what is contained in this one.

The Hon. K.T. GRIFFIN: Well, I can't remember what the mechanism was for recording the conversation but I have indicated that—

An honourable member interjecting:

The Hon. K.T. GRIFFIN: I am not anxious to cover anything up in relation to that. I will get the information and I will bring back a reply.

PUBLIC TRANSPORT FARES

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Transport a question about public transport fares.

Leave granted.

The Hon. BARBARA WIESE: On Tuesday of last week the Minister chose to dodge the issue when I asked her whether she intended increasing public transport fares in line with recommendations made by the Commission of Audit. That brought to mind a question asked of me last year by the Minister when our roles were reversed. At that time she was critical of the STA following research, which according to her had shown that since 1983 the STA had adopted the practice of setting fares under a 'conditions of travel' arrangement rather than by regulation. My question is: in view of her evasive answer last week about the possibility of a public transport fare increase and the fact that Parliament is shortly to break for the winter recess, will she ensure that any public transport fare increase imposed by the Government in the near future is introduced by regulation as she recommended last year?

The Hon. DIANA LAIDLAW: No consideration has been given to the issue of public transport fare increases. If and when that consideration is given I will also consider the matter to which the honourable member has referred.

BUILDING MANAGEMENT DEPARTMENT

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Industrial Affairs, a question about the heritage branch of SACON.

Leave granted.

The Hon. CAROLYN PICKLES: Yesterday the Minister for Infrastructure announced that the Department of Housing and Construction (SACON) was to be abolished and replaced by a new Department for Building Management. Following this announcement, the Chief Executive Officer of SACON issued a newsletter which stated that the new department will retain commercial activities:

> . . . only where they can compete in an untied environment for work within the Government sector, provide a non-financial benefit to the Government, or cannot be easily bought at a reasonable cost from the private sector.

The CEO's newsletter invited all SACON employees to express an interest in separation packages. This offer was accompanied by the following threat:

> It is important that staff consider the option of a separation package seriously as present conditions are not guaranteed after 15 July 1994.

The CEO also said:

> A reduction in most of our current activities is expected to occur because of a drop in demand as agencies are able to make a choice in supplier.

This includes services such as heritage design and restoration, 24 hour emergency breakdown, lift maintenance and asbestos removal. The initial target for staff reductions announced by the CEO is 170 by 30 June this year. In view of this annihilation of SACON's activities the Opposition is concerned about the future of the asbestos removal program and SACON's award winning heritage work. In 1992 SACON's Heritage Unit and Heritage Works Team received international acclaim for their work in conserving South Australia's historic public buildings. SACON was awarded the Grand Gold Award 1992 by the influential Pacific Asia Travel Association for the concept, the achievements and the effect of the SACON's Historic Buildings Conservation Program on South Australia's built heritage. My questions to the Minister are:

1. Does the Minister agree that SACON's Heritage Unit has made a substantial contribution to tourism, to our pre-eminence in preserving built heritage and to the quality of life in South Australia?

2. Will the Government accept separation packages from tradespersons with specialised skills such as stonemasons, who are essential to heritage conservation work, and, if so, will the Government preside over the destruction of the Heritage Unit?

The Hon. K.T. GRIFFIN: I will refer that question to the Minister and bring back a reply.

ADELAIDE AIRPORT

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport a question about the proposed sale of Adelaide Airport.

Leave granted.

The Hon. SANDRA KANCK: An article in today's *Advertiser* about the impact on the South Australian economy of the sale of Adelaide Airport, as detailed in last night's Federal budget speech, reported that the South Australian Government would be open to broker the sale of Adelaide Airport. I am concerned that, if one company were to purchase two or more capital city airports, including Adelaide Airport, fees for transport of passengers and freight by air may be increased and that South Australians may be disadvantaged as a result. If, for example, the same company were to own the Melbourne and Adelaide airports, there is the possibility that air traffic could be diverted to the larger airport, which would be Melbourne, as there would be more incentive to upgrade Melbourne airport, which would have the greatest flow of air traffic. My questions to the Minister are:

1. What are the implications of the decision to sell Adelaide Airport for the upgrading of airport facilities and the extension of the main runway?

2. What would be the implications for air passenger, freight charges and air traffic volumes at Adelaide Airport were the new owner to own another capital city airport in Australia?

3. Can the Minister inform the Council how the Government intends to broker the sale of Adelaide Airport in order to ensure that South Australians are not disadvantaged by its sale and, indeed, so that South Australians may benefit from the sale?

The Hon. DIANA LAIDLAW: I thank the honourable member for her questions, which are important matters. The whole purpose of this Government's campaign to get the Federal Government to agree that the airport would no longer be owned by the Federal Airports Corporation has been to ensure that some attention is finally given to Adelaide Airport. As the former Government found, and as we have certainly found, the Federal Airports Corporation has always seen our airport as a poor relation compared to airports particularly in the Eastern States and we have fared badly in terms of infrastructure initiatives at the airport.

The fact that we have only one air bridge at the international airport is a disgrace. It is not entirely the Federal Airports Corporation's responsibility, but it is relevant that in the leased areas we have no air bridges at the domestic airport; that is also a disgrace. It is substandard treatment of passengers arriving and departing from this airport, and it is unacceptable. I have spoken with the Federal Airports Corporation, saying that at all their properties minimum standards should be set in terms of at least two air bridges at capital city international air terminals and at least one air bridge at domestic terminals. However, it is apparent from discussions with the Federal Airports Corporation that it simply falls back onto its charter, which has a commercial focus, as the excuse to do virtually nothing to improve the standard for passengers and operators of freight in and out of the airport.

It is for that reason that the former Government and our Government have campaigned aggressively for the opportunity to be freed from the Federal Airport Corporation's clutches. A drive to improve facilities at the airport, including the extension of runways, is absolutely critical to the economic development of this State. It has been one of our priorities, so we are delighted to see that so soon after coming into Government we now have an opportunity through the white paper delivered last week and the budget yesterday to prove that we can realise the goals that are necessary for the State in terms of economic development and jobs by having an opportunity to find a private enterprise buyer for the airport.

In terms of the implications of the Federal Government's decision, that now allows us the opportunity for us to facilitate private development, purchase and/or management of the airport, and that is important to the State. As for the implications for freight charges, the last thing that the State Government would be prepared to accept is a structure that would disadvantage the State, when our whole campaign has been to ensure that the State prospers from such a decision. However, we are about to commence discussions with the Federal Government on that and related matters. It also impinges on recommendations by the Prices Surveillance Authority that I mentioned a few weeks ago and any determination by the Federal Government on those recommendations to get rid of cross-charging at airports. The PSA recommendations would be very damaging to our airports.

A Cabinet subcommittee has met on this matter, and we meet again tomorrow. As part of our strategy we will be writing to the Federal Government asking that, given that the first airport sale will probably be negotiated next year, South Australia be allowed to go first in the schedule of sales and in that sense that we be a pilot program so that the Federal Government can appreciate the implications of the sale. As a Government we are very concerned that, if South Australia does not go first in the schedule of sales, the impetus of private sector ownership and operation of airports in the Eastern States would mean that we were absolutely swamped in this State, and we cannot afford to let that happen.

Our first emphasis, to which I shall be speaking tomorrow and which would reinforce earlier correspondence with the Federal Transport Minister, Mr Brereton, will be that South Australia should be allowed to go first in that schedule. As part of that initiative, as the Premier indicated the other day, we have to ensure that we get support from the Federal Government for full or part funding for the extension to the runway and possibly other capital initiatives at the International Airport in particular. It would be difficult at present to capitalise fully on private sector ownership and management of the airport without at least getting some change to the depreciation provisions for infrastructure which at the moment disadvantage the Federal Airports Corporation and certainly would not be attractive to a purchaser of our airport.

All other airports, particularly those in the Eastern States—Sydney, Brisbane and Melbourne, as well as Perth—have had substantial capital funds from the Federal Government in recent years; South Australia has not. If our airport were to be sold and we did not have the benefit of some capital injection and/or changes to the depreciation provisions for infrastructure, there would be some difficulty in achieving those infrastructure needs at our airport in the near future with a private sector owner.

At the same time as we are seeking a private sector owner and for Adelaide to go first in this schedule as a pilot project, we will continue our push for funding from the Federal Government in full or in part or as a challenge grant for the basic infrastructure needs that we require at the airport. While the Government applauds the decision about the sale of the airport, reaffirmed last night in the Federal Budget, it is with considerable disappointment that I think $73 million was found for further infrastructure development at Sydney airport, although there was not one cent for South Australian airports.

So, we will have to continue our campaign in that regard. One of our strategies will be to speak to all Federal Government members of Parliament from South Australia, including the three Ministers, so that they have a full appreciation of their responsibilities to the State, and not only in a Government context. In that regard I would hope to have the support of all members in this place.

SHELTER

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about the Shelter (SA) study.

Leave granted.

The Hon. ANNE LEVY: Last year the organisation known as Shelter (SA) put forward a submission for funding of a tenants' advocacy group for tenants in the private sector, analogous to similar groups which exist for public tenants and their relationship with the Housing Trust. As Minister at the

time, I provided a grant to Shelter to enable it undertake a study as to whether a tenants' advocacy group was warranted. It was felt that by a careful study it would be able to demonstrate whether there was a need for such an organisation or whether the assistance provided by the staff of the Residential Tenancies Tribunal would be sufficient to cope with the queries which were raised, although I realise that the Residential Tenancies Tribunal staff are not in a position to advocate changes.

The Shelter organisation was to complete this study about now. I understand that it may not yet have been quite completed, but I am sure that, when it is, it will be made available to the Minister's officers. My questions are:

1. Has the study conducted by Shelter (SA) yet been completed and presented to the Minister?

2. Will he make it publicly available now, if he has it, or when it is received, so that members of the public will not have to wait until Parliament resumes in August before knowing what is in the study that is being conducted by Shelter?

The Hon. K.T. GRIFFIN: I am not aware that the study has been completed. I know that there was a study. In fact, this morning I met a representative from Shelter (SA), but she did not mention what was happening with the study and I did not have time to ask her. However, I will make some inquiries as to whether it has been completed and, if not, when the completion date is likely to be reached.

I can see no reason why it should not be made available publicly, but I will need to examine the terms of reference and refresh my memory on that in order to ascertain whether it is Shelter's report or the agency's report. On the spur of the moment, I see no reason why it should not be released. If my consideration of the matter confirms that and if it is presented before Parliament resumes in August, I will endeavour to ensure that a copy is made available.

ARTS EMPLOYMENT

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for the Arts a question about employment and the arts.

Leave granted.

The Hon. T.G. ROBERTS: In this week's Adelaide *Messenger* press there is an article by Carol Altmann with the heading, 'Actors deserting South Australia in job search'. The article states:

> Actors are abandoning South Australia in search of work interstate because job opportunities are at an all time low in Adelaide, the Media Entertainment and Arts Alliance says.
>
> Despite a State Government arts budget of $70 million, most of the money is not directed into productions, but is soaked up by administrative costs, the MEAA says.
>
> For example, only one SA company performed at the Adelaide Festival, while most of the SA companies in the Fringe Festival had to rely on box office deals to stage their production, MEAA secretary Stephen Spence says.

The article later states:

> As a sign of the times [using the illustration of one actor] Mr Frost is working in his first production where he will not get paid, along with the other actors in the show, other than through a share of the box office takings.
>
> 'We need to start redirecting funding into creating jobs before it's too late. If it's too long between major productions, then the local talent will all leave town,' Mr Frost says.

I understand that the Government has set up a task force, which is to meet in June and which is to make some recommendations within the arts sphere. Will the Minister, as a matter of urgency, publicly indicate a priority for employment development strategies for artists in this State?

The Hon. DIANA LAIDLAW: Yes. It is true that artists, choreographers, writers and film-makers have been deserting South Australia for some time. The arts have not been immune from this general trend over recent years. The honourable member reminded me of a statement made in our arts and cultural development policy released last November. The introduction of that policy stated:

> The slogan, 'The Festival State' is sounding pretty hollow as artists, musicians, visual artists, writers, choreographers and film industry workers leave South Australia to find work and markets interstate.

For the honourable member's benefit, as he may not have read the policy, page 3 thereof—

The Hon. T.G. Roberts: It is one I missed. I'm still reading Fightback.

The Hon. DIANA LAIDLAW: Unlike Fightback, this will remain a document—

An honourable member: A working document.

The Hon. DIANA LAIDLAW: A working document. Page 3 of the policy, under 'Role of Government', states specifically that the Liberal Government will be streamlining the department's bureaucratic structure to ensure that maximum financial support can be directed to art workers in the industry. As the honourable member mentioned, there was a commitment to establish an arts and cultural development plan, which will promote excellence, and embrace participation and performance, education and training, employment, urban development, product design and marketing cultural tourism and export potential.

That plan is being developed at the present time as a matter of priority by a task force appointed earlier this year. And, while I have received advice that the task force is pretty exhausted because it has been working so hard to develop such a major plan within the short period of time that the Government has allowed for this exercise, progress is being made, although I have not been advised of the matters being specifically considered. I have been advised, however, that by the end of June I will receive the plan. As I indicated, there will be a strong focus on the development of the arts as part of the development of this State, and that will embrace the issues of employment and training, as the member has indicated is important.

The Hon. T.G. ROBERTS: I have a supplementary question. Has the Media Entertainment and Arts Alliance a representative on the task force?

The Hon. DIANA LAIDLAW: No, but it has either made a submission or been encouraged to make one. In either case I would trust that it would do so. There is no person on the task force representing any organisation or any specific field of endeavour in the arts, but the interests covered by the members of the task force are broad in terms of the spectrum of the arts. The task force includes people with a business management background, and people who have been keen in supporting the arts through sponsorship, as well as administration.

The broadest perspective has been taken in terms of the arts because the task force includes representatives from the media as well as science. We wanted to ensure that the arts was not seen as having a narrow focus but that it was broad based and could, and indeed should, be picked up by all departments in their funding programs.

One focus of the task force is how it can weave the arts into all fields of endeavour in our community. No one person

is there to represent any one organisation, but I would hope the Alliance, if it has not done so yet, would certainly make a submission to the task force.

The Hon. ANNE LEVY: I have a supplementary question. Will the Minister explain how she can say that people with broad interests cover all areas of the arts on her task force, when amongst 15 people there is no-one with any background or particular knowledge of literature, no-one with any background, experience or knowledge of youth arts and only one person who could even marginally be described as coming from a non-English speaking background?

The Hon. DIANA LAIDLAW: It is an interesting question, when one considers that I have been criticised for having a task force that is too large, for the honourable member to suggest that I now should have asked people representing specific areas of the arts, and increasing—

The Hon. Anne Levy: I did not say that; you said they covered all areas.

The Hon. DIANA LAIDLAW: I didn't say they covered all areas; they cover a whole range of areas in the arts: literature, youth, media, etc. I spoke with the task force initially and all its members are well aware of my view that they are not there to represent any one field of the arts or their own field of the arts. All of them have a capacity for lateral thinking and were not selected because of their interest or activity in any one field of the arts. I believe that all members understand that that is the role of the task force: to ensure a broad picture of the arts. From all the feed-back I have received my expectation of their capacity to do so was sound.

The Hon. Anne Levy: I can understand why a few people are feeling pretty nervous.

The PRESIDENT: Order!

FEDERAL BUDGET

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Treasurer, a question about yesterday's Federal budget.

Leave granted.

The Hon. T. CROTHERS: Those of us who monitor all facets of the media must have been greatly disturbed during the week leading up to the Federal budget by some of the inane, asinine stories and guesstimates which were being presented to the general public by commentators who were supposed to be experts in the field of economics. How, of course, they were able to do this without knowing the facts about the budget, which were only released to them yesterday, remains a mystery to me. The stories, I suppose, could best be described as beat-ups in order either to justify their position, or perhaps even to make the enterprises for which they work more profitable.

It would seem, however, that business and the money markets appear to have received the budget quite well. Of course, most of the media continues on, and the latest is that Australia cannot reach the levels of economic activity being forecast by Treasurer Willis, and so the knocking and carping remains unabated. This type of media coverage is, in my view, a disgrace, as it does no small harm to investment in Australia. Matters fiscal in this respect are generally regarded as extremely delicate and easily upset by the slightest of misinformation. Overseas investors could be frightened off from coming here if they took our media stories as accurate reporting. Fortunately, I am led to believe that such is not the case; otherwise, the present State Government's efforts to attract new industries here could run up against a media manufactured brick wall. I trust that this will not be the case and can only say I wish the present State Government every success in that pursuit.

Likewise, present bank interest rates, about which it is a well known fact that the banking fraternity would like to see remain at their present rates or even go higher in order to make up for the disaster of the 1980s, which I believe affected every bank in Australia except one—

The Hon. L.H. Davis interjecting:

The Hon. T. CROTHERS: The Hon. Legh Davis interjects with old information again. Let him continue on, I say, with—

The PRESIDENT: Order! The honourable member should continue on with his question.

The Hon. T. CROTHERS: —his senile declamations. I understand that the only exception to that was the National Bank of Australia. The media reporting over the past week only serves to support those who claim, and I for one believe falsely claim, that interest rates should be higher than they currently are. I can only say—

The Hon. L.H. Davis interjecting:

The Hon. T. CROTHERS: With your opinions, you are still on the backbench. I can only say that this sort of reporting is an absolute shame. From the bottom of my heart, I believe that a lot of suffering and damage has been inflicted on all Australians by this sort of reporting, which is so unnecessary. I might add that some media reporters were not involved and endeavoured over the past week to report matters as honestly and objectively as they could. To those people, I say, 'Keep up the good work and long may you do so'. In light of all the foregoing—

The Hon. L.H. Davis: That is the end of it?

The Hon. T. CROTHERS: I wish it were the end of you, but unfortunately we have to suffer on. In the light of all the foregoing, I would conclude—

Members interjecting:

The PRESIDENT: Order!

The Hon. T. CROTHERS:—that what has to be realised about this current budget is that it was framed with a four or five year game plan in mind. As such, I for one believe that even if some of the Willis's forward projections turn out not to be right, then there is always the opportunity to address that matter in some future budget. So much for the Jonas's and Cassandra's of this nation. In light of the foregoing, I address the following questions to the Minister:

1. What good news does the Minister believe is contained in the budget for South Australia?

2. What bad news does the Minister believe is contained in the budget for South Australia?

3. Does he believe that last night's Federal budget will strongly assist the State Government in dealing with our present very high levels of unemployment and boost investor confidence for the benefit of all South Australians? I would conclude by appealing to the Minister that he answers my questions in as specific a fashion as possible and not give me generic answers by nature.

The PRESIDENT: Order! I notice in the member's preamble to the question there was an enormous amount of opinion. This is not a forum for second reading speeches prior to asking questions. I ask members to respect that.

The Hon. R.I. LUCAS: Certainly I, and I am sure the Treasurer, to whom I will refer the honourable member's questions, will be as specific as indeed the honourable member has been in his explanation of the particular ques-

tions. I would only make some general comments before referring the questions to the Treasurer. First, I welcome the honourable member's bipartisan support for the new Liberal Government's initiatives in relation to attracting significant new investment and therefore job opportunities to South Australia. It is heartening to see a former prominent member of the union movement, and now a member of the Labor Party, giving bipartisan support to the new Government's job creation initiatives in South Australia, and I indeed welcome that. I am sure the Premier and the Ministers responsible will welcome that news when I convey to them the honourable member's particular views on those issues.

In relation to the Commonwealth budget and its effects on the State Government and its finances, they are indeed important questions. The honourable member asks what was the good news and what was the bad news. The bad news was that, with respect to a number of specific projects for which the Premier sought additional funding from the Commonwealth, in relation to the MFP, the airport and one or two other areas, on my understanding we did not receive that additional funding to assist us in further development of economic opportunity in South Australia. In relation to what good news might have existed, there were a number of specific programs where the Commonwealth Government has indicated it is prepared to assist. In the area of education, there was a $48 million Asian languages assistance program over four years. I would assume in a number of other areas there may well have been some specific programs. Certainly I will refer those questions to the Treasurer and bring back a reply.

The only other point I would make in relation to interpretation of the budget is that not only has there been some favourable comment, there has also been some unfavourable comment. There are a number of commentators who are cynical about the validity and accuracy of some of the growth figures and projections within the budget and believe that some of the figures might be rubbery, if one can use that word to describe them. One of the concerns that the economic commentators have is the effect of the budget on interest rates within Australia, and some commentators anyway do believe that the result of the budget and the fiscal policy that has been followed by the Commonwealth Government will lead inevitably to further rises in housing loans, bankcard interest rates and interest rates generally in the community. If that were to be the case, then certainly that would be a problem for the housing construction industry market and general investor confidence in South Australia and in Australia. With those general comments, I will refer the detail of the questions to the Treasurer and ensure a reply is sent to the honourable member during the coming break.

AIRPORTS

In reply to **Hon. T.G. ROBERTS** (19 April).

The Hon. DIANA LAIDLAW: I have some further information in response to the question asked by the honourable member.

Privatisation of Adelaide Airport would have no effect whatsoever on the funding of those airports listed by the honourable member, or any other airport in South Australia with the possible exception of Parafield Airport. No revenue transfer occurs between Adelaide Airport and country airports because Adelaide Airport and Parafield Airport are owned and operated by the Federal Airports Corporation while country airports in South Australia are owned by local municipalities.

The operators of Ceduna, Whyalla, Port Augusta, Mount Gambier and other country airports are fully aware of this. The PSA recommendations are a separate issue and do not apply to country airports.

The South Australia Government supported the transfer of country airports from federal to local ownership, which was completed in July 1991. Since then it has assisted the Local Government Association to fund its aviation service which provides expert advice to country airports through the employment of an appropriately qualified engineer. This has ensured a smooth transition and helped to fill the gap left by the withdrawal of Commonwealth expertise.

The Government is concerned that the needs of country communities for adequate airport infrastructure are catered for. This is particularly important of course for remote rural communities, many of which have no adequate alternative means of transport. Now that the Commonwealth has withdrawn from funding any country airports in South Australia, the last group of which transferred from Commonwealth to local ownership in 1991, I believe the Government has a responsibility to help provide the means for those airports to weather the transition efficiently and safely. The Government has therefore agreed to continue assisting the Local Government Association to fund an aviation service for the next four years, which will monitor standards at rural airports, provide training where necessary, and provide technical advice and expertise to bridge the gap left by the Commonwealth's withdrawal.

MITCHAM RAIL SERVICE

In reply to **Hon. M.J. ELLIOTT** (19 April).

The Hon. DIANA LAIDLAW:

1. Advice is currently being sought from the National Rail Corporation (NRC) which is undertaking the design work on behalf of the State Transport Authority, on whether the alignment at the Eden Hills loop can be modified to accommodate a platform.

2. The response to this question is clearly dependant on the response from the NRC to question 1. I shall advise further when the additional information has been received from the NRC.

3. The most recent program provided by the NRC indicates that the crossing loops will become operational by 7 May 1995.

EDUCATION WORKS

In reply to **Hon. C.J. SUMNER** (24 March).

The Hon. R.I. LUCAS:

Elizabeth West Primary School—Cabinet approval was given 25 October 1993. Redevelopment on this site will be carried out in four stages, estimated to a total of $4.1 million. Stage 1 which involved the total refurbishment of the primary school solid construction buildings has been completed and is now occupied. Stage 2 works are currently in progress and involve the consolidation and refurbishment of administration buildings, Library/Resource Centre, Canteen, Activity Hall and Child Parent Centre. Stage 3 and Stage 4 involve the upgrading of the Open Space Unit and the refurbishment of the junior primary solid construction buildings. The planned completion date is September 1994.

Paralowie R-12 School—Funding has been approved by Cabinet on 25 October 1993 for this project. SACON has indicated that it is able to undertake the work within the budget for the project and proposes to let trade contracts for at least 90 per cent of the net contract value and has also prepared a program to complete the project by commencement of the 1995 school year.

Munno Para Primary School—SACON has completed the building documentation and is currently assessing the project for construction which is due to commence on site during May 1994.

Consultation has occurred with the Department of Treasury and Finance. The issues have been addressed by officers from the Department for Education and Children's Services and the revised submission is currently being prepared for forwarding to Cabinet for its decision.

Elizabeth City High School—The stage 1 redevelopment of Elizabeth City High School was completed in 1993. These works included:

- provision of a seven classroom teaching block;
- modification of an existing technical studies building to accommodate the Engineering Pathways Computing Laboratory;
- refurbishment of science and business/computing areas;
- refurbishment of administration and staff facilities;
- establishment of student services facilities;
- provision of a lift.

These stage 1 works were costed at $2.52 million. Within this stage 1 redevelopment, the opportunity was taken to incorporate $400 000 from the Commonwealth Secondary Schools Refurbish-

ment Program. This met criteria set by the Department for Education, Employment and Training as well as enhancing access of senior school students to new curriculum directions such as the Engineering Studies Pathways Program.

GOVERNMENT STRUCTURE

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

I. That a Select Committee of the Legislative Council be established to consider and report on the structure of government in South Australia and its accountability to the people with particular reference to:
- (a) recognition of the original inhabitants of the State;
- (b) the relations (including financial relations) with the Federal Government and whether:
  - (i) powers should be referred or transferred to the Federal Parliament and/or Government;
  - (ii) whether powers should be referred or transferred from the Federal Government and/or Parliament to the State Parliament and/or Government;
- (c) whether responsibilities and powers should be devolved on local government;
- (d) the sources of funding for the three tiers of government;
- (e) the modernisation of the South Australian Constitution Act including the role, functions and structure of the Executive Government and whether it should be recognised in the Constitution Act;
- (f) the entrenchment in the Constitution of the independence of the judiciary;
- (g) the accountability of the judiciary;
- (h) the appointment and powers of the Governor including the need for a Head of State;
- (i) the need for a bicameral legislature and the number of members of Parliament;
- (j) the implications for South Australia's constitutional structure of proposals for Australia to become a republic;
- (k) the desirability of the establishment of a Charter of Rights for South Australians to be incorporated in the Constitution Act and the desirability or otherwise of entrenching such a charter;
- (l) the education of members of the community (including school children) in issues relating to the constitution and government, and civil rights and responsibilities.

II. That Standing Order 389 be suspended to enable the Chairperson of the Committee to have a deliberative vote only.

III. That this Council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence or documents presented to the committee prior to such evidence being reported to the Council.

IV. That Standing Order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

This motion arises out of the belief that it is timely for the Parliament and people of South Australia to examine the structure of government (in its broader sense) in this State. It is timely for a number of reasons.

A new Government has just been elected. We are approaching the Centenary of Federation. Debate about a Republican future for Australia is very much alive. The role of the judiciary is under scrutiny. The debate about the merit or otherwise of a Bill of Rights continues. There is continuing concern about overlap between the different tiers of government.

All this is occurring in a period of considerable change and restructuring in the Australian economy and in a period when South Australia has to decide how it is going to relate economically to the rest of Australia and the rest of the world.

It is the Opposition's view that we should anticipate the social and economic changes which are occurring in Australian society and examine whether our structures of government are appropriate for the twenty-first century. We should attempt to anticipate these changes and prepare for them.

The former Premier, Lynn Arnold, on 9 September 1993, in a Ministerial Statement in the House of Assembly on constitutional reform, foreshadowed an examination of these issues had the Government been re-elected. Suffice it to say that this issue, although important, was lost in other matters in the debate leading up to the last election. The time has come to resume that debate. A select committee of either the Legislative Council or a joint select committee is an appropriate way of doing it.

The restructuring of the Australian economy was a dominant theme in the 1980s, part of the agenda of changing attitudes, changing the mentality of Australia towards a more productive, competitive economic environment. The importance of increased productivity, particularly national competitiveness, has been a constant theme emanating from both Federal and State Governments during the 1980s. The new Brown Liberal Government in South Australia has also taken this up. Whether a community is successful in restructuring its economy depends on the culture or attitude of its members. South Australia has been particularly conservative in its attitudes to change and in particular to economic change. Attempts to stimulate development have often been retarded by narrow parochial attitudes which are prevalent in all sectors of South Australian society.

This was brought home to me very forcefully during the debate on the Mutual Recognition Bill in this Parliament last year when one of the Liberal opponents of mutual recognition asked whether the Premiers interstate were aware of South Australia's unique history of settlement when considering and recommending mutual recognition laws. To me this epitomised the sort of culture which permeates the South Australian society and which is a major impediment to change and restructuring. If we are talking about a culture of change, a culture favourable to restructuring, then it should not be confined solely to the economy, but should also embrace our constitutional and governmental structures.

Here there is a curious paradox because many people on the conservative side of politics, Liberal politicians and business people support restructuring of the economy but oppose restructuring of constitutional and governmental structures designed to make Australia more efficient economically and to make us operate as a nation instead of a collection of States. In other words, many people say they want to have greater competition in Australia, more open markets and a more efficient economy, and at the same time adhere to the protections which the State laws can give them. It is imperative for all of us concerned about the future of Australia to try to develop a more flexible culture, a more open minded mentality towards governmental as well as economic restructuring.

Politicians are often blamed because change is not achieved, yet in the final analysis, constitutional and governmental change only occur if Australians want it and express themselves to that effect through the ballot box. There is a wide perception in Australia that we are overgoverned: three tiers of government, too many politicians and overlapping areas of responsibility. Yet, in the recent past

whenever referenda are proposed which in any way impinge on States' rights they are defeated. Even the simple proposition of ensuring that elections for the House of Representatives and the Senate should occur simultaneously has been defeated, defeated three times in the last 20 years because it was seen as a diminution of States' rights. We need to retain an open mind on these matters in order to repudiate narrow States' rights parochialism which has bedevilled change in the area of constitutional and governmental restructuring as it has in the area of economic restructuring.

The terms of reference largely speak for themselves and I do not intend to canvass at length all the matters that arise under each proposed term of reference. With respect to some of the matters I have a firm view and the Opposition has a policy which it would seek to advance through the select committee and community debate process. In others we have no firm view but believe the interests of South Australia will be served by commencing a debate on these issues at this time. However, some brief commentary on the terms of reference is called for.

RECOGNITION OF THE ORIGINAL INHABITANTS OF THE STATE

The Mabo decision of the High Court has thrown into sharp focus the circumstances of the occupation of Australia by European settlers. Forms of native title were recognised by Mabo. It is appropriate to examine whether there is a case for other forms of recognition of the original inhabitants of the State. This is particularly so in the context of the National Council for Reconciliation which has been established by the Federal Government.

FEDERAL-STATE RELATIONS

This issue is at the heart of Australia's governmental structure. There has been much debate about this issue over the last 20 years, since the establishment of the Australian Constitutional Convention by the Whitlam Government in 1973. This Convention met on seven occasions but achieved little. More recently there has been the report of the Constitutional Commission (comprised of experts, not politicians). It reported in 1988 but again little has flowed from it. Four referenda proposals arising out of it, namely recognition of local government, four-year parliamentary terms, fair elections, and the recognition of some basic rights (the right to trial by jury, the right to fair compensation for property acquisition and religious freedom) were all defeated. Currently there is a non-governmental body, the Constitutional Centenary Foundation of which Sir Ninian Stephen is Chairperson which is looking at the Commonwealth Constitution after nearly 100 years of operation. Despite the lack of action through these bodies in dealing with the issue of the overlap of the three tiers of government, there are certain matters which have to be acknowledged. First of all government at all levels can not keep on expanding and each Government (particularly the State Government) needs to look at core activities. Historically more and more power has devolved to the Federal Parliament since Federation and this is a trend which is not likely to be halted. This is because of the imperatives of national Governments taking responsibility for the national economy and the role of Australia in the world economy and community.

