LEGISLATIVE COUNCIL

Thursday 12 May 1994

The PRESIDENT (Hon. Peter Dunn) took the Chair at 10.30 a.m. and read prayers.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

In Committee.

(Continued from 11 May. Page 942.)

Clause 66—'Form of payment to employee.'

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

Page 26, after line 32—Insert—

(2a) An employer must not act vexatiously in the exercise (or purported exercise) of an entitlement (or purported entitlement) under subsection (2)(d).

Penalty: Division 7 fine.

(2b) In addition, the court by which an employer is convicted of an offence against subsection (2a) may, on the application of the employee against whom the offence is committed, order the employer to make a payment to the employee of an amount not exceeding twice the amount sought to be deducted under subsection (2)(d).

Page 27, lines 1 to 3—Leave out subclause (3) and substitute—

(3) An employer must deduct from an employee's remuneration membership fees payable to an association to which the employee belongs if—

(a) the deduction is authorised by an award or enterprise agreement; and

(b) the employee has, by written notice to the employer, requested that the deduction be made.

(3a) An employee may, by giving written notice to the employer, withdraw an authorisation or request under this section.

I understand the purpose of the Government's original clause but have concern that an employer in seeking to make a deduction of a liability may, at times, behave vexatiously and that in fact there may not be a real liability. That may not happen very often but it is quite possible that it will happen; in fact, I would say not only possible but probable that it will happen. In those circumstances an employer must know that he or she will be exposing themselves to both a fine and a penalty in relation to the payment that should be made to the employee. I think that is only reasonable in the circumstances and I do not believe that there would be a finding of a vexatious behaviour unless there was not reasonable belief for that to be occurring.

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

Page 26, lines 17 to 32 and page 27, lines 1 to 7—Leave out the clause and substitute new clause as follows:

66.(1) If an employee does work for which the remuneration is fixed by an award or enterprise agreement, the employer must pay the employee in full, and without deduction, the remuneration so fixed.

(2) The payment must be made—

(a) in cash; or

(b) if authorised in writing by the employee or in an award or enterprise agreement by an employee association whose membership includes the employee or employees who do the same kind of work—

(i) by cheque (which must be duly met on presentation at the bank on which it is drawn) payable to the employee; or

(ii) by postal order or money order payable to the employee; or

(iii) by payment into a specified account with a financial institution.

(3) However, the employer may deduct from the remuneration—

(a) any amount the employer is authorised, in writing, by the employee to deduct and pay on behalf of the employee; or

(b) any amount the employer is authorised to deduct and pay on behalf of the employee under an award or enterprise agreement.

(4) An employee may, by giving written notice to the employer, withdraw an authorisation under this section.

(5) This section does not prevent a deduction from remuneration authorised or required by law.

(6) Despite the other provisions of this section, remuneration may be paid by the Crown to an employee by cheque or by payment into an account with a financial institution specified by the employee, but, if payment is by cheque, there must be no deduction from the amount payable because the payment is made by cheque.

The Opposition amendment seeks to reinstate the whole of the provisions of the current Industrial Relations Act in this matter dealing with payment of wages to employees. I am advised that since the Truck Act 1834 passed in the United Kingdom, and handed down in South Australia from the Wakefield colonisation in 1836, workers have been entitled to receive their wages in cash. The existing legislation allows for employees to be paid by methods other than by cash, for example, by cheque or electronic funds transfer, but only if that is authorised by the individual employee, or through the registered association, or is provided for by specific provision in the award.

Some employees have bargained away their entitlement to pay in cash, and in the process employers were able to achieve an efficiency gain. We do not oppose this occurring. We support the concept of enterprise bargaining involving mutual gain. However, the Bill limits the worker's ability to bargain by making this concession a *fait accompli*. In addition, there remains the problem of the few employers who do not pay properly.

Take, for example, a problem reported in the media earlier this year concerning workers at a certain chicken products processing establishment in this State. First they were underpaid. Then following the union involvement, the employer agreed to correctly pay the employees. However, when correct payment was made, it was made by cheque, which subsequently bounced, I might add. When a cheque bounces, not only do people have no money to pay the rent, buy food, etc., but also the unfortunate recipient of the cheque gets slugged for fees for re-presentation, etc. It may be all right for employers to run overdrafts and various lines of credit—these are normal business practices. Many workers, however, live from week to week and do not earn enough to be troubled by the concepts such as discretionary spending. If they do not get their pay on pay day, they do not eat. It may well be that such problems affect only a relatively few employers, but their employees require protection, too. An employee's right to receive cash should be regarded as sacrosanct in our view.

The Government's Bill provides that employers may decide to pay employees by cheque or some other form against the employee's wishes and not make the adequate arrangements with respect to ensuring that these employees are paid correctly at the right time on their pay day. No justification for the creation of this source of potential abuse is provided, and we strenuously oppose it.

The existing legislation allows for a sensible resolution of these problems where an employer wants something with respect to seeking their employee's permission to forsake cash. They are more amenable to providing a whole range of facilities to enable those employees to accept non cash pays. The Government's legislation would enable the employer unilaterally, without any consideration of the employee's

circumstances, to insist on their being paid by cheque or some other means.

The existing legislation allows employees to authorise their employer to deduct amounts, whether it be for medical insurance or union fees, from their wages if their employer has such a facility available. In many instances, employers in the private sector already impose administrative charges on those organisations that receive the benefit of these services.

The Government's Bill is basically designed around thwarting the High Court challenge to the *Bortus v. ANZ Bank* High Court case of 1972 which ruled that payroll deduction facilities was not an industrial matter capable of being subject to an award. This matter is currently being reconsidered by the High Court of Australia involving *FIME and ComalcoBuild*. In effect, if the High Court was to overturn the Bortus decision of 1972, the South Australian Parliament says that irrespective of the merits of the case no union can seek to make a binding award on an employer to compel that employer to provide for union payroll deductions, notwithstanding such a High Court decision.

The existing legislation which we seek to reintroduce as part of our amendments with respect to clause 66 does not allow employees at any time of their own volition to cease paying union fees through payroll deductions, simply by giving notice to their employer or withdrawal of their authority. The employer must, under the legislation, comply with the employee's wish. For those reasons, we believe that this amendment in relation to clause 66 is fair and equitable in the circumstances and ought to be accepted in its entirety.

The Hon. M.J. ELLIOTT: I will not move my second amendment at this stage and, after consideration, I withdraw my first amendment. In so doing I will explain—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Yes, I said that in so doing I will explain why. My principal concern relates to another part of clause 66 which I have not sought to amend and which I can only tackle by supporting the amendment of the Hon. Mr Roberts. That is quite simply the question of an employer being able to pay in cheque when no agreement has been reached that the employer might do so. Many people in South Australia live from pay to pay; that is the reality of this world. If a cheque bounces they do not have the money to buy their food, and it is as simple as that. I do not have any problems with agreements being reached in a proper manner that payments are to be made by cheque or by any other means, but I do not believe that people should be exposed to that risk—and it is not a vague possibility; it is the real world and cheques do bounce.

By all means, people may agree to it in their enterprise agreements, which the Government is trying to encourage, but in general terms I do not believe that the first requirement—that the payment be in cash—is an unreasonable one. I know why some people might not want to do that, but that should be negotiated.

The CHAIRMAN: What about in the sticks?

The Hon. M.J. ELLIOTT: Sorry, but you, Sir, can contribute to the debate later on if you want to leave the Chair. I am withdrawing the other amendments because—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I cannot tackle this issue at present. That does not mean that I do not consider the two amendments I have on file are also necessary. I have already spoken to one, and I will refer to the other one now so that at least the issue is on the table. I believe that if an enterprise agreement allows for employees' membership fees to be deducted—and that is a mutual agreement between employer and employee—and if an employee also makes the request that that deduction be made it should be able to be made.

The legislation simply states that an enterprise agreement cannot allow this to happen. I think an enterprise agreement should allow this, just as it allows a number of other things to happen. Enterprise agreements are supposed to be about mutual agreement between employers and employees and that should be something that can happen.

The Hon. K.T. GRIFFIN: The Government opposes the Hon. Mr Roberts' amendment, which merely seeks to reinstate the present position. If one looks at the present position one will see that it allows the deduction from remuneration only in certain circumstances. It really is just a redraft of the present Act. It is on authorisation and it may be given for the purposes of section 153(2) of the present Act, which provides:

> (a) by the employee himself or herself giving the authorisation in writing;—

and there is no problem with that—

> or
> (b) by a registered association of employees whose membership covers persons who do the kind of work undertaken by the employee agreeing to the authorisation in an award or industrial agreement.

That means that the authorisation to make deductions can be agreed without the employee's approval and, as I understand it, is frequently negotiated as part of the union's negotiations on award conditions. We find that objectionable because it denies the right of the employee to be involved directly in the decision about what should or should not be deducted from his or her wages.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: That does not happen under the principal Act or under your amendment.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: It may be a practice, but that is not reflected—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: That was under the old Truck Act.

The Hon. R.R. Roberts: We have had six people out of 1 300 at BHAS choose to be paid in cash, and they were paid in cash every week because they would not sign the deduction form.

The Hon. K.T. GRIFFIN: That is not what your amendment says. It might be the practice but it is not what your amendment or the principal Act says.

The Hon. R.R. Roberts: You are saying that industrial law can override the common law.

The Hon. K.T. GRIFFIN: Yes, because that is what the Act allows. It is for that reason that we oppose the Hon. Mr Roberts' amendments. I now address the issues raised by the Hon. Mr Elliott. I take his point in relation to clause 66(1)(b) about payment by cheque, which is not necessarily provided for. It is not necessarily with the concurrence of the employee. I propose to the Hon. Mr Elliott that for the time being—it is a matter that we can review—that I would be prepared in line 20 to move an amendment to accommodate our concern about that point. That will enable him to continue to support clause 66 and we can then deal with his amendment to the clause. I move:

> Page 26, line 20—After (b) insert 'with the agreement of the employee,'.

The clause would then continue 'by cheque (which must be duly met on first presentation); or'. The amendment accommodates the concern that the Hon. Mr Elliott has. It is a reasonable concern. I have not had any consultation with the Minister, but I suggest that it go in now and it can be reconsidered. It meets the Hon. Mr Elliott's immediate concern.

As to the Hon. Mr Elliott's proposal to insert new subclauses (2a) and (2b), I have some sympathy for the principle that he is endeavouring to address. However, I find it objectionable that it is included in the form proposed in the amendment. I find it objectionable for a couple of reasons. The first is that an employer must not act vexatiously. There has been a lot of litigation about what is vexatious in the context of declaring a litigant a vexatious litigant, but it is a question of interpretation as to the context in which this now appears as to what is 'vexatious'.

For example, the employer may genuinely believe that the employee owes the employer some money. If there was a genuine belief but nevertheless the deduction is made it is quite open for the employee to dispute it and say, 'You are being vexatious', and endeavour to build a case.

It is not just a question of civil liability; it is a question of criminal liability, because it creates an offence and a fine is attached to that. It also provides that in addition to the fine the court may also impose a penalty not exceeding twice the amount sought to be deducted. That is double jeopardy; you have a fine and a civil penalty. I can understand that there may be a dispute as to whether or not there is an outstanding liability, where the employer says, 'I lent you $500 six months ago on the basis that you would pay me back when you left,' and the employee says, 'Nonsense; you gave me the $500 as a bonus' or 'Nonsense; you did not lend me the money at all', so there is a dispute as to whether or not there is that outstanding liability.

One of the options to address that issue may well be that it is dealt with at a civil level rather than at a criminal level so that the employer may be able to deduct the liability. If it is disputed, in those circumstances it may be that, in resolving the issue (which might end up in the small claims court or be resolved by some other mechanism, and we need to address that because of the potential costs involved), the employer is exposed to a liability of up to twice the amount sought to be deducted. That would be a civil deterrent to seeking to deduct a liability which is not established as a lawful entitlement of the employer.

So, if the Hon. Mr Elliott accepts the amendment which I am proposing to subclause (1)(b) and if he were prepared (if not now then later) to consider the development of some alternative mechanism to the criminal sanction and the double jeopardy civil sanction, then certainly the Government would be prepared to examine that on the next run through this Bill.

The Hon. M.J. ELLIOTT: I will not accept any change on the run; the important thing is that the issues are on the table. The mechanism suggested by the Minister in relation to cheques is not acceptable, because 'by agreement' simply means that the employer says, 'I have no cash here, take a cheque' and then it bounces. That mechanism does not appear to cope.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Then put 'bank cheque' in. We will not solve it here on the run, so let us not spend forever arguing the details. All I am saying is that there is still a problem there. If we get to the question of deductions of outstanding liabilities, the Government has to recognise that this is a significant change to the current law in this area. In general terms, we are not talking about people who are usually in an absolutely equal position to sort these things out. If the employer is given absolute discretion and faces no risk if they have been vexatious, then the problem that some employers are complaining about creates an even worse problem for some employees. I recognise the need for balance in all this, and that is all I have sought to achieve. If the Government is not willing to accept balance, we can forget about it. The Minister did not address the final matter in relation to deductions, but it is still a vitally important issue. At this stage I support the amendment moved by the Hon. R.R. Roberts, because it addresses one issue that my amendments do not.

The Hon. CAROLINE SCHAEFER: I do not want to hold up these protracted negotiations, but has the Hon. Ron Roberts considered the practical implications of somebody who does not live anywhere near a bank having to pay cash? If anyone who works for me asks for cash, I am immediately suspicious that they have given me a false tax number or something like that and are going to do a bunk. It is not just employers who are known to be dishonest in this world. I would find it most inconvenient to take on casual labour if I could not pay by cheque.

The Hon. R.R. ROBERTS: If we are talking about a simple contract whereby somebody is performing a function for you, you can make an arrangement to pay by cash or by cheque. These provisions are more for people working in a structured ongoing situation where these arrangements can be made. What you are asking for can be negotiated and put into the award, but it must be with the agreement of the employee and the employer. The Bill provides that the employer can now make electronic transfers or pay by cheque whether or not the employee wants it. All we are saying is that we should go back to the fundamental tenet that one is entitled to be paid in cash.

Regarding paragraph (d), the Attorney-General, in trying to persuade the Hon. Mr Elliott, said that the employer can make a claim, whether right or wrong, on the employee's wages which have accrued by the day or the hour or whatever, and if the employee, the weaker party, objects to it being taken out, he can take legal action. I think that if wages have accrued under the award the employee is entitled to receive them. If there is a dispute about another matter and the employer thinks that he has been hard done by, he can pursue that through the common law streams of justice in South Australia. Basically we are saying that it comes back to the employee's right to be paid in cash. It does not deny the problem of negotiating before a contract is made how the payment will be made.

Even in the award situation you can still make that contract, but you must have agreement for it. If there is a dispute the employee is entitled to be paid in cash. There was a reference to the bush. I live in the bush, too. We have people working shift hours in industry and when they finish the banks are closed. If they live 40 or 50 kilometres out in the bush and you give them a cheque, they cannot cash it unless they have a friendly person in their own area. We have had situations where the majority have agreed to give up the benefit so that they can be paid in cash. This is a serious and fundamental matter. I thank the Hon. Mr Elliott for his indication of support.

Hon. K. T. Griffin's amendment negatived; clause negatived; Hon. R.R. Roberts' new clause inserted.

Clauses 67 to 70 passed.

New clause 70A—'Objects of this Part'.