At the same time there has been an expansion of responsibilities of local government beyond simply roads, rates and rubbish, and indeed the South Australian Government formally has devolved certain activities to local government in the past few years. In this context it is particularly important that State Governments look at their core activities. There are many areas, in my view, which would be better handled at the Federal level. This is particularly in areas which impact upon economic efficiency. Uniform credit laws have still not been enacted around Australia despite 25 years of attempts. There is little justification in Australia for different defamation laws in each State, yet attempts to get reform of defamation laws, which began in 1979 following the Australian Law Reform Commission Report have all failed.

The reality is that the only way to get uniform defamation laws in Australia will be for States to refer powers to the Commonwealth or for there to be a referendum to give the power over defamation law to the Federal Parliament. There seems to me to be no rational basis for the State to retain power over defamation laws. This is particularly so given that communications occur on a national basis. There is also a case for a uniform criminal code around Australia but this also is unlikely to be achieved. My personal views on constitutional reform in the area of Federal-State relations are probably beyond what most South Australia MPs would find acceptable. They include:

(i) The national Government should have effective control over the Australian economy and financial sector. This should include powers over both prices and incomes policy. Wages policy should be able to be determined federally. Constitutional restrictions which require a dispute extending beyond the limits of one State should be removed. State wage fixing tribunals should be abolished and their functions conducted nationally.

(ii) The national Government should be responsible for regulation of the whole financial sector. This should not only include insurance companies and banks, which it does already, and companies and securities, but also national Government regulation should extend to all other financial institutions, such as building societies, credit unions, co-operatives and the like.

(iii) Because consumer laws impact on the economy, they too should be the responsibility of the Federal Government. The 20 year farce in attempting to get uniform credit laws in this nation should be ample testimony for the need for this.

(iv) Differential health, safety and environmental regulations between States should also be removed. Australia should be able to act as one nation in determining what standards industry should have to comply with, whether producing within Australia, importing or exporting

(v) There needs to be a better coincidence in the responsibility for raising revenue and spending it, particularly at a State level. A better mix of taxing powers must be available to the Australian States. It is unsatisfactory that one of the few taxes the States have is a tax on employment (that is, payroll tax). This is ridiculous in this modern day and age. This tax that the States were given in the early 1970s as a growth tax, and one which we can levy constitutionally, is in fact a tax on employment.

Yet it is impossible, despite its undesirability, to remove that tax from the States because we have a very limited constitutional basis upon which to rely to raise revenue in other ways. So a better mix of taxing powers in any constitutional restructuring must be available to the States.

(vi) There needs to be a greater delineation of what are the responsibilities of national, State and local governments. Mechanisms to reduce overlapping and inefficiencies and produce rules of national competition should be further developed. It is pleasing to see that the mutual recognition

laws and the Hilmer report have taken a big step in this direction. The Council of Australian Governments (COAG) has been an important forum for this process.

These are but a few ideas. It may be that constitutional restructuring cannot be achieved by constitutional referenda but we still need to look at other ways to make our federation more flexible. Referral of powers is one option, that is, referring State powers to the Commonwealth. Having the power to refer Commonwealth powers back to the States is also desirable but not possible at this stage. I recognise that these matters may not all be agreed on but I believe as a State we need to re-examine our core activities and face up to these issues of Federal/State relations.

As I have just mentioned, one of the continuing debates has been the lack of the State's capacity to raise revenue and its mendicant status to the Commonwealth. Most commentators on federal forms of Government would argue that the constituent parts of a federation need the capacity to raise funds to provide the services that they are constitutionally obliged to. It is argued with merit that responsibility for spending to provide services should be matched with the responsibility to raise revenue. This clearly does not occur in Australia because of the very narrow tax base that the States have. The State Labor Government attempted to overcome this by arguing in the Capital Duplicators case in the High Court that the definition of 'excise' in the Commonwealth Constitution was narrower than the current test applied by the High Court. This was lost by four to three in the High Court but, had it been successful, it would have broadened the capacity for the States to raise revenue.

Under the Federal Constitution excise cannot be imposed by the States. However, if the definition of excise, which South Australia argued for had been successful (that is, narrowing the definition so that excise was a tax levied on production and not one imposed at any stage from manufacture to sale), then the State taxing powers would have been more secure. I should add that the decision taken by me and Premiers Bannon and Arnold in this and an earlier case (the Philip Morris case in 1989) to open up this issue before the High Court was strongly opposed by most other States.

Much of what I have said earlier will no doubt be dismissed by supporters of States' rights as centralist. Nevertheless, in the crucial area of taxing powers the former Labor Government attempted to secure the States' capacity to raise revenue independently of the Commonwealth (that is, to place the States on a more secure financial footing consistent with the normal principles of federation). Although I believe there is a case for rationalising State functions and reducing them in some cases, I also believe that for the States to operate effectively their mendicant status to the Commonwealth has to be overcome.

THE SOUTH AUSTRALIAN CONSTITUTION ACT IS VERY ANTIQUATED

In recent times there have been a number of issues that have arisen relating to the interpretation of the Constitution Act 1934. We are currently dealing with the situation of the qualification of members to sit in Parliament and last year there was debate in the Legislative Council about the power of the Council in relation to money Bills. These are issues about which there should be clarity and a process of modernising the South Australian Constitution should be embarked upon. The laws date back to the 1855-56 Constitution and some of the language is still to be found in the present Act.

THE INDEPENDENCE OF THE JUDICIARY

Again, this is an issue about which there has been considerable debate in the community in recent times and judges in particular have been concerned about threats to their independence. A current issue on this topic is before us in the industrial relations legislation. This debate highlights the difference of views about this issue. It also shows that the principles need to be further debated and discussed. It is not even clear that the Judiciary have a thorough understanding of the issues. The independence of the Judiciary should be entrenched in the Constitution. However, before that occurs it is important to identify the appropriate principles so that threats to independence can be judged by reference to objective and agreed criteria.

THE ACCOUNTABILITY OF THE JUDICIARY

Independence of the judiciary is a fundamental pillar of a democratic society in upholding the rule of law. However, there do need to be mechanisms for accountability of the Judiciary built in to any procedures for entrenchment of the independence. Again, this issue needs considerable thought but at the very least there need to be systems of peer review and continuing legal education introduced for the Judiciary and probably simpler methods of discipline when judges do not behave responsibly but in a manner which is not so serious as to warrant dismissal.

THE NEED FOR A BICAMERAL LEGISLATURE

The Labor Party has always considered that the Legislative Council should be abolished. Originally this argument was based on the fact that it was a Council elected on a limited franchise and was not democratic. Although it is now elected democratically, there must be questions raised as to whether two Chambers of the Parliament are justified in a State the size of South Australia. Abolition of the Legislative Council can only occur by referendum. However, as a prelude to its abolition Labor Policy is to reform the powers of the Legislative Council such that:

- A money Bill becomes law if the Legislative Council does not pass it without amendment within one month of its receipt from the House of Assembly;
- Any other Bill becomes law if it is passed by the House of Assembly in two successive sessions whether of the same Parliament or not, and rejected by the Legislative Council in each of those sessions provided that one year elapses between its second reading in the House of Assembly and its passing by that House in the second session.

Related to the question of the abolition of the Upper House is the reduction in the number of members of Parliament. This has been proposed from time to time and if not achieved by abolition of the Legislative Council could be achieved by reducing the size of both Houses. Obviously, if the Legislative Council were to be abolished, there would need to be reforms in the Lower House. Perhaps there would be a case for increasing the number to some extent but procedures to deal with legislation would need to be examined; for instance, a legislation committee established to which all legislation would be referred before passage. The method of voting for the House might also have to be examined because the abolition of the Upper House would restrict the capacity of minority Parties to be elected.

THE REPUBLICAN DEBATE

This debate is going to continue and many consider that the republican form of government is inevitable at sometime in the future. If this were to occur there would be significant impacts on the States. The present Governor, Dame Roma Mitchell, has highlighted some of the issues that could arise. It is important for the State Parliament to consider these.

CHARTER OF RIGHTS

Labor believes that it is time that the basic rights and freedoms of the citizens of the State were spelt out in a Charter of Rights. The charter would deal with basic civil and political rights as well as equal rights for women. It would provide a set of minimum standards to which the actions of the State and others must conform.

The debate about a Bill of Rights or a Charter of Rights has been going on in Australia now for the last two decades. It is time that Parliament squarely addressed the issue. Unless Parliaments in Australia do deal with the question of a Charter of Rights or a Bill of Rights there is the risk that the courts (and particularly the High Court) will take it upon themselves to imply rights into the Federal Constitution. The first steps have already been taken in the television political broadcasting case where a right to free speech was implied in the Federal Constitution.

Unless Parliamentarians are prepared to enter these areas then the courts will fill the power vacuum. There are other examples where this has occurred (for instance, Mabo). One can debate whether it is appropriate for the courts to get involved in these essentially political questions but the reality is that the High Court in particular in recent years is increasingly becoming involved in them and will do so by default unless members of Parliament start to examine the issues. That is why I consider that an important part of this proposal is to deal with the question of a Charter of Rights. At this stage I prefer a Charter of Rights which provides a statement of rights which would be used in the interpretation of legislation (similar to the New Zealand model).

At present there is no such touchstone which judges can use to interpret legislation so that it can achieve its objectives. The charter would keep Parliament aware of fundamental rights and freedoms and sensitive to the effects of its activities on such rights and freedoms. It would require the elected Parliament to take public responsibility for its adherence to or departure from any of the provisions of such a Charter of Rights. The charter would be an important means of educating people about the significance of their fundamental rights and freedoms. Citizens would have a readily accessible set of principles by which to measure the performance of the Government and exert influence on policy making. An awareness of basic rights and fundamental freedoms among citizens and a desire to uphold them are powerful weapons against any Government seeking to infringe those rights and freedoms.

In this way the proposed Charter of Rights would be a forceful influence on the Government, its officials and agencies. The charter would require legislation to be interpreted in accordance with its terms and would be binding on the courts unless the Parliament specifically overrode aspects of the charter. The other alternative is for a Bill of Rights to be entrenched in the Constitution and for the courts to have power to strike down legislation that is inconsistent with it. This policy issue should be examined by the select committee. Labor will propose legislation to adopt a Charter of Rights and freedoms providing protection of freedom of speech, freedom of religion, freedom of assembly, the right to privacy, the right of the individual to equality before the law, the right to trial by jury for serious offences and equal rights for women.

EDUCATION

The committee should also examine the current curriculum and education in schools relating to our constitutional structures. Earlier in this session I gave a speech about the teaching of ethics in schools. To some extent this issue is related. Constitutional structures are an important statement of the rights and responsibilities of governments and citizens and a Charter of Rights would heighten awareness of these. But rights and responsibilities are the opposite side of the same coin and ultimately respect for rights and a commitment to responsibilities depend on the culture of the community and its adherence or otherwise to basic ethical principles. It seems to me that much more could be done in the area of education of the community and school children in particular in our constitutional structures and the foundations for it.

In the community the reputation of politicians is very poor. This has been brought about by spectacular examples of political misbehaviour in Queensland and Western Australia in particular. But even where no corruption is involved, the status of politicians in the eyes of the public is very low. Undoubtedly a good bit of this we bring upon ourselves, through behaviour in Parliament, failure to adhere to commitments at election time and in other ways. But it is also true that the community is unaware of the political process, unaware of its complexities and unaware of the skills needed to be successful.

The practice of politics is also undervalued in our community. 'Politics' is a dirty word. If we want to denigrate an action or idea, we refer to it as political, yet in a democracy one would expect that the art of politics should be valued highly. What is the problem? Perhaps it is that the community is unaware of what we do and of the difficulty of translating an idea or policy into reality. Formulating policy—having the idea—is the easy part; putting it into effect requires political skills such as the capacity to negotiate and compromise. It seems to me that we should look at these issues and the education of the community about the political process. The proposal for this select committee provides a useful context for this to occur.

OTHER ISSUES

In the restructuring of government the role of executive government could also be examined. A proposal that might attract is the reduction in the number of Ministers to 10 and the inclusion of Ministers from outside of Parliament (three perhaps would be appropriate). Many people in the States are also concerned about the Federal Government's reliance on international instruments (covenants, conventions, treaties, etc.) to legislate to override laws which traditionally have been the responsibility of the States. We have seen this in a number of areas in recent years: race discrimination and equal opportunity legislation, the Tasmanian dams case, current industrial laws and the possibility of Federal Parliament action in relation to the homosexual laws in Tasmania.

Many people lament this development as another example of centralism. Personally I see it as an inevitable consequence of the social and economic changes that are occurring in Australian society and the imperative for Australia to become integrated economically and otherwise into the international community. Despite my views, however, this is an issue which the committee may wish to examine.

While this proposal involves the establishment of a select committee, it could be done by some other means if the Parliament felt that appropriate. A committee of eminent persons could be established to examine the issues to which I have referred. However, I think in theory it is better for members of Parliament to deal with these issues, because

unless there is support for them within the Parliament nothing will happen. In any event, it might assist in a process (to which I have referred) of enhancing the reputation of MPs in the community, to be seen to be debating such issues of fundamental importance. I commend the motion to the Council.

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

WRITERS' WEEK

The Hon. ANNE LEVY: I move:

1. This Parliament notes with concern the total lack of effective action on the part of the Minister for the Arts on the restructuring of the Writers' Week Committee by the Festival Board.
2. This Parliament insists that all possible steps be taken to ensure that Writers' Week remains a vibrant and successful part of future Adelaide Festivals of Arts.
3. That a message be sent to the House of Assembly requesting its concurrence thereto.

The story of the Writers' Week committee is a saga which is convulsing the literary community not only in Adelaide but also throughout Australia, as readers of the *Australian* and the *Sydney Morning Herald* can attest, and even internationally, as I will illustrate shortly. That it should have been allowed to grow to this extent with possible serious ramifications for future Writers' Weeks and future Adelaide Festivals is an indictment of the Minister. She of all people should have realised that the situation was getting out of hand and should have acted swiftly and decisively to resolve matters and prevent the damage to our artistic reputation that may now be occurring. That she has not done so shows her incompetence and lack of attention to important matters in the arts and lack of care about our festival and associated activities. It has been one of the few things going for Adelaide at the moment now that Kennett has so underhandedly pinched the Grand Prix from us.

Let us look briefly at the history of this matter. Much of it has been set out in the *Adelaide Review*, whose editor is one of the people who has been involved, and the basics of his article have been confirmed by others, also ex-members of the Writers' Week committee. This year's Writers' Week was an undoubted success, enjoyed by a very large number of South Australians and visitors from interstate and overseas. It attracted a total audience of 50 000 people, and this compares with fewer than 10 000 people for the Melbourne Writers' Week function.

The Hon. Carolyn Pickles: So it was pretty successful.

The Hon. ANNE LEVY: Pretty successful. The tents were full for nearly every session; the chairs spilled way out of the tents into the beautiful autumn sunshine and the bookshop tent did a roaring trade in books by all the featured writers who spoke. In fact, it was never not crowded. All who attended certainly enjoyed the week and the program enormously. There is an old saying that if it ain't broke, don't fix it. On the other hand, one must acknowledge that nothing is ever perfect, and it would be foolish to say that Writers' Week should never change; that it is fixed in aspic and cannot evolve. This obviously is what the director of the 1996 festival thinks. Back in December (I think 17 December, to be precise), before he had ever attended an Adelaide Writers' Week, he proposed to the festival board—

The Hon. Carolyn Pickles: He has never been?

The Hon. ANNE LEVY: At that time he had never been. He proposed to the festival board that a different organisation should be put in place for the next Writers' Week, with himself as Artistic Director having a greater say. This was not the only topic on which he addressed the board, but the minutes apparently show that the board made no in-principle decisions at that time, despite the Chair's intimating later that it had; they merely noted what Barrie Kosky had said on this and a whole lot of other matters. The board and its executive took no steps whatever to discuss Mr Kosky's ideas with the Chair or members of the Writers' Week Committee, despite their being pretty radical ideas which would mean fairly fundamental changes to the organisation of Writers' Week.

Then in April this year, after the festival was over and after the Government had agreed to bail out the festival to the tune of $860 000, a meeting was held of three members of the executive of the festival, and they decided to sack the entire Writers' Week committee and set up a new structure. They propose an advisory committee with four interstate experts as well as 10 to 12 local people. This advisory committee will meet only four or five times in the two years between festivals, and the actual work will be done by an executive for Writers' Week of five people: two from the advisory committee, one of whom will chair the executive; one representative from the festival board of governors; the executive officer of Writers' Week and the Artistic Director of the festival.

Such a new structure may work very well—I am not criticising it as a notion—but it is certainly a radical departure from the then committee which was made up of 10 individuals, all South Australians, all highly regarded people, who spent many hours working in an entirely voluntary capacity. I should have thought that such a major reorganisation would be the result of a decision made by the whole Festival board, not just a committee of three, which, incidentally, was made up of an accountant, a developer and one person only who is versed in the arts, although his expertise is primarily in music, not literature. Again, there was no discussion whatsoever with anyone from the Writers' Week Committee or with anyone who had ever faced the practical problems of organising a Writers' Week. I should have thought that common courtesy would lead to some prior discussions, even if the views of those consulted were subsequently to be overridden. The 10 individuals who had worked so hard to achieve what was undoubtedly a most successful Writers' Week were naturally rather stunned to receive, out of the blue, curt notices of dismissal. They had had no prior warning whatsoever.

I raised the matter in Parliament, and the Minister, to her credit, reacted fairly firmly, categorically asserting that the Festival Board had acted provocatively. Actually it was the executive, not the board, because many members of the board knew as little of it as the Writers' Week Committee. I am sure that I was not the only one who felt that the Minister would safeguard our Festival and our Writers' Week.

What has happened since then? The Minister apparently met the Chair and Deputy Chair of the Festival Board and Barrie Kosky. According to one of those who was present at this meeting, the Minister completely backed the board and its executive and she has sat on her hands since. This is despite the fact that she had 860 000 good reasons for insisting that consultation should take place, for suggesting that rational and dignified discussions should occur, that personalities be taken out of the equation and that a sensible resolution be found. Instead, she completely went to water. Only time will tell what damage has been done to Adelaide's artistic reputation and the international esteem in which our

Writers' Week is held due to her inaction, ineptitude and total incompetence.

To illustrate the possible international repercussions which may flow from the Minister's indecision and bungling, I should like to quote from a letter which was received yesterday by the Festival Board, the Writers' Week Committee and the Minister. It also appeared in yesterday's *Sydney Morning Herald*. This letter from New York states:

Recent visitors from Adelaide have informed us of the disbanding of the entire 1994 Writers' Week Committee.

As participants in the event, we wish to express our dismay that such a stellar group has been so summarily dismissed and our fear that the international literary community's most respected gathering of writers may suffer adversely because of this precipitous action.

We do not write with the intention of involving ourselves in the politics of the action but, rather, as writers who are frequently invited to participate in various international conferences and congresses. None, in our opinion, compares to Adelaide's. The quality of the writers at the 1994 Festival was exceptional. The variety of their writing entranced the large and diverse audience. To us it represented the broadest possible spectrum of Australian culture and society. When we writers gathered privately, much of our conversation centred around the enormous crowds who listened so attentively to our words and their enthusiastic reception of our work, verified by the vast quantity of books they purchased.

The letter further states:

. . . we urge you to consider very carefully what a splendid Writers' Week you already have in place before you incorporate sweeping changes simply for their own sake which may damage it badly.

This letter is signed by Deidre Bair, Marilyn French, Tama Janowitz, Sharon Olds, Sara Paretsky and Donna Tartt—a collection of some—

The Hon. Carolyn Pickles: Of the most eminent writers in the world.

The Hon. ANNE LEVY:—of the most eminent writers in the world today. These US writers are all of great renown and they certainly delighted me and thousands of other South Australians just a few weeks ago. Although this letter was directed to all members of the Festival Board, copies were not provided to board members at their meeting last night until after they had voted to support the action of the three executive members.

The Chair of the board has also refused to let anyone from the Writers' Week Committee put a point of view to the board. That board meeting was held as an emergency board meeting because three members requested a special meeting to discuss the situation, and that same meeting last night refused a request that Barrie Kosky should be asked to meet the sacked Writers' Week Committee. I gather that one result of that meeting is that a long-standing member has resigned, probably to the delight of those who remain.

The Hon. C.J. Sumner: Who is that?

The Hon. ANNE LEVY: I think it is up to that person to make it public. Many pieces of correspondence have been flying around recently regarding the events surrounding the sacking of the Writers' Week Committee. I should like to re-emphasise the seriousness of the current situation by quoting from a letter written by a member of the sacked committee and then from a letter written by an eminent literary agency interstate. I will read not the whole of the letter from the member of the sacked committee, but some extracts from it. It states:

None of us unfortunately has ever met Barrie Kosky. I am sure that I speak for other committee members in saying that we would have been quite happy to work with him with the same degree of cooperation and openness that we have worked with all previous Festival Directors, with the recent exception of Christopher Hunt.

I might add that Mr Hunt was reportedly rather difficult to get on with, this report having come from many different people. Further in the letter the author says:

There is no doubt in my mind that the board should have paid the committee the fundamental courtesy of discussing this decision with us before making it; even if it could not have done this, it could have met with us to discuss the proposed new relationship and to introduce Mr Kosky to us.

The letter further states:

If the reason for our dismissal was one of financial accountability and control of Festival activities, then in the case of Writers' Week I cannot see that it holds. Writers' Week has never, nor indeed could it in future have, entered into any 'commitments' by itself—nor is it empowered to create liabilities which might have to be shouldered by the incorporated body.

It has never created any such liabilities in the past. In fact, Writers' Week actually made money this year from its evening ventures. . . . The Writers' Week Committee has always operated with absolute propriety and within the confines of its charter. It operates with the funds made available only for the specific purpose of running Writers' Week, and these funds are managed through the Festival Centre. All support for bringing the international writers we have invited to the week has come from publishers, international arts bodies, airlines, etc. Such is the frugality of our operations. The whole committee is entirely voluntary, as you know. . . . To suggest that the committee had to be reigned in lest it rush off and compound the debt incurred by the Festival itself is therefore quite misleading.

Further, the writer states:

Writers' Week is one outstanding example of South Australians doing something that ranks with the world's very best.

I finish the quotation from this letter as follows:

Has thought been given to how Writers' Week can operate post-1996? An event such as Writers' Week needs long-term stability in order to maintain its international reputation in a changing environment. While there is always room for improvement and for greater innovation—and for changes to the organising committee—to shatter the very South Australian foundations of the week seems to be self-defeating. Given the limited resources available, inventing a more complex committee structure for one Festival only also seems unnecessary.

I would also like to quote from a letter received from a most eminent literary agency in Sydney. The letter states *inter alia*:

I was astounded to hear of the sacking of the Writers' Week Committee in Adelaide—all the more so because of the spectacular success of the 1994 week. The people involved should be made aware of the fact that Australian writers and the associated publishing industry, not to mention overseas literary agents, publishers and writers, regard Adelaide's Writers' Week as on a par with the two other great literary festivals—Edinburgh and the Toronto Harbourside Readings in Canada.

I, like most people in the industry, attend most of the literary weeks in other States—New South Wales, Victoria, Western Australia, Canberra, Warana in Queensland, and Salamanca in Tasmania—and there is absolutely no doubt in anyone's mind as to the fact that the Adelaide Writers' Week is by far the most important and best in Australia. It has become an event that overseas writers seek to come to, and it is certainly the only Australian Writers' Week that international literary agents come to. . . . Already a great number of writers, arts administrators and publishers have contacted me to express their dismay at this turn of events. I see that they are saying that their actions are just a restructuring—but that is clearly not the case.

The letter concludes with the writer saying:

I would be grateful if you could advise the relevant people as to the alarm with which their decision has been met within the writing and publishing and agency industries.

The Hon. J.C. Irwin: Who signed the letters?

The Hon. ANNE LEVY: I am happy to show them to the honourable member, but I do not wish to make it public in the Parliament. Many South Australians are very proud of our Festival and delight in the Writers' Week component of it. It is something unique which certainly has placed Adelaide on

the world artistic map. It has enhanced our cultural reputation and has assisted both our tourism and trade endeavours. It is very easy to lose one's reputation in such matters and once lost almost impossible to regain. It will be a sad day indeed if this storm in a tea cup spreads and damages us further nationally and internationally, as I have illustrated is occurring.

The Minister by her total inaction in supporting the Festival board and her indecision has increased the possibility of this damage occurring and occurring irrevocably. I make no comment on the decision to restructure Writers' Week, which may well be desirable and successful. However, I assert that the way it has been handled by the Festival Board and by the Minister is absolutely disgraceful, and the potential for disaster is enormous—if only the Minister would realise this and take appropriate action!

This Parliament should roundly condemn the Minister for letting matters get to this stage and call on her to cease her whining and her sloth in this matter, and finally take some effective action to ensure the success of future Festivals and their Writers' Week components.

The Hon. DIANA LAIDLAW (Minister for the Arts): The Hon. Anne Levy's feigned anger in this matter is amazing. As she indicated at one stage 'a storm in a tea cup—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: That is what you said. You said, 'This storm in a tea cup.' I would concur with those sentiments.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: They are your words: 'a storm in a tea cup'. I would endorse your assessment of this situation. I also not only find her feigned anger amazing but I also find her hypocrisy pretty outstanding. It has been known for years that there have been problems with the structure, the management, the funding, and the membership of the Festival Board of Governors. The former Minister did nothing, and in fact it was this Government that unfortunately inherited the tensions between the board, the management of the Festival, the Adelaide Festival Centre Trust, the Artistic Director and the like.

This Government inherited those tensions and it also inherited the cost blow-outs. Both matters consumed hours and hours of my time over the first few weeks of government, and they were matters that I dealt with and Cabinet dealt with immediately the Festival was over. There was no way that I was seeking to reflect on the Festival in the lead-up to the Festival or during the Festival, because of the damage that would have been done to Adelaide and the Festival and the importance of the arts to this State.

The Festival is unique and it is important to the State, and it was for that reason that, notwithstanding economic difficulties that the Government has also inherited, Cabinet without hesitation agreed to find, at the first opportunity the Festival was over, $860 000 to bail-out the Festival.

As part of that bail-out it was agreed that the task force established to look at an arts and cultural development plan for the arts for this State would establish a subcommittee to look exclusively at the Festival and all its components. That committee will report to me very shortly.

In the meantime, this issue of the Writers' Week has blown up, an issue that I was able to inform the honourable member and all members of this place was not canvassed with me and was not one that I was asked to approve, nor did I approve it. Christopher Pearson, in the *Adelaide Review* of this month, indicated:

> The manner of our dismissal was objectionable, as was the procedure.

I addressed those sentiments on 20 April when I said that the manner of dismissal and the procedure were provocative. They were not—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: That is right, and they were not procedures that I accepted. The first opportunity I had to meet with Barrie Kosky and the Chairman was a few days later. Again I outlined in the clearest possible terms my disgust at the way the board and the executive on behalf of the board had handled this matter, and that I expected the board, which is responsible for the Writers' Week subcommittee, to seek to make amends if that was going to be at all possible, and I questioned that because of the damage that had already been done.

I asked the Chairman of the board to write immediately to all members of Writers' Week, and the same letter was to be sent to all members of Writers' Week, not as they had done in the past with a separate letter to the Chair to that which was sent to all other members. The letter sent by the Chairman of Writers' Week was to convey to the members that the Chairman had acted inappropriately in the manner in which he had handled this matter. The Chairman was to provide further information. I will read the letter that was sent on 29 April.

The Hon. Anne Levy: Who was it sent to and by whom?

The Hon. DIANA LAIDLAW: It was sent by the Chairman of the Board of Governors to all members of Writers' Week, including the Chair of Writers' Week, so, on this occasion, it was the same letter sent to all. This is one of the things that was so foul about this matter, that separate letters were sent to the members of Writers' Week from that sent to the Chair. The letter sent by the Chairman of the Board of Governors, John Bishop AO, on 29 April 1994 reads as follows:

> In the light of some of the events of the past week or so, it is clear that my letter of 18 April did not provide sufficient information regarding the background to the executive's decision in relation to Writers' Week for 1996. In order to clarify the situation, I enclose:
>
> (a) a copy of a paper which outlines the proposal for 1996; and
>
> (b) a copy of a statement which I felt obliged to make to the *Advertiser* on 21 April in response to what I considered to be some very misleading publicity.
>
> At its meeting on 15 April, the executive was very conscious of the conditions under which the Government had agreed to fund the deficit from the 1994 festival and the fact that the Government has ordered a review of the festival's financial and organisational structure by the Arts and Cultural Development Task Force. We reviewed the composition of all board committees and decided to make changes in the case of Writers' Week and finance and marketing in respect to all committee members who were not members of the Board of Governors. By this means, the board would be fully aware of any action taken or any commitments entered into by the incorporated association or by any of its committees.
>
> This decision was considered to be an essential step in managing the financial affairs of the incorporated association and the rights and obligations of its directors and officers.
>
> With hindsight, it may have been more appropriate for the executive committee to meet with the members of the Writers' Week committee to canvass our plan for a broadened and strengthened committee structure for 1996 and to ascertain whether you would like to continue your involvement with the new structure. By inviting you to contact Barrie Kosky, I may have inadvertently given the impression that Barrie will have total control over Writers' Week—an influence which he neither wants nor will have under the new committee structure.

I very much regret the publicity which has been given to this matter and hope that this additional information will put the executive's action in perspective. When Barrie Kosky returns to Adelaide in mid-May, a meeting will be convened to discuss plans for the 1996 Writers' Week. I very much welcome the opportunity to meet with you on that occasion.

The board met last night, I understand, and has decided that on 21 May there will be a meeting between the board and Barrie Kosky with the 1994 committee, plus people who have expressed an interest in serving on the committee for Writers' Week 1996. This was a note given to me this morning when one of my officers contacted John Bishop. I have not spoken to Mr Bishop myself to determine exactly the number of people that have expressed that particular interest in serving the Festival, Writers' Week and the State.

I have indicated, however, that no members of those proposed committees will be appointed until after the review has been completed and I and the Government have assessed that report.

The Hon. Anne Levy: Have you rescinded David Malouf, because he has been appointed?

The Hon. DIANA LAIDLAW: I am interested in this suggestion that I should be going around rescinding decisions by an artistic director.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: No decisions on the committee composition will be made, and that is the situation. What I find of great interest, and what the arts community will find of great interest, is the former Minister of Arts telling me, as Arts Minister, that I should be countermanding the decisions of an artistic director, whether that artistic director be of the Festival, the State Opera, the State Theatre Company, or Meryl Tankard's theatre. In terms of artistic content and artistic direction, the Liberal Party has always decided that it will always have an arm's length approach. If the former Minister of the Arts is suggesting that I should be adopting an interventionist approach and interfering with the decisions of the artistic director, and direct that the decision by an artistic director be negated, it is a very interesting development that is being proposed. It is one that I do not support and I will not support.

The Hon. Ms Levy asks if Mr David Malouf's appointment as Chair of the Advisory Committee has been rescinded. I am not sure of that, and certainly I have not asked that—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: That appointment has been made. It was one made at the request of the artistic director. If you are suggesting—

The Hon. Anne Levy: You didn't say that. You said no appointments.