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

Page 29, after line 2—Insert new clause as follows:
70A.The objects of this Part are—
(a) to encourage and facilitate the making of agreements governing remuneration, conditions of employment and other industrial matters at the enterprise or workplace level; and
(b) to provide a framework for fair and effective negotiation and bargaining between employers and employees with a view to the making of such agreements and to provide for the participation of associations in the process of negotiation and bargaining; and
(c) to ensure that award remuneration and conditions of employment operate as a safety net underpinning the negotiated agreements at the enterprise or workplace level; and
(d) to provide for improved flexibility in conditions of employment at the enterprise and workplace level with consequent increases in efficiency and productivity.

The Government believes that it is important to insert objects in this part because it is a comprehensive new part. Notwithstanding the argument by the Hon. Ron Roberts yesterday that agreements have been around for a long time, the fact is that the approach that we are taking and the extent to which we are addressing enterprise agreements is quite new. The clause relates to enterprise agreement jurisdiction. Whilst objects of a general nature are proposed in clause 3 for the whole of the Bill, the Government takes the view that it is desirable that specific objects be included in the enterprise agreement laws. As this part of the Bill is new, we think that there ought to be the clearest possible language giving clear guidance to employers and employees. Prescribing objects will assist in the understanding and application of these new enterprise agreement laws. As I said, as it is necessary to give a clear intention in respect of the Bill, these objects will enable that to occur.

The Federal Industrial Relations Reform Act 1993 actually contains specified objects throughout portions of that Bill, including its enterprise agreement division. The objects proposed by the Government's amendments very clearly express the Government's intentions in respect of the operation of the Bill. In particular, the proposed clause 70A(c) specifically provides the object of the Bill will, and I quote:

. . . ensure that award remuneration and conditions of employment operate as a safety net underpinning the negotiated agreements at the enterprise or workplace level.

That is important to recognise. There have been observations by the Hon. Mr Roberts and the Hon. Mr Elliott about the safety net provisions. I would have thought that now that we are considering these objects it can be seen that we do have a genuine desire to have the safety net underpinning negotiated agreements and that this puts the issue beyond doubt.

The object is a statutory recognition of the Government's policy intention. By the provision of objects in the manner proposed in the amendment, the interpretation and application of the enterprise bargaining provisions and, in particular, the provisions of approval in clause 75 of the Bill will more clearly give effect to the Government's intentions. Whilst the Government has not modelled this Bill on any particular State or Federal legislative scheme, it should be noted that the proposed object 70A paragraphs (a), (b) and (c) reflect similar provisions in the Federal Industrial Relations Reform Act 1993, and I therefore move the amendment.

The Hon. M.J. ELLIOTT: The insertion of objects in this part is something that the Democrats support. It is a great pity that perhaps it was not there to start off with, but I do not think I need to say a great deal more at this stage.

The Hon. R.R. ROBERTS: Paragraph (c) provides: 'to ensure that award remuneration and conditions of employment operate. . . ' The Attorney is talking about the award which would normally be in place, not award minimums as we had before; it would be what we used to call the 'parent award nexus' type of arrangement. Is that correct?

The Hon. K.T. GRIFFIN: With respect, it is clear, and I put it beyond doubt that it is our intention that it be the award remuneration and conditions of employment in the award, and not a reference to the award minimum standards in the Bill.

New clause inserted.

Clause 71 passed.

Clause 72—'Persons bound by enterprise agreements.'

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

Page 29—
Line 9—Leave out 'An' and substitute 'However, an'.
After line 13—Insert—
(2a) An association must not divulge to an employer which employees within a group have given authorisations under subsection (2)(b).
(2b) An association that has entered into an enterprise agreement on behalf of a group of employees must, at the time the application is made for the approval of the agreement, deliver to the Commission, in the manner prescribed by the regulations, the authorisations provided by employees under subsection (2)(b) so that the Commission can be satisfied that the requirements of that subsection have been met.

The amendment to line 9 in fact links to other amendments. I want to make it quite plain that an association can enter into an enterprise agreement on behalf of employees and the circumstances under which that will happen. The requirement that I will be producing in (2b) is that the association must provide to the commission, in a manner prescribed by regulations, evidence that it is actually representing the majority of employees. The reason I am doing that is that I do not believe that some employees in certain situations would feel confident to grant their authorisation if they felt any pressure from the employer. Certainly, some employers are anti-union—

The Hon. K.T. Griffin: Some employees are, too.

The Hon. M.J. ELLIOTT: Yes, that is why I am supporting some other Government clauses in this Bill. The point is—I was not casting reflections—it is a fact: some employers are anti-union, and if an employee wishes to authorise a union to act on their behalf, they should not be exposed to the wrath of their employer because of it. For that reason I want to give employees the opportunity to authorise the union to act on their behalf without the employer necessarily knowing precisely which employees have made such a request. It is just recognition of—

The Hon. Carolyn Pickles: It is a coercion thing.

The Hon. M.J. ELLIOTT: Yes. I think at the end of the day the coercion clauses that have been put into this Bill simply will not be used most of the time when coercion occurs. It is not living in the real world to believe that coercion clauses most of the time will have any significant effect against either employers or unions. I am seeking to put in a simple form of protection, that where an employee makes a request to be represented the employer does not have to know specifically who made the request. Nevertheless, I think the commission itself has to be satisfied that the representation is a genuine representation of the people. I understand that not dissimilar things happen in other circumstances with

the commission now. In any event, that is the thrust of what I am trying to achieve: allowing the association to go into the agreement as a party. It would do so on the authorisation of the majority of employees but that authorisation should be known to the commission and not necessarily to the employer.

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

Page 29, lines 6 to 16—Leave out the clause and substitute new clause as follows:

72.(1) An enterprise agreement may be made between—

(a) an employer or two or more employers who together carry on a single business; and

(b) a group of employees or an association bound by an award that applies or would, but for an enterprise agreement, apply to one or more members of the group of employees that is to be bound by the agreement.

(2) An employer or two or more employers who propose to carry on an enterprise may make an enterprise agreement with a registered association bound by an award that will apply to one or more employees in the enterprise or would, but for the existence of the agreement, apply to one or more employees in the enterprise.

(3) A person who becomes, or ceases to be, a member of a group of employees defined in the enterprise agreement as the group bound by the agreement becomes or ceases to be bound by the enterprise agreement (with no further formality).

The Opposition amendment provides for an enterprise agreement to be made between an employer and a group of employees, whether they be union members or not, or by an association which is bound by an award which would, other than for the existence of an enterprise agreement, apply to one or more employees of the group. This provides a far greater flexibility with respect to making of enterprise agreements than the Government's existing Bill. The Government's existing Bill discriminates against employee associations, that is, in particular, trade unions, and in that only those associations that are authorised in writing by a majority of employees who are to be bound by the agreement may be made a party to that enterprise agreement.

This discriminates, for example, against the union in a plant with 100 employees, 20 of whom are all members of the metal workers union, as they are all maintenance workers, and the remaining 80 employees are truck drivers, storemen and packers, clerks, shop assistants, etc. The Metal Workers Union is unable by its own rules to enrol those other employees as members, even though 100 per cent of those employees who are able to belong to that union are members. Because they do not constitute a simple majority of the total work force or a group, they cannot have their union made a party to that particular agreement, given the fact that they have 100 per cent of the membership.

The Opposition's agreement provides for maximum flexibility in that the employers and their employees, whether or not they be union members, can enter into an enterprise agreement; or an employer and registered association, that is, a registered trade union, or a non-registered association, can be made a party to the agreement.

In respect of these matters, and taking on board what the Hon. Mr Elliott has said in his amendments, we feel that he covers part of our concerns. However, we do not feel that it covers all the areas that we would wish to embrace in this amendment.

I do not know whether the Hon. Mr Elliott has made up his mind as to whether or not he will support our amendment in its totality, but if in the event that he does seek to pursue the remedies he proposes in his own form at this stage I would ask him to consider, if that is to be his final position on this, looking at this aspect, which covers a couple of other areas that are embraced by our amendment. For the sake of expediency, if the honourable member were to take that view, we would have to look at these matters again, along with other issues. I put our amendment to the Hon. Mr Elliott for his consideration, seek his support and give an indication that we feel that the things he is addressing are within the confines of our own amendment, but that we wish to go further.

The Hon. K.T. GRIFFIN: I will just address a couple of remarks to the Hon. Mr Elliott in relation to his amendment. Certainly, in relation to clause 72(2), the insertion of the word 'however' is not a problem for the Government. The amendment is made to what is in the Bill, and the honourable member will see that the Government is proposing an alternative subclause (2) which in our view clarifies the Government's intention in relation to the circumstances in which an association can be a party to an enterprise agreement as distinct from the relevant employees.

Where the association has been authorised in writing by a majority of the employees constituting the group of employees bound by the agreement, then the association can enter into the agreement on behalf of the group as a whole. It must, however, specifically be pointed out that where an association does not have this authorisation it is still able to represent each and every member of the association which comprises the group in both the negotiation of the agreement and any proceedings relating to the approval of the agreement before the enterprise agreement commissioner. The Government's intention in relation to this latter aspect will be made clear in a further amendment to clause 81(a).

The Government wishes to insert a new subclause (2), and I would be happy to move it in an amended form so that it picks up the amendment moved by the Hon. Mr Elliott and, accordingly, I move:

Page 29, lines 9 to 13—Leave out subclause (2) and insert:

(2) However, an association may enter into an enterprise agreement as a representative of the group of employees as a whole if, and only if—

(a) notice has been given to the employees as required by regulation; and

(b) the association is authorised, in writing, by a majority of the employees currently constituting the group to act on behalf of the group.

That picks up his immediate problem, and I hope he will see that the new subclause which I have moved will help to clarify the position and certainly will not compromise that amendment which the honourable member has moved.

In respect of his other amendments, the Government does have concerns about his paragraphs (2a) and (2b). I think that embargo on disclosure by the association of information to an employer will make the system unworkable. I submit to the Committee that, in the enterprise agreement situation, what we envisage is that an employer is negotiating with his or her or its employees, that some employees may wish to be represented by an association, and that is quite proper and is not discouraged, and that others may prefer to be represented by another association or to have someone else or another body represent them. It may be that one of that group of employees is delegated to represent those who do not wish to be represented by the association.

For the system to work, the employer must know which employees he, she or it is to negotiate with directly or through a representative. I would suggest that, if there is an embargo upon the association saying, 'I have got authorisation to represent X, Y, Z; A, B and C, but not D, E and F,' then it will be an impossible situation to be able to enter into negotiations. Even if the association represents a group of

employees but not the whole of those employees, as part of the process which we envisage the other employees are entitled either to be otherwise represented or to participate themselves in the negotiation process, and the employer must then know whom he, she or it is negotiating with. Otherwise, it just becomes unworkable.

The Hon. Mr Roberts' amendment seeks to enable a trade union to be a party to an enterprise agreement simply because the union is a party to an award that covers the employees, despite the union's not having any membership amongst the group of employees who are to be bound by the enterprise agreement. That is a fundamental issue which the Government opposes. It is our view that trade unions should not be entitled to enter into enterprise agreements with an employer where they do not have any membership and support of the employees concerned. The trade union role in relation to enterprise agreements must specifically be contained to the union acting on behalf of and with the support of its members who are likely to be parties to that enterprise agreement.

The Government's subclause (2) allows an association to be a party to an agreement where it represents a majority of the employees. If it does not represent a majority it may still be involved in the negotiation; there is no discouragement to that. So, I indicate opposition to the Hon. Mr Roberts' position. I hope that the Hon. Mr Elliott at least will support my amendment in its amended form. I also indicate opposition to the Hon. Mr Elliott's two amendments to insert new subclauses (2a) and (2b).

The Hon. M.J. ELLIOTT: I indicate that I will not be supporting either of the other amendments. I have further amendments in other clauses which recognise that where a union has members in the workplace it should be able to represent the workers as distinct from becoming a party to the agreement itself. I am attempting in this clause to make it quite plain that where a union represents a majority of the people at a workplace it then will be a party to the agreement. That is certainly the intent of the package of amendments that I am putting together.

I expect that where there is not a majority it will still be involved. However, in terms of the authorisation—because we are talking about in this case representing a majority of employees—if it is representing a majority of the employees then the employer knows that the negotiation involves a majority of the employees.

The Hon. K.T. Griffin: How does he know that?

The Hon. M.J. ELLIOTT: The intent of the authorisation process that I am setting up here is that—

The Hon. K.T. Griffin: How does the employer know? This is the problem.

The Hon. M.J. ELLIOTT: If this is not clear to the Attorney he should feel happy to amend it further. I do not accept that, because of the problems of coercion, the employer needs to know who the people are. I can accept that the employer needs to be satisfied that a majority are being represented, and that should be able to be ascertained by the commission; and, if my amendment does not allow that, I am quite happy—

The Hon. K.T. Griffin: But it does not get to the commissioner until the enterprise agreement—

The Hon. M.J. ELLIOTT: Okay; we will amend it. Let's stick to the principle at least. I am quite happy for an amendment to allow that to happen if the Attorney sees that as a problem. As I said, I believe the coercion clauses are hardly worth the paper on which they are written, and that is why I have other amendments which seek to get around the difficulties of coercion in other ways.

The Hon. K.T. GRIFFIN: I can see the way the wind is blowing, but I need to make the point very clear from the Government's perspective that the employer needs to know with whom he, she or it is to be negotiating in relation to an enterprise agreement. I accept the Hon. Mr Elliott's indication that if we think these amendments are unclear we can address that issue, and we certainly will. However, the fact is that you come back to basic principles, and the basic principle is that, if employees wish to have an association represent them, they are entitled to do that. The employer is entitled to know and to be assured in some way—and I do not know any other way other than to know whom the association represents—that it does represent the majority of employees. However, the employer is also entitled to know who is not represented, so that those employees have their rights to enter into negotiations as well.

It is not just an association negotiating with the employer, and those employees whom the association does not represent should also be involved in that negotiation because, if you only focus upon the association representing the majority, it denies the whole concept of an enterprise agreement and, I would suggest, denies the rights of the unrepresented employees to participate in that process. Our approach is to involve employees in the negotiation process and the information sharing process and not to exclude them as many of them have been excluded at the present time.

The Hon. M.J. ELLIOTT: I note that the test for enterprise agreements in terms of who does the negotiations is a fairly simple one of 50 per cent. My recollection is that in New South Wales 65 per cent are required in certain areas of those negotiations, and that is a much more severe test. So, there are probably a few swings and roundabouts in this process.

The Hon. R.R. ROBERTS: The Attorney-General is still talking about simple majorities in the workplace. It does not overcome the problem—

The Hon. K.T. Griffin: The Hon. Mr Elliott is talking about simple majorities.

The Hon. R.R. ROBERTS: It does not overcome my problem; I need to put this point. In a major area of employment you can have 100 per cent of a class of employees, all day workers who, at the end of the day, represent only 40 per cent of the work force. Shift workers may make up 60 per cent of the work force. Those day workers may all be fitters and turners and therefore be covered by the appropriate award, and the others could be represented by an unregistered organisation or, indeed, by another union which does not necessarily want to be part of the enterprise agreement.

We are saying—and I think there is some acceptance of this now—that they ought to be able to represent those workers in the negotiations. We are also saying that a registered association, which has always had a part to play and which has represented its workers faithfully in most cases, ought to be party to an award. The point was made that the employer needs to know whom he is negotiating with and who will be bound by it.

The Hon. K.T. Griffin: An enterprise agreement, not an award.