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: Okay, no further appointments. If the former Minister is now suggesting that I remove David Malouf—

The Hon. Anne Levy interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: —it is not an action which I would find acceptable nor of which I would be a part. That is not something I think the artistic community would find acceptable as a standard from the Minister for the Arts.

I realise that we are in the last few days of the parliamentary session and so I have undertaken to my Leader that I will not go on about this matter at length. However, it is important to put on the record that the Government's commitment to the future of the Festival—not necessarily the current composition and structure that is responsible for the Festival—is very precious to all South Australians and is very precious to me and to the Government. It is for that reason that we bailed out the Festival to ensure that no person left this State with money open—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: No, we did not. Nor would I expect ever again to bail out the Festival, although it was the second occasion and no action was taken on the previous occasion.

The Hon. Anne Levy: The first time it had its own reserve; it wasn't bailed out.

The Hon. DIANA LAIDLAW: Last time the Festival of Arts also required Adelaide Festival Centre Trust funding to support that bail-out.

Members interjecting:

The Hon. DIANA LAIDLAW: They had part of their reserves; they also required additional funding.

Members interjecting:

The PRESIDENT: Order!

The Hon. Anne Levy: Not from the Government.

The PRESIDENT: Order! We have three very long days ahead of us.

The Hon. DIANA LAIDLAW: I did listen in silence, Mr President.

The PRESIDENT: That is exactly right. I was about to say that the Hon. Anne Levy was given the opportunity to present her case in silence and I request that she does not interject because we have a long hard road to go.

The Hon. Anne Levy: I promise not to interject if she doesn't say—

The PRESIDENT: Order! I ask the Minister to proceed with her reply as quickly as she can.

The Hon. DIANA LAIDLAW: Yes, Mr President. As I have been accused of incompetence and lack of care in relation to the Festival I think that it is important to indicate that, while it is clear that the former Minister wishes to be offensive and score cheap points, the accusation about lack of care would not stand up in the general community. The issue of incompetence is for others to judge but, unlike the former Minister, I have acted quickly to deal with the situation in terms of the structure of the Festival, which is essentially the basis for so many of the difficulties that we have inherited. I would not have thought that that showed incompetence. I simply took the action that the former Minister should have taken long ago.

I have indicated—and it has been confirmed to me by the board and by the Artistic Director—that the South Australian component of Writers' Week in terms of the decision making structure will be in the majority by a large number and that South Australian influence will be great. It is important to note that the advisory committee—the structure of which was recommended by the Artistic Director and not by me—would consist of 10 or 12 members from South Australia and four members from interstate, so there will be three times as many members from South Australia. The committee would meet five times a year to suggest, advise and stimulate the discussion and development of the program ideas. So they are not determining the content: they are suggesting, advising and stimulating discussion and development.

The executive committee, which again is the proposal of the Artistic Director, will comprise two South Australian members of the advisory committee, one of whom shall be the chair. So, David Malouf who has been nominated by the

Artistic Director—a decision which most Ministers of the Arts would respect and which I respect because that is the standard practice in terms of arm's length management of this situation—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: He will not be administrating; that is the point. He will be in charge of a group of 10 to 12 South Australians and four members from interstate, of whom David Malouf will be one, and the role will be to suggest, advise and stimulate discussion and development of program ideas. They will report to an executive, which will be headed by a South Australian. This proposal, as I understand, was the one first considered in December and then confirmed in April before the first unsatisfactory letters went out.

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: No, this is the whole trouble. I have pointed out to the board, the chairman and Barrie Kosky how badly they handled their responsibilities as managers of this important Festival. It was offensive and I am not surprised that members of the Writers' Week committee have taken offence. I certainly took offence as Minister and I can appreciate their sentiments. The executive committee, which will carry out the administration, will comprise two South Australian members of the advisory committee, one of whom will be the Chair; one member of the Festival Board of Management, who again will be a South Australian; the Artistic Director, Barrie Kosky—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: Yes, and there will be the Writers' Week. I repeat that because you would think from the carry-on from the honourable member that we have actually got rid of Writers' Week. Writers' Week will be strong and will hopefully be as good, if not better, than last Writers' Week. The structure is a decision of the Artistic Director and it is important, in terms of art administration in this State, to understand the role of Minister and that is, at least in this Government's term, not to interfere with the decisions of the Artistic Director. The Artistic Director has a contract with the Adelaide Festival of Arts and, without dragging out this debate, it is important to note that the conditions in this contract are the same as the conditions that have been agreed to between artistic directors and boards of governors over many years. Those conditions read as follows:

It is hereby agreed that:

1. The Festival engages the company—

the company being Treason of Images Pty Ltd—

to provide the services of Barrie Kosky (hereinafter referred to as Artistic Director) as Artistic Director of the 1996 Festival.

2. The Artistic Director will plan and arrange the artistic content of the program for the 1996 Festival in accordance with the policy guidelines laid down by the Board of Governors of the Festival (hereinafter referred to as the 'board'):

(a) The program will be contained within the budget agreed with the administration and approved by the board.

(b) There will be reasonable representation of each of the various performing and visual art forms and overall there shall be a reasonable balance between national and international content.

(c) It is understood that the Festival will comprise, in addition to the performing arts program, writers' week, activities outdoor,including events that are accessible and free to the general public, forums, performances for schoolchildren and other items that may be mutually agreed between the Artistic Director and the board.

(d) Discussions will be held with State Theatre Company, State Opera of South Australia, Adelaide Symphony Orchestra, Australian Dance Theatre and the Art Gallery of South Australia about their possible participation in the Festival.

(e) Within this general outline and subject to the above paragraphs the Artistic Director will have freedom of choice in the selection of individual program items.

It is quite clear that this Artistic Director, as all past Artistic Directors, has been engaged to plan and arrange the artistic content of the program and has freedom of choice in the selection of individual program items. That gives the Artistic Director, if he wanted to, unlimited power over Writers' Week, which is a subcommittee of the Festival. However, Barrie Kosky is not seeking such unlimited power. It was quite clear in the letter and in the conversation that Barrie had with me that he does not want influence and control as has been suggested by a number of people in this State.

He does not want total control, although his contract would allow him to have such total control over Writers' Week, as the letter from Mr Bishop to the former members of Writers' Week indicated, an influence which he neither wants nor will have under the new committee structure, notwithstanding his contract. The fact that he will not have that power arises in part from the amicable conversation I had with him, when he and the Chairman agreed that the matter had not been handled well to date. On the day I met with him he was leaving for Melbourne and it was agreed that at the first opportunity when he comes back a date is to be arranged to meet with all members of the Writers' Week Committee. That meeting has been arranged, as I indicated, for—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: I do not know what size meeting it will be because I am not sure how many people have expressed interest. However, I will speak to the Chairman at the first opportunity to indicate that I believe he should be speaking with members of the committee—all members of the committee—and there should be further opportunity to speak to others who may have an interest on serving on committee. Those are my sentiments and they are clearly yours, and I will convey that to Mr Bishop.

Finally, I reject totally the accusation that there has been a total lack of effective action by the Minister. I have done everything that I possibly could within the realms of the traditional arm's length policy of the Minister for the Arts in this matter. I have spoken in the strongest terms with both Mr Kosky and the Chairman of the Board of Governors which led to this letter which, when one reflects on it, is humble in terms of an apology, regret and a recognition that the manner in which the matter was handled was inappropriate.

Writers' Week will stay. South Australia will continue to be in control of Writers' Week. Further members of advisory committees will not be appointed until after the review has been held, a review that I suspect will recommend changes to the structure and financial and other management arrangements, changes which I believe from a personal point of view should have been taken some time ago when the former Minister could have taken such action if she had the will and heart to do so.

The Hon. CAROLYN PICKLES: I do not intend to take up the time of the Council because I know we have important legislation to debate, but I want to place on the record my support for the motion. As someone who has enjoyed Writers' Week over many years, as a consumer of Writers' Week I previously had little money to spend on anything to do with the arts—although I have more disposable income

these days and can attend more functions—Writers' Week was always free and, when I was much younger, it was something I attended frequently and thoroughly enjoyed, as I am sure many South Australians do. I wonder whether this is a sin. It is obviously a sin for the average person to enjoy something in South Australia. We have something successful here in Writers' Week.

The Hon. Diana Laidlaw: And it will continue.

The Hon. CAROLYN PICKLES: I hope that the Minister is correct in saying that it will continue. I will reserve my judgment on that until the next time. As someone standing back and observing it a little, I find it amazing that we have probably had the most successful Writers' Week ever. Why then did we need to change the structure of the committee that organised it and insult all the committee members in the way that they have been treated? The Minister has stated her views strongly on that issue. However, at the very least the Minister should ensure that those aggrieved members of the Writers' Week Committee have their concerns answered by the Minister: I do not believe that you have done so. I do not know what the Minister can do short of banging together the heads of all those on the festival board. It seems to me that that might be an appropriate thing for the Minister to do. It is probably not within her power to do so, but it would be a tempting thing to do if the Minister could. Certainly, the Minister should use what powers she has in this respect.

Members interjecting:

The Hon. CAROLYN PICKLES: It is an incorporated association but the Minister could have gone in and said, 'I find your actions to be totally unacceptable.' I am sure that the Minister has the power for them to listen to her views, and if she does not have that power she jolly well should have. The board has acted in a high-handed manner, a manner that I find personally offensive. Everyone has enjoyed Writers' Week in this State. I talked to many people at Writers' Week this year and they said what a wonderful occasion it was. They said how fantastic it was to come to a beautiful city like Adelaide to listen to so many wonderful writers. They referred to it being so well organised and to the ambience, the excellence and the credit that it is to our State. This board suddenly then says, 'It's not good enough so we are going to change it.' Perhaps the board should first look at the mistakes it has made. It is a pity that it did not do that a long time ago. I support the motion and, if it requires the Minister to have more powers in this direction, then so be it.

The Hon. BERNICE PFITZNER secured the adjournment of the debate.

MINISTER'S REMARKS

The Hon. ANNE LEVY: I seek leave to make a personal explanation.

Leave granted.

The Hon. ANNE LEVY: During the Minister's comments she suggested that I had indicated that she should be sacking or not sacking David Malouf from the position to which he has been appointed as Chair of the advisory committee for the next Writers' Week. I made no such suggestion. The Minister indicated that there were to be no appointments to the committee until after the report of her task force. What the Minister meant was no further appointments—but she did not say that—and consequently, I asked whether that meant that David Malouf's appointment should be rescinded.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: I was not suggesting that she or anyone should be rescinding his appointment. I was merely querying the statement the Minister made that there were to be no appointments until after the task force reports, whether that meant automatically that David Malouf's appointment had been rescinded. I was not suggesting that it should have been—

The PRESIDENT: Order! The honourable member is now debating the matter.

The Hon. ANNE LEVY: I am explaining that I was not suggesting that David Malouf's appointment should be rescinded at all. I was merely questioning whether the Minister's statement that no appointments were to be made implied that his appointment had been rescinded. The matter was clarified when she said that no further appointments were to be made. I would not want the record implying that I had suggested that David Malouf's appointment should be rescinded in any way at all. That is not what my comments meant at all.

HEARING LOSS

The Hon. M.S. FELEPPA: On behalf of the Hon. Mr Lawson, I move:

That the regulations under the Workers Rehabilitation and Compensation Act 1986 concerning hearing loss, made on 17 March 1994 and laid on the Table of this Council on 22 March 1994, be disallowed.

I do not intend to speak on this motion at length. These regulations have been before the Legislative Review Committee for some time now and have caused considerable concern among the committee members. The committee is also aware of the debates in the Council, and I personally clearly recall the comments made by the Hon. R.R. Roberts as late as last Wednesday which referred to a serious concern with this regulation. In sharing such concerns the committee as a whole resolved to move its motion for disallowance of this regulation because it felt that, as Parliament is soon to be prorogued and the 14 sitting days have already elapsed, extra time was necessary to allow further consultation between the Minister and some interest groups in our community, which consultation could lead to alternative consideration and possibly more amendments to be put in regard to this regulation. Therefore I commend the motion to members.

The Hon. K.T. GRIFFIN (Attorney-General): I had intended to speak on a later motion of the Hon. Mr Elliott but as it is identical to that which the Hon. Mr Feleppa has moved, it is appropriate to speak on this motion. From the Government's point of view, regulation 14 introduces improved procedures for determining percentage loss of hearing which were published by the National Acoustic Laboratories in 1988 and which are recognised by virtually all specialists working in the audiometric professions as the best and most accurate guide for the identification and quantification of hearing loss. The improved procedures reflect the current professional knowledge of work-related hearing loss.

They contain a weighting factor for age which allows for the calculation of the work-related element of hearing loss and the avoidance of compensation for any loss due to the

ageing process. Hearing loss due to the natural ageing process is a condition now well known to and documented by the audiometric professions. Clearly, ageing is not a work-related condition, and it naturally follows that any hearing loss assessment should make an allowance for this factor. The procedures contained in the improved procedures for determining percentage loss of hearing have been the accepted standard for hearing loss assessment throughout Australia for some time and are endorsed by the audiological and ear, nose and throat specialist associations. They are in virtually universal use throughout Australia, not only in workers compensation but in all situations requiring audiological assessment.

The old scale which was first published in 1977 and which appeared in the regulations before this change was in fact nothing more than an earlier version of the 1988 procedures. It naturally follows that, having adopted National Acoustic Laboratories standards in the first place, the Parliament would recognise that it is the Government's responsibility to ensure that the standards remain current. The 1977 scale as published in the regulations also contained both typographical and mathematical errors, which in themselves needed to be corrected. The adoption of the 1988 procedures will also rectify those problems.

In moving a later motion on the same question the Hon. Mr Roberts did make a number of observations, and I think it is appropriate to make some reference to those now rather than leaving it until we get to the consideration of his motion. The lump sum amounts calculated under the new procedures are marginally smaller, but I can assure members that this was not the reason for the change. I am informed that whether the amounts were larger or smaller was not considered. The intention is simply to bring WorkCover into line with current industry practice by using the most current up-to-date standards for assessment. The age factor does not come into play until male workers reach 56 years of age, and the figure I have for females is 69 years.

The Hon. M.J. Elliott: That's what it says.

The Hon. K.T. GRIFFIN: It will therefore affect relatively few workers. I appreciate the Hon. Mr Elliott's reassurance that the figure is correct. There was some reference by the Hon. Mr Roberts to the regulation flying in the face of equal opportunity legislation, and I would suggest that is not the case. This is not a matter of age discrimination but recognising a characteristic which develops as persons age; and it is not, I would suggest, within the ambit of the equal opportunity legislation in so far as it relates to age. As I have already indicated, it is the considered opinion of the National Acoustic Laboratories and the audiometric profession that these age-related factors exist, and this regulation seeks to recognise that fact. It is important to recognise that it is not a characteristic of which if unrelated to employment the cost should then be borne by the employer and ultimately the insurer, WorkCover. The regulation does not hand the corporation the power to approve persons for hearing loss testing in a selective manner. The only reference to corporation approval is subregulations 14(2)(b) and (d) and in the definition of an audiometrist.

Due to the extensive use of the word 'or' in these subregulations, if a worker is tested by an ear, nose and throat specialist or an audiologist, it is not up to the corporation to approve or not to approve them. If an audiometrist conducts the test and the audiometrist has been trained by an ear, nose and throat specialist, the National Acoustic Laboratories, the Health Commission or by an audiologist, the corporation's approval will also not be required. It is only in the single circumstance where an audiometrist has not received such training that the corporation has the very reasonable ability to approve or not approve that person on the basis of the adequacy of his or her training to conduct the test.

The Hon. Ron Roberts, when he made his contribution on the other motion, appears to suggest that this regulation is based upon the recommendations of one specialist who is almost predominantly, so it is asserted, consulted by the corporation. I am informed that nothing could be further from the truth. These changes were recommended prior to the last election after a panel of experts representing all sections of the profession approached the corporation with the complaint that the 1977 tables were inaccurate and inadequate and should not be used because of their obsolescence. There is no dispute among the professions that the 1988 tables are the currently accepted standards for hearing loss assessment.

The Hon. Ron Roberts also appears to infer that the regulation is based upon interstate experience and is intended to avoid some event which he does not specify. Again, my information is that this is wrong. It appears that he has confused this regulation with some proposed amendments to the Act which are the subject of another debate and which are unconnected with this regulation. This regulation seeks only to bring South Australia into line with accepted professional practice in use throughout the rest of Australia, according to the advice which I have received. It is for that reason that the Government is of the view that the regulation ought not to be disallowed.

The Hon. M.J. ELLIOTT: I begin by noting that the Liberal Party made a clear promise at the last election that it would not be reducing benefits under the Workers Rehabilitation and Compensation Act. I suggest that Liberal members should read their own policy if they have any doubt about that. Having said that, I must state that it is worth noting that in relation to this regulation as distinct from another regulation at which we will be looking later the decreases are relatively smaller. However, they are decreases nevertheless. I think that when the Government is contemplating reducing benefits it should have a public debate to justify its action. There may be cases when it is justifiable and other cases when it is not.

In terms of the first part of the regulation, where we are adopting a set of standards, I understand that the reduction in benefits will be between .5 and 3 per cent. That will be the general impact. However, there is an overlay of the impact by assuming that there will be loss of hearing with age. It does not seem to be an unreasonable assumption that there will be some natural loss of hearing with age. However, as far as I can tell from what little information there is within the regulation, the cut-off age in relation to men is 56 years and for women 69 years. I presume from that that it is assumed that the male hearing loss becomes obvious at a much earlier age. Indeed, my wife would probably agree with that.

I would have liked to see some evidence that that differential of 13 years in age is not a reflection of the occupations that men and women generally follow. If it is a simple genetic fact that male hearing deteriorates more rapidly than female hearing, that is one issue. Alternatively, on a farm it is more often the male, not the female, who is on the tractor, and it is more often the men who work in the noisier factories, and that has produced some sort of average figure for hearing loss at various ages. They have factored in industry-induced hearing loss and justified that by saying that it is in relation

to age and one should not be able to claim as much hearing loss as one gets older because one will have a loss of hearing.

I should have liked to see some evidence beyond what is in the regulations which justifies what is being done in terms of the differential between male and female and some implications which suggest it may not all be genetic but may in part be occupation based. For that reason, I would not like to vote on this regulation at this time. Clearly it will need to be voted on before the Council rises for the end of the session, and for that reason I hope that the motion for disallowance will be adjourned and will remain an order of the day for the next day of sitting. That is reasonable and can be done, so we will still have a chance to vote on it after the Government has come forward with the information to justify the latter part of the regulation.

I suggest that in future, if the Government is going to do these sorts of things, it may be helpful if it provides more information up front so that we can be convinced that it is not a matter of Government policy and of trying to save money but that it is justifiable on other grounds.

The Hon. R.R. ROBERTS: I will make a reasonably brief contribution. I spoke in respect of these matters on a motion which appears further down the Notice Paper, but in the same terms. Since that time we have had the recommendation of the Legislative Review Committee against the discussions that have taken place, and this comes before the Council as a recommendation of that committee. This matter has been discussed, and there may be some reason for looking at it again in more detail.

However, one problem that I have had is that, if the Parliament were to prorogue, the regulation would stand and, if it were tested and found wanting at some later date, workers would suffer a penalty under this legislation. I believe that we ought to vote on it. However, the Hon. Mr Elliott has said that he wants it adjourned until the next day of sitting to allow us to undertake that task. I will not be pedantic at this stage; I am prepared to go along with that suggestion.

I need to point out again, as did the Hon. Mr Elliott, the difference between the natural loss of hearing of men and women over a period of time. We can fall into a trap in respect of the natural loss of hearing even between the sexes. It is an argument that I have tested before the Equal Opportunities Commission in respect of the physical differences between men and women who are exposed to the same conditions. This was in a case where it was claimed that the physiological differences between women and men made it dangerous for them to work in a lead area.

That case was tested before the Equal Opportunities Commission and it was defeated. The actual case did not stand up in the Commission. We are talking about two different types of hearing loss: degenerative hearing loss that occurs naturally, and noise induced hearing loss. I am assured by technicians, and through experience in a number of hearing loss cases over the years, that people who conduct these acoustic tests are able to determine clearly the percentage of hearing loss attributable to the degenerative effect of ageing and that which is attributable to noise induced hearing loss.

It is only that latter area of hearing loss that is ever compensated. We really need to concentrate on the argument in hand, namely, the noise induced hearing loss. You can be misled when you take into account physiological differences between men and women when it comes to degenerative hearing loss that occurs naturally. This regulation talks about hearing loss which is noise induced and does not in fact take into account the concerns that have been expressed by the Hon. Mr Griffin and elaborated on by the Hon. Mr Elliott.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

NON-ECONOMIC LOSS

The Hon. M.S. FELEPPA: On behalf of the Hon. Mr Lawson, I move:

That the Regulations under the Workers Rehabilitation and Compensation Act 1986 concerning non-economic loss, made on 17 March 1994 and laid on the table of this Council on 22 March 1994, be disallowed.

I do not intend to repeat what I said on a previous motion. The remarks I made a few seconds ago, in supporting that motion for the disallowance of the Workers Rehabilitation Compensation Act 1986 regulations concerning hearing loss, would apply equally to these regulations.

The Hon. M.J. ELLIOTT: I spoke earlier to an identical motion, but I want to put on the record that I see this as a matter of far greater concern than the previous motion, because in this case benefits have been cut by in excess of 50 per cent. I gave an example of a worker who loses a hand and a thumb receiving less benefit than the worker who loses simply a hand. As I recollect, the current compensation for such an injury would be around $160 000. Compensation now would reduce to, as I recollect, $76 000. That is about as clear a breach as you could ever get of the election policy.

It is not just a matter of breach of policy; it is quite an extreme move. I must say that I was even more concerned to see the Government then try to introduce something by way of legislation. I should have hoped that it would involve itself in some consultation processes. If the Government does have a problem—and I will not explore that aspect now—in terms of the way some interpretations happen at the moment, I understand that, but it does not justify some of the things that the Government has done to try to solve that problem. I suggest that it should go into a proper consultation mode to address those problems. This is a regulation that I will vote to disallow with no compunction whatsoever.

The Hon. K.T. GRIFFIN (Attorney-General): The regulation was introduced to govern the handling of compensation for multiple disabilities from the one trauma. It has no application to single disabilities. In the debate to which the Hon. Mr Elliott has alluded on the Workers Rehabilitation and Compensation (Administration) Amendment Bill, the Government touched on this issue and acknowledged that the regulation in its present form is capable in some circumstances of an unfair application. Nevertheless, there is a real ongoing problem in the area that does need to be addressed.

In the light of the difficulties which have been acknowledged, I can indicate that the Government is not opposing the disallowance of this regulation, but indicates that a further regulation on the issue will be promulgated after consultation with all relevant interest groups. I think it is important for members to recognise and to be informed that no determinations have been made pursuant to this regulation; therefore, no claimant has been prejudiced by the perceived unfairness which has come to light after further consideration of the regulation. I reiterate that the Government will not be

objecting to the disallowance of the regulation in the circumstances which I have outlined.

Motion carried.

HINDMARSH ISLAND (VARIATION OF PLANNING CONSENT) BILL

Adjourned debate on second reading.

(Continued from 4 May. Page 706.)

The Hon. DIANA LAIDLAW (Minister for Transport): Last week I made a few preliminary remarks in response to the Bill moved by the Hon. Michael Elliott. The Bill endeavours to address the issue of planning consent in relation to Binalong, stages 2 to 6 of its development on Hindmarsh Island. I indicated on 4 May that my initial assessment of the Bill would be that it did not address the major problem that the Government has encountered all along with this bridge, that is, the tripartite agreement in particular negotiated by the former Government, Binalong and the Port Elliot and Goolwa council, and other contractual arrangements.

That is the major difficulty that the Government has in this whole matter, and I have tried, as has the local member (the Premier, Hon. Dean Brown) and Cabinet, to look at a whole range of ways in which we may be able to address the undertakings as part of that tripartite agreement, including a bridge at another site. But whatever we did we found that we could not satisfy claims that would have been made against the Government arising from that tripartite agreement. It has been a frustrating, drawn out and maddening affair that has saddened me a great deal.

The Hon. T.G. Roberts interjecting:

The Hon. DIANA LAIDLAW: The Hon. Terry Roberts interjects about the arrests. I pleaded with the former Minister publicly in this place through press releases not to sign those contracts. If there are arrests they are—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: It was not too late in terms of the—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: You took the recommendation in terms of the tripartite agreement. I have read the Cabinet documents how you took that matter to the Cabinet in terms of the tripartite agreement. That is the major problem we have with this. It was the Cabinet submission that you took for consideration and Cabinet agreed. I know that Westpac finds that tripartite agreement most disagreeable because it believes it breaches other agreements that had been entered into by the former Government. As Mr Jacobs has suggested in his report, this is a real snakepit.

I would love to have thought that the Hon. Mike Elliott had given us reason and had found a new way that we had not thought of to get out of this mess, but unfortunately that is not so. I indicated last time I spoke on this matter that I would be seeking more considered advice. I have received such advice from the Crown Solicitor which confirms the view that I gave last week. The Crown Solicitor has said that the proposed variation of the planning consent granted to Binalong for stages 2 to 6 of its development on Hindmarsh Island does not materially change or affect the Minister's obligations to Westpac, Binalong Pty Ltd or Built Environs Pty Ltd. That advice also indicates that Mr Elliott's Bill raises a policy issue for the Minister to consider. This issue is whether support should be given to a proposed legislative enactment overturning an administrative decision made by a planning authority after a detailed evaluation and approval process. I do not need to get involved in that planning and policy issue because it is the legal obligations that have been the sticking point in this whole seedy affair.

There is a crucial deficiency in the Bill, one which I know the Hon. Mr Elliott acknowledges, but it is so fundamental that that deficiency does not help the situation that we face. Therefore, I indicate that I will not be supporting the Bill.

The Hon. BARBARA WIESE: I did not intend to speak on this matter today, but the Minister has once again made some quite outrageous statements which I really do not believe should be allowed to pass. Before I address that matter, I want to make just a brief contribution with respect to the issue that is covered by this Bill that has been introduced by the Hon. Mr Elliott. I do not doubt at all the sincerity of the Hon. Mr Elliott in wanting to find a solution to the problem that he sees here, but I agree with the comment made by the Minister that this Bill does not deal with the problem that he seeks to address. In fact, it would create new problems for the State, should such a measure be successful.

This Bill would not deal with the fundamental legal issue that has been a part of this matter now for a very long time. On that question of the legal issue, it is that point about the legal obligation that the Government has to build this bridge that I want to quickly refer to with respect to comments made by the Minister. She suggested that if, during the course of last year, I had not signed the tripartite agreement or the contract to build the bridge, there would not have been a problem. That is absolutely and utterly false, and if as she indicates she has read the files and the documents concerning the Hindmarsh Island bridge, she would know that the comment she made is false.

The fact of the matter is that long before I became Minister of Transport Development and assumed any responsibility for this issue, there was a legal obligation created by a letter which was signed some years before. That is the issue that created the legal obligation, not the signing of any documents during the course of last year by me. I want to make that perfectly clear, because they are the facts of the issue, and it is about time there were a few facts put on the record with respect to this Hindmarsh Island debate, because the Minister and the Hon. Mr Elliott, during the course of last year, both made a number of extraordinarily misleading claims to suit their various ends with respect to this matter, and it is because there was so much false information provided to the public that such a huge issue has been created around the building of a $5 million bridge in the first place. I wanted to put that fact firmly on the record.

Coming back to the substance of the Bill that the Hon. Mr Elliott has introduced, I indicated in my opening remarks that I thought that this Bill would create new problems should it be successful. I certainly believe that to be true, because it would make a mockery of our current planning system and our current planning laws. A great deal of energy and effort during recent years has been put into trying to create a planning system that provides greater certainty for people within our community, whether they be proponents or opponents of development. As I said, a lot of energy has been put into that matter by people of all schools of thought on the question of development.

If we were to take a step in Parliament like the one he is proposing, after a development has been through the legiti-

mate planning process and has achieved a legitimate planning approval, of taking away one of the conditions of the planning approval because it suited us on this occasion or on any other occasion, we would be sending all the very wrong messages to developers. We would be sending wrong messages to the community at large, because they would have to conclude from this that planning approvals mean nothing, and that it does not matter what comes out of the planning process, because if somebody does not like some part of it, they can just bring a Bill to Parliament and overturn the bits they like or dislike. It simply is not an option and I certainly oppose it.

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

RURAL POVERTY

Adjourned debate on motion of Hon. B.S.L. Pfitzner:

That the interim report of the Social Development Committee on Rural Poverty in South Australia be noted.

(Continued from 4 May. Page 708.)

The Hon. T.G. ROBERTS: I asked that I be included in this debate on noting the report of the Social Development Committee on rural poverty. I understand that it is only an interim report which has not looked at the whole of the State but which makes some observations about classifications and measuring poverty and the difficulties that the committee faced in doing that.

The committee looked at two areas of the State, which were given priority by the committee as it felt that they were suffering the most under the national recession that we have experienced. Those two areas—the Mallee and the West Coast region—experienced similar difficulties although they had agricultural pursuits which were not exactly the same but which had some common factors in the causes for the pockets of poverty. If we were to look at some areas in the northern regions we would see similar common factors running through the causes for poverty and they are: a combination of high interest rates, low commodity prices and, in some cases, weather patterns, although there is not a lot of reference made to weather as a reason for the background to poverty.

I would prefer to see a select committee or a standing committee look at wealth because, included in a broad study of wealth, you might find some of the causes for poverty. It may be a lateral way to study poverty but there have been numerous inquiries into poverty in Australia, probably the most significant of which was the Henderson report, which was a very detailed study into poverty. However, I have yet to see a select committee or standing committee inquire into the wealth of this country, and I would like to see that done at both the Federal and State levels. If we conduct a proper inquiry into wealth creation and wealth patterns we may be able to then draw some links with the problems associated with poverty, and if we then want to extrapolate that out to rural poverty we could highlight the differences that impact on rural areas alone.

In relation to wealth creation we need to look at the banks, finance companies and, to some extent, the stock companies that control the well-being and wealth of many of the rural centres. The ownership and control of debt is a key factor in financing farm properties and the ability to make returns on farm properties tends to rely heavily on whether properties are owned outright or whether there is finance required to buy and develop. The 1980s was a difficult period for many people in rural areas and it was a period where banks were advising many rural property owners to expand their holdings and that, if they did not expand their holdings and make their properties more efficient, they would be restructured to a point where their properties would not have been able to obtain a return value. And so started a cycle of encouragement of people to expand their properties at a time when there were low international prices for and an over-supply of commodities. There was also a period of poaching of markets and a series of deregulated moves were made which brought much uncertainty into the rural industries themselves.

The problems occurring within rural industries present a good argument for strong intervention by Governments in marketing and distribution as the rural industries are subject to a totally deregulated market and rely totally on market forces around commodities, which in turn rely heavily on weather patterns, investment, cost of money or interest rates and uncertainties, such as the fickleness of consumer countries to buy the products at reasonable prices. If we look at the agricultural or horticultural pursuits that take place in the Riverland, we see that the Riverland farmers are no different from the wheat farmers, sheep farmers and beef farmers in South Australia. They are very efficient; they are probably some of the most efficient and most hard-working people in the world in relation to their industries. They are innovative in most cases and they are very frugal in most cases about the way in which they make their spending decisions.