The Hon. R.R. ROBERTS: Well, the enterprise agreement; I stand corrected on an important technicality. If the union is able to negotiate on behalf of the people whom it represents, and other associations or collections of people are also able to have an input into the enterprise agreement, at the

end of the day the enterprise agreement covers all the employees, so you really—

The Hon. K.T. Griffin: The class of employees; it can be a class, so it can just be your 40 per cent that you've talked about, if that's the way you want to negotiate.

The Hon. R.R. ROBERTS: Nonetheless, whether that class of employees are or are not members of the union the enterprise agreement is for the workplace and covers the conditions for all people working in that workplace. Other than if it involved a vindictive person, why would someone want to go out and say, 'Are you a member of the union or not?' because the conditions would be exactly the same.

The Attorney's argument is that you have to be able to identify person by person. He has already made his intention clear: that we need to identify who is a member of a union, especially in the Public Service, with the requirement that every year members have to put in another authorisation. A commonsense approach, which has worked in this area for the past 30 years, is that you put in a notification and, if you want to stop, you can put in a notification stating, 'Please stop' at any time. This is another situation where you are making great play on wanting to identify the individuals.

The practicalities of what we are putting to the Committee are that the representation can take place for different classes of employees but in some cases 80 per cent of the employees may be members of the union and there ought to be no reason why the union ought not to be a party to the enterprise agreement. But when we have this separation we often have two distinct groups of people in the one workplace because the union or the registered association does not maintain a simple majority.

The Government's proposal states that the union cannot be a party to the agreement even though 100 per cent of the people able to be in that union are in that union and have told their organisation, 'Yes, we want you to represent us and to be our agent.'

The Hon. K.T. Griffin: With a class of employees negotiating, the union can be part of it if it represents the whole number of the class.

The Hon. R.R. ROBERTS: As to representation, we are saying they ought to be a partner in the agreement or award at the end of the day. They should be a signatory to the award.

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: That is if it is specific, but we are talking about the general condition of the enterprise agreement that must apply to everyone. You are saying that they can represent them.

The Hon. K.T. Griffin: Forty per cent of a workplace. If those 40 per cent are all fitters and turners and there are no other fitters and turners, then within the workplace you can have an enterprise agreement relating to fitters and turners.

The Hon. R.R. ROBERTS: Why can't the association be a signatory or partner in the award?

The Hon. K.T. Griffin: They can if the enterprise agreement relates to that group of people only. You are speculating about all sorts of variables. The principles are the important things.

The Hon. R.R. ROBERTS: You are not answering the question. I put my concerns to the Hon. Mr Elliott and he has indicated that he wants to pursue his own line. I have asked him to consider the points I have made and to look at the matter at the obvious revisiting of the clauses.

The Hon. T.G. ROBERTS: I wish to make a couple of points. There seems to be confusion about collective bargaining and enterprise bargaining. We have gone through a period where we have had a combination of both. There has been no exclusion: it is either by associations not representing non-union members, which is the case now, or associations representing non-union members in a collective bargaining arrangement.

Some organisational structures have 15 unions on one site running four awards. Employers are now going to unions and saying, 'Can you help us get rid of this mess? Can we have one negotiated collective bargaining award or an enterprise agreement on this site?' What we are heading for here is a dog's breakfast, where it is quite possible to have a whole lot of different categories of arrangements, with employers negotiating a whole lot of different arrangements for different categories of people on one site.

It is an arrangement where employers have said to unions, 'Can you mop all this up? We now have a more mature approach to enterprise bargaining at the Federal level with some rules that people can understand and work within.' We have just come out of the nineteenth and twentieth centuries and we are being dragged back again. The Government needs to look at the amendments of the Opposition and the Democrats and pull together something that makes practical sense out in the work places, because the arrangements as to closed shops vary. I know you are going to outlaw them and hope that they will change, but many employers prefer to deal with one association or one group of people to negotiate those conditions or awards so that there is some certainty there.

The Hon. K.T. Griffin interjecting:

The Hon. T.G. ROBERTS: Yes, but if there are provisions for a whole range of different variations, we will end up with lots of different problems.

The Hon. T. CROTHERS: I will preface my question to the Attorney with this statement. The unions in spite of their best efforts still have a way to go, but a position can arise where more than one union has constitutional coverage for workers in a particular industry. The Minister spoke about fitters and turners, and that is one area where that is the case. There are other areas where constitutionality of coverage extends to more than one union. How will the aspect of the Attorney's Bill that touches on that enable that matter to be dealt with because, if the Bill cannot deal with that matter, you effectively disfranchise some members on certain work sites from the capacity to have any representation at all?

The CHAIRMAN: The question is—

The Hon. T. CROTHERS: Mr Chairman, I have directed a question to the Attorney and it does require an answer. I want to know whether or not the Attorney is prepared to answer it. It is not fair for you to proceed with the matter until such time as the Minister answers the question that I have directed to him.

The CHAIRMAN: I cannot force the Minister to answer.

The Hon. K.T. GRIFFIN: We are accommodating that in a subsequent amendment to recognise the situation where some employees may wish to be represented by one organisation and some by another.

The Hon. R.R. ROBERTS: I have been told that my explanation is not clear. We accept that the union can be a party to the negotiations and we are saying that the union should be a party to the agreement. We are not excluding the people who are not members of associations from being parties to the agreement. We believe both should have the ability to be parties to the agreement, and that is what I am trying to achieve. It is not one party or the other: where there is a significant representation and the employees in that group

want to be represented by that association and be represented as a party to the agreement, they as the unregistered association or the collection of other employees in the association are also party to the agreement. I thought that I was being clear in using the example flagged to me by the Attorney-General when he said he wanted to identify the two groups. I thought that covered it. I make it clear that we are not saying that one party has exclusive rights—we are saying that both groups ought to have the right to be a party to the agreement.

The Hon. M.J. Elliott's amendment carried; the Hon. K.T. Griffin's amendment negatived.

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

Page 29, after line 13—Insert:

(2a) An association must not divulge to an employer which employees within a group have given authorisations under subsection (2)(b).

(2b) An association that has entered into an enterprise agreement on behalf of a group of employees must, at the time the application is made for the approval of the agreement, deliver to the commission, in the manner prescribed by the regulations, the authorisations provided by employees under subsection (2)(b) so that the commission can be satisfied that the requirements of that subsection have been met.

Amendment carried; clause as amended passed.

Clause 73—'Form and content of enterprise agreement.'

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

Page 29, lines 18 to 20—Leave out subclause (1) and substitute—

(1) An employer must, before beginning negotiation on the terms of an enterprise agreement—

(a) give the employees who may be bound by the agreement at least 14 days written notice that negotiations are about to begin in accordance with procedures prescribed by regulation; and

(b) ensure that those employees have had reasonable access to a copy of any award that binds the employees.

(1a) An employer and group of employees who may be bound by an enterprise agreement must also, in negotiating the agreement, comply with procedures and formalities required by regulation.

Page 29, lines 27 and 28—Leave out 'and address the question of the Commission's power to intervene to prevent or settle industrial disputes'.

Page 29, lines 29 to 32—Leave out paragraph (d).

Page 30, lines 5 and 6—Leave out paragraph (f).

Page 30, lines 7 to 9—Leave out paragraph (g) and substitute—

(g) must make provision for the renegotiation of the agreement at the end of its term;.

These amendments largely create a package. In the first of the amendments, to lines 18 to 20 where I am replacing subclause (1), I am seeking to ensure that employees are given 14 days notice of the commencement of the negotiation of an enterprise agreement, and also that they have access to copies of any award that binds them. Many employees will not understand the process of enterprise agreements; they may not even know what are their current award entitlements. How can you enter into a process that provides an award as a safety net if you do not even know what your safety net looks like or what are its provisions and if you have not had some chance to consider for yourself what you may be seeking by way of the agreement? I do not think that is unreasonable. Given that employees themselves may wish to speak among themselves, may need to be prepared and may want to talk with representatives of any associations of which they may be members, that is not an unreasonable provision, and I would hope that other members in this place would support it.

The next amendment is to page 29, lines 27 to 28. I believe that an enterprise agreement should provide procedures whereby industrial disputes may be settled. I have some concern however that an enterprise agreement may have a proviso that the commission's powers to intervene cannot be used under any circumstances—in fact, the commission being totally shut out. I would suggest for instance that when one sets up an enterprise agreement one would reasonably try to anticipate all situations, but it is possible that something has not been anticipated—that the dispute mechanism simply does not cope with it. If you do not address it you are then inviting disputation under clause 80. If for instance under the enterprise agreement employees or an employer have difficulties settling some dispute that has arisen—one that perhaps was not reasonably predictable—and they are being denied the capacity to go to the commission to sort out that difficulty, then the disputation could elevate into industrial action by the employer or employee, and that would bring the whole agreement to a crashing halt. I do not believe the Government would want that to happen either.

So, I am saying, 'Let us be sensible; by all means let us do as much as we can within the enterprise agreement to have dispute settling capacity.' Absolutely to preclude the commission or to have that possibility is an invitation to set up industrial action, and that does not seem to be terribly bright to me. In some other amendments I try to ensure that enterprise agreements are not capable of being of any length. I accept that we would not want a dispute being set up about the hourly wage rate three months after an enterprise agreement had been agreed, and I would not expect that a dispute over the wage rate would legitimately find its way to the commission. This largely covers matters which have not been adequately addressed by the enterprise agreement or just a simple inadequacy within the mechanism itself. We need to allow for those things occurring.

I am moving to delete paragraph (d) because I believe it should be perfectly possible to write out an enterprise agreement which covers all the issues which are found within an award. I believe that in circumstances where a document fails to address an issue the award should prevail. I am not seeking to have the award prevail over the enterprise agreement; I am insisting that enterprise agreements should be thorough enough and make it quite plain that if award conditions are being reduced or not being applied the agreement should spell it out. I am asking for thoroughness in enterprise agreement documentation. At a meeting that I had with employer groups, I know that they were worried about this. I argued that it should be possible with each award to come up with a standard enterprise agreement which ensured that matters under the award were not ignored. I had the feeling at the end of that discussion that they acknowledged that was possible.

I am not proceeding with an amendment to paragraph (e). That was a bad instruction by me or an error. Either way, it is there. As regards paragraph (f), I do not believe that agreements should be secret. I believe that agreements should be held by the commission. If we are to have confidence that the safety net is operating, we must know what agreements are being struck. As much as anything, it is to ensure that the safety net is working, and therefore agreements should not be kept secret. Looking at the legislation as it stands, people are concerned that we will be setting up a political commission which may be biased and which may allow certain decisions to be made which fall well below the claim safety net and no-one would have access to the enterprise agreement to find out whether that was happening or not. Therefore, I insist that such agreements should not be secret.

I am proposing to replace paragraph (g) because, as I shall make plain in other amendments, enterprise agreements should be for a term of two years. My amendment makes it plain that as we approach the end of the maximum term of two years, or it could be less, the enterprise agreement must contain a provision for the renegotiation of the agreement at the end of the term.

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

Page 29, lines 18 to 32 and page 30, lines 1 to 14—Leave out the clause and substitute new clause as follows:

73.(1) An enterprise agreement—
- (a) must be in writing; and
- (b) must specify the employer and define the group of employees to be bound by the agreement; and
- (c) must include procedures for preventing and settling industrial disputes; and
- (d) must be for a term, not exceeding two years, stated in the agreement; and
- (e) must contain provision for renegotiation of the agreement before the end of its term; and
- (f) must be signed by or on behalf of the employer who is to be bound by the agreement and by each member of the group of employees who are to be bound by the agreement, or by an officer of the registered association.

(2) Within 21 days after an enterprise agreement is signed by or on behalf of all persons who are to be bound by the agreement, the agreement must be submitted to the commission for approval.

In our view, this amendment is far superior to the clause in the Bill in that it sets out a maximum term of two years for an enterprise agreement to be made. The Bill allows for an unlimited period of time for an enterprise agreement to be entered into. For example, an employer could con employees into striking a 100-year enterprise agreement—and that could be done as the Bill is drafted—notwithstanding the fact that the composition of the work force could change many times in those 100 years. When one reads the Bill with respect to the opportunity to rescind or vary enterprise agreements during the life of those agreements, it is very restrictive.

The amendment also provides that the agreement must be signed by each member of the group of employees who are to be bound by the agreement or by an officer of a registered association. This comes back to the argument about who is a party. The Bill is deficient in that it allows for so-called representatives of the workers to sign enterprise agreements on their behalf. In a non-union shop, for example, who will keep a check on those persons who are supposedly authorised to sign on behalf of the majority of employees who allegedly support the enterprise agreement?

Under the provisions of the Bill, persons signing an agreement would not necessarily be an incorporated body, and they would not be subject to any sanctions or penalties imposed upon them by their fellow workers if they sign agreements in bad faith or contrary to the instructions of the employees. This is unlike registered associations whose officers are directly responsible to the membership, subject to regular elections and to their actions being challenged under the rules of a registered association or within the Industrial Court. To overcome any such argument it is not too onerous to expect an employer to seek the written agreement of each of the employees who are in favour of the agreement. As many of these enterprise agreements, if they are entered into at all, will be done mainly through small businesses with fewer than 30 or 20 employees, to ask an employer to ensure that 15 or 16 of those employees actually sign the enterprise agreement to testify that they are truly happy with the agreement is not an onerous imposition.

Again, we have a series of amendments in the same area. I can see where the Hon. Mr Elliott is going. To a large extent, he is in concert with us. I again put the proposition to him that the way that we have carried out this exercise is better and more succinct and covers all the areas that the Hon. Mr Elliott wants to canvass. We are in much the same position as on the last clause. The Hon. Mr Elliott has given a clear indication of his intentions. Basically, we agree with most of those intentions. We may be wrong, but I am confident that our arguments for the construction of our clause are superior, and I would ask the Hon. Mr Elliott to consider them closely and to make up his mind whether he agrees with our contention that we are doing everything that he wants to do, without being offensive, in a superior way.

The Hon. CAROLYN PICKLES: My concern is about paragraph (e). As honourable members are aware, the Social Development Committee has been considering at some length the whole issue of family leave provisions. We have had a number of witnesses before us. As the committee has not yet reported to the Parliament, I cannot divulge what has been decided. It is unfortunate that the Hon. Sandra Kanck is not present, because, from the evidence that she has had before her in this committee, I am sure that she would be concerned about clause 73(1)(e).

It seems to me that this provision does not really benefit people who wish to have more flexible arrangements for the care of sick relatives. In the past it has been a practice, albeit illegal, to take sick leave to care for sick relatives, particularly women who take sick leave to care for sick children. That unfortunate situation has been forced upon women who, when they are sick, find that they have run out of sick leave and therefore have to go to work sick. That is not a situation that we should be supporting. It is particularly dangerous if a woman is working on machinery and she has a high temperature and cannot concentrate properly. So I do not think this provision is very sensible and I think it is a retrograde step. Some of the suggestions that have been put before the parliamentary committee are far more sensible and at present I believe that the Hon. Mr Roberts' amendments to clause 94 will more adequately take into account the concerns that I have expressed.

The Hon. K.T. GRIFFIN: The fact of the matter is that it is in this Bill and we are dealing with it now; we are not dealing with it when the committee reports.

The Hon. Carolyn Pickles: You do not want to hear the truth, do you?

The Hon. K.T. GRIFFIN: The committee is still considering the matter. We are dealing with it now in this Bill.

The Hon. Carolyn Pickles: You wouldn't change your mind no matter what the committee said.

The Hon. K.T. GRIFFIN: You don't know what we would do. At least the Government has put this in the Bill; the Labor Government did not do it. We have at least created a presumption, which employers and employees have to address.

The Hon. R.R. Roberts: Some of those provisions are already provided for.

The Hon. K.T. GRIFFIN: That may be, but what we are doing is providing a statutory presumption, and it took a Liberal Government to do it. The previous Government did not decide to put it into any legislation. All that we are saying is that it is there as a statutory presumption and people have to address it. If they do not address it then the presumption is in favour of such leave in the enterprise agreement

situation. If the committee decides to report at some stage in the future, then that is a matter we will consider at that time. The Bill is before us; it has a new provision in it, which creates a statutory presumption and I would have thought that people would be pleased about that rather than criticising something that has never been in the statute before. My view in respect of that is that paragraph (e) is appropriate. It does something new, and it is important that it remain in the Bill.

In terms of the Hon. Mr Elliott's amendments there are a number of points that I need to make. The first is that in relation to his proposed new subsection (1), the Government is sympathetic to the position he is putting. The problem is that it is inflexible. That is, that employees have to be given at least 14 days written notice that negotiations are about to begin. The problem is that there may be a situation in which it is important to begin negotiating immediately with a view to preventing an industrial dispute. You have to give your written notice, and you have to wait at least 14 days. It may be that you cannot prevent the industrial disputation. There is a very practical consequence of limiting the period to 14 days. As I say, we are sympathetic to notice, and we support the provision of a copy of an award or giving access to it. It may be that in that there is an area where subsequently there can be some discussion with a view to providing some more flexibility in those situations where there is a sense of urgency about beginning negotiations for an enterprise agreement.

In relation to the Hon. Mr Elliott's amendment to paragraph (c), we have already had some extensive discussion about this on an earlier clause. What the Government is seeking to do, is to ensure that the parties to a prospective enterprise agreement give consideration as to the mechanisms and processes they want to put in place for the prevention and settlement of industrial disputes.

The Hon. M.J. Elliott: There is no argument about that.

The Hon. K.T. GRIFFIN: Okay. That is what we want to try to achieve. We believe that by putting paragraph (c) in there, and to make it specifically directed towards the commission's power, that the parties need to direct their minds to whether the commission will have a particular range of powers and involvement, or whether that is to be undertaken by someone else. They may decide they want some independent arbiter, rather than the commission—that is fine. If one reads that in conjunction with clause 77, one can see it qualifies and complements clause 73(2)(c). Clause 77 provides:

> An enterprise agreement may confer power on the commission to settle industrial disputes between the employer and employees bound by the agreement.

The Hon. M.J. Elliott: It may and it may not.

The Hon. K.T. GRIFFIN: Yes, it may and it may not, and if it does not then the commission is involved. Clause 77(2) provides:

> Irrespective of whether an enterprise agreement confers power on the commission to settle industrial disputes the commission may exercise its powers of conciliation [distinguishing it from arbitration] in an industrial dispute between an employer and employees bound by an enterprise agreement.

What we are endeavouring to do is to distinguish between arbitration on the one hand and conciliation on the other; and provide that if there is a dispute that the commission can become involved, regardless of what the agreement says in respect of conciliation. But if there are procedures in the enterprise agreement, as we seek to have parties include, then the commission can or may or may not be involved, depending on the content of the agreement. Remembering that the enterprise agreement commissioner becomes involved in approving or not approving an enterprise agreement and would, I expect, be focusing on whether the requirements imposed under clause 73 have in fact been addressed. Clause 75(1)(c) provides:

> The commission must approve an enterprise agreement if, and must not approve an enterprise agreement unless, it is satisfied that—
>
> (c) the agreement complies with the other requirements of this Act.

So, what we are trying to do is develop a coherent scheme, which requires employers and employees to address various issues and to provide for what happens in terms of the gaps, which may advertently or deliberately be left. The other point is that in our policy we have indicated that the commission will undertake a range of functions, including conciliation and arbitration of industrial disputes under awards, and where the parties to an enterprise agreement have agreed that the commission should be the body to resolve disputes under the agreement.

In respect of paragraph (d), we sought to ensure again that the parties address the issue of which parts of the award, if any, should apply to the agreement and which should not. One of the concerns we have, if we leave out paragraph (d), is that, notwithstanding subsequent amendments, there may well be a difficulty in interpretation. For example, if the enterprise agreement records that the employees will forgo penalty rates of pay but in return for other benefits—and the award deals with the issue of penalty rates in a different context—it may then be a difficulty in interpreting where the line is to be drawn between the parties to the agreement agreeing that penalty rates will be forgone, and the award applies. So, there may be questions of interpretation.

We are suggesting that, if you are going to have an enterprise agreement, address the issue quite specifically and clearly by identifying that, in terms of the award, these provisions will apply, these will not, and deal with them specifically, rather than leaving it up to a question of interpretation. What we are seeking to do is minimise the area for either disputation or the need to have the matter interpreted by the commission.

The Hon. M.J. Elliott: I am seeking to ensure that the awards are written properly.

The Hon. K.T. GRIFFIN: So are we. That is the emphasis of this. If you leave in the paragraph, it will ensure that that is specifically addressed. If you leave it out—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: That can be done. The Hon. Mr Elliott made an interjection about a minimalist agreement. If the parties agree in about a dozen paragraphs that there are certain arrangements between them in relation to remuneration, leave, and so on, and say that all the other provisions of the award shall apply, I do not see any problem with that. However, I am not clear exactly where he is going on that basis.

In relation to disclosure, I would have thought that it ought to be between the parties to determine whether or not an agreement is to be disclosed to third parties.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: There may be, but I think you misunderstand what an enterprise agreement will frequently do. What happens in some enterprises is that management lays on the table, 'This is where we want to go; these are the issues we will have to address, in management terms and productivity terms; this is the competition we will have to

meet; this is the new product we are developing; this is the new technology we are developing or seeking to acquire and put into place. All of that will mean these consequences for you.' In those circumstances, if that happens to become part of the agreement—new technology or new processes to become more competitive—you put that in the contract which might be an appropriate basis for their saying, 'What we are trying to do is this; that is what we will do if you as employees adopt this particular stance.'

If you are not saying that employees and employers cannot agree, that information will not become available. The moment it becomes available, it can be disclosed to anybody and a business may well be signalling to a competitor what sort of stance it will take.

The Hon. R.R. Roberts: That information may show up in the negotiating process.

The Hon. K.T. GRIFFIN: It may. It may be in the agreement. If you have seen some of the enterprise agreements I have seen, you will realise that they are very comprehensive, and they set the standards. They set the performance required of the employer as much as that required of the employee. What we are saying, in that context, if you want employees and employers to communicate frankly and develop a comprehensive arrangement, one has to expect, for it to work properly, the employer has to put the cards on the table and the employee has to understand all the information that is available. From my understanding of what has happened in lot of negotiations for enterprise agreements elsewhere, not necessarily in South Australia, all the cards are on the table, and management, the financial controllers and a whole range of other people put information on the table. Employees get more information than they have ever had before.

The Hon. T.G. Roberts: If only that was true.

The Hon. K.T. GRIFFIN: It is true. In some enterprise agreements I have seen and in negotiations about which I have been informed, that happens. An enterprise agreement is not all one way about what the employee will do. It is also about what the employer will do. If the employer says, 'We will introduce this technology on such and such a date,' and as a consequence of that the employees accept a particular arrangement, you are signalling to competitors an edge which you hope to have on them and about which they will be forewarned.

The Hon. T.G. Roberts: That doesn't have to be written into an agreement.

The Hon. K.T. GRIFFIN: It may be, because it is an obligation that the employer is accepting in return for the employees undertaking certain obligations. The Hon. Mr Roberts say that it may not need to be there. The fact of the matter is if an employer and employee are now aware of this you will find that the employer will not disclose a lot of information that will become public knowledge or may become public knowledge and thereby remove the competitive edge. The employees will suffer as much as the employers.

The problem I see is that you are removing the opportunity for employees and employers to make a comprehensive agreement which may have commercially confidential information and competitive information in it, and you are removing their opportunity to say, 'We agree that that will not be disclosed as part of the process.'

In relation to the term, I will just address that briefly and say that the Government is sympathetic to some term. We think that two years is too short, but we are sympathetic to a term provided that we have clearly defined what happens at the end of the term. That is an issue that we can address later. We have one amendment, to add a new paragraph (ca). I therefore move:

Page 29, after line 28—Insert paragraph as follows:

(ca) if a majority of the group of employees covered by the agreement agree—may include a provision giving an association of employees that is able to represent the industrial interests of the employees constituting the group rights to represent the industrial interests of those employees to the exclusion of another association of employees[2]; and

[2]However, the provision must be consistent with section 109(1) and 110(1).

The amendment is an important element in the introduction into the Bill of the Government's legislative scheme in relation to demarcation disputes. It is a matter that the Hon. Mr Crothers raised earlier. The amendment enables one union only enterprise agreements to be entered into between an employer and a trade union on behalf of the majority of the employees constituting the relevant group. The effect of this amendment is to enable an enterprise agreement to specifically provide as a term of the agreement the right for one union to have the exclusive role of representing the industrial interests of employees in the group to the exclusion of another trade union. This provision will therefore enable demarcation disputes to be resolved through the making of enterprise agreements.

This provision may also have application in circumstances where there may not be a demarcation dispute but simply in circumstances where an employer and the group of employees wish to enter into an enterprise agreement which requires the employer to deal only with one trade union. The Government, however, has been conscious to ensure that this amendment remains consistent with its freedom of association principles.

The Government amendment requires before an agreement can contain such a provision that the majority of the group of employees covered by the agreement have agreed to such a provision. This means that the employees have themselves democratically determined by a majority to support the rights of one trade union to represent their industrial interests to the exclusion of another trade union.

Furthermore, the Government's amendment must be read in the context of its freedom of association provisions in clauses 109 and 110 of the Bill. In particular, the relevant provision in the enterprise agreement could not require the employees in the group to become members of the trade union. Membership of the relevant trade union would continue to be entirely voluntary, and neither the union nor the employer could force employees to join the relevant trade union or provide preference to employees who decide to join the union over those who decide not to do so.

The Hon. M.J. ELLIOTT: I oppose the Attorney-General's amendment. It seems to me a fairly unnecessary one as well. No agreement at the end of the day will be reached unless a majority of employees come to a particular view. What is being done by this amendment is that people cannot even say whom they want to represent their arguments during the negotiating process.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: According to amendments which I have on file and some that have already been dealt with, an association can only, at the end of the day, enter into an agreement if it represents the majority of employees. That does not prevent another association putting a view which

represents particular members during the discussion stages. At the very least I would argue that the amendment is unnecessary. It does not achieve anything which is of any benefit to anybody. It only means that a section of employees—and under this a minority of them—are not allowed to have their particular views represented by people or a person of their choice. I do not see that that complies with the Liberal Party policy of—

The Hon. K.T. Griffin: This does not stop the negotiations; this is only when the agreement has been negotiated and it goes to the enterprise employment—

The Hon. M.J. ELLIOTT: I think the Attorney had better have another look at clause 72 (2) as amended because it is provided already that you must be authorised in writing by a majority of employees.

The Hon. K.T. Griffin: That is in negotiation; this is after the agreement has been entered into.

The Hon. M.J. ELLIOTT: As I said, I do not think that this clause is necessary and I think that it potentially denies representation. I will not support the Opposition's amendments on this clause. I think the debate has gone far enough so I will not take it any further at this stage.

The Hon. CAROLYN PICKLES: I would like to revisit paragraph (e) because I am still confused about why the Attorney thinks that this is an additional provision—that this is adding something. If the awards provide for sick leave of 10 days, or however many days one can have, how can a provision that requires you to use that sick leave for another purpose be an addition? If the Government is serious about—

The Hon. K.T. Griffin: It is simply that the awards give you no right to stay home and look after your kids.

The Hon. CAROLYN PICKLES: But if the Government is serious about an additional provision for people to take care of their sick family members, why does it not insert a clause that provides for additional family leave?

The Hon. K.T. Griffin: The parties can agree to it if they wish to. This is a minimum; it says that your sick leave can be used for certain other compassionate purposes.

The Hon. CAROLYN PICKLES: Sick leave is supposed to be for your own personal sick leave, not for somebody else's.

The Hon. K.T. Griffin: We are extending the option.

The Hon. CAROLYN PICKLES: You are not extending the option: you are restricting it. The Government is extending the option in one area by saying, 'You can use it for a number of other things,' but it is also taking something away because it is not giving people an additional provision. If the Government were to say that an additional number of days may be taken for the care of family members—

The Hon. K.T. Griffin interjecting:

The Hon. CAROLYN PICKLES: Government members criticised the former Labor Government in this area, and I would like to inform them how the reference on this matter came before the Social Development Committee: because I had raised the issue with the former Minister when another Bill on this issue was being debated some time last year. The Minister at that time did not feel that adequate consultation had taken place with employer groups in relation to the whole issue of family leave provisions, and he agreed that the Social Development Committee would be an admirable forum in which to have further information presented. The committee was to come up with a set of recommendations which would facilitate the taking of family leave by all members in the community—not just by men but by women, too.

Unfortunately, it is a fact of life that women workers have the predominant care of the family. Presumably one day—not in my lifetime—we will reach a stage where that care of family members is shared equally between men and women. We are moving towards that slowly but I expect to see it—probably by the time I am 95 I will see it—

The Hon. K.T. Griffin interjecting:

The Hon. CAROLYN PICKLES: I won't last that long if this keeps on going. We are moving towards this very slowly, but at present all the Government is doing is using this as some kind of smoke screen to say, 'We are handing over an additional provision.' However, it is not handing over an additional provision. The Government is saying that sick leave is, and has for many years been, a provision to cover employees themselves being sick. The fact is that employers have not provided employees, either voluntarily or under any kind of legislation (and I admit there has not been legislation for this), with adequate provision to care for family members when they are sick. It is now a reality of life that women are in the work force to stay, so some kind of provision in addition to sick leave must be made to enable them to care for family members. I think that the Hon. Mr Roberts' proposition in relation to section 94 is admirable, and it will accommodate this.

An ACTU test case has been conducted and we should be looking at that issue and not trying to fudge this and pretend that this is some kind of miraculous cure-all for the care of family members who are sick.

The Hon. K.T. GRIFFIN: The Hon. Carolyn Pickles misunderstands—

The Hon. Carolyn Pickles: No, I do not misunderstand.

The Hon. K.T. GRIFFIN: You do misunderstand. Just listen for a tick.

The Hon. Carolyn Pickles: You are fudging.

The Hon. K.T. GRIFFIN: I am not fudging it. It is no secret; the Government is saying that presently there are minimum sick leave standards.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: The Government is not saying that by statute they are going to be extended or that other rights—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: There is no secret about it. If you read the Bill you can find that out for yourself. The Government is saying that presently there are minimum standards for sick leave. Sick leave can only be used by the employee for the purpose of his or her sickness. If he or she has a child at home who is sick and has to stay home there is only one way to do it: only—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: We are not talking about additional leave. In the law at the moment the only way you can do it is to either lie to your employer or take additional leave. The Government's provision says that—

Members interjecting:

The Hon. K.T. GRIFFIN: Separating the argument about whether or not there should be additional leave—and I acknowledge that that is a legitimate matter for debate and that is the issue which the Committee is considering— that is not the issue in relation to paragraph (e). The issue is whether, under an enterprise agreement, there is a minimum standard for sick leave which can only be used by the worker. By including this paragraph, the Government is saying that it must provide that that sick leave can be used for the other compassionate purposes, unless the agreement provides to the

contrary, and that is by negotiation. There is nothing to say you cannot negotiate additional leave for other compassionate purposes.