However, that is not enough. One of the problems associated with rural poverty and the depression that goes with it is the fact that many farmers blame themselves for the circumstances in which they find themselves, when in fact there are many factors outside their control that brought them into that crisis situation during that period. The period is still ongoing but if most people with a rural background, either in this Council or another place, study the indicators they will see that there seems to be a lift in commodity prices, which may be able to pull some farmers out of the poverty traps in which they find themselves.

I hope that their market prices, along with the lowering of interest rates, will enable them to get back into the black. The problem with some of the areas looked at—suicides and depression in rural areas—comes from the fact that farmers blame themselves for not being successful when in fact many other factors come into play. It is up to Governments and supporting agencies, particularly rural departments and agencies associated with rural industries, to bring that message home especially to efficient farmers.

Everyone knows that there are some efficient agriculturists who were not going to survive even with good commodity prices and low interest rates, but the recession did hit many good and frugal managers and that is where the personal depression associated with failure became endemic. Reinforcement can come through community leaders and Governments doing all that they can to assist farmers to get through the difficult periods— if they are going to survive in the long term—that is, by restructuring debt, providing short term finance, bridging finance at reasonable cost and not at the cost that commercial banks provide.

Figures given to me at a personal level indicate people were paying up to 24 per cent or 25 per cent for short term finance. Such offers are not offers at all but millstones around farmers' necks, and that is the way it turned out. I did not see

any reference in the report, but I am sure the committee can collect evidence in the South-East and other areas about international finance offered via some trading banks to readjust debt financing via Singapore at lower interest rates. Hong Kong was another offer and some people in rural areas did take up the offers but, with the fall in the Australian dollar, overseas interest rates started to look less attractive. People got trapped into signing agreements and, unfortunately, the offers that they thought were going to be their saviour again ended up being millstones and farmers had to find ways out of contracts written internationally.

A number of new pitfalls developed in the 80s and people associated with rural industries had to struggle with them. The result of that was the impact of low spending in rural and regional areas with people not being about to employ labour and the trickle down effect was that not only were people in rural industries affected but town dwellers and regional dwellers were affected as well. If the committee is to continue to study rural poverty—and I suspect it is—comparisons need to be drawn between some of the agricultural industries that are now starting to look at change. We have many bright spots on the horizon and people are starting to readjust their assessments on the long term future and viability on farm income not based on traditional farming methods of wheat, wool and sheep. There is now much alternative farming being encouraged by the department. Much of that was done under the previous Government and I hope an extension of that will be done by this Government.

I refer to aquaculture and niche marketing for specialist products. Many alternative use programs are being put in place and farmers are starting to take advantage of those. In the South-East many alternative farming programs are being commenced. Two years ago the Riverland was completely shrouded in depression about the commodity prices being offered, but many horticultural industries are starting to see the light at the end of the tunnel. Vignerons and wine industries are now starting to lift people out of the doldrums that have been present for a long time. I congratulate the committee on its interim report.

I would like to see a report on wealth creation and wealth distribution rather than poverty in South Australia because there are many messages about the way wealth is created and distributed in tracking down the causes of poverty. Rural people do not like living in a goldfish bowl and being studied by people from outside for financial, economic or political reasons, regardless of the intentions, because they tend to be conservative and like to rely on their own strengths and independence. They have a strong view about accepting social security and advice from Governments. They are reluctant to come forward and apply for what people in the metropolitan area see as their rights. Rural people are reluctant to come forward and accept such benefits until the signs of depression is marked and obvious and, in some cases, it is too late to help because the family unit has broken up, young people have drifted to the cities or regional areas, and there are not many Government services that can be applied to help people once that starts to happen.

There need to be recommendations to the State Government and through to the Federal Government about rural restructuring involving assistance in industry development and trying to maintain services in rural and regional areas. There is much restructuring going on in regional areas that needs to be monitored because of some of the benefits and side effects occurring. Many regional centres are now starting to get a population drift away from the small towns and that is also presenting problems. It is only a matter of time before the population drifts then go from regional centres to the metropolitan area. Eventually the whole State picks up the problem and I would prefer to see the support services remain in country areas for country people so that family units can remain together for as long as they can. I refer to health, education and welfare services but, unfortunately, as the regions start to dry and people start to move out, so do the services and the centres are no longer able to self-sustain.

The committee can look at many problems about how to preserve decaying regional areas, how to breathe new life into them, how to structure them around non-traditional areas of agriculture and how to encourage that. Where do people get the venture finance and capital to do that? Rural people have the same right to restructuring, support and assistance as metropolitan people who have been displaced out of industry. The same should apply to preserving country and regional areas as we put energies into supporting metropolitan areas.

The Hon. CAROLINE SCHAEFER: I would prefer to save most of my comments until the final report is brought down by the committee. However, I would like to mention that this morning I attended, with the Hon. Di Laidlaw, the Hon. Dale Baker, the Hon. Bernice Pfitzner, the Hon. Sandra Kanck and the Hon. Ron Roberts, the launch of the inquiry into rural poverty by the CWA. The CWA has a membership of 6 000 throughout South Australia, and 100 of its branches replied to its circular. I am sure that details of the inquiry will be widely circulated, because members of the press were also invited to that launch. The findings of that inquiry certainly vindicate the findings of the Social Development Committee.

It is quite an extensive inquiry, but I will mention just a few of the findings. They mention that children have lost ambition, motivation and self-esteem; they are increasingly travelling long distances; there is an increase in stress; teenage suicide is increasing; children can no longer go on school excursions, camps or holidays as their city peers can; children are working on farms at an early age; clothing and nutrition has declined; stealing has increased; health problems have increased; children are left unsupervised; mothers are working away from farms or out on the farm when children return home from school; and that there are no child-care facilities in isolated rural areas.

Some of the effects on adults are frustration and a feeling of hopelessness; the retirement age has been pushed into the distance; they are working harder and longer hours and to a later age; women are experiencing feelings of guilt, humiliation and loss of self-esteem when applying for welfare benefits; many minor farm accidents occur when doing a job that needs another pair of hands but they cannot afford to employ; dangerous jobs are being attended to alone, increasing the risk of injury; crime is on the increase; social isolation is evident; clothing and nutrition have declined; and many people acquire all their wardrobe from opportunity and swap shops.

As we all know, the population has declined. There has been a detrimental effect on single people in the community, who normally would take over the employment in those areas. They are now moving away, and that has social and economic implications to the fall-over of the infrastructure of the rural population. Local schools, local government facilities and local sporting activities have all been badly affected. I wish to mention this only as an addendum to the findings of the Social Development Committee. I commend its members on their task and look forward with some dread

and trepidation to their final findings, and I will make further comment at that time.

The Hon. BERNICE PFITZNER: In closing this debate I thank the members of this Council for their contribution. The Country Women's Association report does single out similar experiences that have been relayed to the committee but produced to us only as anecdotal evidence. We are now beginning to feel that this evidence might be of some significance as we take further evidence and produce the final report. In raising all these disturbing concerns, some people have suggested to us that perhaps we ought not to raise these concerns as it would tend to further depress the rural community. However, even though I do understand their line of thinking, perhaps if we do identify this human suffering we might be able to make some kind of recommendation for intervention.

That brings me to what the Hon. Mr Terry Roberts has just said, namely, that it would be useful to look at the factors he has raised for intervention purposes, for example, looking at why some farmers are so wealthy—what they have done and what factors are in their favour that have produced this wealth—and about changes in methods of agriculture. We need to look at that area, too. We did not have any evidence of the new factor of international debt financing. However, we will be looking at those two depressed rural areas which were identified to us from the ABS data, based on the rural indices of socioeconomic status, which took into account not only finance and income but also the education and profession of those rural communities. I ask this Council to note the preliminary report carefully, and commend this report to the Council.

Motion carried.

WRITTEN DETERMINATIONS

Adjourned debate on motion of Hon. R. R. Roberts:

That the regulations under the Workers Rehabilitation and Compensation Act 1986 concerning written determinations, made on 31 March 1994 and laid on the Table of this Council on 12 April 1994, be disallowed.

(Continued from May 4. Page 709.)

The Hon. M.S. FELEPPA: Members would be aware that the Legislative Review Committee has also moved a motion for the disallowance of these regulations. It is therefore my intention not to prolong this debate but, rather importantly, to draw the attention of the Council to the fact that the members of the Legislative Review Committee have as great concern as that already expressed by the Hon. R.R. Roberts that these regulations try to remove a requirement for reasons for a decision to be given in a formal notice to workers. I add that as my personal comment. I commend the motion to members and ask them to support it.

The Hon. K.T. GRIFFIN (Attorney-General): The Government does not see any good reason for the regulations to be disallowed. I understand that the Legislative Review Committee is supporting this only because the time has run out for disallowance and if it does not disallow it cannot protect its position to continue to examine this matter. If the motion for disallowance is carried, it may be that the Government will repromulgate the regulation, again only to protect its position, but that will give the committee a further opportunity to consider the matter because time will begin to run again. I have no advice from the responsible Minister on that, but I flag that that may be one of the options that the Government will take.

Regulation 17 was amended to reduce the incidence of written determinations failing in the review and appeals process due to minor technical legal difficulties. The amendment simplifies the wording of the regulation to prevent the prescriptive manner in which the regulation was being interpreted by review officers. The regulation was not amended and has not resulted in the corporation's ceasing to provide reasons for its decisions in its notices. The regulation maintains the requirement for the reasons for a decision to be given in formal notices to claimants. It is not a matter of the amended regulation 17 being too strict for insurers; it is a matter of simplifying the wording of the regulation to prevent review officers from overturning reasonable corporation decisions solely on the basis of the determination notice not meeting the review officer's interpretation of the regulation.

The Opposition admits that there is a requirement for improvement in the area of notices. I have some draft letters which are soon to be introduced for the use of the corporation. These letters contain full reasons for decisions as well as inviting the claimant to contact the case manager who has made the decision. If members want to look at them, they may do so, but I do not intend to take up the time of the Council by reading them into *Hansard*. They are redrafts designed to focus upon full reasons as well as providing other information. I suggest that the Opposition should agree that it is to the advantage of all parties for the corporation to use standard informative determination notices which allow decisions at review to be judged on their merits and not solely on the content of the notice advising of the decision.

It should be recognised that review officers are meant to be making decisions administratively. They are not required to look at the legal technicalities of the way in which determinations have been communicated. They were always intended to be persons who made administrative decisions quickly without recourse to form and technicality, but rather on the basis of what was fair and reasonable in the circumstances. The regulations which have been promulgated are really focusing on that, because the review officers have been making decisions of a more technical nature.

Some cases have been drawn to my attention and I will refer to them briefly. The first relates to a case where the WorkCover Corporation reduced a worker's weekly payments by $226.52 per week by removing an overtime component. The worker's employer had ceased to trade and, therefore, the worker, had he not been injured, could not have worked and received payments for overtime. In his determination, the review officer said:

> There is no doubt that the corporation has the power to reduce a worker's weekly payments where there is an overtime component. A reduction can occur where overtime has ceased to exist.

The review officer overturned the corporation's decision to reduce the weekly payments solely on the basis that the notice to the worker advising him of this decision did not, in the opinion of the review officer, contain certain information required by regulation 17. In particular, the review officer states:

> I set aside the decision on the basis that the notice does not comply with regulation 17.

At no time does the review officer suggest that the decision to reduce the weekly payments was incorrect. The consequence of this determination is that the worker continues to

be paid $226.52 per week for overtime which the worker could not possibly have earned had the worker not been in receipt of compensation payments. There are a number of other decisions made by review officers which address the matters before them in a similar technical manner.

In another case a worker lodged an application for review of a decision by an exempt employer to discontinue weekly payments as the worker had ceased to be incapacitated for work. The basis of the review was the validity of the notice of the decision. The notice provided by the exempt employer was extensive and included copies of a report and a medical certificate. In her determination, the review officer states:

> I do not find that the prescript of regulation 17 has been satisfied within the text of the employer's notice. The subject notice has incorrectly stated one of the specific facts upon which it based its decision.

The consequence of this determination is that the worker continues to be paid weekly payments where an ongoing entitlement to weekly payments has never been established.

There are other cases, all of which focus on the review officers making decisions based on the technicalities, not on the merits. That is all that the regulation was seeking to address. It was certainly seeking not to remove the obligation to provide information but to overcome the highly technical decisions which were being taken. I think that anyone who has regard for getting decisions taken properly and reasonably would recognise that such reliance upon technicality is not consistent with the spirit of the Act, nor with what I think everybody believes the review officers should be doing, and that is making decisions quickly based on the merits and without resort to form and legal technicalities.

The Government would be disappointed if the regulation was disallowed. However, it recognises that if the committee is still taking further evidence there may be no option. The Government opposes disallowance and indicates again that it may be necessary to repromulgate the regulation not only to protect the position of the WorkCover Corporation but also to recognise the consequences of what the Legislative Review Committee is proposing.

The Hon. M.J. ELLIOTT secured the adjournment of the debate.

VICTIMS OF CRIME

Adjourned debate on motion of Hon. M. J. Elliott:

That the Legislative Review Committee be required to examine and report on the following matters:

1. The effect of the introduction on 12 August 1993 of the amendments to the Criminal Injuries Compensation Act.
2. The adequacy of compensation being provided to victims of crime.
3. Whether the required burden of proof be changed from 'beyond reasonable doubt' to 'upon the balance of probabilities'.
4. Whether the award of damages be indexed to inflation.
5. The manner in which the Attorney-General has been exercising his discretion to make an *ex gratia* payment.
6. Other related matters.

(Continued from 4 May. Page 710.)

The Hon. K.T. GRIFFIN (Attorney-General): The Government does not think there is any need for the sort of review proposed in the motion moved by the Hon. Mr Elliott. The motion is based on several premises with which I take issue. The Hon. Mr Elliott suggests that as a result of amendments to the Criminal Injuries Compensation Act, introduced by the former Government last year, and supported largely by the then Opposition, awards of damages under the Act have been reduced to about one-fifth of the previous entitlements. This does not accord with my information at all.

The Crown Solicitor's office has in fact settled only three cases under the new scale system for assessing the pain and suffering component of the damages award. Between 12 August 1993 and 9 May 1994, the Crown received 978 new applications for criminal injuries compensation. Of those 978 cases only 171 relate to injuries which occurred on or after 12 August 1993, and of those 171 only three have settled. So, three cases, I would suggest, is hardly a basis for the extreme assertions made by the Hon. Mr Elliott.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: It is. Only three cases have been decided. How the Legislative Review Committee is to consider whether the system is working when it is yet to be fully operational is a mystery. The Crown Solicitor's office advised, as it did when the amending Bill was before the Parliament last year, that it takes between 12 and 18 months after the commencement of any new amendments to the Criminal Injuries Compensation Act for there to be a flow-through in awards. This is because the Act makes it clear that each change applies only to injuries which take place after the changes to the Act. In other words, the law which applies to injuries is the law as it was at the date the injury occurred.

So, as the new provisions came into operation on 12 August 1993 they apply only to injuries occurring after that date. Injuries which occurred before that date are dealt with under the law as it formerly was. It is of note that the Crown is still dealing with claims which arose when the maxima were $10 000 and $20 000 respectively. In summary then, there is, in my opinion, no evidence available to assess whether the new system is working or not. There is certainly no evidence that awards have fallen to one-fifth of their previous level, as the Hon. Mr Elliott asserts.

While I consider that there is merit in keeping the system under review, until the majority of claims are made under the new system, I do not see how the full effect of the new system can be assessed. In addition, the Hon. Mr Elliott complains that some people who suffer minor injuries recover nothing at all. It is interesting to refer to the *Hansard* of the time of the 1993 amendments, wherein it is revealed that there was some debate about the minimum award and at what level it should be set. Ultimately, the former Government, with the support of the former Leader of the Democrats and the Hon. Mr Elliott, had the sum of $1 000 included as the minimum. At the time, the Hon. Mr Ian Gilfillan, as he then was, said:

> I think that there is a good argument to have the start off ledge at a level that would deal with the more substantial need for compensation and not be tied up with what might be called the more trivial. So, for that reason, not the persuasion of indexing, I believe the figure of $1 000 is reasonable.

As was stated at the time, I think by the Leader of the Opposition, then the Attorney-General, minimum thresholds now apply in motor vehicle accident cases and in WorkCover cases, and it is not unusual therefore that there should be a minimum amount of damage before the Criminal Injuries Compensation Act applies.

A further issue raised by the Hon. Mr Elliott concerns the burden of proof. The Hon. Mr Elliott suggests that the burden of proof should be changed to one on the balance of probabilities from the current balance of proof beyond reasonable doubt.

It is interesting to peruse the legislative history to the Criminal Injuries Compensation Act, which reveals that when re-enacted in 1977-78 the burden of proof was balance of probabilities. This was changed in 1982 to provide that the claimant had to prove beyond reasonable doubt that an offence was committed and that there was a direct link between the offence and the injury.

The reasoning at that time is still apposite. With the burden of proof as the balance of probabilities, the situation could arise where a person has been acquitted of an offence because the prosecution has been unable to prove beyond reasonable doubt that the offence was committed, but a claimant under the Criminal Injuries Compensation Act who was able to prove on the balance of probabilities that an offence was committed would be successful, and the alleged perpetrator of the offence would be required to pay the criminal injuries compensation for an offence for which he or she has been acquitted. That seems to be a most unjust proposition.

[Sitting suspended from 6.2 to 7.30 p.m.]

The Hon. K.T. GRIFFIN: In relation to the issue of indexing the damages under the Criminal Injuries Compensation Act, I simply point out to the Council that the criminal injuries compensation funds come largely from the public purse. These funds are not and never have been intended to put a person back into the position in which they were prior to the criminal conduct. They are an award of last resort. Indexing the awards will cost more, and the Criminal Injuries Compensation Fund, which is presently unable to fund awards without the aid of significant sums from general revenue, will be further depleted. It has always been the case that criminal injuries compensation is set at a fixed maximum by statute, and the statute is periodically brought back to the Parliament for the maximum to be increased. It seems to me appropriate for a compensation measure which is largely funded from the general revenue.

For the information of the Council, the current financial position of the Criminal Injuries Compensation Fund is as follows: receipts for the year to date—levies, $2 260 000; 20 per cent of fines, $1 728 000; and confiscation of profits, $145 000. On top of these receipts, it has been necessary for consolidated revenue to pay $7 409 000 into the fund to enable it to meet its commitments as required under the Act. It is expected that by the end of the financial year the contribution from general revenue will have increased to $9 400 000. Compensation payments to 30 April 1994 amounted to $11 431 371.20, and estimated payments to 30 June 1994 are $13 700 000. It will be interesting, if this reference is made to it, if the Legislative Review Committee can identify the means by which the Criminal Injuries Compensation Fund can be enhanced so that the indexation of the maximum is possible.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Well, the levies are only part of it. I know we had a difference of view about the issue of levies, but even if one doubled the levies up to the present time, $2 260 000 in levies does not make a significant hole in the total bill for the year which is expected to be $13 700 000, and that is only the tip of the iceberg. I think it will increase, because police now draw to the attention of victims the availability of the Criminal Injuries Compensation Fund and brochures are handed out. I am not suggesting that we should curtail that, but the fact of the matter is that it is becoming better known.

Mr Ray Whitrod, when President of the Victims of Crime Service, had raised with me on a number of occasions whether paying lump sums to persons who had been injured was the best way to address the issue of providing services to victims of crime. The Government and I are certainly not proposing that we withdraw from that field, but one does have to raise the question and seriously consider, when looking at all of the range of victims of serious crime, whether it is better to provide a more universal service to victims or to provide lump sum payments to a relatively small number of victims from public revenue. Again, I reiterate that that is not on our agenda, but it is an interesting question to contemplate.

The final matter I wish to address is the exercise by me of my discretion under the Criminal Injuries Compensation Act to make *ex gratia* payments. It is proposed that the manner in which I am exercising this discretion be the subject of review. I point out that the Act casts the discretion in terms of an absolute discretion. I am at a loss to see how this can be reviewed. I do not, nor did the former Attorney-General, give reasons for the exercise of the discretion. In fact there were occasions, I note from the files, when he was requested to indicate the basis upon which he exercised his discretion and he declined to provide that information.

The exercise of the discretion involves the complex consideration of information in the files of the Crown Solicitor, Director of Public Prosecution and the police, together with representations from claimants. Therefore, it is a complex issue. Making or refusing an *ex gratia* payment is not an easy issue to resolve, nor is it one that I take lightly, but nevertheless it is a discretion in those cases which do not result in a formal award being made by the court.

The question of the review of the exercise by the Attorney-General of his discretion also raises some other interesting questions about the extent to which a Minister ought to be the subject of scrutiny by a joint parliamentary committee. It may well be that the Attorney-General will need some approval to appear, but that is probably a side issue. The question is: what is the extent to which a parliamentary committee ought to be delving into and has the right to delve into the rationale for the exercise by a Minister of a discretion which is given to the Minister by statute as an absolute discretion? Many of the problems with *ex gratia* payments are really generated by solicitors who practise in this area, some of whom seem to have the view, 'Don't worry if you do not qualify for criminal injuries compensation in the usual way; you can always put in for an *ex gratia* payment', rather than facing the reality of the lack of merit in the claim in the first place.

I conclude by reiterating with what I opened, that is, the Government does not consider that there is any merit in requesting at this stage the Legislative Review Committee to report on the matters set out by the Hon. Mr Elliott in his motion. As I said at the outset, it is too early to tell what the effect of the 1993 amendments will be, and that is comprehensively proved by the figures from the Crown Solicitor's Office. If the reference is made to the Legislative Review Committee, that is something that it will have to discover for itself on investigation. So we see no merit in proceeding with such a review. It may be that in 18 months or two years it is appropriate for a review to be conducted, but certainly not so at the present time.

The Hon. M.J. ELLIOTT: I will keep this brief, in the light of other matters which are on the Notice Paper today. Looking at the matters which are included in the terms of reference, you can have an argument about whether there is sufficient time to look at the consequences of the amendments in 1993, and I will not take that further. That can be just a matter of disagreement. I think the question of the adequacy of compensation is independent of that and is worth looking at in its own right.

The question as to whether or not the required burden of proof be changed is also independent of that legislation in August 1993 and is an issue which deserves very thorough attention. While I chose not to give examples in this Chamber, certainly I have been given examples of the sorts of things that have been happening. There is no doubt that there are cases when most people would agree that a perpetrator of a crime is guilty but cannot be found guilty beyond reasonable doubt.

However, that burden of proof should not fall upon a victim. If a person has been a victim they should not have that burden of proof imposed upon them as well. That is unreasonable and, at the very least, it is a matter that deserves further attention and I believe that the Legislative Review Committee should look at that question. The question of whether or not awards or damages should be indexed to inflation is another perfectly legitimate question. Whilst the question in relation to the Attorney-General and the exercising of his discretion is there it does not have to imply criticism. However, it does ask a broader question, which is what is the best mechanism for handling questions of *ex gratia* payments and, at the end of the day, it might be that the current system is the only way to handle them, except for the fact that different persons in the same job might come to slightly different decisions, without implying a criticism of the individuals. That question as to how *ex gratia* payments should be handled is a legitimate one also.

The only point that the Attorney-General made that may have some legitimacy was in response to the first question, and there is nothing to stop the committee itself from saying, 'Well, look, we think it is too early to comment on this particular term of reference.' However, I do not believe that that criticism is fair in relation to the other points and I think that they all deserve attention. As I said, I have had a number of examples brought to my attention which have caused me concern and it is for that reason that I came forward with this motion. I appreciate that the Opposition will support the motion.

Motion carried.

DRESS CODES

Order of the Day, Private Business No. 10: Hon. R.D. Lawson to move:

That the regulations under the Education Act 1972 concerning dress codes, made on 21 October 1993 and laid on the table of this Council on 21 October 1993, be disallowed.

The Hon. M.S. FELEPPA: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

NON-LEGAL AGENTS

Order of the Day, Private Business No. 12: Hon. R.D. Lawson to move:

That the regulations under the Industrial Relations Act (S.A.) 1972 concerning non-legal agents, made on 4 November 1993 and laid on the table of this Council on 10 February 1994, be disallowed.

The Hon. M.S. FELEPPA: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

REGISTERED AGENTS

Order of the Day, Private Business No. 13: Hon. R.D. Lawson to move:

That the regulations under the Industrial Relations Act (S.A.) 1972 concerning registered agents, made on 9 December 1993 and laid on the Table of this Council on 10 February 1994, be disallowed.

The Hon. M.S. FELEPPA: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

DEVELOPMENT ACT REGULATIONS

Order of the Day, Private Business No. 14: Hon. Caroline Schaefer to move:

That the various regulations under the Development Act 1993, made on 27 October 1993 and laid on the table of this Council on 2 November 1993, be disallowed.

The Hon. CAROLINE SCHAEFER: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

Order of the Day, Private Business No. 15: Hon. Caroline Schaefer to move:

That the regulations under the Development Act 1993 concerning variations, made on 31 December 1993 and laid on the Table of this Council on 10 February, 1994, be disallowed.

The Hon. CAROLINE SCHAEFER: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

GOVERNMENT MANAGEMENT AND EMPLOYMENT ACT REGULATIONS

The Hon. M.S. FELEPPA: On behalf of the Hon. Mr R.D. Lawson I move:

That regulations under the Government Management and Employment Act 1985 concerning various amendments, made on 16 September 1993 and laid on the table of this Council on 6 October 1993, be disallowed.

Mr President, these regulations, among other things, vary regulation 26 of the principle regulations such that:

Where an employee fails to apply for and take recreation leave. . . the employee forfeits any entitlement to the leave not so taken unless approval is given by the Chief Executive Officer of an administrative unit in which the employee is employed for the leave to be taken within a period fixed by the Chief Executive Officer and the leave is so taken.

In a letter from the Public Service Association of South Australia, the committee was advised of the association's concern over the application of the regulation. The association put the view that the reduction in the numbers of public servants in conjunction with the drive for increased productivity in the Public Service could lead to situations where employees are not granted annual leave requests owing to staff shortages. They could then face the prospect of having their leave removed once it had accrued.

The association was also concerned that employees could lose annual leave entitlements without actually knowing that they had accrued, and it suggested that the Chief Executive Officers should be required to advise employees of their individual leave entitlements within a reasonable time before they must be taken. The association made the following point:

> While we recognise that annual leave should not be able to be accrued from year to year. . . we are concerned that the new regulation may be applied unfairly.

The committee invited comments from the Minister for Industrial Affairs on the points raised by the association, and it also sought advice on the following point:

> Whether the regulation establishes a regime which is less favourable to public servants than that which pertains in the private sector in regard to accrued recreation leave.

In the Minister's reply he informed the committee that informal structures are already in place to inform employees of their leave entitlements through leave lists compiled by payroll sections for managers and that forfeiture of leave should not occur without the express involvement of the Chief Executive Officer.

However, he stated:

> I am advised no known State award contains a forfeiting provision in relation to accrued recreation leave.

Furthermore he conceded that:

> Forfeiture of annual leave is a somewhat extreme position that ought to be avoided by proper management. I am anxious that we ensure that proper processes are in place to minimise the extent to which such a forfeiture might occur. In these circumstances I am of the view that the proposed regulation should be disallowed to enable a further consideration of this matter and the drafting of a more appropriately worded regulation.

The Hon. T.G. Roberts: That is enterprise bargaining Government style.

The Hon. M.S. FELEPPA: Exactly. In view of the Minister's advice, the committee resolved that it would proceed with this motion to disallow the regulation. The committee is aware that the Council cannot disallow only one part of the regulation listed as No. 210 of 1993 but is required to disallow all of the regulation. However, the Minister can re-gazette immediately those regulations which are supported and omit the regulation dealing with accrued recreation leave until that regulation can be assessed and redrafted. Therefore I commend the motion to the House.

The Hon. K.T. GRIFFIN secured the adjournment of the debate.

ELECTORAL (POLITICAL CONTRIBUTIONS AND ELECTORAL EXPENDITURE) BILL

Adjourned debate on second reading.

(Continued from 4 May. Page 714.)

The Hon. SANDRA KANCK: When he introduced this Bill the Hon. Mr Sumner referred us to a second reading speech by the Hon. Ms Levy last year. Having read that speech, I am still unclear what the Bill itself is trying to achieve. The speech said that basically this Bill is mirroring Commonwealth legislation and that in many cases political Parties would be lodging the same forms at a State level as they would at a Commonwealth level. I am unclear what the point is of lodging something twice, particularly when returns are lodged under Commonwealth legislation. That information is publicly available anyway and I do not understand why that is needed.

In her speech the Hon. Ms Levy claimed that this legislation was going to be breaking new ground in the area of publishers and broadcasters. Again, I cannot see what new ground is being broken, given that publishers and broadcasters are already answerable under Federal legislation. Certainly, as a State candidate I am aware that I have to provide a return at the end of this financial year. Certainly, the Democrats have been advised that every bit of money that comes in must be assumed as coming into the Federal campaign, unless we can prove otherwise.

I note from the Attorney-General's second reading speech that he referred to the burdensome nature of the Commonwealth law, and this applies equally to the Democrats, if not more so, because we depend entirely on volunteers. I have not gone through the clauses with a fine-tooth comb to compare the Commonwealth Act with this legislation but, if there is any difference between the two pieces of legislation (and I stand to be corrected on this), it may be that this Bill picks up those Parties that are not registered under the Commonwealth Act and Independents. If this is so, why are we not having instead a Bill that specifically picks up those Parties and Independents? We seem to be using a sledgehammer to crack a nut.

I have a few comments about the Bill. A number of references were made to unincorporated industrial organisations being excluded from some of the responsibilities from which other bodies are not excluded and the second reading explanation does not make clear the reason for that. In clause 5(4) I am curious to know why the appointment of an agent is not effective during a specified period after polling day. In clause 12(2) the Democrats believe that the amount of maximum donation from individuals should be increased because the sorts of money we are talking about in terms of donations will be picked up over four years, which is greater than the 2½ year interval that occurs with Federal elections. I am reluctant to support the Bill because it will increase the load on Parties in filling out forms. It seems to be largely unnecessary and, as the Attorney mentioned, there is a Federal review at present. If there are any weaknesses in the Federal legislation, they would be picked up at that point.

The Hon. C.J. Sumner: Are you opposing the second reading?

The Hon. SANDRA KANCK: Yes, I am opposing it.

The Hon. C.J. SUMNER (Leader of the Opposition): That is an extraordinary position for the Democrats to take, particularly in the light of their continual bleating about probity and openness in parliamentary affairs, but that is for them to cope with in the public arena when the time comes. It would not be unduly burdensome. If in the Committee stages members want to look at how burdensome it would be and whether it can be simplified, that is fine. That is why a Committee stage is available. For the major Parties and the Democrats, too, the information is largely provided through the Federal legislation. It is not something that would be unduly burdensome when the information is already collated and prepared to a significant extent. The point is that in South Australia there is not a comprehensive regime of disclosure at the present time. It does not cover, as the Hon. Ms Kanck has mentioned, other Parties, Independents and so on.

The Hon. Sandra Kanck interjecting:

The Hon. C.J. SUMNER: It is being done for them. Even though the bulk of the disclosure applies already to the existing Parties that are registered federally, it does not apply across the board in the State and the Opposition believes that

it should do so. The Hon. Ms Kanck has a number of questions that I am happy to address in the Committee stages if we get that far, but it looks as if we may not in the light of her and the Government's attitude. There is a Federal review apparently and that is fair enough. The Federal review can proceed. Obviously, this Bill is not going to pass this Parliament in this session, although I would have preferred that the Bill be given a second reading so that the matter can then be revived without having to start the whole process again when Parliament resumes, presumably in August.