The Government is saying that for the first time it is recognised by statute as a presumption that the leave to which workers are presently entitled for sick leave purposes may be used not just for the sickness or illness of that particular employee but for the additional compassionate purposes. That is what the Government is saying. It is not arguing about whether or not that should be extended; it is saying that there is now a presumption that that leave can be used for other compassionate purposes. It is as simple as that.

The Hon. M.J. ELLIOTT: I understand what the Hon. Carolyn Pickles is saying and it is an issue I will reflect on further. The position is an improvement on the current situation, not just because it now makes legal what was formally done illegally, which is only a marginal gain but which nevertheless is a gain. It also means that under an enterprise agreement you can negotiate for an extra couple of days sick leave which might also be useable as family leave as well. The flexibility is important. The standard number of days is now 10. If people negotiate an extra two days and it goes up to 12 days, they can use it in any combination they like.

The Hon. Carolyn Pickles interjecting:

The Hon. M.J. ELLIOTT: The extra flexibility or the potential for that flexibility is not a loss. I understand the honourable member's concern and I am not saying the issue is not one that will not deserve further attention, but it has to be seen at least as an improvement on the current situation. I agree absolutely with the Hon. Carolyn Pickles that at present sick leave does not cope with the fact that more often than not it is the woman who ends up having to look after not just her own sickness but that of everyone else as well. That is partly a societal problem and that will take time to fix, and it is also a reflection of the current reality.

I do not disagree that there is a problem, but this is certainly not making it worse. Perhaps the flexibility offers some small pluses. The Hon. Ms Pickles' major concern is that this having been done, the Government might say, 'We have done this,' and following the report that the committee is going to make, the Government might say, 'We do not need to do anything else because we have already done something.' I understand that concern as well. We could almost prepare the Minister's response for when that time comes, because it will be pretty predictable—just as predictable as Dean Brown saying, 'Things are worse than we expected.' Nevertheless, I do not intend an amendment at this stage but the matter in my mind is still open.

The CHAIRMAN: We are progressing slowly.

The Hon. T.G. ROBERTS: Some things need to be put on the record and, when people start to read the debate, they can look at what the intentions are and what can be achieved. The Bill includes provision for the enterprise agreement to be in writing. Some awards and agreements also have provision for second languages. Is the Attorney going to encourage the display of awards and/or agreements in another language where another language is predominantly spoken?

The issue of three years going to two years has been addressed by the amendment, and that is a good move in terms of the flexibility required, particularly with the changing nature of work. Three years is too long for agreements and they need to be able to be varied. There needs to be a clarification of the process before the end of the agreement runs out. I would like to have seen the variation within the content and structure of the enterprise agreement; I would like to see the ability to vary in the content of the form and structure of this clause. True, it is in clause 79 but, if employers and employees agree to vary in the middle of a term, there should be that provision written in the form, structure and content of this clause. I acknowledge it appears in another clause.

The argument has just been held on whether people can negotiate their sick leave provisions. I accept the point that it is a change in terms of recognition of definition and legalises what has been done basically by negotiation. The Hon. Carolyn Pickles' point is that there will be a transfer of the leave provisions that exist now. The 10 days will be transferred and be included in provisions for family leave but there will not be any extension to sick leave.

The Hon. K.T. Griffin: The industry average is 4½ days out of 10, so there is still a fair bit of slack throughout the community. There are exceptional cases as well.

The Hon. T.G. ROBERTS: Sick leave has been used in many awards and agreements for variations for negotiations. The point made by the Hon. Carolyn Pickles is that there should be an extension rather than an inclusion and variation, because there are so many variations that exist now. Some have sick leave that is accumulated and is able to be carried on to the next financial year. Others do not have that. Others lose their sick leave provisions when the financial year runs out.

Some can accept their provisions by way of cash. I do not accept this, and this is the problem I have with enterprise agreements: some employers encourage members to cash in their sick leave and I do not encourage it. Sick leave should be used for sick leave only and the Hon. Carolyn Pickles makes the point that, if in enterprise bargaining arrangements people are encouraged to cash in sick leave, people come to work sick and pass on infectious diseases to other people simply to get the monetary benefit. Usually that occurs under awards and agreements that are lower than what is regarded as community standards. I just want to raise those points. They do not need a response because they are statements.

The Hon. R.R. ROBERTS: The Attorney-General in his exuberance started to run a few red herrings around and it has led to something different. The Hon. Carolyn Pickles has raised the issue of sick leave, and this clause is a pre-emptive strike to avoid a certain situation. An enterprise agreement can be made. Test cases are run by the ACTU for family leave. We have the phenomenon these days where more and more women are out working and there is a requirement to maintain those family ties from time to time. In a number of areas family leave has been written into agreements and awards.

The ACTU has recognised the trend as is normally the case where the unions see trends before the employers and they mount a case. This clause is not about giving flexibility but about providing the employer with the opportunity, if the case is won by the ACTU, and there is some likelihood of that occurring, to say, 'Yes, that case has happened, but we are not going to put that in the enterprise agreement because you'll be covered under another section.'

This provision is a pre-emptive exclusion for that class of worker. The Attorney-General also commented about why enterprise agreements ought to remain secret. The award situation has to be there for the public interest and for comparison of safety net standards. The Attorney is saying that the award must be there for everyone to see so that the standard, which we have now agreed, will be the safety net

provision for the enterprise agreement and will be available for everyone to see in the interests of the public. He is then saying, 'But we can make a little clandestine deal over here which we must keep secret.'

If we are going to have freedom of choice, under which the Liberals claim people can make choices, they ought to be able to make those choices upon the basis of proper information and not hide one lot away, picking the bones out of the best of the other and bringing that into agreements while excluding other aspects. The Attorney argued what employers always say about processes and trade information turning up in agreements. The Attorney says that this could well happen. That is again based on the myth that the Liberal Government has come up with something new in enterprise agreements. But they have been around forever. The Liberal Party is like a kid that has discovered something new—but it has all been done and seen before. We have been through all that and the Government is not doing anything new or unique. The fact of life is that those trade secrets and processes do not turn up in the agreements. They are part of the negotiating process which determines what the agreement will be and what it says. It is an absolute red herring to suggest that they turn up in agreements.

The Attorney-General is getting fussed about the time it is taking to deal with this clause. We did fix some positions, but then he started to make wild allegations and made out that the Government was doing something for the working women of South Australia by giving something that we have been able to negotiate in many enterprise agreements and awards throughout the State. That is not an addition; that is a blocker in case the Federal court rules for family leave. That is what it is all about. The Hon. Ms Pickles has picked it exactly in one hit. In one contribution she has unmasked the Attorney-General in this attempt to deceive the public.

The Hon. M.J. Elliott's amendments carried; the Hon. K.T. Griffin's amendment negatived; clause as amended passed.

Clause 74 passed.

Progress reported; Committee to sit again.

[Sitting suspended from 12.55 to 2.15 p.m.]

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: Nos 2 to 14.

MINISTERIAL OFFICERS

2. **The Hon. CAROLYN PICKLES:**

1. What are the names of all officers currently working in the Office of the Minister for Education and Children's Services?
2. What are the names of all Ministerial Assistants employed in this Minister's office and which officers have tenure and have been appointed under the Government Management and Employment Act?
3. What are the salary and any other remuneration details relative to each officer?

The Hon. R.I. LUCAS:

NAME	STATUS	SALARY
Denis Ralph	Ministerial	75 000
Catherine Boomer	Ministerial	51 400
Warren Jones	GME	50 300
Rita Fameli	GME	31 058
Suzanne Harley	GME	31 058
Anne Lambert	GME	31 058
Elise Moore	GME	24 908
Karen Petney	GME	24 908
Jennifer Verner	GME	24 908
Robert Luppino	GME	20 244

3. **The Hon. CAROLYN PICKLES:**

1. What are the names of all officers currently working in the Office of the Attorney-General?
2. What are the names of all Ministerial Assistants employed in this Minister's office and which officers have tenure and have been appointed under the Government Management and Employment Act?
3. What are the salary and any other remuneration details relative to each officer?

The Hon. K.T. GRIFFIN:

NAME	STATUS	SALARY
Lynne Stapylton	Ministerial	72 000
Lisa Brett	Ministerial	51 400
Pam Huntley	Ministerial	32 682
Secretary	GME	46 125
Administrative Officer	GME	34 850
Parliamentary Clerk	GME	31 058
Clerk (part-time)	GME	12 966.50
Correspondence Clerk	GME	23 484

4. **The Hon. CAROLYN PICKLES:**

1. What are the names of all officers currently working in the Office of the Minister for Transport, Minister for the Arts and Minister for the Status of Women?
2. What are the names of all Ministerial Assistants employed in this Minister's Office and which officers have tenure and have been appointed under the Government Management and Employment Act?
3. What are the salary and any other remuneration details relative to each officer?

The Hon. DIANA LAIDLAW:

NAME	STATUS	SALARY
June Roache	Ministerial	75 000
Kenn Pearce	Ministerial	51 400
Penny Reader Harris	Ministerial	51 300
Cynthia Richardson	Ministerial	33 313
Deanne Cullingford	Ministerial	21 423
Clive Nelligan	GME	42 025
Ian Schapel	GME	34 850
Debbie Pieper	GME	29 008
Lyndall Edwards	GME	21 986
(+ $319 academic allowance		
Sue Worrell	GME	$20 808
(+ $406.90 first aid allowance)		
Andrea Glasson	GME	$15 650

5. **The Hon. CAROLYN PICKLES:**

1. What are the names of all officers currently working in the Office of the Premier and Minister for Multicultural and Ethnic Affairs?
2. What are the names of all Ministerial Assistants employed in this Minister's Office and which officers have tenure and have been appointed under the Government Management and Employment Act?
3. What are the salary and any other remuneration details relative to each officer?

The Hon. R.I. LUCAS:

NAME	STATUS	SALARY
Sue Dobbins	GME	24 908
Pam Attwood	Ministerial	44 793
+ 15% in lieu of overtime		
Jim Bonner	Ministerial	60 000
Loretta Battistella	GME	26 958
Caragh Broderick	Ministerial	32 000
Lyn Byrne (0.6 FTE)	Ministerial	19 609
Kevin Donnellan	Ministerial	64 809
Pat Guerin	GME	26 958
Bronwyn Ellis	Ministerial	40 000
Stephanie Gregory	Ministerial	32 000
Michael O'Reily	Ministerial	69 000
John Scales	Ministerial	60 000
Robyn Wight	Ministerial	42 000
Yasmin King	Ministerial	72 500
Richard Yeeles	Ministerial	76 419
Carmen Huddy (0.4 FTE)	GME	9 266
Murray Happ	Ministerial	32 000
Steve Thomson	Ministerial	26 000

6. **The Hon. CAROLYN PICKLES:**
1. What are the names of all officers currently working in the Office of the Deputy Premier and Treasurer?
2. What are the names of all Ministerial Assistants employed in this Minister's Office and which officers have tenure and have been appointed under the Government Management and Employment Act?
3. What are the salary and any other remuneration details relative to each officer?

The Hon. R.I. LUCAS:

NAME	STATUS	SALARY
John Chapman	Ministerial	65 000
Debbie Read	Ministerial	55 000
Geoff Vogt	Ministerial	51 400
Helen Dunham	Ministerial	32 682
R Rechner	GME	43 885
S Lane	GME	26 281
T Newman	GME	22 446
N Skrinnikoff	GME	21 087

7. **The Hon. CAROLYN PICKLES:**
1. What are the names of all officers currently working in the Office of the Minister for Industry, Manufacturing, Small Business and Regional Development and Minister for Infrastructure?
2. What are the names of all Ministerial Assistants employed in this Minister's Office and which officers have tenure and have been appointed under the Government Management and Employment Act?
3. What are the salary and any other remuneration details relative to each officer?

The Hon. R.I. LUCAS:

NAME	STATUS	SALARY
Liz Blieschke	Ministerial	72 000
Denise Keane	Ministerial	51 500
Gudrun Hanke	Ministerial	32 682
David Abbott	GME	46 125
Helene Thomas	GME	29 008
Kim Hunter	GME	24 908
Desi Stergiou	GME	22 305
Rachel Kennedy	GME	18 624

8. **The Hon. CAROLYN PICKLES:**
1. What are the names of all officers currently working in the Office of the Minister for Employment, Training and Further Education and Minister for Youth Affairs?
2. What are the names of all Ministerial Assistants employed in this Minister's Office and which officers have tenure and have been appointed under the Government Management and Employment Act?
3. What are the salary and any other remuneration details relative to each officer?

The Hon. R.I. LUCAS:

NAME	STATUS	SALARY
Bruce Lindsay	Ministerial	68 000
Samantha Murphy	Ministerial	25 000
Andrew Blyth	Ministerial	25 000
Melissa King	Ministerial	55 000
Bret Morris	GME	46 125
Roy Bargwanna	GME	34 850
Rosemary Schultz	GME	31 058
Catherine Radtke	GME	26 958
Julie Hyland	GME	23 484
Penny Simmons	GME	23 572
Kirsten Klomp	GME	20 563
Robyn Wall (0.4 FTE)	GME	10 373

9. **The Hon. CAROLYN PICKLES:**
1. What are the names of all officers currently working in the Office of the Minister for Tourism and Minister for Industrial Affairs?
2. What are the names of all Ministerial Assistants employed in this Minister's Office and which officers have tenure and have been appointed under the Government Management and Employment Act?
3. What are the salary and any other remuneration details relative to each officer?

The Hon. K.T. GRIFFIN:

NAME	STATUS	SALARY
P Anderson	Ministerial	75 000
C Bauer	Ministerial	51 400
A Ruston	GME	37 940
F Whyte	GME	32 682
L Burton	GME	31 058
C Stockbridge	GME	25 243
J Merchant	GME	25 243
N March	GME	22 034

10. **The Hon. CAROLYN PICKLES:**
1. What are the names of all officers currently working in the Office of the Minister for Mines and Energy and the Minister for Primary Industries?
2. What are the names of all Ministerial Assistants employed in this Minister's Office and which officers have tenure and have been appointed under the Government Management and Employment Act?
3. What are the salary and any other remuneration details relative to each officer?

The Hon. K.T. GRIFFIN:

NAME	STATUS	SALARY
S Matthews	GME	$37 515
A Foley	GME	$29 008
G Miller	GME	$29 933
A Roberts	GME	$22 305
A McEachern	Ministerial	$37 000
J Ferris	Ministerial	$65 000
A Scott	Ministerial	$54 000

11. **The Hon. CAROLYN PICKLES:**
1. What are the names of all officers currently working in the Office of the Minister for Emergency Services and Minister for Correctional Services?
2. What are the names of all Ministerial Assistants employed in this Minister's Office and which officers have tenure and have been appointed under the Government Management and Employment Act?
3. What are the salary and any other remuneration details relative to each officer?

The Hon. K.T. GRIFFIN:

NAME	STATUS	SALARY
K Blyth	Ministerial	51 400
K Cunningham	Ministerial	31 058
I McHenry	Ministerial	38 310
M Newman	Ministerial	70 000
K Barrie	GME	42 025 (+ $1435 higher duty loading)
G Cave	GME	23 165
C Gonzalez	GME	23 165
L Lockwood	GME	26 958
V Morris	GME	26 958
D Thomas	GME	34 850

12. **The Hon. CAROLYN PICKLES:**
1. What are the names of all officers currently working in the Office of the Minister for Health and Minister for Aboriginal Affairs?
2. What are the names of all Ministerial Assistants employed in this Minister's Office and which officers have tenure and have been appointed under the Government Management and Employment Act?
3. What are the salary and any other remuneration details relative to each officer?

The Hon. DIANA LAIDLAW:

NAME	STATUS	SALARY
Maxine Menadue	GME	46 125
John Hawkes	GME	42 025
Robyn North	SAHC Act	34 081
Provvidenza Falanga	SAHC Act	26 958
Nadia Calabro	SAHC Act	24 908
Teresa Marks	SAHC Act	20 244
Peter Rice	Ministerial	51 400
Stephen Wade	Ministerial	44 793 (+ 15% in lieu of overtime)
Helen Goerecke	Ministerial	29 711 (+ 10% in lieu of overtime)

13. **The Hon. CAROLYN PICKLES:**

1. What are the names of all officers currently working in the Office of the Minister for Housing, Urban Development and Local Government Relations and Minister for Recreation, Sport and Racing?
2. What are the names of all Ministerial Assistants employed in this Minister's Office and which officers have tenure and have been appointed under the Government Management and Employment Act?
3. What are the salary and any other remuneration details relative to each officer?

The Hon. DIANA LAIDLAW:

NAME	STATUS	SALARY
Michael Geddes	Ministerial	75 000
Geoff Dodd	Ministerial	51 500
Amanda Lynch	Ministerial	51 400
Lenore Triplow	Ministerial	32 682
Tina Lloyd	SAHT Act	50 884
Anne MacMahon	GME	46 125
Carmela Ferraro	GME	33 313
Carolyn Synch	GME	29 008
Elena Cucchairelli	GME	25 933
Marianne Ellis	GME	26 958
Cathie Seal	GME	23 484

14. **The Hon. CAROLYN PICKLES:**

1. What are the names of all officers currently working in the Office of the Minister for the Environment and Natural Resources, Minister for Family and Community Services and Minister for the Ageing?
2. What are the names of all Ministerial Assistants employed in this Minister's Office and which officers have tenure and have been appointed under the Government Management and Employment Act?
3. What are the salary and any other remuneration details relative to each officer?

The Hon. DIANA LAIDLAW:

NAME	STATUS	SALARY
Scott Lowry	GME	37 515
Lea Addy	GME	34 081
Kim Gardner	GME	25 933
Nikki Farquhar	GME	20 563
Nada Popovic	GME	20 244
Chris McArdle	GME	21 127
Sandy Kluge	GME	24 908
John Scanlon	Ministerial	75 000
Liz Wilson	Ministerial	50 000
Philippa Schroder	Ministerial	51 400
Marilyn Shaw	Ministerial	32 682

PAPERS TABLED

The following papers were laid on the table:

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

- Committee Appointed to Examine and Report on Abortions Notified in South Australia—Report, 1993.
- Nurses Board of South Australia—Report, 1992-93.
- Commissioners for Charitable Funds—Report, 1992-93.
- Public Parks Act 1943—Report re Disposal of S.N. Davey Reserve, Port Adelaide.
- District Council By-law—Victor Harbor—No. 2—Animals and Birds.

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I move:

That pursuant to section 14 of the Parliamentary Committees (Miscellaneous) (Amendment) Act 1944 the following members be appointed from 1 July 1994 to the Statutory Authorities Review Committee: the Hons L.H. Davis, A.J. Redford, J.F. Stefani, Anne Levy and T. Crothers.

Motion carried.

GAMING MACHINES

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

Leave granted.

AMBULANCE SERVICE

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by the Minister for Emergency Services in the other place on the ambulance service.

Leave granted.

CONSUMER LEGISLATION

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement on the review of consumer legislation.

Leave granted.

The Hon. K.T. GRIFFIN: I am conscious of the time involved. As a result, I seek leave to have the statement incorporated in *Hansard* without my reading it.

Leave granted.

When the Liberal Government came to office it was clear that South Australians wanted not only a change in government but a change in direction. Since being sworn in it has become even clearer that public servants, as well as the business and professional communities and the wider South Australian community, all wanted firm leadership. Such leadership involves giving South Australians a vision for the future, setting goals and making decisions.

It means changing priorities and identifying what the real role and function of the government should be in the late twentieth century as we move to a new century. It does not mean that we should be passing laws regardless of the impact upon the business and professional community or consumers and others.

Ideas about regulation have changed significantly over the past 20 years, even the past 10 years. What has really brought the issue of regulation into focus is the much greater pressures for Australian and South Australian business to compete internationally as to prices, standards and service. It is in this context that the issue of regulation assumes some significance because, when governments regulate, such regulations will always impose costs and burdens.

Because of this the State Government has taken a very strong position on examining deliberately, carefully and in consultation with those affected by regulation, all regulatory frameworks.

To facilitate this examination in the Consumer Affairs area of my responsibilities, I appointed a team to review all consumer legislation. That Legislative Review Team is chaired by Jennifer Olsson—a senior solicitor of the Crown Solicitor's Office and comprises government officers including the Commissioner for Consumer Affairs— Tony Lawson, the current Commercial Registrar—Bronwyn Blake, Manager of the Legal Unit—Susan Errington and Manager of Special Projects—Kaye Chase. In addition, three people from the private sector with expertise and experience in consumer affairs matters make up the Review Team. They are Robert Surman, who has been in private legal practice for many years and is now Senior Legal Manager, Government Relations with the Credit Union Services Corporation (Aust) Ltd; Robert Sidford, who is a former Commercial Registrar and is now the Executive Director of the Institute of Conveyancers; Steven Trenowden is another former Commercial Registrar who has also held other senior government posts and is currently a partner with a private legal firm. You would observe from this membership of the Legislative Review Team that there has been an attempt to establish a partnership approach, private sector and government, to the task.

The team has been overseeing the review process and has ensured that there has been consultation with those likely to be affected, particularly those in the private sector. Indeed, the outcomes of a major forum at which key industry figures gave their views on necessary changes to legislation have been drawn upon by the Review Team in their deliberations.

I set a six month time frame to undertake this review as I regarded it as one of urgency.

Concurrently with the establishment of the legislative review, I released a policy framework for Fair Trading in South Australia. The policy objectives not only provide the framework for the legislative review but also extend to the operations of the Office of Fair Trading, now known as the Office of Consumer and Business Affairs. This name change which includes reference to business and consumers is also a reflection of the Government's priorities for the consumer affairs agency to provide a much more balanced approach in its dealings with businesses, consumers, landlords and tenants. Accordingly, the Office of Consumer and Business Affairs more accurately reflects the combined role of the Office in providing services, advice and assistance to businesses and consumers as well as working with both groups on policy and other initiatives.

Turning now to the Policy Objectives framework, I consider it worth expanding on this to give a very clear idea of the principles which are guiding the conduct of the legislative review. I quote:

> To ensure that an environment is established in which consumers, businesses, tenants and landlords can act with confidence and certainty, the Policy Objectives framework will achieve the following:
>
> - To return to basic principles to determine whether an activity or behaviour should be controlled or prohibited, whether legislation is necessary and how we can best achieve the goal if some control is necessary.
> - To review the legislative framework and remove outdated provisions and streamline all regulatory frameworks to ensure that they are clearly directed at achieving "fair dealing" and will avoid unnecessary cost burdens to both business and consumers.
> - To undertake genuine consultation with interested parties and provide opportunities for the community to raise issues for consideration in the overall review.
> - To promote industry self-regulation, co-regulation and codes of conduct (which include effective complaint and dispute resolution mechanisms) as effective alternatives to government regulation in order to improve market behaviour and service delivery to the community.
> - To provide educational programs, in co-operation with business, on fair trading principles and encourage business and industry bodies to provide educational material and advice which promotes fair trading and informed customers, and which contributes to a fair, effective and competitive workplace.
> - To restructure the Office of Consumer and Business Affairs to ensure the provision of streamlined, efficient, responsive and relevant services to business and the community.

While the Legislative Review Team is reviewing all consumer legislation, I requested that priority be given to the Land Agents, Brokers and Valuers Act and the Residential Tenancies Act, with concurrent reviews of all other legislation also occurring, but not at the same pace.

For example, in respect of credit laws, they are already the subject of examination by the Standing Committee of Consumer Affairs Ministers and I am pleased to inform you that I have already indicated my support and the Liberal Government's support for the regulatory framework proposed in the Uniform Credit Bill.

In conjunction with that, however, there will be the need in South Australia to examine whether or not there should be or should continue to be the licensing of credit providers or whether some other mechanism to identify credit providers for the purpose of discipline, if that remains necessary, is appropriate. A final draft of the Uniform Credit Bill is due shortly and it is anticipated that it will be introduced in the Queensland Parliament some time this year and into our Parliament sometime after that with a possible implementation date of August 1996.

The Retirement Villages Amendment Act has now been passed, following extensive consultation with all the key stakeholders—it will provide an effective vehicle for the protection of those who live in retirement villages.

Builders Licensing, Second-hand Motor Vehicle Dealers Licensing, Commercial Tenancies legislation, Inquiry Agents legislation and a number of other pieces of legislation are also to be reviewed. The new Uniform Trade Measurement Act has some problems in its administration and that is something that the Review Team will also examine as part of the review process.

The reason for the priority being given to the Land Agents, Brokers and Valuers legislation is that even in Opposition the Real Estate Institute, the Institute of Conveyancers and the SA Chapter of the Institute of Valuers and Land Economists had made representations both to me and to the then government for professional associations to play a more significant part in the administration of their industry and profession.

Some of the key issues for change they have raised with me over time include:-

- Whether there continues a need to licence hotel brokers, managers and salespersons.
- Whether the Commissioner for Consumer Affairs should be responsible for issuing a practising certificate on the recommendation of a body, or a representative body, exercising similar functions in relation to the real estate area as the Board of Examiners exercises for legal practitioners.
- Whether the peak industry bodies play a major part in the complaints resolution process.
- Whether the role of the Commercial Tribunal should be restricted to appeals or disciplinary process.
- Whether the surveillance of the real estate industry in relation to trust accounts should be managed by the industry.
- In the Residential Tenancies area, the three main areas of concern relate to overpayment of rent and period of notice to tenants to quit, and the time taken to resolve these matters.

These and other issues raised through consultations and submissions have been addressed in the new Bills, and I would now like to provide an overview of these.

- The occupations covered in the current Act, will be the subject of three separate Bills, and there will be a fourth Bill regulating real estate and conveyancing provisions.
- The Land Agents and Conveyancers will move from a licensing system to a registration system which is based on an administrative system, whereas licensing is based upon a quasi-judicial system which has regard to a person's fitness and propriety to hold a licence. This will be far more streamlined and efficient in its operation than the current licensing system. It will also set a standard of competence and fitness for occupational entry and will recognise the legitimate public interest in the continued imposition of education and probity standards for agents and conveyancers, and it will also result in a simplification of the related bureaucracy.
- The Conveyancers and Land Agents Bills incorporate mechanisms for the involvement of these industries in the active enforcement of the duties of agents and conveyancers, including the monitoring of trust accounts.
- Further, the new Bills give the Commissioner power to appoint a person as temporary Manager of the business of a land agent or a conveyancer where necessary, similar to arrangements under the Legal Practitioners Act for the management and supervision of legal practices.
- The new registration system will be administered by the Commissioner for Consumer Affairs, in lieu of the Commercial Tribunal.
- In respect of the valuing profession a system of negative licensing will be introduced without any diminution of the existing standards of conduct or qualifications.
- Present provisions relating to rental accommodation referral businesses, will be incorporated in a Code of Conduct which will be administered under the provisions of the Fair Trading Act.

I referred to the fact that the new registration system, as a replacement for the existing licensing system, will be administered by the Commissioner for Consumer Affairs, in lieu of the Commercial Tribunal. A registration system obviates the need for the hearing of objections by the Tribunal which will have the effect of significantly reducing the workload of the Tribunal. Similarly, the work arising from that part of the existing Act relating to Valuers will also be lost if the Valuers Bill is passed by Parliament.

In light of this, I foreshadow that the provisions of the old Act which referred matters to the Commercial Tribunal will be replaced and these matters will be transferred to the District Court in the new Bills. It is envisaged that the Division of the District Court which will hear disciplinary proceedings arising under the Bills will be the Administrative Appeals Division of the District Court, and the few remaining civil matters in the Bills which were formally heard by the Commercial Tribunal will be heard by the Civil Division of the District Court.

As I indicated I set a goal of having the review of all legislation completed within 6 months and in particular to have new legislation dealing with land agents, brokers and valuers as well as with residential tenancies into Parliament in this session. The complexity of the exercise has been far greater than first envisaged, but the progress which has been made by the Review Team in completing

the review of these two major Acts, is most commendable and worthy of praise. To date considerable consultation has been undertaken with key stakeholders on the desired changes to these Acts, and submissions have also been received from a wide range of industry and consumer groups and individuals.

In order to save valuable time the Review Team decided with my concurrence to by-pass the development of green papers for consultative purposes. Instead, the development of draft exposure Bills was the preferred option, thus enabling people to review the proposed new provisions.

Obviously, there is a need for more detailed consultation to occur, and this opportunity will be provided in the recess between the sessions of Parliament.

While the outcome of the legislative review is most important in terms of the future regulatory framework to be administered by the Office, the operational and organisational structures are also very important and indeed an essential and complementary requirement for the proposed changes to be truly effective. Accordingly, I would like to devote some time to elaborating on the organisational change process which is also being undertaken.

The new organisation which is based on the recommendations of the Tilstone Review will include four main areas:

- Business and Occupational Licensing—which will be responsible for business and occupational licensing services to the business community.
- Residential Tenancies—which will be responsible for the provision of support to the Residential Tenancies Tribunal, administration of bonds and the investigation of landlord and tenant complaints.
- The Consumer Affairs area will be responsible for the provision of advice and services in response to general consumer complaints, trade measurement and compliance functions.
- The Policy and Education Services group will be responsible for specialist support in areas such as economic and marketplace analysis, self-regulation and co-regulation, evaluation of policies and programs, legal advice and educational information and programs.

While this change provides a firm foundation for the new organisation, it is only a start and further streamlining will occur as the legislative changes take effect.

As the office is now a Division of the Attorney-General's Department, the corporate services functions of the old Department of Public and Consumer Affairs and the Attorney-General's Department's corporate services functions are being amalgamated.

Some of the other major measures which are being introduced include:-

- Development of a new service culture and a Customer Service Improvement Program for all staff (headed by a new Customer Services Manager) which will include the introduction of customer survey forms located in all offices for completion by customers on a confidential basis.
- A new and updated telephone system to improve customer service and productivity of our staff, including the introduction of an 008 free service for consumers and business to register complaints and comments about the quality of service provided.
- The introduction of credit facilities in all our offices.
- The development of a new data base to collect vital information and statistics on major complaint areas and profiles on the types of people making the complaint. This will enable the office to make decisions on changes to systems and enhance effective resource utilisation.
- Name tags will be worn by all counter and field staff and name plates will be placed on officers' desks and work stations.
- A comprehensive training needs analysis will be undertaken and a Training Plan developed to meet the on-going skills required to undertake the work of the office, for example: mediation techniques, alternative dispute-resolution, conflict resolution, investigation and prosecution techniques.
- Most importantly—a strategic plan is being developed outlining forward plans and priorities for the next two year's operation.