By that time we can look at what review might be going on in the Federal arena. Given that the second reading of the Bill is to express a view about a principle, I ask the Council to give the Bill a second reading. Obviously, it will not go into the Committee stages today or until we come back in August, by which time any unanswered questions can be looked at and we might have more detail about the Federal review. By opposing the Bill at this stage the Government and the Democrats, if they do that, will be saying, 'We do not think there needs to be a disclosure regime particularly tabled to South Australia.' I think that is wrong.

The Bill should be given a second reading to assert the principle and then we can look at the details in August. I would have thought that most Parties in this day and age would have supported as much disclosure as possible in this area to overcome the problem of the potential for corruption and influence to be misused. I know that the Attorney-General downplayed the capacity for that to occur, but there is no doubt about that in my mind, certainly since the appearance of pressure can be there if donations are made by people to political Parties. It may not only be perceptions but the possibility exists of actual pressure and influence by way of political donations.

If we are going to have that perception then it should be overcome as far as possible by full disclosure. In my view—a personal view at least—full disclosure probably should be linked with public funding as well, but the Opposition is not pursuing that issue at this stage for no other reason than that the Government's views on it are well known and we would not get anywhere. There is a certain logic to full disclosure backed by public funding. I do not find it offensive for there to be public funding of the democratic process, given the sorts of costs involved in it, particularly if it overcomes the problems that might exist with corruption or the appearance of influence being used by way of donations. So, the Opposition would want to pursue this and requests the Council to consider the matter and give the Bill a second reading.

The Council divided on the second reading:

AYES (6)

Crothers, T.	Feleppa, M. S.
Roberts, R.R.	Sumner, C. J. (teller)
Weatherill, G.	Wiese, B. J.

NOES (9)

Davis, L. H.	Elliott, M. J.
Griffin, K .T. (teller)	Kanck, S. M.
Lucas, R. I.	Pfitzner, B. S. L.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	

PAIRS

Levy, J. A. W.	Irwin, J. C.
Pickles, C. A.	Laidlaw, D. V.
Roberts, T. G.	Lawson, R. D.

Majority of 3 for the Noes.

Second reading thus negatived.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

In Committee.

(Continued from 10 May. Page 890.)

Clause 30—'The President.'

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

Page 14, lines 4 to 7—Leave out subclauses (1) and (2) and insert—

(1) The President of the Court is the President of the Commission.

This amendment provides for one person to be the President of the Industrial Court and of the Industrial Commission of South Australia. This maintains the advantages of current arrangements. The Government's position allows for two persons to be appointed to these positions. Since the introduction of the legislation in 1967 joining the powers and duties of the President of the court and of the commission into one person, there has been no complaint from any of the occupants of that position or any industrial party of which the Opposition is aware that the workload is such that it requires two persons to carry out the work of one. Only recently in this place the Attorney-General suggested that having four judges of the court was excessive in the light of the workload that they carried, and this was demonstrated by the President's ability to spend the majority of his time on workers compensation matters.

It is conceded that the massive change embraced by this Bill will add significantly to the interpretive workload of the commission, but this only serves to demonstrate why the existing resource level and expertise and experience should not be dissipated for reasons of political expedience.

The existing system is shown to have worked and it is economical, given that if the Government were to appoint a separate President of the court and a President of the commission each of them would hold the same position as a Supreme Court justice with all the remuneration and expenses attached thereto, as well as the other associated on-costs.

It is true that with the Federal amendments to the Industrial Relations Act there is a President of the Industrial Court and a separate President of the Industrial Commission. Government members may be aware, however, that there is a strict doctrine of separation of powers at Federal level which would prevent there being a joint President. This separation of powers, whilst reflecting the greater level of technical complexity of that jurisdiction, has not been seen as necessary in the more flexible South Australian system. This greater flexibility has saved time and money and aided the maintenance of the State's superior industrial relations record for many years.

Yet another factor demonstrating why the separation of Federal jurisdiction need not flow to the South Australian system is the modest size of the Industrial Court and the Industrial Commission. There is no administrative reason to split the job. The very magnitude of the work in the Federal area would support separation for reasons of manageability. On average, almost half the workers in each State are covered by a Federal award. I am told that the figure in this State is about 47 per cent. In Victoria, following the attempts by the Government to debilitate the commission and plunder the workers' pay packets, the percentage is much higher. I understand that now about 85 per cent of workers in Victoria are under Federal coverage. This may well happen in South Australia if the axe is taken too vigorously to the industrial laws of this State.

Finally, I point out that a single president will enable maximum cohesion between the two bodies—something which has served the court and the commission very well in the past. The Attorney-General says that these are new times and new approaches are necessary. But what is new? There is an increased emphasis on enterprise bargaining, but the same commissioners have been approving agreements, as indeed have previous commissioners, for many years. There is nothing new in that.

For those who are unaware, I point out that 1 200 such agreements have been ratified and approximately 600 agreements still exist, including nearly 150 enterprise agreements. This is the area that we are talking about. The commission has handled 150 enterprise agreements under the present system, and they are all working well.

We are told that it was always the Government's intention to make the award the safety net. At least that is what the electorate was told. The same judges and commissioners have been resolving disputes about awards and creating new ones since the court and commission were established, so that is not new. The Committee has not had a clear explanation of what is so fundamentally new as to require such major surgery on the composition of our industrial structures.

The Opposition believes that this is a back door method by which the Government will seek to impose its own political flavour on the outcomes of the processes without demonstrating any inadequacy in the independence of the current personnel. I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. We think there are good arguments for maintaining flexibility. The Hon. Mr Roberts has referred to the Federal situation. Whilst there is a constitutional requirement to maintain a separation of judicial power from non-judicial power—that is why we have the commission separate from the court—the fact is that it provides a helpful precedent. There may be a reference from the commission to the court on a question of law or some issue which otherwise requires interpretation. Of course, if the President is also the President or senior judge of the Industrial Court that person will not be able to determine that issue.

The more compelling reason is that one does not have to accept the structures that have been in place for some years just for the sake of accepting those structures, particularly when throughout Australia there is a significant move to much more flexible industrial relationships and a much more flexible approach to the way in which employers and employees regulate arrangements between them in relation to remuneration and other terms and conditions of employment.

That has been in place overseas for many years. Whether it is enterprise bargaining or some other form of negotiation for the establishment of the terms and conditions of employment between employers and employees, the fact is that there is a great deal more flexibility in developed countries than there is in Australia. Our view is that for South Australia to be competitive nationally and internationally, to be able to attract business and to be able to provide good jobs for South Australians and opportunities for prosperity in the future, there has to be a new outlook in relation to industrial relations. The fact that we have a system in place should not be a deterrent to the consideration of changes to that framework.

The Government strongly believes that in the area of enterprise agreements and of industrial awards issues, which are non-legal but more commercial day-to-day practical decisions, we ought to be able to maintain some flexibility as to whether the presiding member of the court is also the presiding member of the commission. Our view is that the presiding member of the commission need not have legal qualifications, because they are not necessarily the skills which are required for dealing with enterprise agreements and with the award-making process.

Certainly, we provide that that person should have qualifications, experience and standing in the community of a high order and appropriate to the office to which the appointment is to be made. However, I ask rhetorically: why should we, as a Parliament, close the option for appointments to the commission different from the appointments to the court? There is no good answer to that question.

We therefore very strongly oppose the amendment, believing that what we have in clause 30 is appropriate and provides the necessary flexibility in a new era of industrial relations and negotiation.

The Hon. M.J. ELLIOTT: I ask the Attorney-General, if he happens to have a copy of the Liberal Party policy, to turn to page 4 because I want to clarify one matter from the policy. At page 4, the first half of the line under the heading 'The Industrial Relations Commission' says that 'the Industrial Commission will continue.' There is nothing else to suggest anything different about the Industrial Commission other than that 'the Industrial Commission will continue.' If that was a legal document I would know exactly what that interpretation meant.

I know it is not a legal document but, in the absence of any suggestion that anything different will happen, I ask the Attorney-General to explain why the policy says that 'the Industrial Commission will continue,' yet we have legislation which quite plainly sets about creating the new Industrial Relations Commission not as a continuing body but as a new body.

The Hon. K.T. GRIFFIN: I hope the honourable member is as meticulous in seeking to—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: In all areas, not just this: voluntary voting. What are you doing about voluntary voting?

The Hon. M.J. Elliott: I have been closer to your policy in this session than you have.

The Hon. K.T. GRIFFIN: That is nonsense; you have not. The honourable member will get his chance on voluntary voting.

The Hon. M.J. Elliott: That's one. I can find five or six the Liberal Party has breached.

The Hon. K.T. GRIFFIN: If you look at the other parts of the policy, the legislative framework, you will see that the Industrial Relations Act SA will be amended to bring into effect the following major changes for employers and employees covered by State legislation:

> It will enhance the ability of all South Australian businesses and employees to enter into enterprise agreements.

The Hon. M.J. Elliott: You are not going to answer the question, are you?

The Hon. K.T. GRIFFIN: I am going to answer it. I will get to it. Do you want me to answer it or don't you?

The Hon. M.J. Elliott: Okay, as long as you do.

The Hon. K.T. GRIFFIN: Well, stop being too smart by half, because we will have a long night ahead of us if you keep on like that.

The CHAIRMAN: This *tete-a-tete* is not helping in any way with the debate.

The Hon. K.T. GRIFFIN: The policy document states that compulsory unionism will be outlawed, and the amendments will define more precisely the role of the arbitral authority in the place of conciliation and arbitration. So, it is in that context of quite significant change that we propose this legislation. One can have a number of interpretations, I suppose, of 'the Industrial Commission will continue,' and it is quite fair to say that it could be interpreted as the Hon. Mr Elliott seeks to interpret it: that it is the existing commission in every respect, and it is quite reasonable to interpret it in that way.

On the other hand, I would suggest that it could also mean that the whole concept of the Industrial Commission, where you have a commission on the one hand and a court on the other, will continue, but not necessarily with the identical membership or with the identical rules. We are making a significant number of rule changes to ensure that this is put in place.

It is our view that in the light of the significant amendments made to the Bill the more appropriate approach is to retain a commission but not necessarily the same membership. It is quite reasonable, I would suggest, to interpret the policy in that way.

The Hon. M.J. ELLIOTT: I asked that question for a good reason. Frankly, if the policy was to reflect what we have in legislation it would have said, 'There will be an Industrial Relations Commission and it will do the following things,' but it says, 'The Industrial Commission will continue.' I make that point at the outset. We are now seeing an amendment which quite significantly changes the commission, and there are more amendments to follow. When I say amendments, I mean by way of the legislation itself. That is most unfortunate.

I tried to make the point last night and I make it again: I really think that what the Government is doing to the court and to the commission, in terms of the changes to its membership—other than the addition of additional commissioners, for instance, the enterprise agreement commissioner—and in the structure and membership of the court, much of that is totally unnecessary in terms of what else the Government is setting out to achieve.

If you look at the Government's agenda in terms of enterprise agreements, if you look at its agenda in terms of voluntary unionism, and if you look at all the major policy issues which were clearly spelt out in its policy, you will see that none has changed to either the court or the commission, other than possibly the addition of the enterprise agreement commissioner.

This is producing an enormous distraction from the key policy items that the Liberals had at the last election. I also believe that, if it gets them wrong, a real possibility exists of creating a set of industrial tensions that are totally unnecessary. That is the point I am making. I would say that this whole section about courts and about the commission in terms of the composition, etc., is an unnecessary distraction from what I would have thought were the key essentials of the legislation.

One could have an argument about whether or not they are useful things to do, and one could have put them in another piece of legislation and deal with the matter in the next session. However, I do not believe that they are necessary or essential in the context of the important policy issues that the Liberals took to the election, whether or not one agreed with them.

That is the point I make before we go off into the discussion of the various amendments here. There has been no justification brought to this place as to why the changes in relation to the president or the vice-presidents are necessary, and in the absence of a justification I am not supporting a change. Perhaps we could debate at great length about this but, as I said, I do think this whole thing is a major distraction from what the Liberal Party should be focusing on if it is serious about this legislation.

The Hon. K.T. GRIFFIN: It is certainly a major issue. I do not in any way subscribe to the view that it is a major distraction. What we have brought before the Parliament is a significant redrafting and re-presentation of the Industrial and Employee Relations Bill, and I would have thought that in that context, particularly in the context of the other changes which are being made, it was not unreasonable to propose changes in other areas, and not merely just reflect what the honourable member interprets as the policy of the Liberal Party.

As one goes through legislation and develops a scheme and one puts flesh on the bones, it is inevitable that there will be changes which one believes are desirable if one is to achieve the objective of the court policy issues. We believe, as a Government, that it is important to address the issue of the commission and the court. What the policy does not say is that the existing commission will continue with its same membership and with the same relationship to the Industrial Court, but the concept of the commission is certainly retained. It may be that, with the benefit of hindsight, we should have redrafted that to say 'a commission' rather than 'the commission', but we cannot rewrite the policy.

I draw attention also to this issue of individual subcontractors. Already the majority of the House has passed some amendments to the Bill which intrude into our policy position that individual subcontractors will not be classed as employees under the Act. As we go through a review of the Bill which passes this House, that will certainly be one of the issues that we will want the Hon. Mr Elliott to address fairly and squarely.

The Hon. R.R. ROBERTS: The Hon. Mr Griffin's opposition is based on a couple of premises. He said that there is no need to keep the existing structures when changes takes place, and he said that there does need to be change. There are two misconceptions here. The first misconception that Liberals have is that they think they have invented something new or unique in going into enterprise bargaining. Enterprise bargaining has been around for years. It is recognised in the Federal commission at the present moment and we have said here that we accept there will be an extension where groups that are not registered associations will be involved in enterprise bargaining.

The other thing members opposite fail to recognise is that these things are taking place. Their proposition says there has to be change because something they think is new or unique is being introduced. The first fact is wrong: it is not new or unique. It has been around for yonks. I gave the figures in my contribution. The other thing that they say is that just because we had a commission does not mean to say we have to keep it. If the commission was not handling the change, was incapable of handling the change, they may well be right, but the facts deny their argument. The commission has been handling these matters competently and with great flexibility.

What enterprise bargaining in South Australia will mean, now that they have been dragged back to what they were saying before the commission by the Hon. Mr Elliott and arguments from this side of the Council, is only an agreement between employees with the basis of the award rate. That is what we are now coming back to, which was not the original proposition when the Bill was drafted. The system is coping—

The Hon. K.T. Griffin: That's right, the club.

The Hon. R.R. ROBERTS: The system or the club, call it whatever you like. You can be as derogatory as you like about the court and the commission. That is your right; you are in here, and they are out there. They do not get to answer. The system, the court and the Industrial Commission have coped with these new techniques. They have been doing it for years. You are saying, because you have just woken up that there is a new system around, that we ought to change the system. I am pleased to hear from the Hon. Mr Elliott that he will not be persuaded by that false argument.

The Hon. M.J. ELLIOTT: I suppose, since this is the first clause we are handling tonight, it is always prone to be slightly longer than others, in terms of the length of the debate.

Members interjecting:

The Hon. M.J. ELLIOTT: It does not have to be, but a few things need to be put on the record. One of the key issues I was addressing last night in relation to the court, when we started debating the commission, was this concept of independence. I note also with the legislation as it currently stands, as distinct from the previous Act, now that the President may be a person who is not the President of the court, there is no qualification at all expressed as to who this President may be. I do not know what the intention is, but in relation to commissioners generally there is a description as to who and what they need to be, but in relation to the President and the Deputy President, if they do not happen to be from the court, then there is no qualification, as I see it, expressed at all. The Minister might care to correct me there, but that is certainly the way it reads to me.

The Hon. K.T. GRIFFIN: What we are saying under clause 32 is that a person is eligible for appointment as the President or Deputy President of the commission if the person is the President or a Deputy President of the court, or the person's qualifications, experience and standing in the community are of a high order and appropriate to the office to which the appointment is to be made. That is what I understand to be the qualifications of the current commission.

The Hon. M.J. ELLIOTT: The Attorney-General is right and I am wrong, but I was moving to the second point. This is the relevant one in any case in relation to independence. The commission up until now, right or wrong, had some balance put into it insofar as the President and Vice President were coming from the court, and the commissioners were required to be split evenly from the two sides of industrial disputes that arise, so there was some attempt to get some balance. Certainly they were being appointed by the Government of the day, and from what I said last night it should be obvious that I am not enamoured of that regardless of who the Government is.

What we are now doing is taking the President, a person who decides who sits on what case, etc., and making them an even more blatant political appointment and one that is changed on a more regular basis. Consistent with the comments I have made both last night and tonight, I really do believe that we should be seeking as far as practicable, if we want genuine industrial peace and harmony, and if we want this legislation to work properly, to have people who will apply the legislation as it is written and not be there for a political purpose. Even if the current Minister is a good guy and will make sure that only very decent and honourable people go there, we cannot always feel so assured about future Ministers. It might even be the Hon. Ron Roberts!

The Hon. K.T. GRIFFIN: Just putting to one side for one moment the Hon. Mr Elliott's proposition for appointment of commissioners in the future, the fact of the matter is now that whoever is in power from time to time will appoint the President, the Deputy President of the court, the President and Deputy President of the commission, and the commissioners. It is correct to say that the present Act provides in relation to commissioners that there be an equality of representation from employers and employees, but the problem with that, I suggest, is that it immediately polarises the issues. We have seen it with the WorkCover board. We have seen an equal number of representatives of employers and employees, and it is polarised. They cannot make decisions.

The Hon. M.J. Elliott: But you are doing that, too, in clause 35.

The Hon. K.T. GRIFFIN: Right, but even so, I do not necessarily think that is a good idea. The Hon. Mr Elliott points out we are doing it in clause 35(4). The fact of the matter is they are appointments by the Government of the day. It does not matter whether you are Labor, Liberal, Coalition or what; the fact of the matter is, with the law as it is at the moment, that is the way appointments are made. The view which we hold is that we ought to be appointing people who can make decisions who are people of merit, of standing in the community, and not necessarily representative of one group or the other, that is, particularly in the areas of presidential or deputy presidential members. One has to be very cautious about moving away from what is the traditional position with appointments from the Government of the day. I will have something to say later about the Hon. Mr Elliott's proposals for appointment which, as I recollect, involve the Parliament, but that is for another occasion.

The fact is that while you have the Government making those appointments, certainly from our perspective, we would want to appoint people who are of high standing in the community, have qualifications and experience and are not necessarily aligned, if aligned at all, with one group or the other.

Amendment carried; clause as amended passed.

Clause 31—'The Deputy Presidents.'

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

Page 14, lines 13 to 17—Leave out the clause and substitute new clause as follows:

31 (1) A Deputy President of the Court is also a Deputy President of the Commission.

(2) A person may also be appointed as a Deputy President of the Commission by the Governor.

This is a consequential amendment in that the Opposition seeks the maintenance of the existing system, that the Deputy President of the Industrial Court is also the Deputy President of the commission. The reasons advanced for the maintenance of this person occupying both positions is the same with respect to the President of the court and the commission, and we see it as virtually consequential.

The Hon. M.J. ELLIOTT: Agreed.

The Hon. K.T. GRIFFIN: It is consequential. I oppose it.

Clause negatived; new clause inserted.

Clause 32 passed.

Clause 33—'Term of appointment.'

The Hon. M.J. ELLIOTT: I will not be moving my amendment because, as a consequence of the other amendments already moved by the Hon. Ron Roberts, I believe that his amendment is the correct one. As amended the Bill provides that the President and Deputy President of the court automatically become the President and Deputy President of the commission and are such until the age of 70. Therefore, the only amendment required is in relation to any Deputy President who is not a President or Deputy President of the court.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Is that right? The point is that they need to overlap. My amendment is not accurate because it is actually redundant and provides that they shall only remain President or Deputy President so long as they are President and Deputy President of the court, and that is quite a different question from that of any other Deputy President who is appointed separately under clause 31(2).

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

Page 14, lines 25 and 26—Leave out subclause (1) and insert—

(1) An appointment of a Deputy President of the Commission will be for a term expiring when the appointee reaches 70 years of age.

This amendment covers our position. The President's tenure and the age limits in relation to the President are covered under another part of the Act and I do not think we need to debate it further.

Amendment carried; clause as amended passed.

Clause 34—'Remuneration and conditions of office.'

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

Page 15, line 8—Leave out 'and is not reappointed.'

The Hon. M.J. ELLIOTT: This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 35—'The Commissioners.'

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

Page 15, line 18—After 'affairs' insert 'nominated by the Minister after consultation with associations representing the interests of employers and associations representing the interests of employees'.

The fundamental difference between my amendment and the amendment which the Hon. Ron Roberts has on file but which he has not yet moved is that he is actually tackling the whole clause and is seeking to have a single section to the commission and not have one section where there is just an enterprise agreement commissioner or commissioners, who are the people who would handle enterprise agreements. This is one of the issues where I think that what the Government is doing is wrong but I am not sufficiently upset to actually oppose it. I note that the Federal Government has done exactly the same thing and I think it is crazy to separate the commissioners off in the way it has.

However, I decided that I was not going to go to the wall over this matter, and recognising that there were any number of things that were capable of amendment this is one I simply did not take on. The Government has given a clear enough indication that this sort of separation was likely to happen and on that basis I was willing to accept it reluctantly. However, subclause (3) provides:

An enterprise agreement commissioner must be a person of standing in the community with experience in industrial affairs.

There is no other qualification and, consistent with what I have been saying about a requirement to get at least some form of independence, my amendment requires that before the Minister appoints the enterprise agreement commissioner, he should consult with associations representing the interests of employers and associations representing the interests of employees. The commissioner is then not a person elected on the nomination of either of those two groups. I would hope and expect that the Minister would have a shortlist of names, or even a particular name in mind, and would consult with those groups and feel satisfied that, whoever the person is going to be, it is someone who will be mutually acceptable. I have not made that mutually acceptable test an absolute one, but I hope that the Minister will behave in that manner. It is a much weaker test than I was thinking about applying here, but I do not think it is anywhere near unreasonable.

The Hon. K.T. GRIFFIN: It was always the Government's intention as a matter of practice to engage in such consultation. Therefore, we are happy to have that written in and, therefore, we support the amendment. The enterprise agreement commissioner is performing a somewhat different role from the arbitral role of industrial relations commissioners generally and, in these circumstances, an enterprise agreement commissioner should not of necessity be a partisan appointment from either the employer or union ranks in the same way as industrial relations commissioners. As I say, as a matter of practice we had intended informally to implement the sort of consultation referred to in the Hon. Mr Elliott's amendment. I indicate support for the amendment.

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

Page 15, lines 14 to 25—Leave out subclauses (2), (3) and (4) and insert—

(2) A commissioner must be a person with experience in industrial affairs either through association with the interests of employees or through association with the interests of employers and the number of commissioners of the former class must be equal to, or differ by no more than one from, the number of commissioners of the latter class (part-time commissioners being counted for the purposes of this subsection by reference to the proportion of full-time work undertaken).

This is an exceptionally important area of the Bill and I wish to make a contribution for the consideration of the Hon. Mr Elliott and the Attorney-General. The Government's Bill establishes separate enterprise commissioners and industrial relations commissioners. There is no sense in that being done, and the Opposition simply seeks to reinstate in the Bill through its amendment, that commissioners are appointed on the basis that has proven to work up to this date. The amendment also provides the a number of commissioners drawn from the respective classes must be equal or differ by no more than one between the different classes from which they are drawn.

The principle of balanced representation for lay members of the commission is fundamental to retaining integrity and the image of neutrality, which our present commission enjoys. The Government's Bill, by its inclusion of a separate provision for enterprise agreement commissioners, transparently seeks to undermine that integrity. Although the Government will retain the balance of representation for industrial relations commissioners, there is no such balance for enterprise agreement commissioners. Therefore, it is clear that the Government will be seen to be creating a position of enterprise agreement commissioners and then to appoint its mates from the business community with no input from the employees' perspective.

How can this aid in building, particularly amongst employees, confidence in the commission's ability to deliver equity in good conscience? The Opposition believes that such separation is unnecessary and ill-advised, for the reasons I will return to. First, it is important to note that despite originally not doing so the Government now appears willing to make the award the safety net. I await to see the reality of that. Assuming it occurs and the agreement processes operate to include, rather than exclude, awards, then the structure proposed is unsound and illogical.

I note the Hon. Mr Elliott's sentiment about several amendments in the Bill previously moved in this Committee that the substance was more important than the style. Hence, we are less concerned with whether there are one or two commissioners than we are with how disputes are resolved and the efficiency and independence of the process and the umpires. In their second reading speeches on the Bill in this Council, Government members referred to statements in Federal Parliament by the Liberal Party to the effect that the Federal commission was stacked with ACTU nominees. We appreciate that the honourable members are like those who would prefer and seek no union involvement at all. The facts demonstrate that the claim is false.

Let us look first in our own backyard in South Australia where, in recent years, we have had the following appointments to the Federal commission. Mr John Cross, a former employee relations manager at Chrysler Australia, now Mitsubishi Motors, was appointed to the commission under the Fraser Government. Mr Keith Hancock, from Flinders University, had an economics background and was appointed as Senior Deputy President. Mr John Lewin, a former industrial officer with the AWU, was appointed as an commissioner and a Ms Ann Harrison, formerly a senior partner with Baker O'Loughlin—the Hon. Mr Griffin's former law firm—an established law firm which primarily acts for employers, was appointed as a Deputy President.

The picture painted of the Federal commission by the Government is precisely that which would emerge if the Opposition's amendment is not accepted. From a practical point of view we would also say that there is no need for the creation of the new positions of enterprise agreement commissioners. Under the Opposition's amendment there is no impediment to prevent commissioners concerned also acting as the enterprise agreement commissioners. They will carry out their functions as commissioners as they do now, on a joint basis.

I return to the original point that the proposal is, in light of the award as a safety net, ill-founded, illogical and inefficient. A proposal that provides different commissioners in the two aims of the commission means that one commissioner would make the awards and another would have to assess variations to awards to determine disadvantage. Universally, one commissioner would need to review awards but would not be the commissioner most closely involved with agreements, and hence the development in that area of industrial relations. The Government's Bill provides in clause 93(3), as follows:

> a review. . . to ensure that the award. . . is consistent with the objects of this Act;

One of the objects is to encourage enterprise bargaining. The common commissioner approach makes such a review a meaningful and coherent project. The Government's separate commissioner approach prevents cross-fertilisation of experience and knowledge between the award stream and the agreement stream. The Government can have two commissioners if it must, for appearances purposes, but it must insist on common commissioners, and insist as our amendment does on balanced appointments. We do not agree that the current commission is politicised, as has been claimed in this place, where it operates in a politically sensitive area, but to use this as an excuse to suggest that the court and the commission are politically tainted is an affront to the Judiciary. It is clear, however, that it would be open and liable to such taint under the Bill's proposed structure, which is why we have opposed it.

Given the size of the South Australian jurisdiction, there is no argument that the Government can legitimately put forward to justify the establishment of a separate enterprise agreement commissioner to handle this matter, when currently the four industrial commissioners act both as enterprise agreement commissioners and also as commissioners handling general award matters, all at the same time. As I have pointed out during a previous debate they have been doing it competently for years.

The Government is supposedly committed to smaller Government and to reducing the costs to taxpayers of South Australia and therefore the maintenance of the current system which provides lower costs compared to the Government Bill should be commended by the Government. It is interesting to note that this Government, which talks about flexibility within industry and greater utilisation of its work force, and as we have actually had debates in here about demarcation, seeks demarcation between the commission areas of activity and one section of the employees and the other which are both qualified to the same extent. It seems ludicrous when we have commissioners who clearly can cover and have covered both areas, and we are revisiting an argument we had earlier. It seems to me we ought to do the prudent thing and not go into another expensive exercise with all the problems we will have with selection and accusations of bias.

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

Clause 36—'Term of appointment.'

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

Page 15, lines 27 to 29—Leave out subclauses (1) and (2) and insert—

(1) An appointment of a Commissioner will be for a term expiring when the appointee reaches 65 years of age.

This is consequential to the debates we have already had.

The Hon. K.T. GRIFFIN: I agree that this is consequential. We have had the substantive argument about term appointments as opposed to permanent appointments and at least on this run through the Bill I can acknowledge that I do not have the numbers for the propositions which the Government believes are important to be recognised in terms of the composition of the court and the commission. In those circumstances, whilst I indicate opposition to the amendment, I recognise that it is consequential.

Amendment carried.

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

Page 15, line 32—After 'a Commissioner' insert 'who was appointed on an acting basis'.

This is another consequential amendment.

Amendment carried; clause as amended passed.

Clauses 37 to 47 passed.

Clause 48—'Functions of the committee.'

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

Page 21, after line 12—Insert subclause as follows:

(2) The Minister must refer legislative proposals of substantial industrial significance to the committee for advice at least two months before a Bill to give effect to the proposals is introduced into Parliament.

This matter deals with the Industrial Relations Advisory Committee. The Opposition's amendment provided that, before an industrial relations Minister proposes legislation of substantial industrial significance, the committee must be given at least two months notice before such a Bill can go to the Parliament. This will enable all interested parties to give proper consideration to the Government's legislation in this matter, unlike the current circumstances, where a major rewrite of an industrial relations Bill was introduced and had to be debated in the House of Assembly within a fortnight of it having been tabled. This Bill has some 230 clauses. It contains a number of major radical amendments to the way in which industrial relations have been conducted in South Australia to date, and yet none of the major players, except perhaps employers, have had anywhere near enough notice of the Government's intention to be able to realistically debate this Bill and put amendments or points of view to the Government.

The Government promised the parties the Bill before the commencement of the Parliament. This was not done. The Bill was not given to IRAC. At the IRAC meeting the unions did not accept the Minister's seeking to waive the two months notice requirement. That is, IRAC advised the Minister it required further consultation. This was not done. The UTLC had the Bill for one week before it was introduced into the Parliament. The discussions with the Government continue with the UTLC, but the Government refuses to listen and negotiate over basic union concerns. The New South Wales Liberal Government allowed 18 months of public consultation with an academic inquiry before bringing similar widespread reforms into its Parliament, and the Keating Government had over 12 months of debate before having its new industrial relations reforms passed into law.

The Industrial Relations Advisory Council Act, established by the former State Labor Government, provides that matters of industrial significance must have had at least two months notice given to the industrial relations parties. This was not given despite the fact that the UTLC was promised that it would. However, there is a flaw in the IRAC legislation in that it allows the Minister to waive the period of notice if he believes that it is not necessary in certain circumstances.

The amendment removes that discretion from the Minister and compels him to have at least some semblance of consultation with the industrial relations parties in these matters. I think this is a sensible amendment. It allows parties to major industrial reforms the opportunity to negotiate and gives them time to consult their constituents to ensure that proper consideration in a timely manner is given to such important pieces of industrial legislation.

The Hon. K.T. GRIFFIN: What is in the present Act is not mandatory. It says that the Minister 'should'; it is not mandatory. If it is not possible, then it ought not to be mandatory to do so. To make it mandatory is extraordinarily restrictive.