There have also been a number of recent initiatives which ought to be mentioned briefly:

- In relation to the Weight Control Industry a consultative committee (comprising representatives from the industry, health professionals and the Office of Fair Trading) has developed a voluntary Code of Conduct, which I formally released on 6 April 1994.

The Federal Bureau of Consumer Affairs has adopted our code as a basis for developing a national code and I am particularly proud of our continuing work in this area.

- South Australia's proud record of achievement in consumer education is continuing.

One highlight of that work is the public release of the National Primary School Consumer Education Project.

A national Working Party, chaired by South Australia, with representatives from a number of State and Federal agencies has organised the production of a series of four booklets and accompanying videos dealing with consumer issues.

This sort of preventative, long-term activity, designed to produce more informed consumers of the future, will always be a priority for the Office and I foreshadow that efforts designed to make traders more aware of their obligations under fair trading legislation—to provide certainty in their day-to-day business operations and to prevent problems from arising in the first place—will have an increased priority in the new Office.

There is pressure for change and I want to keep driving that change. In making these proposals for change, I want to ensure that the government hand is not a deadening and destructive hand, but is a hand which assists both consumers and business to relate to each other and to deal fairly and openly with each other in the marketplace. The government will not be sponsoring a 'them-and-us' attitude, with the government taking only the consumers' line or only a business line. Consumers and industry will have to make a more concerted effort to try to resolve their problems without the intervening and heavy hand of the government and that will be good. For too long, many members of the community have relied too heavily upon government in a whole range of areas, not just consumer affairs to do things for them rather than endeavouring to do things for themselves. I do recognise and the government recognises that there are some people who really are unable to help themselves, or in some instances really do need help because the system has broken down. Above all, I want to see a balance in the relationships between businesses and consumers.

Obviously the way in which the Office of Consumer and Business Affairs is structured and managed will determine its responsiveness to community needs, and as I have outlined, positive changes are well underway. I want to see industry take responsibility for a greater level of education of those who carry on business in particular areas and the weight of the law in the form of criminal prosecutions only brought to bear when it is a last resort.

As already stated, the government's key objectives are to ensure that fair dealing occurs in an efficient, competitive and informed marketplace where there is a balance between the rights of individual consumers, businesses, landlords and tenants, and develop a new and sustained approach to consumer affairs operations in South Australia.

ABORIGINAL DEATHS IN CUSTODY

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to table a ministerial statement made by the Minister for Aboriginal Affairs in the other place on the Royal Commission into Aboriginal Deaths in Custody-1993 Implementation Report, South Australian Government.

Leave granted.

QUESTION TIME

SENIOR SECONDARY ASSESSMENT BOARD OF SOUTH AUSTRALIA

The Hon. C.J. SUMNER: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about SSABSA.

Leave granted.

The Hon. C.J. SUMNER: Recently there has been considerable publicity about the problems with the treatment by SSABSA of the 1993 SACE examination results. It has been claimed that many students have been disadvantaged by a breakdown in procedures within SSABSA. As a result of the problems experienced with the 1993-94 results release

cycle, the SSABSA Board, at its February 1994 meeting, set up a review of SSABSA's 1993 results procedures to report to the board at its April meeting.

I have been informed that the review established that serious problems exist in relation to staff morale within SSABSA. This relates to a feeling that management of the results processing was perceived by staff as not providing the tight supervision and coordination required during the critical weeks of the SACE cycle. There were also problems in communication between sections of the staff. The Director of SSABSA informed the board at its April meeting of the decisions taken by him in relation to staff changes to begin implementation of the recommendations of the review. However, the decisions relating to staff were taken before the board had even read the final recommendations and involved shuffling the positions of existing senior staff, some of whom must have had supervision responsibilities for areas of the organisation where serious problems occur. In other words, persons with supervisory roles when the problems occurred have been allowed to continue in those roles.

Further, I have been advised that the appointments did not follow the procedures outlined in SSABSA's own policy for short-term acting positions. My questions to the Minister are:

1. Was the report on the review of the 1993 SSABSA results procedures made public? If it was not made public, will the Minister now table a copy of the report, and, if not, why not?

2. Can the Minister assure the Council and the people of South Australia that all required steps, short, medium and long term, will be taken in time to ensure that the serious problems which occurred in the 1993 results release cycle will not occur again?

3. Does the Minister believe that extra resourcing will be required to implement the recommendations? If so, what is the extent of this resourcing and how will it be provided?

4. Can the Minister assure the Council and the people of South Australia that recommendations relating to the management structures of SSABSA will be fully implemented and that a culture of client service will be established with students and with schools?

The Hon. R.I. LUCAS: As I have said publicly on a number of occasions, I am politically impotent in relation to the internal machinations of the Senior Secondary Assessment Board of South Australia. The structure of the relationship between the Minister for Education and Children's Services and the SSABSA Board is that there is no power of direction and control, the Minister does not appoint the presiding member and the Minister does not even appoint members to the SSABSA Board.

The Hon. C.J. Sumner: But you provide the money.

The Hon. R.I. LUCAS: The taxpayer, through the Minister, provides the money. There is no power to direct or control the SSABSA operation. It is an independent organisation. The argument for that, I understand from the Labor Party when in Government, was that because at that stage it controlled the year 12 assessment process it was deemed to be important that it was not subject to political control and influence and that it be seen to be—

The Hon. C.J. Sumner: Your view.

The Hon. R.I. LUCAS: No, that was your view; that was the Labor Government's view in relation to the process.

The Hon. C.J. Sumner: Wasn't it your view as well?

The Hon. R.I. LUCAS: I was not the shadow Minister at that time.

The Hon. C.J. Sumner: It was the Liberal Party's view.

The Hon. R.I. LUCAS: I will check the record for the honourable member, if he wishes. It was the position that was put to the Parliament by the Labor Government at the time.

The Hon. C.J. Sumner: Supported by the Liberal Opposition.

The Hon. R.I. LUCAS: In relation to the questions, I shall have to check whether or not the review committee's report was made public. I will inquire of the presiding member, Miss Judy Roberts, to see whether it was made public and, indeed, whether it can be made public.

Secondly, in relation to the 1993 results, yes, every effort is being made by SSABSA, its staff and the board, as I understand it, to try to ensure that the problems that were experienced with the round of 1993 results will not recur in 1994. Substantially, the issues related to major systems problems in the way it processed the aggregation of results and the scaling of results for university entry. The first part of the process, which is the straight assessment on a subject achievement score of the individual subjects, went relatively well when compared to the scaling and aggregation process, which is done for the universities to assist them with respect to university entry.

In relation to the 1994 experience, some recommendations were made. I will certainly check again with the presiding member of SSABSA, but my understanding of the decisions that have been taken is somewhat different to the information that has been provided to the Leader of the Opposition in relation to staff changes. I understand that, at least in one or two significant areas which related to the review committee reports and which also related to the supervisory role that needed to be conducted by some senior staff of the 1993 round of results, staff changes had been made. But, as I said, my understanding is somewhat different to the information given to the Leader of the Opposition. I will check that and write him a letter during the parliamentary break to provide him with the information.

In relation to resources, as the Leader of the Opposition will know, that is obviously subject to the budget discussions of 1994-95. Certainly, there is a view in the report which says that there might need to be some short-term top up of resources to try to get the systems up and going again, as opposed necessarily to long-term financial assistance and support. I am awaiting a formal submission from SSABSA if that is the case. Upon receipt of that formal submission we would certainly discuss it with SSABSA and with Cabinet in relation to whether or not it can be factored into the 1994-95 budget decisions.

Certainly, from my viewpoint, I will do all I can, if I can be assured that this is the only way of getting the 1994 results processed correctly, and if there is no other option of reordering priorities within the SSABSA budget, then that will have to be an issue that Cabinet considers and considers closely, so that we can ensure that there are not hundreds, if not thousands, of students who are put through some trauma and turmoil at the end of 1994 as they were put through at the end of 1993.

WOMEN'S CENTRES

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about community based women's centres.

Leave granted.

The Hon. CAROLYN PICKLES: The Women's Community Centre at St Peters has been operating for over 17 years—I am not quite sure whether it is 17 or 20 years, but a very long time—and provides a unique service as a women's community centre in South Australia. Importantly, that centre services women from throughout metropolitan Adelaide. In fact, 75 per cent of centre users come from outside the local area. The legal service, in particular, is used by women living considerable distances from the centre. The provision of child care has also been a crucial part of the centre's services and is vital for isolated women in the home.

Currently the women's centre at St Peters receives an allocation of $45 000 through the women's unit attached to the Minister for the Status of Women, approximately $12 000 of which comes from Family and Community Services. The former Minister for the Status of Women, through a Labor Government, ensured funding through that budget line. I understand that the present member for Norwood strongly supports the centre, as did the former member for Norwood. It is pleasing to see that there is continuity and support for this particular centre. Will the Minister demonstrate her commitment to community based women's centres by guaranteeing future funding for the Women's Community Centre at St Peters of at least current levels?

The Hon. DIANA LAIDLAW: The honourable member would be aware that all policy advice and other matters in relation to the Office for the Status of Women, which is the new name for what was formerly the Women's Unit, are being assessed at the present time. We are looking at whether we continue all the current services and roles or whether the Office for the Status of Women should have a policy role, and not be there to support organisational functions, such as the St Peters centre. That is a matter being considered at the present time. I am aware that last year the former Minister for the Status of Women agreed to provide funding for this centre following a decision by Family and Community Services not to continue funding for the community centre project, but only continue funding for—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: Yes, but only continue funding for the occasional care services. Discussions will be held with Family and Community Services, the St Peters centre, and with the local member in the next few weeks about this matter.

The Hon. CAROLYN PICKLES: As a supplementary question, does the Minister personally support the continuance of the St Peters Women's Community Centre in its present role?

The Hon. DIANA LAIDLAW: I do not believe that it is wise, at this stage, to indicate a personal view. I have asked for a review of all services and functions for which the Office for the Status of Women is responsible, and that is being undertaken at the present time. I do not want to prejudge those findings. As I say, the whole role of the office is being assessed, as to whether it should play a part in funding community activities, or whether its role should be more in policy terms and the implementation of policy objectives. That is as far as I can make any commitment at this stage.

AUDIT COMMISSION REPORT

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the Audit Commission report.

Leave granted.

The Hon. G. WEATHERILL: In the Premier's recent ministerial statement, released in conjunction with the Audit Commission report, he made great play on the statement from the Audit Commission in relation to education in South Australia, and I quote:

> No convincing evidence has been presented which links South Australia's high expenditure with improved outcome.

My questions to the Minister for Education and Children's Services are:

1. Which member of the Audit Commission has formal qualifications in relation to the education standards and the education policy?

2. If no member of the Audit Commission has formal qualifications in these fields, why are their anecdotal thoughts being given so much weight by the Premier?

The Hon. R.I. LUCAS: I am the Minister for Education and Children's Services in South Australia and I have to say that in the six months I have been the Minister one issue I have raised with the Institute of Teachers, with principals' associations, and with other interested groups within education is that the policies of the past 10 or 20 years in South Australia have left the education sector vulnerable. For so long, whilst we have put additional resources into education in South Australia, the interest groups or the lobby groups within South Australia have steadfastly refused to introduce and accept evaluation systems or accountability systems, which demonstrate in an objective and accountable way the standards that are being achieved in terms of student learning outcomes here in South Australia.

Those lobby groups have been aided and abetted by Labor Governments and Labor Ministers for the past 10 or 20 years. In particular, when one looks at something as relatively simple as the introduction of basic skills testing, something which is now being supported by the Labor Party in New South Wales and in a number of other States of Australia, one sees that it has been steadfastly opposed in South Australia over the period of 20 years by either Labor Governments or Labor Oppositions.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: It is still the policy position of the Labor Party to oppose basic skills testing in South Australia. If the Leader of the Opposition wants, in effect, to indicate that there is to be a change in the Party's position, let him come into the Chamber and indicate that the Party has made a decision in relation to supporting the Liberal Government's policy of the introduction of basic skills testing.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: It was released prior to the election—the last three elections.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: You do not have to be too smart to work out what basic skills testing is. I should have thought that even the Leader of the Opposition would be capable of working out what basic skills testing is.

The Hon. L.H. Davis: I do not know how he would go on numeracy!

The Hon. C.J. Sumner: That is why I am here and you are there.

The Hon. R.I. LUCAS: That is why you are in Opposition.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: So it leaves the education sector vulnerable to these sorts of judgments, because it is true to say—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: It is true to say that when I as the Minister for Education—

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: It is true to say that when I as Minister for Education asked the education lobby groups to produce objective information as to where we are better in relation to literacy and numeracy than all the other States and Territories of Australia, the Institute of Teachers and a variety of other interest groups and lobby groups were not able to produce that information. So, it is therefore a fair question for anybody, whether or not they have educational specific qualifications.

Let us now refer to the four commissioners who worked on the Commission of Audit. As I said I think in response to a question from the Hon. Michael Elliott, it is not their task to be experts in either education, health, E&WS—which they are not—police or Correctional Services because—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Well, the simple facts of life are that there is no one person on this earth who is an expert, other than perhaps the Hon. Mr Elliott—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Hold on, listen to the point I am making. There is not one person on this earth who is an expert on education, health, correctional services, prisons, information technology, and the whole 23 or 26 portfolios, whatever they are, that are part of the public sector. There is not one person who can be an expert in every one of those areas. It was not their responsibility—

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: Exactly. It was not their responsibility to be an expert in all those areas. They were meant to be economists and accountants, people with a business background, to give us, in effect, the information on the state of the State's finances. It is then—and this is the point I have made all along—up to the Government, with the individual Ministers representing their own particular portfolio areas, listening to the interest groups in their particular areas, to make the decision about the Commission of Audit recommendations.

It is a nonsense criticism for the education sector to say 'We did not have four teachers sitting up there doing the Commission of Audit,' for the health lobby to say 'We did not have four nurses up there,' for the police to say 'We didn't have David Hunt doing it,' or for whatever other lobby group saying that there were not four separate people on the Commission of Audit who had a particular expertise in their specific area or portfolio.

It is simply not the way you conduct accounts of the State's finances. When you want to question the state of the State's finances, you do not ask Mike Elliott, Chris Sumner or Rob Lucas; you get experts in the area of economics, finance, business and accounting, and you ask them to make the recommendations on the state of the State's finances and then it is up to the Government to make the decision.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: That is just nonsense. It is then up to the Government to make the decisions in relation to the particular portfolio areas. The simple answer to the Hon. Mr Weatherill's question again is that the audit commissioners have asked exactly the same questions that I have, and they got that particular response, because that is the sort of response I get from lobby groups when I speak to them. It is the criticism I have made of the system as well: if you want to justify additional expenditure in any area, you need to be able to demonstrate to the community, the taxpayers and to the Commonwealth Government that you are doing more for the dollars you are putting in, and that in terms of student learning outcomes it is worth the extra investment.

It is heartening to see a change in mindset now amongst some leading educators in South Australia. One of the leading Aboriginal educators in South Australia met with me in the past month or so and put to me the point of view that he was a very strong supporter of basic skills testing, because it enabled those who want to see more done in Aboriginal education to demonstrate the effectiveness as they see it of their particular programs, so that if they can demonstrate that they are improving student learning outcomes they can go to the Commonwealth Government again and say, 'These programs are working' in terms of improved student learning outcomes 'and you therefore need to continue to resource them and increase the resources in those particular Aboriginal education areas.' So with respect to all our new and existing programs, we need to incorporate systems and measures of evaluation and accountability into them.