I should like to correct what the Hon. Mr Roberts said about the extent of consultation by the Government with the union movement. I understand it was two weeks before it was introduced that IRAC had it. I will give the schedule of the meetings held between Government officers (and on occasions the Minister) and the UTLC: 9 March; 11 March; 15 March; 18 March; 18 March; 22 March; 25 March; 28 March (although that was scheduled, it was cancelled by the unions); 31 March; 6 April; 6 April; 7 April; 11 April; and 12 April. Those meetings ranged on 12 April from half an hour up to three and a quarter hours on 18 March. The meeting to which I referred on 6 April was with the PSA, and the meeting on 18 March was with the SDA. So, no-one can suggest that there was not a diligent attempt to consult with union representatives on this Bill.

Normally one would expect consultation, but to suggest that it must be two months is quite ludicrous. We have to think of it in terms of constitutional obligations. What is the sanction if that does not occur? Does it mean that a Minister cannot then introduce a Bill into the Parliament? That would be an extraordinary consequence of failing to comply with the mandatory provisions. The Minister must be able to introduce legislation into the Parliament as the proper democratic institution where legislation is made. The Minister must not be constrained by such inflexible mandatory obligations which the Hon. Mr Roberts seeks to impose upon a Government.

In any event, even if it is discretionary, I am sure there will be occasions with the new Federal industrial relations legislation and its inter-relationship with the State legislation, particularly in relation to unfair dismissal where there are some significant consequences to State law if it does not mesh in properly with Federal law, when we may want to rush amendments into the Parliament to make adjustments to the legislation. If honourable members believe that there has not been adequate consultation, I know what will happen: the majority will refuse to debate the Bill. Of course, one would hope, as we have been able to achieve in the past, whether in relation to this legislation or any other, that, if a sense of urgency can be clearly demonstrated, Opposition members in particular, but also the Australian Democrats, would be prepared to shorten the timeframe for consideration of that urgent legislation. I strongly oppose, and ask the Committee to reject the amendment.

The Hon. M.J. ELLIOTT: I understand the objection to 'must' being mandatory, but why did the Government not choose to adopt what is in the IRAC Act where the term 'should' was used in relation to referring legislative matters to the Committee?

The Hon. K.T. GRIFFIN: The Government took the view in relation to the IRAC Act that it was not necessary to have this enshrined in its own Act of Parliament. More particularly, we took the view that it sets up an expectation and a minimum period of consultation. If that period was not met for any reason, then the Government would be criticised for that, as it has been tonight by the Hon. Mr Roberts.

I think any Government is entitled to expect that, if it does not consult adequately, it will be the subject of criticism in the Parliament and in the public arena. However, I think that some discretion has to be given to Government about the extent of that consultation process. It is difficult to build in consultation in a form which is clear and beyond doubt and to cater for all the exigencies which Governments frequently must face. When a Government does not meet the minimum expectation, as I said, there will be criticism. When we were in Opposition, even if Bills went to IRAC, frequently those Bills continued to be the subject of criticism, but, more particularly, there continued to be consultation.

Indeed, there was frequent criticism by employers, who were members of IRAC, that the Minister of the day would provide a Bill and say, 'You cannot talk about it outside the committee. You are locked into a process of consultation and

it is either agree or not agree.' Of course, in some cases there was a vote and the decision was taken to be the decision of the majority. We took the view that whilst we would, as a matter of practice, seek to consult not only with the advisory committee but also with other groups in the community, it was unwise, because of the exigencies that the Government has to meet on many occasions, to lock into a two-month minimum time period.

The Hon. R.R. ROBERTS: I would like to pick up a couple of points raised by the Attorney-General. He talked in particular about a Government from time to time needing to bring in legislation because of circumstances that may prevail. He read out what appeared to be an impressive list of meetings with the UTLC and said that there had been consultation. I can remember being involved in industrial relations and people saying, 'Yes, we have consulted the unions.' That consultation consisted of the employer calling the employees in and telling them that he was going to change things. There are all sorts of consultations.

My advice is that many of these meetings did take place between the UTLC and Government officers handling this Bill, but it was like talking to a post. The Government officers were sitting there, giving the impression that they were listening but they were doing virtually nothing. That may be an unfair criticism, but what we are talking about in our amendment is not the situation that the Minister puts forward where, from time to time, Government will have to change legislation. What we are saying here is that the Minister must refer legislative proposals of substantial industrial significance to the committee (which we set up for that very purpose) to advise at least two months before the Bill giving effect.

Quite clearly, the opportunity for the Government to do that was there on this occasion. It could have had the two months. We could have come back and fixed this up in a couple of weeks. It has been clearly demonstrated throughout the debate that the commission is bubbling along and enterprise agreements with the award safety net are being produced day by day. There is no undue haste, and no reason why this could not have been done, unless there is some clandestine reason for it. The other point the Minister made was that if the majority of the Parliament did not think there had been enough consultation it should not debate the Bill. Does that really mean that if the Hon. Mr Elliott and I find ourselves in a bind we can walk out and go home? Of course it does not. We are doing the consultation. We are making the accommodation.

The Minister's pious rubbish about consultation over a fortnight means nothing. The Minister said that the Government had the legislation, having spent six months drawing it up; it had people—teams of them—beavering away, emasculating the Industrial Relations Bill; imposing its will on the workers of South Australia. The Government wants to rip it into the Parliament and give us a couple of weeks to deal with it. We go through the charade, sitting here night after night, with all sorts of threats about sitting next week. I do not care if we sit next week; I will sit until Christmas, if necessary.

Why did we set up the IRAC committee in the first place? It was done because there were matters of a substantial nature that would affect the way in which work was to be done in South Australia as well as the inspectorate involved. We set it up to do those things. On this occasion the Government has deliberately by-passed the intention of that Bill and has tried to promote this argument that, from time to time, it has to be done for extenuating circumstances.

I am sure that under this Bill, if there was an emergency situation, there would not be a problem. When the Government was in Opposition it talked for years about emasculating the industrial relations system in South Australia. The Government has been planning these sorts of things for years. It then comes here and says, 'We have to get it through because of time constraints; it is an emergency.' However, it is clearly not an emergency. We are saying that the intentions of the IRAC committee, as the Minister said in previous debates, ought to be laid down so that the meaning is clear, and we should implement what we mean.

This is not an outrageous suggestion; this is a very sensible piece of legislation, which provides for industrial harmony, and that is what the industrial system in South Australia is supposed to be about. This is a valuable adjunct to better legislation and cooperation between all the parties involved in industrial relations. I believe that this is an important piece of legislative activity and it is an important amendment. It is extremely important that this piece of legislation passes this Committee.

The Hon. T. CROTHERS: I was not going to enter the debate but some of the remarks made by the Attorney about the length of time that was given in respect of consultation require answers. It is quite obvious to me that he did not think his answers through because the logic that one would apply to them refutes them absolutely in respect of the period of time that he says was adequate in order for the trade union movement and others to negotiate with the Government in respect of matters that are pertinent to this Bill.

The Attorney started out by telling us that consultations commenced in early March, and he gave a list of dates as to when consultations took place. But, what we have to recognise, of course, is that this Bill was introduced some time ago in the Lower House. As a consequence of that the Bill was set in concrete and, of course, that makes 10 March—I think that was the jumping off date that the Attorney gave for consultation—look very sick indeed, when you line it up to the date of the introduction of the Bill in another place. It is quite obvious from what the Minister says that his knowledge of the workings of the trade union movement in this State is, to put it in one word, abysmal.

The Minister must understand that, while there are about 70 affiliates of the United Trades and Labor Council in this State, they do not represent all of the registered organisations in this State. It is not just the UTLC with which one must consult; one must also consult with other registered industrial organisations that are not affiliated with the UTLC. If the matter is to proceed in a proper fashion, the United Trades and Labor Council has to consult with all of its affiliates; otherwise, not only is democracy not seen to be done but also it is not done in its entirety.

The Attorney then went on to tell us that if matters arise that constitute an emergency then they must be dealt with as expeditiously as possible. No-one on this side disagrees with that, but what we have in front of us is a total rewrite of the Industrial Relations Bill. If I were a cynic I might suggest that the nature of the Bill would preclude any new Government from setting it in place in the period of time—something like about 10 weeks—that it took the Liberal Government to do so. If I were even more cynical than that, I would suggest that parts of the Bill at least are not of the making of the Government but rather the Government has been receiving outside advice from sources other than its departments.

I am mindful of the fact that, as agnostic as I am, it is said that the All Mighty took six days to make heaven and earth.

I am absolutely certain, knowing his Christian beliefs, that the Attorney would certainly not want to set up the Government as being in the same league as the All Mighty. But that is what we are virtually asked to believe: that within 10 weeks the Government has rewritten the Industrial Relations Bill. We are given to believe that enough time has passed for consultation, and that is clearly not the case. The UTLC has to consult with it is affiliates first, and it is a broad church organisation.

The UTLC at the end of the day does not have within its membership other registered organisations. Whilst the Attorney said that the Government had met with the SDA and, I think he said, the PSA, that is but two of many registered industrial organisations in this State. I want to take issue with the Attorney on that, because it is very clear to me that try as he might, as the Minister representing the Minister for Industrial Affairs in another place, he does not understand the infrastructure of the organisations with which we are dealing. To say that something like two months or less is a sufficient time for consultancy on the basis that I believe is required, when you are rewriting the totality of the Act, is just sheer nonsense and folly on his part.

I conclude my remarks and I hope, as a former industrial practitioner, that I have at least set the record straight in respect of the infrastructure relative to the industrial organisation with which we are dealing. Democracy does prevail in the trade unions, and the UTLC does consult with its affiliates. Two months clearly, if it is two months, is not sufficient time for that to happen, irrespective of what the Attorney says.

The Hon. K.T. GRIFFIN: It is interesting to hear that democracy is alive and well in the UTLC and that it does consult so widely with its affiliates on these issues. As it was put to the Government by the UTLC, it had established a working party specifically to discuss with the Government this piece of legislation. A very large number of representatives of various union organisations attended the initial meeting. The membership of the meeting became smaller and smaller over a period of time, but it was still a working party established by the UTLC specifically to discuss with the Government what was in its Bill.

The Bill was actually introduced on 23 March, so the UTLC had the Bill for at least 14 days before its introduction, and it was clearly indicated that it was not a *fait accompli*, but that there would be an opportunity for amendments if that could be negotiated. As you can see from the amendments that the Government has on file, there are amendments which have been made. There were actually amendments made before it was introduced. There has been that preparedness on the part of the Government to make changes. It raises the question of what is consultation. If we had the IRAC Act, we would have been obliged, if it was mandatory, to have given the Bill to the trade union movement and the employers on 9 March, and we would not have been able to proceed with it until two days ago and introduce it. That is a nonsense.

The Government was elected in December. It was given a charter to govern, and it got on with the job, and I can tell members that no drafting of any Bill had been done before the election. We put in a mammoth effort to get this Bill up and into the Parliament because we believed that, in the interests of South Australia, we had an obligation to get this legislation into the Parliament as we do in relation to a number of other policy initiatives. Believe it or not, this Government did move quickly, and a huge number of hours were put in by Ministers, our staff, advisers and parliamentary counsel, to get this and a lot of other legislation ready for introduction this session. So, there is a will on the part of this Government to get things done.

I did refer briefly to what is consultation. It is all very well to talk about IRAC and its function, which is to give advice to the Government of the day in relation to what have been referred to as substantial industrial matters. Anything that deals with consultation means that you can talk to people, you can listen to arguments, you can put counter arguments, but if you are not persuaded, you can proceed with what you ultimately intended, and there is no obligation under the IRAC Act for the previous Labor Government to accept the advice that was given, and frequently there was a division between the employer and employee representatives on IRAC in relation to legislation which was submitted to IRAC. So, it all depends on the will which the Government has to consult and then to make some decisions. There is no compulsion to accept advice or to make changes as a result of that consultation.

There is only one other matter upon which I want to make an observation, and that is that the Hon. Ron Roberts said that, if there were amendments which had to be made as a result of court decisions or some overlapping jurisdictional difficulties with the Commonwealth, then they were quite obviously the matters that could be addressed within the two month time frame. I would say that that is not correct in all cases. They may still have been regarded as matters of substance. Therein lies another issue. What is a matter of substance? It is all very well to express that sort of vague intention in legislation, but it is another matter to actually put it all into place.

Amendment negatived; clause passed.

Clauses 49 to 52 passed.

Clause 53—'Terms of office.'

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

Page 22, after line 26—Insert subclause as follows:

(5) This section does not apply to the Minister or the chief executive of the department (who are members of the Committee *ex officio*).

This is a technical amendment. It relates to the appointment of members of the Industrial Relations Advisory Committee to vacant positions. It is necessary to specifically provide in the Act that both the Minister and the Chief Executive of the Department for Industrial Affairs are members of the committee *ex-officio* by virtue of clause 52(1)(a) and 52(1)(b). In these circumstances, clause 53(4) needs to be qualified where either of these positions falls vacant.

What my amendment seeks to do is exclude from the operation of the section the positions of Minister or Chief Executive; otherwise it would not make sense. It would mean that the Governor could remove a member and that a member's office could become vacant in certain circumstances which are not pertinent to the office of Minister or Chief Executive.

Amendment carried; clause as amended passed.

Clauses 54 to 56 passed.

Clause 57—'Confidentiality.'

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

Page 23, line 23—Leave out "unless its members are unanimously of the opinion" and substitute "unless the committee resolves".

The question of confidentiality is one which I think should be determined by resolution of the majority of the committee and should not be a unanimous decision.

The Hon. K.T. GRIFFIN: I support the amendment. Under the existing Industrial Relations Advisory Council Act,

IRAC members must be unanimously of the opinion that a decision of IRAC should be publicly announced for this to be permitted. The amendment quite obviously requires a resolution of the committee which is obviously a majority. The Government would have preferred the existing position to have been retained, but does acknowledge the fact that some public disclosure of divided views amongst IRAC members may be appropriate. Therefore, as I indicated, we will support the amendment.

Amendment carried; clause as amended passed.

Clause 58—'Constitution of the office.'

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

Page 24, lines 9 and 10—Leave out subclause (2).

We are now looking at the Employee Ombudsman. During the second reading stage I expressed a very strong view that the concept of Employee Ombudsman is a good one but, if we are to have such a person, I believe that person needs to be independent. The Government promised, during the election campaign, by way of its policy, that there would be an Employee Ombudsman, which I have said I support. By the very name 'Ombudsman' and the fact that the policy also made it plain that the Employee Ombudsman would be reporting to Parliament annually, it was a reasonable assumption that this person would be independent and not subject to political pressures and interference. What is interesting is that that view has been held fairly widely, and even held by the State Ombudsman himself, who wrote to the Hon. Mr Griffin on 20 April.

The Hon. K.T. Griffin: He didn't like its being called Ombudsman.

The Hon. M.J. ELLIOTT: That's right. There is an important point here. I think it is worth reading the letter, because it underlines what I wish to argue. It states:

I am cognisant of the debate in Parliament concerning content of clauses 58-61 of the Industrial and Employee Relations Bill. (See *Hansard* report 19 April 1994 at pages 802 and 803).

I have of course no interest as Ombudsman in the content of the Bill itself or the jurisdiction of the 'Employee Ombudsman'. I do have however considerable concern about the use of the word 'Ombudsman' in a context of an officer who by virtue of his appointment and 'control and direction' could not be described as being an Ombudsman in the classical traditional sense or for that matter even the current extended use of that word.

I have raised these concerns and observations in Parliament in several of my previous reports to Parliament and more recently in my Twenty First Annual Report. (See pages 33-34 annexed hereto.)

There are grievance-handling officials in the world who carry out functions of an Ombudsman-type but nevertheless by reason of the constitutional process of their appointment are linked to the President or to the Government itself rather than a parliamentary system (e.g. Pakistan), but these officials are not styled 'Ombudsman'.

Another concern with the extension of the use of the word 'Ombudsman' to circumstances that do not fit the traditional model is that it may lead to unnecessary confusion in the public mind and degrade the essential value of the principal institution *viz.* direct accountability to the Parliament, which has become part of the general public expectation. I enclose herewith several materials which I believe ought to be considered in this regard and would be prepared to make a more detailed and objective submission on this particular matter if you wish. As the matter is already one of parliamentary debate, and I am an officer of Parliament, I think it sufficient that copies of this letter be tabled in Parliament in the context of any debate relating to the use and application of the term 'Ombudsman'. Yours sincerely, E. Biganovsky, Ombudsman.

There are two reactions that the Government could put up to this one; one is that what he is saying is—

The ACTING CHAIRMAN: Is the honourable member seeking to table that document?

The Hon. M.J. ELLIOTT: No: I just quoted it. The Government might like to argue, 'Perhaps we will not call this person an ombudsman; we will call them an industry advocate or something like that, and therefore the concerns raised by the Ombudsman are overcome.' However, the Liberal Party's policy provided for an ombudsman who would be reporting to Parliament, and any reasonable person reading the Government's policy would have anticipated that we were getting an ombudsman—that we were getting an independent person—as we all understand an ombudsman to be—who would be reporting to the Parliament and carrying out whatever functions were designated to that person.

If the Government is serious about sticking to its mandate, as it keeps on insisting that I should do, here is another example where it has strayed well wide by its legislation. This first amendment of a series of amendments which I intend to move does not seek to change the role that the Government has given this person but does seek to ensure that this person is an ombudsman as the Government promised.

The ACTING CHAIRMAN: The Hon. Mr Roberts has the same amendment. Does he wish to withdraw his amendment?

The Hon. R.R. ROBERTS: I think the wording is slightly different.

The ACTING CHAIRMAN: It says 'Leave out subclause (2).'

The Hon. R.R. ROBERTS: I would like to move the amendment. I move:

Page 24, lines 9 and 10—Leave out subclause (2).

This is a fundamental position adopted by the Opposition in that the Government promised the appointment of an independent employee ombudsman to assist workers, whether or not they be members of unions. The existing Bill provides for a so-called employee ombudsman who is directly under the control and direction of the Minister for Industrial Affairs. If the Government wishes to appoint an ombudsman, it should be honest with the public of South Australia and appoint a person who is appointed and subject to dismissal only by resolution carried by the both Houses of Parliament.

The State Government itself is the largest employer of labour under the State industrial legislation. It is a nonsense that an employee ombudsman can realistically represent the interests and rights of the State Government employee when he or she is directly responsible to the Minister. For those reasons and the reasons so adequately put by the Hon. Mr Elliott, we are supporting the setting up of an ombudsman in the true sense of the word.

The ACTING CHAIRMAN: The Hon. Mr Roberts did not need to move his amendment as it is the same as the Hon. Mr Elliott's amendment.

The Hon. K.T. GRIFFIN: The Government does not support either amendment. If we go back to the policy, we see that it does talk about an 'employee ombudsman', and that is a term which, for non-parliamentarians, means someone who can be independent and give advice. If you look at the policy, you see that our proposal was that the office of employee ombudsman would be established to assist with the provision of information, advice and support. It provides that the employee ombudsman will report to Parliament at least annually, although many bodies and officers report to Parliament without necessarily being officers of the Parliament. The role will include advice on awards and agreements; support for actions to recover entitlements owing

under awards or agreements; advice to individual home-based workers, in other words outworkers who are not covered by awards or enterprise agreements in negotiating individual contracts with employers; and an advisory service—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: They had rights even under our Bill. It provides for an advisory service on the rights of employees in the workplace relating to occupational health and safety issues. That provision is not in the Bill because, when the policy was released in July last year, we certainly intended that that would be a service provided to employees but subsequent to that we released a workers safety policy and specifically we gave this function to the body that was to be responsible for the monitoring of worker safety.

The Hon. T.G. Roberts: Does that mean that occupational health and safety becomes an industrial matter?

The Hon. K.T. GRIFFIN: I do not think it changes the principle. 'Rights, privileges or duties of employers': I should have thought it was within the definition, whether that in the Bill now or that which was in the Bill before it was amended. The first point to make is that we have identified clearly the functions of this officer. As the Hon. Mr Elliott says, perhaps if you did not want an ombudsman actually appointed by the Parliament, accountable to the Parliament and with all the other characteristics of an ombudsman, which he has inferred from the policy, then call that person something else. It may be that 'employee advocate' may have been—

Members interjecting:

The Hon. K.T. GRIFFIN: But you cannot just look at the name. You have to look at the functions.

The Hon. R.R. Roberts interjecting:

The ACTING CHAIRMAN: Order! It's getting late.

The Hon. K.T. GRIFFIN: It is clear. It has a heading 'Employee ombudsman' and it talks about what the functions of that officer will be.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: What the Hon. Mr Elliott is saying really misrepresents what is in the Bill. The Bill provides, under the annual report provisions—

An honourable member interjecting:

The Hon. K.T. GRIFFIN: It is all very well to laugh, but the fact is that it is a misrepresentation of the position: the employee ombudsman must prepare and forward to the Minister a report. Subclause (3) provides:

> The Minister must, as soon as practicable after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

That is reporting to the Parliament. The fact of the matter is that that clearly reflects the intention of the policy. We certainly did not say and it cannot even be inferred, even though the Hon. Mr Elliott seeks to draw the long bow, that the ombudsman will be an officer of the Parliament. We say, 'will report to the Parliament at least annually,' and that is what is happening. It is a report to the Parliament.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: The Minister can have a look at it; so what? The Minister cannot doctor the report.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: The Minister cannot. The employee ombudsman reports to the Minister, who then tables the report. Under the Labor Government, Government agencies, departments, officers and a whole range of people reported to the Parliament through the Minister.

Members interjecting:

The Hon. K.T. GRIFFIN: No, the Ombudsman reports direct to the Parliament. That is fine.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: You might be saying that, but you have clearly misrepresented the policy. For that reason, we believe that it is a misrepresentation of our policy. If we turn to the Hon. Mr Elliott's amendment, what he seeks to do is make this person truly an officer of the Parliament so that, whilst the Governor can make an appointment, the person cannot be appointed as the employee ombudsman unless or until his or her proposed appointment has been approved by a resolution of both Houses of Parliament. That is not akin to our policy in relation to certain officers of the Parliament: the Ombudsman, as such, the Electoral Commissioner, the Auditor-General.

In Alberta, for example, there is a bipartisan committee of the Parliament that very confidentially assesses applications for the position of ombudsman when the position is vacant and applications have been called for, and there is a bipartisan approach, so that candidates' names are not all bandied around and abused, commended, or whatever, and the process is politicised. There is a genuine process in Alberta, as there is in New Zealand, for the appointment of the ombudsman through a discreet and confidential process involving all parties within the Parliament.

But to suggest that that ought to apply to this officer is again misrepresenting the policy. If we look at what the Ombudsman had to say in the letter and reports which I tabled, he is drawing a distinction between his position as Ombudsman and that position which is recognised around the world as ombudsman from the functions being performed by this officer. It was my interpretation of what the Ombudsman was saying that, because of the functions of the office of the employee ombudsman, it was not appropriate to call that person an ombudsman. That is the point he was making—relating it to functions. To then suggest that one can only remove an employee ombudsman on the presentation of an address from both Houses of Parliament is quite ludicrous and inappropriate because the employee ombudsman is not performing all of the sorts of functions that the Ombudsman is addressing under his legislation. We reject vigorously both proposals of the Hon. Mr Roberts and the Hon. Mr Elliott.

The Hon. M.J. ELLIOTT: When you have got it wrong, I suppose you still have to put up an argument. The point I was making to the Attorney-General is that the Government used the term 'ombudsman' in its policy and, in the second part talked about the ombudsman's reporting to Parliament annually, which is exactly what the current Ombudsman does as well, and so far as the Government has supplied any information, there is no reason to believe at all that this person was not going to behave in an ombudsman-type manner and was not going to be independent.

The policy that the Liberal Party has in relation to the employee ombudsman is a good idea; it is one that I am pleased to support. If the Government is saying that it is going to give assistance particularly to non-unionised labour—that is where the assistance is going—then it is important that that person is independent and not susceptible to pressures and can then carry out the role in an impartial manner. The Attorney has questioned the particular mechanism that I have put forward for getting independence for this position. I have read the Liberal Party policy about the State Ombudsman and it talks about Parliament's being involved in the appointment but in the policy it did not spell out the mechanism.

If the Liberal Party had a mechanism in mind for that position, which is one that does not create a political bunfight and is not a public blood-letting, as it did not spell it out in that policy, I did not know what mechanism it intended. I am willing to accept a mechanism which is different from the one I have proposed. All I am asking, as I have done in other parts of the Bill, is to get levels of independence. As much as the Government might want to argue on a philosophical ground how independent some of the positions might be, I cannot see how it can sustain an argument in the face of what its own policy says.

Amendment carried; clause as amended passed.

New clause 58a—'Appointment of employee ombudsman.'

The Hon. K.T. GRIFFIN: Neither amendment is satisfactory. However, if one has to take a punt, the Government would prefer the course followed by the Hon. Mr Roberts and hope that there could be some discussion as the Bill goes through the deadlock conference stage. It is not desirable but it is the lesser of two evils.

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

New clause, page 24, after line 10—Insert new clause as follows:

Appointment of Employee Ombudsman

58A. (1) The Employee Ombudsman is appointed by the Governor on conditions determined by the Governor and for a term specified in the instrument of appointment and, at the expiration of a term of office, is eligible for reappointment.

(2) However, a person cannot be appointed as the Employee Ombudsman unless or until his or her proposed appointment has been approved by resolution of both Houses of Parliament.

(3) The Governor may remove the Employee Ombudsman from office on the presentation of an address from both Houses of Parliament seeking the Employee Ombudsman's removal.

(4) The Governor may suspend the Employee Ombudsman from office on the ground of incompetence or misbehaviour and, in that event—

(a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within seven days of the suspension if Parliament is then in session or, if not, within seven days of the commencement of the next session of Parliament; and

(b) if, at the expiration of one month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the Employee Ombudsman's removal has not been presented to the Governor, the Employee Ombudsman must be restored to office.

(5) The office of Employee Ombudsman becomes vacant if the Employee Ombudsman—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice given to the Minister; or

(d) is convicted of an indictable offence; or

(e) becomes, in the opinion of the Governor, mentally or physically incapable of carrying out duties of office satisfactorily; or

(f) is removed from office under subsection (3).

I move this amendment, despite the indication and the attempt by the Minister to pre-empt all of this. Indeed, the Attorney-General is trying to avoid having an independent ombudsman.

The Hon. K.T. Griffin: Rubbish!

The Hon. M.J. ELLIOTT: You are. The mechanisms I am moving to insert are seeking to achieve that. As I have said previously, I am quite happy to look at other mechanisms that create a genuinely independent ombudsman. However, I do not believe the Hon. Mr Roberts' amendment actually addresses that particular question. To that extent, I believe his amendment is deficient.

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

New Clause, page 24, after line 10—Insert new clause as follows:

Appointment and conditions of office of Employee Ombudsman

58A. (1) The Employee Ombudsman is appointed by the Governor for a term of office expiring when the appointee reaches 65 years of age.

(2) The office of Employee Ombudsman becomes vacant if the Employee Ombudsman—

(a) dies; or

(b) reaches 65 years of age; or

(c) resigns by written notice given to the Minister; or

(d) becomes mentally or physically incapable of carrying out the duties of the Employee Ombudsman's office; or

(e) is removed from office by the Governor on presentation of an address from both Houses of Parliament asking for removal of the Employee Ombudsman from office.

(3) The Employee Ombudsman can only be removed from office if he or she becomes mentally or physically incapable of carrying out the duties of the Employee Ombudsman's office or if both Houses of Parliament present an address to the Governor asking for removal of the Employee Ombudsman from office.

The Opposition has the same intentions as the Hon. Mr Elliott. Our drafting is—

The Hon. K.T. Griffin: Not good intentions, either.

The Hon. R.R. ROBERTS: He is being provocative.

An honourable member interjecting:

The Hon. R.R. ROBERTS: I will not make him withdraw; I am a very tolerant person. I think the indications are clear. Both the Hon. Mr Elliott and I seek to ensure that an ombudsman, if we were to appoint an ombudsman, is truly that. That is the intention of the amendment and I do not need to pursue it any further.

The Hon. K.T. GRIFFIN: I am sorry I pre-empted the debate. I was just trying to hurry things along a bit. I indicate again that the lesser of the two evils is the Hon. Mr Roberts' amendment. The Government certainly intended that there be a measure of independence, but also a measure of accountability.

One analogy which came to mind was the concept of review officers under the WorkCover legislation. Whilst it is not an ideal situation, and we have been critical of it, the review officers are, by statute, independent regarding their decision-making process but are nevertheless accountable for their day-to-day administrative responsibilities to the corporation. I do not suggest that that is a desirable precedent. However, at least it reflects the sort of dual responsibility and independence of action in relation to a defined area of responsibility on the one hand but a measure of accountability for the performance of administrative functions on the other.

It may be across the spectrum of the debate on this issue that we will find some means by which we can reach at least a compromise on the way in which this officer will approach his or her function of providing advice and support for employees.

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

Clause 59—'Ministerial control and direction.'

The Hon. R.R. ROBERTS: The Opposition is opposed to this clause, as it makes the employee ombudsman directly subject to the direction of the Minister. Therefore, we are falling into line with the Hon. Mr Elliott's opposition to this clause.

The Hon. K.T. GRIFFIN: I can see where the numbers are and, whilst we have some concern about it, I recognise that we will not be successful.

Clause negatived.

Progress reported; Committee to sit again.

SUPPLY BILL

Adjourned debate on second reading.

(Continued from 9 March. Page 200.)

The Hon. CAROLINE SCHAEFER: I rise to support this Bill. In doing so, I wish to comment on the rural economy and in particular the rural debt audit which was tabled recently in another place. This audit was commissioned by our Government and is by far the most accurate and far reaching inquiry into debt in rural South Australia, and as such I would recommend that all members read it in detail. Essentially, all lending institutions were surveyed and South Australia's 14 000 farm businesses, which between them owe $1.3 billion, were divided into three categories: those with A level debt, or over 70 per cent equity, and little or no difficulty servicing their debts; those with B level debt, involving between 30 and 70 per cent equity, and some difficulty and declining ability to service their debts; and those with C category equity, which is under 30 per cent equity, involving extreme difficulty in servicing their debts. These people will probably be forced to leave the industry without outside income.

The findings show that, although South Australia's farm debt is at its highest level ever, 77 per cent of our farm businesses still have a serviceable debt, which is a great credit to those people who have hung on for 10 years in an ever-declining climate. While this finding should be reassuring to lending institutions and the Government, it should be remembered that 23 per cent of farm businesses are in real trouble. It is a matter of grave concern in any industry if a proportion of almost one in four businesses is at real risk. This audit has gone further and identified debt categories in regions and in commodities. It is from these figures that the real pattern emerges. The regions are as follows:

In the Adelaide Hills, Fleurieu Peninsula and Kangaroo Island, 13 per cent of total borrowers hold 16 per cent of total State indebtedness; in the Eyre Peninsula/West Coast area, 11 per cent of total borrowers hold 12 per cent of total State indebtedness; in the Mallee and the Murray Lands, 9 per cent hold 6 per cent of total State indebtedness; in the Mid North, 20 per cent hold 18 per cent of total State indebtedness; in the pastoral country, 2 per cent of total borrowers hold 3 per cent of total State indebtedness; in the Riverland, 16 per cent hold 11 per cent of State indebtedness; in the South-East, 21 per cent of total borrowers hold 26 per cent of total State indebtedness; and in the Yorke Peninsula 8 per cent hold 8 per cent of total State indebtedness. This does not categorise what percentage of those people are on A, B or C levels.

On an industry basis, 7 per cent of the cattle industry holds 10 per cent of total State indebtedness; 37 per cent of the cereal industry holds 32 per cent of total State indebtedness; 7 per cent of the dairy industry holds 7 per cent; 10 per cent of the horticulture industry holds 9 per cent of total State indebtedness; 7 per cent of the viticulture industry holds 6 per cent thereof; 20 per cent of the wool and sheep industry holds 27 per cent of total State indebtedness; and 12 per cent of other industries hold 9 per cent of total State indebtedness.

In summary, the two major industries of cereals and wool and sheep between them comprise 57 per cent of total borrowings, holding 59 per cent of total State rural indebtedness. Four regions were confirmed by the study as problem areas: Eyre Peninsula/West Coast, the Riverland, Mallee-Murray Lands and Kangaroo Island.

The Hon. Bernice Pfitzner asked earlier tonight where the wealth in rural South Australia comes from. A quick summary would be to say viticulture and cattle at this stage. I recognise, however, that that would simplify the issue. What the audit has done is identify areas and commodities which must be targeted if they are to survive. It is hoped that rural development grants, as indicated by the Federal Government, can be used in these areas to maintain the population infrastructure. I know that the Minister for Regional Development and the Minister for Primary Industries are working towards that end.

Bearing this in mind it is of great concern to me to learn that the Federal Government, in last night's budget, announced that it will cease exceptional circumstance interest rate subsidies to wool growers as from 30 June this year. Many growers, who with one more year's funding would have survived, are now left high and dry. A report on last night's budget which I obtained from the National Farmers Federation states:

> The budget contains only $498.2 million of Commonwealth funds for agriculture, forestry and fishing. While the budget shows $1 742.4 million will be spent, farmers themselves will contribute $728.5 million in taxes and charges and $515.7 million in the diesel fuel rebate. Of the actual contribution of $498.2 million, the Department of Primary Industries and Energy will use $90.3 million, and there is $15.3 million to pay redundancy packages to meat inspectors.

In the end, therefore, the Government will also be applying $392.6 million, of which $102 million will go to National Landcare programs. The summary then is that there will be very little from this budget for rural South Australia. One can only hope that the Federal Government will come to its senses and begin some real incentives and recognition for this valuable industry. I support the second reading.

The Hon. R.I. LUCAS (Minister of Education and Children's Services): I thank members for their contributions to the second reading of the Supply Bill. I should like to respond briefly to some of the issues that were raised. I refer in particular to the contribution by the Leader of the Opposition, who raised one or two general issues to which I wish to respond. Towards the end of his contribution he made some requests of the Government in relation to funding commitments, and I have a response, albeit brief, from the Under Treasurer to some of those questions.

One of the first issues raised by the Leader of the Opposition was the notion that the Government's move to reduce the number of Supply Bills from two to one was in some way a lessening of the mechanisms of accountability of the executive arm of Government to the Parliament. I can only suggest that, as he now has some time at hand, he might address himself to some of the Supply Bill debates in the Legislative Council over the past three or four years in relation to the sorts of issues and questions that were raised on most occasions.

The Hon. C.J. Sumner: Not just in the Council.

The Hon. R.I. LUCAS: Let us talk about the Legislative Council. I also suggest that he should look at the contributions made in the main by members of the House of Assembly during debates on Supply Bills. As the Leader suggested towards the end of his contribution, one could fairly say that they give House of Assembly members an opportunity for a grievance debate, and only in recent years has this opportunity been given to members of the Legislative Council. If anyone is talking about strict notions of executive accountability to the Parliament, I do not believe that many

independent political observers would believe that the move from two Supply Bills to one Supply Bill in a year would by itself lessen the accountability of the executive arm of Government to the Parliament. Nothing that I have seen in my 12 years in Opposition and scrutiny of Supply Bill debates in both Houses of Parliament would indicate that that would be the case.

In relation to opportunities for grievance procedures, there have been some changes in recent years in the House of Assembly. Immediately after Question Time on each sitting day, about 30 minutes of grievance time is provided, and generally six members speak for about five minutes each on any matter upon which they might like to grieve. This gives members of Parliament an opportunity to raise matters in the House of Assembly, perhaps to bring the executive arm of Government to account, to represent the views of their constituency on a particular matter or, indeed, to put forward a point of view that a member wishes to put on the record for public consumption.

As a member of the Opposition in this Chamber, I have spoken on a number of occasions during Supply Bill debates about the fact that we in the Legislative Council do not have the opportunity of speaking in a grievance debate, and I called on the Legislative Council to consider the option of a grievance debate for members of this Council. I indicate that it is my intention as one member of the Government and of the Legislative Council to explore with the Leader of the Opposition and members of the Labor Party and the two Australian Democrats during the coming parliamentary recess, if we ever get to it, the notion of making changes to our Standing Orders, in particular, to provide for a grievance debate procedure in this Chamber.

That would provide all members in this Chamber with the opportunity to grieve on a particular issue and also, on a relatively regular basis, to bring the Executive arm of Government to account, without having to go through the devices that we have all gone through in the past and the Leader of the Opposition and his colleagues are now going through in order to raise a particular issue. We see it all the time when the explanation of a question is much longer than it might normally be because members of Parliament want to put down a particular attitude on an issue.

If the Leader of the Opposition would like to go back over the contributions of the past two or three weeks, he will find that on at least two occasions he has played fast and loose with the Standing Orders of the Legislative Council in relation to commentary during an explanation to a question because he wanted to put his view down on a particular issue. I understand what the Leader of the Opposition is going through because I went through it for some time when my Party was in opposition.

The other device used by members of the Opposition is to move a motion to enable them to talk about a particular issue. The perfect case in point was the motion moved yesterday and spoken to today by the Hon. Anne Levy in relation to Writers' Week. I suspect that, if we had been able to provide the Hon. Anne Levy with five or 10 minutes of grievance time, and there was some sort of restriction, she may have been able to at least get off her chest her views and concerns in relation to Writers' Week without moving a motion, which everyone knows was not going to be voted on in the end. That is not a criticism of the Hon. Anne Levy, because I have been there. In fact, all of us have had to use similar devices in the past to get our viewpoint on the record on a particular issue because we felt strongly about it or wanted other people to know our view on a certain issue.

There are other ways that we as a Chamber can sensibly ensure that members have an opportunity to keep the Executive arm of Government on a reasonable leash and bring it to account whilst giving members of this Chamber the opportunity to put down their viewpoint without having to go through the devices that members of the Opposition generally have to use to undertake such a course. Therefore, I am a strong supporter of the notion of having one Supply Bill instead of two.

When my Party was in opposition I raised this matter with the then Leader of the Government, the Hon. Mr Sumner. I do not think he was as adamant when in Government, or certainly not in response to my question—he said it was an issue at that stage that could be considered at some point but that the Government had made no decision to go down this path. I do not think it was an unequivocal 'No' that he would never consider it, but rather it was a case of, 'It is not on our agenda; we have not decided to do it; it may happen some time'.

I have always been a supporter of this notion. I cannot understand the view that we need to move a Bill to provide Supply for a certain period, and for a period that continues straight after that we have to move another Supply Bill in the next session to provide Supply until the Appropriation Bill debate is completed some time in November. The Leader of the Opposition then raised a number of general points about the state of the State economy. I will quote from a number of areas. He said:

> In a nutshell, South Australia's debt is now under control.

I refer the Leader of the Opposition to the Commission of Audit report to indicate where I think at least those eminent persons in matters economic would certainly not agree with the Leader of the Opposition's proposition that South Australia's debt is now under control. Later, the Leader of the Opposition said:

> The fact is that the stabilisation of the State's finances was well advanced under Labor as I have described through the last budget and through the Meeting the Challenge package.

I do not want to delay the Chamber this evening, as we near the end of the session, but I refer the Leader of the Opposition to the Commission of Audit report, which in summary indicates that we, as a State family budget, spend $350 million a year more than we bring in. Any household family budget that spends $350 a fortnight more than it takes in knows full well that in the not too distant future it will run into significant financial difficulties.

The Commission of Audit is telling us that this State's family budget is spending $350 million a year more than it is taking in, and we just cannot go on with that sort of family budget for the State of South Australia. The Government has to take some action in relation to those sorts of financial circumstances. Again, I would reject the notion of the Leader of the Opposition that it was a fact that the stabilisation of the State's finances was well advanced. Indeed, the Commission of Audit reports in some detail on the previous Government's Meeting the Challenge package, and it indicates that the state of the finances certainly had not been stabilised, and that our fiscal problems were ballooning and exploding out of control.

The Leader of the Opposition then concluded by saying this:

To conclude on this topic, the Liberal Government has inherited a moderate level of State debt, with a debt reduction strategy which will see the recurrent deficit eliminated by 1995-96.

Again, the Commission of Audit rejects that out of hand and indicates, as I said, that our recurrent deficit is some $350 million a year. It certainly does not support the proposition from the Leader of the Opposition that the recurrent deficit of $350 million will be eliminated by 1995-96 if the previous Government's existing policies are continued. The Leader of the Opposition then asked some specific questions, which I have obviously had to refer to the Treasurer and Treasury, and I refer to those questions, as follows:

What I want to know from the responsible Ministers is: what are the items which the Liberal Government has agreed to over and above those included in Labor's budget and which have been added and therefore added to the expenditure of the budget in 1993-94?

So, what are the items which the new Liberal Government has agreed to over and above those included in Labor's budget and which have been added and therefore added to the expenditure of the budget in 1993-94? I have a note from the Under Treasurer, Mr Peter Boxall, in response to my request. It is headed 'Liberal policy commitments impacting on the 1993-94 budget', and it states:

Cabinet has made a number of expenditure commitments which will impact on the 1993-94 budget. It is important to point out that many of these relate to the machinery of Government e.g. agency and ministerial restructuring and others e.g. Parliament House refurbishment not included in the Government's policy commitments. There are only two electoral commitments to our knowledge included in the 1993-94 budget figuring to date which will impact on the outcome for the year. These include:

- Audit Commission costs (est) $1.5 million
- Jobs Package (est) $1 million

The Jobs Package estimated to cost $4 million in 1993-94 will be financed by additional funding of $1 million (as above) and the balance (i.e $3 million) by reallocation within the budgets of the agencies involved. Given the limited time to consolidate this information it was not possible to contact agencies to ascertain whether they are undertaking some electoral commitments from within their existing resources.

It is fair to say that a number of Ministers are reallocating the resources within their existing 1993-94 budget to meet some electoral commitments. In my own area of education and children's services, I refer to the restructuring of the senior end of the department where we axed almost half the director level positions. We used some of that funding to employ extra speech pathologists, which was one of the electoral commitments that the Government made in relation to assisting children with learning difficulties and special needs in the early years of education.

In many or most Government agencies there has been the reallocation of priorities within the 1993-94 budget figures that were provided to Ministers. That is the response I have received from the Under Treasurer regarding those specific commitments. The Leader of the Opposition might like to reflect on those responses. If he has any further questions I would be pleased to refer them to the Under Treasurer. As he would understand, we need to get the Supply Bill through this week. If I can get the responses before we finally debate this Bill and pass it, I will certainly do so. If they are more long term in nature, as the Leader has done in the past I will certainly undertake to provide a written response during the parliamentary recess.

Bill read a second time.

LIMITATION OF ACTIONS (RECOVERY OF TAXES AND SUBSTANTIVE LAW) AMENDMENT BILL

Consideration in Committee of the House of Assembly's message intimating that it insisted on its amendments to which the Legislative Council had disagreed.

The Hon. K.T. GRIFFIN: This is essentially a formality to finalise the movement towards a deadlock conference. It relates to an issue of 12 months or six months as the period of limitation. I move:

That the Legislative Council do not insist on its disagreement to the House of Assembly's amendments.

Motion negatived.

A message was sent to the House of Assembly requesting a conference at which the Legislative Council would be represented by the Hons. M.S. Feleppa, K.T. Griffin, Sandra Kanck, A.J. Redford and C.J. Sumner.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

In Committee (adjourned on motion).

(Continued from page 929.)

Clause 60—'General functions of Employee Ombudsman.'

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

Page 24, lines 22 to 25—Leave out paragraph (d) and insert:
(d) to represent employees in proceedings if their rights and entitlements are in issue and it is in the interests of justice that such representation be provided; and.

The Government's legislation with respect to an Employee Ombudsman's functions are very limited. An Employee Ombudsman is able to advise employees only as to their rights and obligations and as to their avenues with respect to enforcing their rights under the award through enterprise agreements. Clause 60(1)(d) allows the Employee Ombudsman to intervene only in enterprise agreement matters before the Enterprise Agreement Commissioner where there are grounds to suspect coercion in the negotiation of the agreement or for some other special reason. Under the Opposition's amendment, the Employee Ombudsman is entitled to represent employees, whether or not they are members of unions, in proceedings before the Enterprise Agreement Commissioner, as well as the interests of those employees where they believe they are not being well served under the enterprise agreement.

There are examples where employers have not exercised coercion with respect to their employees in making an enterprise agreement. Those employees could simply have misunderstood or not fully comprehended the consequences of their entering into simple agreements, for example, the abolition of penalty rates, where those employees are largely non-English speaking persons and have traditionally been female. They may be in the minority in the work force who are substantially disadvantaged by the terms of that agreement. They should have access to an independent person who is able to represent their interests as of right before the Enterprise Agreement Commissioner and not restricted simply to the suspicion of coercion.

The Hon. K.T. GRIFFIN: The amendment is opposed. It is important to recognise that the paragraph as it is in the Bill at the present time relates to situations not only where coercion is suspected in the negotiation of an agreement but also if some other special reason justifying the Employee Ombudsman's intervention in the proceedings becomes

apparent, and that means it can be fairly wide. It is certainly not defined, but it gives an opportunity for representation in other areas where it appears that there is some special reason justifying that.

The Hon. Mr Roberts' amendment would also give to the Employee Ombudsman a very wide right to appear in award making proceedings. We did not think there was a need for that, because the award making proceedings are very largely unchanged from the principal Act. It is the area of enterprise agreements where we feel that there may need to be at least some measure of protection in circumstances where the agreements may relate to one or two or a small number of employees rather than a large number. It is there as, in a sense, a safety net to guard against any concerns which persons might have in respect of the negotiation process. We see no justification for the amendment to broaden the impact of the responsibility of the ombudsman and we are satisfied that what is in the Bill is an appropriate measure of protection or safety net provision.

The Hon. M.J. ELLIOTT: It seems to me that the Hon. Mr Roberts' amendment broadens paragraph (d) in two ways. First, it does allow involvement of the ombudsman in relation to awards, although I must say since most, if not all, of those will see unions involved, I would expect that the ombudsman would say it is unnecessary, and just simply make that decision. If there was some special instance where the ombudsman felt a need, why preclude the ombudsman?

The other broadening I think is a more significant and important one. At this stage the test that exists within paragraph (d) is that the ombudsman must suspect coercion, and then it says 'or some other special reason', which to me is fairly vague, whereas the amendment proposed talks about being 'in the interests of justice that such representation be provided'. In this case, the 'interests of justice' certainly picks up questions of coercion, but it gives a little more direction than just talking about special reasons. They are not absolutely specific, but paragraph (d) certainly implies there may be cases when the ombudsman may want to become active for instance in the negotiation of enterprise agreements, not just when there is a suspicion of coercion but simply when there is a concern that the employees may not be getting a fair go.

I might have said that in a rather vague way but, when one considers that the ombudsman might be advising employees on their rights and obligations and on ways of enforcing their rights in so doing, the ombudsman may become aware of a group of non-unionised employees in particular who may not be capable of negotiating their own agreement. There may be some reason for feeling that there is concern, and the ombudsman in such instances may feel free to become involved to a greater extent.

The Hon. K.T. GRIFFIN: What the Hon. Ron Roberts' amendment does is to bring the Employee Ombudsman into the whole gamut of the conciliation and arbitration process. Whilst it is correct that that may not occur on so many occasions because of the involvement of employee associations in the award making process, nevertheless it does provide that opportunity and it introduces a totally new concept into that part of the industrial relations process which is relatively unchanged from what the present Act provides. So it does introduce a new element and it broadens it significantly.

It is very difficult to define interests of justice, just as it may be difficult to define a special reason. I think it is important to note that what clause 60 does is to establish the Employee Ombudsman's functions, and very broadly they coincide with the policy we had at the election. The paragraphs provide:

(a) to advise employees on their rights and obligations under awards and enterprise agreements; and

(b) to advise employees on available avenues of enforcing their rights under awards and enterprise agreements; and

(c) to investigate claims by employees or employee associations of coercion in the negotiation of enterprise agreements; and

(d) to represent employees in proceedings. . . [where it is suspected that there has been coercion].

That is quite a proper basis upon which to have the Employee Ombudsman involved, because where coercion is suspected it is important to have someone who is a bit away from the interests of the employer and the employee to be able to deal adequately with that process and to investigate the conditions under which work is carried out in the community under contractual arrangements with outworkers and other examinable arrangements.

It is broadly consistent with the policy position. It does not involve the Employee Ombudsman in actual representation in the broad range of the conciliation and arbitration process, and I think that that is important to recognise. For those reasons, we believe paragraph (d) in the Bill ought to remain and that the Hon. Mr Roberts' amendment should not be supported.

The Hon. CAROLYN PICKLES: How will the Employee Ombudsman satisfy himself or herself that coercion took place, and what does coercion constitute?

The Hon. K.T. GRIFFIN: You can take it in the bald sense: 'You sign this or else you do not get a job or you do not keep your job.'

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: The Hon. Carolyn Pickles asked me what coercion is. I am giving her the most blatant example. There may be more subtle pressure. Coercion is not physical force; it may be a whole range of activity which is not normal negotiation in the sense that the cards are on the table. It may be: 'This is what the company or the enterprise can afford. You can see where our profit is going. If you stay with us for 12 months but you stay at a lower rate, in 12 months time this is the bonus you will be paid.' The SPC enterprise agreement is an example of that. I would not regard that as coercion: that is merely putting the facts on the table. But I suppose coercion may well be: 'If you do not accept this, you will now be sacked.' That is a more blatant example of that sort of coercion. I cannot give you any clearer example of what coercion may be.

We are trying to ensure that the arrangement between employer and employee is freely negotiated. If the employees say, 'Well, look, all things being equal and, given the facts, that is the best we can negotiate with you; therefore we have some pluses, we have some minuses, we will go into it.' If it is freely negotiated in that sort of way no-one can suggest there has been coercion, and we are trying to ensure that the framework within which the negotiation takes place and the agreement is entered into is negotiated freely. It may be a tough bargaining process but in the end the employer and the employee recognise that what they finally negotiated is the best for both or the worst for both and is appropriate to be accepted.

The Hon. T. CROTHERS: I want to direct a question to the Attorney. Assuming this all goes through here, what sort of supporting mechanism does the Government envisage the

ombudsman will have relevant to the carrying out of the functions that will be attached to his or her office?

The Hon. K.T. GRIFFIN: We have not identified that there will be 10 staff or six staff or that they will be in this category yet—

The Hon. R.R. Roberts: You know precisely how many judges you will need.

The Hon. K.T. GRIFFIN: What do you mean? You do or you don't know.

The Hon. R.R. Roberts: You said that you do.

The Hon. K.T. GRIFFIN: No, I haven't. I haven't made any indication at all.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: It could be busy and we will provide the resources to enable the job to be done properly. That is on the record.

The Hon. T. Crothers: How do you know what resources will be required?

The Hon. K.T. GRIFFIN: We don't yet. It is in our interests and the Government's interests that the Employee Ombudsman have the adequate resources to do the job; it is as simple as that. No Government that sets up a new office which is designed to play a key role in this process or enterprise agreements is going to run the risk that in 12 months time there will be a report through the Minister to the Parliament, or however that occurs, where the Employee Ombudsman says, 'I haven't got enough resources.' We had the Ombudsman under the previous Government saying, 'I had to type my own annual report because I did not have any resources.' I can give you nothing clearer than an expression of principle, an intention, that we intend that there will be the necessary support to ensure that the Employee Ombudsman is able to perform the functions required under the Act.

The Hon. T. CROTHERS: Mr Chairman, that answer just appals me. I said earlier tonight that it was my view that not enough time had been given in respect of the whole of this Bill, a Bill of some 200 odd—

The Hon. K.T. Griffin interjecting:

The Hon. T. CROTHERS: Let me finish. I have not entered into the debate all that much. I ask the Attorney to show me the courtesy that I think members deserve in this place when they are on their feet speaking about a very serious matter. As I said, that answer that I have been given appals me because it seems to me, and I repeat again, that this Bill has been cobbled together in indecent haste. It is rather like putting the cart in front of the horse not to know in advance of the utilisation of the ombudsman just what facilities he or she is going to be accorded. It is all very well for the Attorney to sit in this Chamber and say, 'Well, look, the ombudsman has to report to the Minister and therefore to the Parliament every 12 months,' but in the meantime I suggest to you that there will be a waiting list of disputes to be resolved by the ombudsman that Mosstrooper could not jump over in its most halcyon days as a steeplechaser. There we have the ombudsman standing almost solitary like a lighthouse on an island whilst disputation of an industrial nature, to the State's detriment, is allowed to bubble away without any mechanism for resolution, at least not through the ombudsman. If the ombudsman is going to have six or ten staff, well that may be different. If I am right in the sort of confrontationist attitude that will occur as a consequence of this Bill the poor old ombudsman will not last a week in the job; he will be worked to death.

Yet, the Attorney does not know and cannot tell me what sort of supporting staff mechanisms that person will have. That to me, at least, is what needs to be known if the office of ombudsman is to work in an effective way. But he does not know. It is yet another example of acting in haste and repenting at leisure. It seems to me that, when I look at it, the Bill is flawed right through with anomalies that will give this State the greatest industrial headaches we have seen since the State was first promulgated back in 1839.

The Hon. L.H. Davis: 1836, actually.

The Hon. T. CROTHERS: Well, three years farther back, that is even worse. It seems to me that, when you look at the Roberts' amendment, it will in fact widen the ambit of responsibility of the ombudsman, thereby assisting in keeping this State's fairly good industrial record on track. What is incumbent in the Attorney's Bill is the confrontationist approach to industrial relations. What the Hon. Ron Roberts is endeavouring to do with his amendment is to widen the scope of the parameters of responsibility of the ombudsman so that, in effect, there will be a mechanism for dispute resolution, at least in so far as the ombudsman is responsible for it. Yet, the Attorney-General cannot tell this Chamber what sort of supporting staff the ombudsman has relative to the discharge of his or her functions.

I find that absolutely appalling. Let me put on record again, for whatever it is worth, that the Attorney-General has cobbled this together, he and his Government and his Minister in another place. I cannot believe that the Liberal Caucus would have unanimously supported this Bill. I am sure there must be some sanity and rationality amongst some of the members of his Caucus who have had industrial hands-on experience. Be that as it may, the Bill is now in front of this Chamber for its deliberations and I cannot see why the Government should shy away, in the interests of conflict resolution, from the Hon. Ron Roberts' amendment.

When you couple that with the fact that we do not know to what extent the ombudsman will be able to operate in respect of the number of disputes that he or she can handle at the one time, it is an absolute recipe for industrial turmoil. I put on record now: if this Bill goes through in that form, that is what we will get. I for one do not want that, because I value the wellbeing of all South Australians. I for one do not want to have to stand up in this place and say to the Attorney and his Government, 'We told you so'. He is probably under pressure from different constituent parts of the Liberal Party to get this matter dealt with, but I for one will find no joy in getting up, as I most assuredly will in 12 or 18 months time, and saying to the Attorney and to his Government, 'I told you so.' I hope that does not happen but, unfortunately, I have fears that it will.

It will be the State that will suffer, not the Government, and the Government will then have to repent and go back and do it all again. Certainly, the amendment, as I have said, should be supported. It provides for an extended capacity for the ombudsman to become involved. I hope and trust that this Chamber will see fit in the interests of all South Australians, in particular, and South Australia in general, to ensure that, in so far as it is possible for us to do so, we have at all stages in all areas of the Bill where it is required some form of mechanism that can address the disputation that will most assuredly follow this Bill if it goes through in the form in which it has been presented to us by the Government.

The Hon. K.T. GRIFFIN: The Hon. Mr Crothers is eloquently arguing against the amendment of his colleague. As I said earlier, this Bill largely leaves untouched the award making part of the industrial relations scheme, that part which has been in place for a long period. The Hon. Mr Crothers

said with some pride that the system has worked well. If it has worked well and it remains largely intact, why do you need to extend the jurisdiction of the Employee Ombudsman to deal with that part of the system?

The Hon. T. Crothers: Because it's a new system, that's why. I would rather have too much than not enough.

The Hon. K.T. GRIFFIN: The honourable member is arguing against himself. You are proud of the record and the way the award system operates, and you have not had an Employee Ombudsman, yet you are saying, 'Now that the Bill has an Employee Ombudsman, let's put it in there because of the problems that are likely to occur in the system.' We are saying that we ought to be focusing the role of the Employee Ombudsman essentially upon the enterprise agreement aspects of the legislation, and that is where it ought to rest. Certainly, there is some involvement in advising employees of their rights and obligations under awards and to enforce their rights under awards, but largely the Employee Ombudsman ought not get into the award making or variation process. The amendment suggests to me that that is what is going to happen.

It is all very well for the Hon. Mr Crothers to say, 'You don't know what you want or what resources you are going to give.' There will be a gradual development of resources, because no-one knows at this stage the extent to which the enterprise agreement options under this Bill will be used by employees and employers. We are suggesting that under the functions identified in the Bill, which in our view ought not to be widened as suggested by the Hon. Mr Roberts, we will adequately resource that person as the needs become identified.

It is not possible for anyone to estimate what the quantity of resources may be as a result of the enterprise agreement provisions of the Bill. We will have to assess those needs as they become apparent. It is different from the Youth Court, for example, where you bring in a new provision and you can identify right from the start that it is going to cost $700 000 or some other amount based on the existing framework. You cannot do that here because you are bringing in a new option.

The Hon. T.G. ROBERTS: The questions have been asked about the operations of the ombudsman's office in relation to the industrial climate that will be set. In the industrial relations reform ministerial statement of 9 March it is clear that these reforms will outlaw preference to unionists; outlaw compulsory unionism; outlaw closed shops forced by employers or unions; and individual choice of union membership will be a central principle in the new system. The critical question is what sort of industrial dislocation that will bring at the same time as the Government is putting in place an office of staff numbers unknown, with investigatory powers—

The Hon. K.T. Griffin: It depends on how many people want to coerce other people.

The Hon. T.G. ROBERTS: It is not only coercion that will be investigated. If you advertise your services and if you are going to do the job properly—

The Hon. K.T. Griffin: I have said that—

The Hon. T.G. ROBERTS: The point I would make is that the ombudsman's position is totally unnecessary in the whole scheme of things if the industrial relations system is adequately set up to allow for a reasonable power sharing between employers, employees and the Government. To have a tripartite system set up—

The Hon. K.T. Griffin: If you are saying that it is unnecessary, why you are expanding its role? You can't win.

The Hon. T.G. ROBERTS: If you want to argue single issues in relation to the whole Bill, some of them look ridiculous. As an Opposition we have to try to make the position at least a little workable in relation to what you are trying to achieve. If we withdraw altogether from the argument and say that an ombudsman position is ridiculous in the whole scheme of things, we pull out of the debate immediately.

We are saying that it needs to be independent of ministerial control and that it needs to have those powers necessary to investigate without prejudice. If the ombudsman is going to undertake investigations in relation to coercion or anything else in terms of how enterprise bargaining arrangements are to be set up, there will be victimisation.

Union offices get anonymous telephone calls from non-union shops and part-union shops in relation to setting up their negotiations about enterprise bargaining, which already exists, and even award inquiries. These people ask for their anonymity to be maintained, because they do not want to be victimised in their workplace. In many union offices union officials will not accept telephone calls like that; they will not service members on that basis. Many other union officials will, because they recognise the need to prevent the industrial discord that comes with those workshops, either partly unionised or non-unionised, impacting on other areas that have industrial harmony.

The Government is breaking down many relationships that have historically developed and evolved over a long period with what I regard as a Mickey Mouse system. You want some sort of controls, so you bring in what is basically a Mickey Mouse position. I do not want to be too disrespectful of a position that has not yet been set up. It will be very difficult to get some sort of accord into such a system.

The Government has already indicated that the ombudsman will not be involving himself in disputation: the role will involve giving advice and directions on where to go to get the best system for a particular enterprise bargaining agreement. Not only will the ombudsman find that he will be under-resourced to carry out his duties in a proper manner but it will interfere with good industrial relationships.

It is quite possible to have harsh, unjust and unreasonable dismissals brought about by confidentiality being broken between people trying to set up arrangements at a workshop level. Will the ombudsman maintain confidentiality between people respectfully requesting information as to how to set up their arrangements within their work premises? On the other hand, will the ombudsman be forced into dealing with both the employer and the employee, therefore breaking down the confidentiality and thus increasing the risk?

The Hon. K.T. Griffin: It is representing employees; it is clear.

The Hon. T.G. ROBERTS: But 'representing employees' would then mean that at some time the employer has to be notified that the ombudsman has been acting on behalf of the employees who have taken up the argument in search of information and some sort of protection within the system. It is completely different with the ombudsman's position at the moment, because that carries with it a certain amount of respect. People in the community use the position as a last refuge for some sort of justice, mostly between departments and individuals in society who feel powerless about taking up matters in any other way. Confidentiality in that case does not really matter, because in the main you are dealing with Government departments or, in some cases, business premises and concerns. You are now changing the role: it is

a different tent and different desert. It is not an ombudsman's role: it is almost a public conciliator role.

The Hon. K.T. Griffin: An employee advocate.

The Hon. T.G. ROBERTS: Basically. You have opened up a whole new range of responsibilities, but you are also opening up a whole new range of potential problems in the industrial world. Will confidentiality be maintained, how will the ombudsman set priorities in relation to potential disputes and, if the information given does lead to disputation, where does it go then?

The Hon. R.R. ROBERTS: I am not surprised by the number of contributions coming from my colleagues. The people who are speaking on this matter have been involved in industrial relations for many years and have seen disputes. The Attorney-General must remember the point that the Hon. Mr Elliott has been trying to put through a number of contributions tonight: the Liberal Party said in its election policies that it would have an independent ombudsman. The Hon. Mr Elliott has made the point that the perception in the community is that he is an independent person. People perceive an ombudsman as not looking after only one section of the community; the ombudsman should be available to all employees.

The other part of the Government's policy was quite distinct. You made very clear that employees would have the right to choose whether or not to be part of a union—freedom of choice. The Attorney made the point that the Hon. Mr Crothers was arguing against this position.

Fundamentally, the people in the Australian Labor Party believe that registered associations have a proper role and do these things in the best possible manner. If you then come in and say, 'No, we will have freedom of choice; you will be able to choose whether or not you are in a union, covered by enterprise bargaining or covered by an award,' then the dilemma is that people could be working under an award who are not in a union; they may choose not to be in a union but they can be involved in disputation within the commission.

This legislation provides that registered organisations cannot represent people who are not their own members. That is the Government's legislation. The Attorney is arguing against himself. If the Employee Ombudsman is to be universal and independent, surely he should not discriminate between those people who choose—

The Hon. K.T. Griffin: It might be a woman.

The Hon. R.R. ROBERTS: He or she—to represent people who want to go into the stream of industrial relations that the Attorney favours. But he is saying that there should be no capacity for those who exercise those freedoms of choice that the Attorney has lauded so loudly throughout all the Government's policies to choose to be under an award system. The award system is negotiated by the registered authority, but the Government's scheme provides that these people do not have to be members of the union or to comply with the rules. They are entitled to the conditions of their award. That is fine, until a dispute does occur. Under this mechanism they have nowhere to go, because they are not part of a union, and under the Government's legislation the union is not allowed to represent them, anyway.

The Hon. K.T. Griffin: You have inspectors. They can go to the industrial relations office.

The Hon. R.R. ROBERTS: Possibly they can, but the person who chooses the enterprise agreement does not have to go to the industrial inspector. Because he is toting up to your policy you are prepared to provide him with resources. You qualify the resources. We have taken the position—

The Hon. A.J. Redford interjecting:

The Hon. R.R. ROBERTS: The Hon. Mr Redford wants to keep this going, obviously. There will be occasions when the union may well wish to access the ombudsman for a particular reason where you have a particularly bad employer with a history of intimidating his workers. There may be a unionist in there and the employer may say, 'I do not want the union to come in.' There is a relief for other workers who want to exercise free choice under this clause and want to choose to have the Employee Ombudsman. We have argued the philosophy of what the ombudsman should be. The majority of this Committee has said that the ombudsman should be a proper ombudsman and therefore should not be restricted only to act for particular parts of people in the work force. If we follow the logic of having established that there should be the ombudsman—

An honourable member interjecting:

The Hon. R.R. ROBERTS: We can argue about this. We are talking about the Ombudsman.

The Hon. K.T. Griffin: We have debated the issue for enough time.

The Hon. R.R. ROBERTS: To conclude, the point is that the ombudsman we have established will be a true ombudsman, and therefore it is my assertion that he ought to be able to act for all classes of workers and they ought to be able to exercise their choice to go down one stream or the other.

Amendment carried.

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

Page 24, after line 25—Insert:

(da) to advise individual home-based workers who are not covered by awards or enterprise agreements on the negotiation of individual contracts;.

This is one of a couple of amendments which have been drawn directly out of Liberal Party policy. I think it is a very important one. The ombudsman will help most of those people who are not members of unions and is aiming to help those who are most disempowered. You cannot get a group more disempowered than the home-based workers. I think it was a good part of the policy, and I am supporting it by putting it into the legislation.

Amendment carried.

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

Page 24, after line 27—Insert:

(f) to provide an advisory service on the rights of employees in the workplace in relation to occupational health and safety issues.

Again, this has been drawn from the Liberal Party policy document. Its aim is to provide advisory services. It provides for advice to be given to employees in relation to their rights on occupational health and safety matters. I recall the Minister earlier in this debate, or it might have been outside this place (my memory of the discussions I have had recently has blurred very much), making the observation that this is now covered in the Occupational Health and Safety Act. I do not recall a particular amendment which addresses the question of advisory services on the occupational health and safety issues but I may stand corrected.

The Hon. K.T. GRIFFIN: The Government does not support the amendment. It is correct that it was in the policy but, as I indicated subsequent to the policy, we did release in December the worker safety policy which provided for a restructuring of occupational health and safety structures including the establishment of an occupational health and safety advisory committee. It is a tripartite committee and, given the establishment of that committee, together with the

new responsibilities placed upon WorkCover to administer the Occupational Health and Safety Act, we took the view that it was not necessary to duplicate the advisory services which would undoubtedly be provided through WorkCover and to also provide them through the Employee Ombudsman.

One must have a focus on the responsibilities of the Employee Ombudsman, and we believe that adding the occupational health and safety responsibilities will merely duplicate what WorkCover has a responsibility to do in respect of employers and employees. It is true that no formal advisory service is specified in legislation to be provided by WorkCover, but its overall function and responsibility is to provide education, research and advice, and that obviously will be to employers and employees. Our preference is to maintain the Bill as it is in relation to this matter.

The Hon. M.J. ELLIOTT: It appears to me that in relation to very small businesses and home-based workers it is possible that the occupational health and safety section of the corporation and within the DIA is unlikely to come into contact with workers in the smallest of those businesses.

The Hon. K.T. Griffin: There are inspectors.

The Hon. M.J. ELLIOTT: I do not think that the inspectors will be going into the homes of home-based workers, for example; neither will they find their way into many small backyard businesses. However, the ombudsman may indirectly because he may be brought in to give advice on terms and other conditions. I think it is important that contact be made by the ombudsman that will not be made by others.

It is among small businesses that we have the very best and worst of employers. Many small businesses are excellent employers; they work in a true relationship with their employees. I have seen many small businesses like that. However, in some of these small businesses we can get some of the biggest shocks. They will always be non-unionised, and that is where some of the worst of the occupational health and safety abuses exist. The fact is that the Employee Ombudsman will be coming into contact with them incidentally because of the other duties that he has to perform.

It is a question as to whether the ombudsman can provide an advisory service or whether it is a key role. I think that the ombudsman should be able to provide advice in this area although it might not be a principal role, if I may make that differentiation. Nevertheless, the ombudsman should be empowered to give advice when necessary. That is not in any way to take away the responsibilities or to usurp the important role of the corporation and the Department for Industrial Affairs.

The Hon. K.T. GRIFFIN: There is no guarantee that the Employee Ombudsman, who has the power of an inspector, is any more likely to be out among the smaller businesses than the inspectors. We want to avoid the overlap which this will undoubtedly create. I think it is usually the unionised small businesses where there is likely to have been some breaches of awards or workers' safety conditions. That is probably why employees join a union in many cases. However, in those small businesses where the employer is fair and reasonable, there has not been any necessity for employees to join a union. We can debate that issue for some time. We are trying to avoid duplication.

The Hon. R.R. ROBERTS: We support the amendment moved by the Hon. Mr Elliott. There will be occasions when the ombudsman will be carrying out an inspectorial role in other areas and, if safety issues come up and he is suitably qualified, he ought to be able to do those sorts of things. This is a sensible amendment and we support it.

Amendment carried.

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

Page 24, line 28—Leave out ', with the approval of the Minister,'.

It is really consequential on earlier arguments, so I will not debate it further.

The Hon. K.T. GRIFFIN: The Government opposes the amendment.

Amendment carried.

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

Page 24, line 31—Leave out '(and must be revoked if the Minister requires its revocation)'.

The amendment is consequential on the debate about independence.

Amendment carried; clause as amended passed.

Clause 61—'Annual report.'

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

Page 25, lines 2 to 4—Leave out subclause (1) and substitute:

(1) The Employee Ombudsman must, before 30 September in each year, prepare a report on the work of the Employee Ombudsman's office during the financial year that ended on the preceding 30 June and forward copies of the report to the Presiding Members of both Houses of Parliament to be laid before their respective Houses at the earliest opportunity.

This directly reflects Liberal Party policy. The Employee Ombudsman will be reporting to Parliament.

The Hon. K.T. GRIFFIN: The amendment is opposed. It depends on the interpretation of the policy. I thought that I had made that clear.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: There is a report to Parliament under our Bill.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: There is a report to Parliament. Don't be so inane. It is to the Minister, forwarded to the Parliament and tabled—simple!

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: It is a report.

Amendment carried.

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

Page 25, lines 8 and 9—Leave out subclause (3).

It is consequential on the previous amendment.

Amendment carried; clause as amended passed.

Clauses 62 and 63 passed.

Clause 64—'Basis of contract of employment.'

The Hon. R.R. ROBERTS: I oppose the clause and move:

Insert the following new clause—

Terms of contract of employment

64. (1) A contract of employment must provide for employment by the hour, day, week or another period specified by award covering the employment.

(2) In the absence of an express provision, a contract of employment is taken to provide for employment by the week.

(3) Remuneration accrues under a contract of employment from day to day unless the contract provides for employment by a period of less than 1 day, in which case remuneration accrues in respect of each such period.

The Government's Bill is somewhat dangerous in our view in that it detracts from the existing legislation with respect to general conditions of employment, that is, the basis of the contract of employment. The Opposition's amendment seeks simply to reinstate into the legislation that which currently exists under the Industrial Relations Act 1972.

In particular, the Opposition's amendment provides that, in the absence of an expressed provision, the contract of employment of an employee is taken to be by the week. The Government's legislation does not provide for that safeguard in that there could well be an argument as to what an employee's proper contract of employment is under the Government's legislation, whether it is on a daily, hourly, weekly or monthly basis, whereas the existing State legislation, as encapsulated in the Opposition's amendment, clearly provides that, unless there is an expressed provision, an employee is deemed to be hired by the week.

If an employee is dismissed for any other reason, he must be paid one week's wages. This fundamental tenet of Crown law employment relationship has been recognised in statute over the years, and the Government has provided no explanation or any good reasons why it should be departed from. This is a sensible amendment and provides protection for employees that they have enjoyed in the past. It is something on which we can rely. It does not say that you cannot make other arrangements; it says that, in the absence of an expressed arrangement to the contrary, it will be taken that any employee dismissed is engaged by the week and is entitled to that recognition. I commend the amendment.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. The Opposition's amendment makes no reference to employment for a fixed term, and there ought to be provision for employment on a fixed term basis. What we seek—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: It is a contract.

The Hon. R.R. Roberts: It is an expressed condition that it is for a period. Where there is no expressed condition—

The Hon. K.T. GRIFFIN: What your amendment says is that a contract of employment must provide for employment by the hour, day, week or another period specified by award covering the employment. You are not giving anybody a choice. It all has to be done under an award. Why should someone not say, under an enterprise agreement, 'I want to employ you for three months,' and make a contract for employment for three months, without having to be bothered about an award? The fact is that our Bill provides flexibility but it also provides security because wages under clause 65(1) accrue under a contract of employment from week to week.

If one looks at schedule 9, the periods of notice for dismissal or termination of employment are specifically covered under clause 1 of that schedule, which relates specifically to termination. As I say, we have provided that wages accrue from week to week. In our view what the Opposition amendment provides is for a presumption of weekly hire and thereby denies the flexibility. It also seeks to provide for wages to accrue from day-to-day. The point I should make is that that conflicts with a number of existing award provisions, which provide that wages accrue from week to week for persons who are weekly hired employees.

Such an amendment, as proposed by the Hon. Mr Roberts, could potentially give rise to under-payment claims in respect of a day's pay, notwithstanding the fact that full wages were paid on a weekly, fortnightly or monthly pay period, and I suggest that such a proposition is ridiculous and ought to be rejected. There are adequate safeguards within a flexible employment environment provided in our Bill, and I would urge the Committee to reject the amendment

The Hon. R.R. ROBERTS: I note the principal objection of the Attorney-General in that he talks about awards. I am prepared to make that 'award' or 'agreement.' The advice I have received—and in looking at the interpretation in this Bill—is that an award means 'an order of the commission regulating remuneration or other industrial matters'. Even an enterprise agreement is regulated by the commission and by the registration. My advice is that this wording actually covers the concern that the Minister raises, but if the Minister insists on making it an award or an agreement I am prepared to accommodate—if it can be done on the run—the Minister's concern by saying an award or an agreement.

The Hon. K.T. GRIFFIN: With respect, that will not accommodate my point because what that will mean is that the person who enters into a contract of employment will have to be bound by an award or by an enterprise agreement. There are many people not bound by awards who will not be necessarily bound by an enterprise agreement, but who still nevertheless want to enter into a contract of employment. It may be that you have someone at the management level who wants to enter into a contract of employment for a fixed term and does not necessarily want to be bound by an award—there may not be an award that covers that employee.

It may be that that person does not want to be bound by an enterprise agreement under this Act. At the moment you have a situation where a significant number of the work force is not bound by awards. There is also a significant number of employees in the community who are not the subject of industrial agreements.

The Hon. R.R. ROBERTS: I accept the point that there is a contract of employment which may well not be covered by an agreement or an award, but my advice is that this is a tenet of the common law relationship, which is recognised. So it does cover the area to which the Attorney-General refers. We are dealing with a piece of legislation which covers enterprise agreements and/or awards. We say that within the agreement or the award you can express a number of terms. If it is to be by the day, the hour or the month, that is stated, but, where an agreement is in existence with no specific reference to those matters, all we seek to do is to ensure that, in future, workers enjoy the same basic safety net that they have always had where there is a dispute in this area.

The interpretation of the common law courts and the industrial courts is that, in the absence of an expressed condition to the contrary, it must be deemed to be a week. We are not introducing a thunderous new change; we are not introducing a change because of this legislation—we are saying that this is a basic tenet of employment in South Australia that has existed for years and that it ought to be made very clear within this legislation that, in the absence of an express position in the award or agreement, that tenet ought to be maintained.

The Hon. K.T. GRIFFIN: There is a number of objections to what the Hon. Mr Roberts is attempting to do. His offer to extend this measure to cover enterprise agreements is still not adequate because, first, it still limits the provision to awards or enterprise agreements and does not allow the flexibility which we think ought to be available to those who wish to be employed or engaged on a fixed term contract outside an enterprise agreement or an award or who wish to be employed on a monthly hire basis. There are plenty of contracts in the private sector—and there are now some in the Government sector—where employment is on a month-by-month basis. There may not be an express provision of monthly hire, but they are paid on a monthly basis. If there is no express provision under the Opposition's amendment,

it is employment on a week-by-week basis, which of course is detrimental to the employee because a week's notice is all that is required for termination. What we suggest in our Bill—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: Well, it is—is that it be a fixed term. You will not have to worry about whether it is an award or an enterprise agreement, but it may be. The wages and the notice of termination provisions are protected. They are the basic ingredients which should be inherent in contracts of employment which are to be flexible according to our clause 64.

The Hon. T.G. ROBERTS: This is a very disarming clause. What the Attorney-General is saying is that you can have an enterprise agreement by contract with no minimum standards. I suspect that is one of the key areas in which the Government has had a lot of Opposition presented to it by the trade unions involved or by bodies such as the Justice and Peace Commission, which sets standards by which—

The Hon. K.T. Griffin: The common law allows award free people.

The Hon. T.G. ROBERTS: But what you are trying to legislate for now is contracts that have no minimum standards in relation to an individual signing a contract out of an award—

The Hon. K.T. Griffin: That is the current law.

The Hon. T.G. ROBERTS: But what I am trying to find out is whether you are prepared to have some sort of minimum standard established or will that be argued in the—

The Hon. K.T. Griffin: If people want to enter into an arrangement where they are not covered by an award but which suits their circumstances, why not let them? They are not being exploited. It may be to their advantage.

The Hon. T.G. ROBERTS: In your own words, you can have a three-month contract. For example, a person could be employed in grape picking, could have a three-month contract and could work 12 hours a day.

The Hon. K.T. Griffin: They're going to be covered by an award.

The Hon. T.G. ROBERTS: Yes, but in some areas a contract could be written outside the award, and that would be seen as a flexible enterprise contract. That would then undermine awards and enterprise bargaining arrangements around contracts. If that is not the intention of contracting, as this definition is, could the Attorney-General explain it? Why do you not have the minimums as outlined by the Hon. Ron Roberts in relation to resignation or completion of job with a week's minimum?

The Hon. M.J. ELLIOTT: Clause 64 could remain as clause 64(1) which would allow the contract to be for fixed terms, namely, monthly, fortnightly, weekly, daily, hourly, and so on, or on another basis. Subclause (2) could then be inserted, and it would be the same as the Hon. Mr Roberts's subclause (2), which provides:

> In the absence of an express provision, a contract of employment is taken to provide for employment by the week.

It appears to me that, largely, what the Minister said he wanted and needed was there, and I would have thought the most important provision that the Hon. Mr Roberts was seeking would also be inserted at the same time. I simply put that as a proposition at this stage to measure reaction.

The Hon. K.T. GRIFFIN: I would suggest that there is an internal inconsistency in that. We are providing for flexibility under clause 64. The contract may be for a fixed term, namely, monthly, fortnightly, weekly, daily, hourly or some other basis. Therefore, I would suggest that you do not need to have proposed new subclause (2). We are providing for those bases and we are protecting the wage situation under clause 65(1), because wages accrue under a contract of employment from week to week. We have protected the notice provisions under schedule 9. Therefore, I would suggest that you do not need proposed new subclause (2), but if you do put in that subclause, if someone enters into a contract of employment, say, on a monthly basis, that is, month by month hire, it will have to be expressed on a month by month basis.

The Hon. R.R. Roberts: Would you pay a month's pay on termination or a week's pay.

The Hon. K.T. GRIFFIN: You would pay a month's pay; that would be my view. If it is in the contract—

The Hon. R.R. ROBERTS: It says you 'may' have those things in there. We do not say that you must have that in every contract. Where there is no expression, the minimum should be a week. That is what we are saying.

The Hon. K.T. GRIFFIN: It is very hard to envisage a situation where you have a fixed term on a monthly, fortnightly, weekly, daily, hourly or other basis. I would have thought that that covers it all.

The Hon. R.R. ROBERTS: Many contracts will be verbal. If someone is hired, they will not sit down and write a contract. However, within those employee relationships there could be a breakdown. At the present moment, every employee in South Australia at common law is entitled to a week's pay. I suppose you could possibly argue that you could go to common law and get relief, but we are trying to get an efficient, quick dispute settling procedure.

The Hon. K.T. Griffin: What are you looking to protect? We have dealt with wages and notice. What else do you need to deal with?

The Hon. R.R. ROBERTS: Where does it say notice? Today before this legislation was introduced the underpinning tenet of employment was that you have a guarantee, in the absence of an expressed provision, that it will be a week. Under the new Act, in the absence of expressed provisions which provide that the minimum will be weekly hire, that basic tenet ought to apply. If it is a month, we will go with that. That is why I asked the question about the month. If it does not provide for a month and if somebody says, 'I will hire you', if there is then a dispute, if the employee is told, 'You are sacked; I will give you a day's pay', and if he says, 'Hang on, that is not right', we have a dispute. All we are saying is that, in those circumstances, the contract clearly ought to be a week.

The Hon. K.T. GRIFFIN: We are getting bogged down. Let us try to analyse what we have. We have a contract of employment maybe for a fixed term, on a monthly, fortnightly, weekly, daily, hourly or other basis. The second point is we have protected the wages under clause 65(1). The third point relates to clause 1 of schedule 9, which provides:

> (1) An employer must not terminate an employee's employment unless—
>
> (a) the employee has been given either the period of notice required by subsection (2) or compensation instead of notice; or
>
> (b) the employee is guilty of serious misconduct, that is, misconduct of a kind that makes it unreasonable to require the employer to continue the employment during the notice period.

The Hon. R.R. Roberts: No argument.

The Hon. K.T. GRIFFIN: Right. Subclause (2) provides:

The required period of notice is worked out as follows—
(a) if the employee's period of continuous service with the employer is not more than one year—the period of notice is at least one week; and
(b) if the employee's period of continuous service with the employer is more than one year but not more than three years—the period of notice is at least two weeks;

And so it continues: with three to five years continuous service, notice of at least three weeks; more than five years, at least four weeks notice. So the notice provisions are covered.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: We will argue about that later. What I am saying is that, if you have the contract, the wages protected and the notice provided, I do not see what you are seeking to achieve by saying that 'a contract of employment is taken to provide for employment by the week', because it is irrelevant.

The Hon. M.J. ELLIOTT: On my reading of clause 65, unless the Hon. Mr Roberts wants to slow it down again, I think it picks up his proposed clause 64(2). If that is the case, I do not believe that we are achieving much more at this stage.

Clause passed.

Clause 65 passed.

New clause 65A—'Ordinary hours of employment.'

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

Page 26, after line 15—Insert new clause as follows:

65A. For the purposes of an award, enterprise agreement, or contract of employment, the maximum number of hours per week that may constitute ordinary hours of employment is—
(a) if employment is by the week—38;
(b) if employment is by the fortnight—76;
(c) if employment is by a period of 3 weeks—104;
(d) if employment is by a period of 4 weeks—152;
(e) if employment is by reference to any other period—a proportionate number of hours.

The Bill seeks to provide, albeit very poorly, minimum standards with respect to rates of pay, annual leave, sick leave, parental leave and redundancy pay in the schedules attached to it. The Government's legislation does not provide for any maximum number of ordinary hours that can be required to be worked by a worker. Even under Conservative Liberal Governments in New South Wales and in Western Australia their legislation recognises that the maximum number of ordinary hours that can be worked in any one week is 40 hours. The Opposition's amendment seeks to make it mandatory that with respect to any award or enterprise agreement, or any other contract of employment, the maximum number of ordinary hours that can be worked in any one week is 38 hours; or if it employs over a fortnightly period, 76 hours; or if it employs over a three week period, 104 hours; or if it employs over a four weekly cycle, 152 hours.

The Bill, because it provides no minimum safety standards with respect to the maximum number of ordinary hours that can be worked by a worker, could allow a weekly wage of $500 a week, under an existing award of 38 hours per week, to be translated into $500 per week to be worked over a 60 hour week. There are no safety net provisions within the Government's legislation which protects the maximum number of ordinary hours that can be worked by an individual worker under an enterprise agreement or award. Under current legislation, whilst there is no specific reference to the maximum number of ordinary hours to be worked, it is regulated through each award. The Full Bench decisions of the State Industrial Commission acknowledge, for example, a community standard with respect to the maximum number of ordinary hours of 38 per week, and that has been in existence since the early 1980s. The Government's legislation diminishes the role of the awards and in particular the role of the Industrial Commission with respect to the public interest test to ensure that enterprise agreements heed these minimum standards that have been recognised over the years by Full Benches of the State Commission. Hence the need for the amendment, and I seek the support of the Committee for it.

The Hon. K.T. GRIFFIN: The proposition is quite revolutionary and is vigorously opposed. The most recent State wage case in November 1993 did address the issue of standard hours in these terms:

In approving any application to reduce standard hours to 38 per week, the commission should satisfy itself that the cost impact is minimised. Claims for reduction in standard weekly hours below 38 will not be allowed.

This has been done on an award by award basis, and not by legislation. There are some 199 State Industrial Commission awards. They do not include superannuation awards, recreation leave, loading awards or traineeship awards—but there are 199 of them. Twenty-five of those awards still have a condition of employment for the total number of hours per week being 40 hours. There are a further 15 awards which make no mention of ordinary hours of employment. What the Hon. Mr Roberts seeks to do by legislation, with the slap of the axe, is to say that everything is back to 38 hours, and there is no accommodation for the practice which exists at the present time.

The other point that needs to be made is that awards under our legislation remain in existence, with all the limitations which are in them and those limitations which may relate to ordinary hours remain where that is 38 hours or where there is some other provision for ordinary hours of employment.

The Hon. M.J. ELLIOTT: I will not be supporting this amendment. The Labor Party had an opportunity to do this when it was in Government and it did not attempt to do it.

Members interjecting:

The CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: The important point as far as I am concerned is that, as long as the award system itself is kept secure and that there is a genuine linkage of enterprise agreements to awards so far as they provide the safety net as promised in the Liberal Party policy, this sort of thing cannot be justified at this stage.

The Hon. T.G. ROBERTS: The points that have been made on both sides of the argument are now standing out starkly in disagreement. The points that the Hon. Ron Roberts makes about minimum standards in relation to the whole of the general conditions of employment, including contracts, hours of work, conditions and rates of pay, can quite easily be taken away by the stroke of a pen on a contract being negotiated with employees on site who have no bargaining strength and no alternatives. They will be the weakened section of the community, and those standards will be the minimum standards that will be negotiated by unscrupulous employers and by employers who will have the whip hand during high periods of unemployment.

I will give you a warning, and it happens in every cycle: as soon as the circumstances and the employment opportunities change, if there are key sections of the work force that are able to take control or at least get a negotiating whip hand, they will be making sure that the commission, the ombudsman and everybody else is run off their feet in relation to the changing of these standards. You have to set minimum standards in which people can have confidence that they will

be protected by awards and agreements and by contracts that have some reflection of the stance in the community to get the respect that is required when you do have an upturn in the economy and so that you do not get wage-push inflation by demands that have been made in a leapfrog manner as has been the history of Australian industrial relations periods.

We were at a period almost ready to consolidate a wage relationship between capital and labour. We are now in a position where clauses like this jeopardise the whole of that relationship and you end up with an industrial relations jungle again where there are those who are in strong enterprises and who are able to negotiate using key negotiators, union support and protection and there are those who are being exposed to the clauses within this Part 1 'General conditions of Employment' to whom the minimum standards will apply and that is where the abuses will come.

The Hon. T. CROTHERS: The hour is late but the time is ripe. I want to place on record my concerns at the oft repeated phraseology being utilised by the Government, in the person of the Attorney, about the award safety net. That would have to be one of the greatest furphies I have ever heard in my life, because the tactical approach that the Government intends to use over a very short period of time relative to the awards is one where it will erode them away, and they will do that by a series of clauses such as those in this Bill which, if passed into legislation, will have that effect.

Members of the Government seek, as did Hitler and Stalin, to neuter the unions in respect of their having a capacity to act on behalf of their members. They seek to neuter the strength of the unions. First, there are no check list deductions now by the Government, unless the unions go out and sign up every member. Secondly, they are promoting enterprise agreements (and I do not mind supporting the promotion of enterprise agreements), but under terms in this Bill that will certainly remove much of the capacity for the unions to go into any commission and argue for changes and updating of their awards. I put on the record the Government's tactic relative to awards—

The Hon. K.T. Griffin interjecting:

The Hon. T. CROTHERS: It is no good the Attorney repeatedly parroting to me that the award is there as a safety net. The Government's technique is quite clear. It intends over a period of four or five years to erode the capacity of the awards by the effluxion of time and by attrition.

The Hon. R.R. ROBERTS: I must respond to the Hon. Mr Elliott, because he has made a statement that we are doing something ground-breaking by setting the minimum standards. Much has been made over many days about the 40 hour week being the basic standard, and most agreements or awards, and the Hon. Mr Griffin pointed out a number of them, have 40 hours a week in them. His proposal provides that the minimum hours can be any number of hours. There is a well-established standard throughout Australia. We went from the 48 hour week back to the 40 hour week, and the overwhelming trend is for (and most tribunal hearings have now accepted) the 38 hour week. What we are proposing here, despite what the Hon. Mr Elliott has said and the passionate response by the Attorney-General, is hardly ground-breaking.

We have had the 40 hour week since well before my time. If you want to argue whether it is 38 or 40, I will come to the party with you. What the Attorney wants to do is to say that the minimum hours can be 100 if he wants. If an employer can exploit his worker and put enough pressure on him to make it 50 hours, the Attorney would have it 50 hours. I understand the numbers, but I will not allow this to go through to the keeper without some comment. We are not doing anything ground-breaking by saying there ought to be some minimum standards. I outlined in my contribution what can occur. I accept the position as put by the Hon. Mike Elliott. I am disappointed in it, but I understand it. But I do need to put on the record that we are not doing anything outlandish. I will accept either 40 hours or 38 hours a week, but there must be at least a minimum standard of hours within any new agreements or awards. This has been standard practice since Adam was running round in short pants.

The Hon. M.J. ELLIOTT: I have already indicated that I am not supporting the amendment, but I think it is worth responding to a comment of the Hon. Terry Roberts. He is perfectly correct in saying that there is a real danger in our society that there will be a gradual division in terms of the sorts of wages people can earn depending on what industries they are working in and—

The Hon. K.T. Griffin: Also depending on whether or not they have a job.

The Hon. M.J. ELLIOTT: Yes, I agree with that. I would applaud the Government for one thing that it has begun to do here in that it has in legislation put in some minimum standards in terms of leave and a few other matters. I think it is important that this concept of minimum standards is looked at perhaps even in terms of a base hourly rate and in terms of hours worked—or, at least, the standard hours worked, which the Hon. Mr Roberts has.

It is an important issue that we need to address but, in reality, I accept at this stage that it has gone well beyond the gamut of the legislation and the issues we are addressing. They are issues worth addressing, but now is not the time it is going to happen. The reality is that this whole Bill will fail if we start putting in those things, anyway. I implore the Government, having taken the first step in terms of looking at minimum standards, to look further at that question. We should be providing some sort of underpinning standard, including an acceptable minimum hourly rate and an acceptable minimum regulation number of hours worked in a week, all of which could be negotiated around later.

The time will come to do those sorts of things and to make it plain that we do not accept some of the sweat shop standards that are happening with outworkers at this stage and put some of the things happening with outworkers simply beyond question by having minimum standards which would underpin outworkers and every other person in an employer/employee relationship. Having rejected the amendment, I do not reject the notion behind it and I suggest that we should be looking further if we really are looking for a healthy society and one in which we all want to live in the future.

New clause negatived.

Progress reported; Committee to sit again.

JOINT COMMITTEE INTO THE FUTURE DEVELOPMENT AND CONSERVATION OF SOUTH AUSTRALIA'S LIVING RESOURCES

The House of Assembly transmitted the following resolution in which it requested the concurrence of the Legislative Council:

That a joint committee be appointed—

(a) to inquire into the future development and conservation of South Australia's living resources;

(b) to recommend broad strategic directions and policies for the conservation and development of South Australia's living resources from now and into the 21st century;

(c) to recommend how its report could be incorporated into a State Conservation Strategy;

(d) to give opportunity for the taking of evidence from a wide range of interests including industry, commerce and conservation representatives as well as Government departments and statutory authorities in the formulation of its report; and

(e) to report to Parliament with its findings and recommendations by December 1994,

and in the event of the joint committee being appointed, the House of Assembly be represented thereon by three members, of whom two shall form a quorum of the Assembly members necessary to be present at all sittings of the committee.

The House of Assembly has also resolved to suspend joint Standing Order No. 6 so as to entitle the Chairman to a vote on every question but when the votes are equal, the Chairman shall also have a casting vote.

STATUTES AMENDMENT (CONSTITUTION AND MEMBERS REGISTER OF INTERESTS) BILL

The House of Assembly intimated that it insisted on its amendments to which the Legislative Council had disagreed.

CRIMINAL LAW CONSOLIDATION (CHILD SEXUAL ABUSE) AMENDMENT BILL

Returned from the House of Assembly without amendment.

STATUTES REPEAL (OBSOLETE AGRICULTURAL ACTS) BILL

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

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a second time.

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

Leave granted.

This short bill repeals four measures that have become moribund. The *Canned Fruits Marketing Act 1980* ratified the Commonwealth/States scheme for the marketing and equalisation of certain Australian canned fruits. That scheme was dismantled in 1988/89 with the repeal of the Commonwealth Act and subsequent winding up of the Australian Canned Fruits Corporation.

The *Primary Producers' Debts Act 1935* was superseded by the *Primary Producers Assistance Act 1943*. The latter in turn has been rendered superfluous by more recent legislation. There are no accounts under either Act.

In the course of inquiries into this situation, the existence of the *Farmers Assistance Act 1933* was discovered. This measure has clearly been inoperative for decades.

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for commencement on a day to be fixed by proclamation.

Clause 3 repeals the *Canned Fruits Marketing Act 1980*.

Clause 4 repeals the *Farmers Assistance Act 1933*.

Clause 5 repeals the *Primary Producers Assistance Act 1943*.

Clause 6 repeals the *Primary Producers' Debts Act 1935*.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

STATUTES AMENDMENT (COURTS) BILL

Returned from the House of Assembly with amendments.

SOUTH AUSTRALIAN PORTS CORPORATION BILL

Returned from the House of Assembly with amendments.

HARBORS AND NAVIGATION (PORTS CORPORATION AND MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly with an amendment.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

Returned from the House of Assembly without amendment.

DOMESTIC VIOLENCE BILL

Returned from the House of Assembly without amendment.

SUMMARY PROCEDURE (RESTRAINING ORDERS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 12.16 a.m. the Council adjourned until Thursday 12 May at 10.30 a.m.