PORT STANVAC

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister for Environment and Natural Resources a question about Port Stanvac dredging.

Leave granted.

The Hon. M.J. ELLIOTT: A research team from the University of Adelaide is studying effects of the dredging of Port Stanvac in Adelaide's south by the Coast Protection Branch of the South Australian Department of Environment and Natural Resources. An article in the Adelaide University's *Adelaidean* newspaper has so far revealed that the dredging seems to have repressed the biological activity of the site. Dr Anthony Cheshire from the university's Botany Department is coordinating the project into the impact of broad scale dredging on plants, animals and algae living on the sea bottom.

The results can only be properly determined over time and with more data collection. However, Dr Cheshire is reported as saying that the Coast Protection Branch was unable to make funding available for full analysis of the results. It is hoped that funds will be available for a complete survey in 1995.

Dr Cheshire has reportedly suggested that all future dredging operations be confined to the current site or to the north, because of important endangered sea grass meadows which exist south of the current dredging site. There is evidence that the seagrasses have already been stressed by effluent outfall from Christies Beach. These would be at further risk from any extension of the dredge area. My questions to the Minister are:

1. Will the Minister ensure that funding is made available for a full survey of the dredge site in the future?
2. Will the results be made public?
3. Will the Minister give an undertaking that any future dredging operations will not encroach farther south into the area of endangered seagrass meadows?

The Hon. DIANA LAIDLAW: I am familiar with the article that has been referred to by the honourable member. I will refer his questions to the Minister and bring back a reply. That will be during the parliamentary break. I suspect the reply will be forwarded directly to the honourable member.

CONSUMER AFFAIRS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about consumer affairs matters.

Leave granted.

The Hon. ANNE LEVY: I have had an opportunity to have a quick look at the ministerial statement which the Minister had inserted in *Hansard* this afternoon. As a minor comment, I could indicate that it is perhaps a little churlish that the Minister is claiming as his achievements matters that were started by the former Government, and in this respect I refer to the investigation of the weight control industry and the production of the national primary school consumer education project, both of which were well under way before the change of Government.

I also notice that the Minister indicates that one of his changes is that he is about to introduce credit facilities at all Consumer Affairs offices. As he would probably know, I had arranged that all Consumer Affairs offices were to introduce credit facilities as from March of this year, so the change of Government is not bringing this about: it has delayed it by at least two months.

However, on more serious matters which are incorporated in the statement the Minister discusses the setting up of the review of all consumer affairs legislation and indicates what he thinks is the broad nature of the review committee. It has been brought to my attention by numerous people that there is no consumer representative on the committee; that all the people on the committee are either in the Government or private sectors; and that their experience is certainly not such that it would bring a consumer point of view to the review.

A number of groups have also indicated to me that they feel concerned that there are no green papers or discussion papers on which they can comment. They are asked to provide submissions on, say, the Residential Tenancies Act, but they do not know what it is they are meant to be discussing. Without some draft or discussion paper, they feel unable to address particular concerns or to know what other people may be putting with regard to particular provisions against which they might like to put a counter argument.

I note that the Minister is introducing today four Bills which relate to land brokers, real estate agents, conveyancers, and so on, and he indicates that the idea is that these draft Bills will then be available for consultation during the winter break. I appreciate that, and I am sure various bodies will be glad of the opportunity to comment on the Bills before us, presumably with the idea that they can be changed when we meet again in August. However, no draft Bill is foreshadowed for the Residential Tenancies Act, about which a large number of people feel very strongly either that it should or should not be changed and, as a consequence, a draft Bill or discussion paper will not be available during the break.

One other matter I raise in my explanation is that the review team includes Tony Lawson, who is described as the Commissioner for Consumer Affairs. I have looked through the *Gazette*—although not necessarily completely, and certainly not today's *Gazette*—and, although I may have missed it, I have not seen anything to indicate when Tony Lawson was appointed as Commissioner for Consumer Affairs. I understood that he was Acting Commissioner for Consumer Affairs or, as he has been described on radio, the interim Commissioner for Consumer Affairs. My questions to the Attorney-General are:

1. Can he indicate when Mr Lawson was appointed as Commissioner for Consumer Affairs, not in an acting or interim capacity?
2. If reports or draft Bills arise from the review, particularly relating to residential tenancies, before the Parliament resumes in August, will he make these available for consideration and comment, as many consumer groups would prefer that something is before them on which they can comment rather than making comments and submissions in a vacuum?
3. Would he consider having someone with a consumer orientation and background added to the review team to bring that perspective to the examination of the legislation?

The Hon. K.T. GRIFFIN: Mr Tony Lawson's initial appointment as Acting Commissioner was for a period of six months, and I think that expires at about 21 June. He was initially appointed with a view to undertaking significant change within the agency, and particularly to implement a number of the changes proposed by the Tilstone report and also to drive the process of reviewing legislation. His initial period of six months expires at about 21 June or thereabouts—late June, anyway—and the Government examined the fact that he had initiated change and was making what it believed to be significant progress.

The Government assessed whether it would be appropriate to extend his appointment for a particular period of time in view of the fact that he was in the process of making these changes, to enable him to see the changes through, or whether it should start afresh. The view was taken, after some consultation with staff and others in the community, that it would be preferable for him to see through the changes rather than getting a new person in to really pick up where he started. So, the Government took the view—and it is a statutory appointment—that he should be appointed for a further 18 months. He was appointed as Commissioner last Thursday in Executive Council and that appointment should have been in last week's *Gazette*.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: Well, it was done.

The Hon. C.J. Sumner: For how long has he been appointed?

The Hon. K.T. GRIFFIN: He has been appointed for another 18 months.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: I have no control. I do not edit the *Networker*.

The Hon. C.J. Sumner: Why wasn't it advertised?

The Hon. K.T. GRIFFIN: It doesn't have to be advertised. You made a number of appointments to various positions without—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: It is an appointment by the Governor and it does not have to be advertised. The Government took the view when it came to office, when the former Commissioner moved to Industrial Relations and the Government had a reform process which it wanted to put in place, that it did not have the time then to advertise, and it was appropriate to put—

The Hon. Carolyn Pickles: What was his previous position?

The Hon. K.T. GRIFFIN: Director of Corporate Services in the Attorney-General's Department, and all the information I had was that he was doing a good job. So, we did not need to advertise, and that was the rationale for making the appointment.

I accept responsibility for establishing the review team. I took the view that we could either have a representative body, and then we would draw from a number of agencies, and the experience that I have had and that the previous Government may well have had with representative bodies is that you all have different positions and it is very difficult to reach a concluded view on particular issues. The Government took the view that therefore it would put people in from Consumer Affairs and from the private sector, and the three people who have been appointed from the private sector have previously been in the consumer affairs agency so they do not come to this task without at least some experience.

The Hon. Anne Levy: They have some experience in business orientation but not consumer orientation.

The Hon. K.T. GRIFFIN: One is Mr Robert Surman from Credit Union Services, which certainly has a business perspective but which also has a consumer perspective because it is dealing with many thousands of consumers in the credit union environment.

Robert Sidford, from the Institute of Conveyancers, and Steven Trenowden. We took the view that it was better to have a purpose driven group that was set a task so that it could prepare, after taking submissions and consulting, a proposed package of reforms, than to go through the green paper/white paper process and have representatives involved. I have indicated to consumer organisations who have criticised the fact that there is not a consumer representative that this body is not representative and that there will be adequate opportunity for those with an interest—whether from consumer areas or business—to make their representations on Bills which enshrine the interim position of the Government in respect of the reform process.

As the honourable member indicated, I will be introducing Bills shortly relating to the real estate area. It was deliberate that we should have those introduced for the purpose of exposing them for public comment. I had intended that residential tenancies legislation would be available, but there has been a bit of slippage in the program by a couple of weeks and I can indicate that, when that draft Bill has been approved by me and Cabinet, it will be released publicly and there will be an opportunity again for comment on that.

The Hon. Anne Levy: Can I get a copy of that?

The Hon. K.T. GRIFFIN: Yes, I will get a copy for the honourable member.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: No, it will be dealing with a range of other issues, too; the Residential Tenancies Tribunal—

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: It certainly does deal with that specific issue, but it will have a broader impact than that—efficiencies, speeding up the resolution of complaints and a whole range of issues that we think will facilitate the conduct of residential tenancies activities. That will be available with the other reforms that we propose when Bills have been finally worked through and been accepted by me and by the Cabinet as suitable drafts for exposure.Then they will be exposed also. There is a sense of urgency about it, but not to the point of excluding the opportunity for people with an interest from all parts of the community to make comment on them. That will be addressed.

I note in the ministerial statement that one date is wrong. Reference is made to the uniform consumer credit legislation to come into effect in August 1996. It is my recollection that that should be August 1995. There has been some slippage in the consideration of the uniform legislation, and only the other day I was required to vote on an extension of time for introducing the Bill into the Queensland Parliament from April through to September this year, when it will be re-introduced. There has been a bit of slippage in that, too.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: It is my understanding that it will be August 1995, but that is my initial reaction to the date in the ministerial statement. If there is any change to that I will let the honourable member know.

SACON SEPARATION PACKAGES

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Industrial Affairs, a question about SACON separation packages.

Leave granted.

The Hon. T.G. ROBERTS: Last week I asked a question of the Minister about the Audit Commission's report on changes to tendering practices for SACON. I asked about how many employees that would affect. I have not received an answer to that as yet, and I do not expect to, as it is only a week since I asked the question. The answer to my question was basically given to me on the front page of the *Advertiser* when every member of SACON was offered a separation package. The proposal put in the Audit Commission's report for Government departments to act as tenderers in the preparation of contracts, particularly in the SACON area, makes that almost impossible now that there will probably not be a SACON department to make any competitive tendering processes.

People in SACON have always claimed that their ability to work efficiently and effectively was dependent on the numbers, skill requirements and retention and training of apprentices coming through. It was always their fear that the department would be cut to a point where their effectiveness and efficiency to exist in a non-tendering circumstance would be challengeable and that economic rationalists would be able at a point to argue that they were no longer sufficiently able to support their own position within Government departments based on their ability to deliver and survive.

Their worst fears have been justified. It appears that as a department they will no longer be able to work efficiency in being able to prepare tenders in that area. I refer to a letter to the Editor of 28 April 1994 in the *Advertiser* and the reply by Mr Geoff Britton, Chairperson, Accident Compensation Committee, Law Society of South Australia. He said there was much misinformation being spread about rorts in relation to WorkCover legislation, and that we were getting a rort a day being put before us. Included in the separation packages for SACON department workers, there is inclusion of a provision to encourage employees to breach the Act by waiving some of their rights under the Act to workers compensation. To make some of the separation packages more attractive to those who are carrying residual injuries and who are on light duties or off work, they have been encouraged to breach the Act by accepting what would be less than the Act would deliver to them in terms of protection and

support for injured workers. Section 119 of the Workers Rehabilitation and Compensation Act provides:

(1) Any agreement or arrangement entered into without the consent of the corporation that purports to exclude, modify or restrict the operation of this Act is to that extent void and of no effect.

(2) Any purported waiver of a right conferred by or under this Act is void and of no effect.

(3) Any person—

(a) who enters into any agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of this Act is subject to a penalty of $5 000.

The United Trades and Labor Council has put out a media release, as follows:

WorkCover: Government ignores breaches of Act.

It goes on to state:

It is illegal for employers to get injured workers to forgo their workers compensation rights. Yet this is precisely what management at SACON is attempting to do. . . the Government is doing absolutely nothing about it. It appears that this management tactic is part of a broader strategy to drastically reduce, in line with Government policy, the number of workers employed by SACON.

The references to the breaches of the Act are the encouragement of workers to forgo or waive some of their rights. The reference to the letter to the Editor by Geoff Britton is that the *Advertiser* has consistently on a daily basis cited a rort a day in which workers are involving themselves against WorkCover when, in fact, many of those cases were seen to be normal claims going through the normal process. The highlights being made by the *Advertiser* were unwarranted in most cases. As everyone connected with the WorkCover Act acknowledges, there will always be some who get through the net and there will be some claims that are less than genuine.

The media very rarely highlight cases that I am highlighting in this Council, that is, that the Government is itself encouraging breaches of the Act and that could be regarded as a rort, but I doubt whether the same attention will be paid to those questions as those that were undermining the WorkCover Act when the pressure was being applied to the Democrats to make amendments to the Act that would drastically reduce benefits. Will the Minister stop all the breaches of the Act covering WorkCover claims in all departments where separation packages are being offered?

The Hon. K.T. GRIFFIN: I will refer that question to my colleague in another place and bring back a reply.

PARLIAMENT, DISABLED ACCESS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking you, Mr President, questions about disabled access to Parliament House.

Leave granted.

The Hon. SANDRA KANCK: In the last 4½ weeks, following my doctor's orders, I have been attempting not to over-exert myself physically and I have found that a number of doors around Parliament House are particularly difficult to open. Ironically, the two doors that are most difficult to open are those that display signage for disabled access, namely, the back entrance via the car park and the side door next to Old Parliament House. I have had to push them open by exerting the whole length of my body against them and to pull them open has required both my hands and often a few attempts. It is my belief (and I would like to have this tested by a person in a wheelchair) that a wheelchair-bound person would not be able to open these doors without the wheelchair tipping over. Should at some stage one of our parliamentarians become a paraplegic or indeed someone be elected who is already wheelchair-bound, they would not be able to enter this building unless there was somebody with them. My questions are:

1. Have the two entrances marked for disabled entry ever been tested to determine whether they could be opened by a person in a wheelchair?

2. Would you, Mr President, be willing to organise for a representative of a group, for instance, Disabled Peoples International, to check the ease or otherwise of opening these doors?

3. Should the doors be shown to be unacceptable for disabled persons' entry, would steps be taken to rectify the situation?

The PRESIDENT: The answer to the question is 'Yes'; I shall pursue the issue that the honourable member has raised and see whether I can get a response. The doors are difficult to open but there is a good reason for that: the side door is and outside door and it needs to close against a strong breeze sometimes. They have door closers on them, and I understand that is the reason. However, I agree with the honourable member that they are difficult to open. I will pursue the issue and there may be another way to make their use easier. We have made access easier to Parliament House, not for people in wheelchairs but for members of Parliament, because they can now access the two small front doors, but that does not answer the honourable member's question. My answer is that I will pursue it and bring back an answer.

ISLAND SEAWAY

In reply to **Hon. BARBARA WIESE** (10 May).

The Hon. DIANA LAIDLAW: The consultancy examining transport links by sea with Kangaroo Island was awarded to KPMG Peat Marwick on 19 April 1994. The Terms of Reference are:

- Assess the success of the Island Seaway's operator, R.W. Miller, in realising the terms of its performance agreement to operate the vessel between Port Adelaide and Kingscote until 30 June 1994.
- Identify the future demand for ferry services, including the likely size and nature of vehicle, freight and passenger traffic to and from Kangaroo Island over the next 10 years.
- Report on the financial, economic, environmental and social impacts of ferry services between Kangaroo Island, Port Adelaide (and Port Lincoln) in respect to:
  direct costs to Government of ferry services; direct user costs; marginal additional road improvement and maintenance costs; possible environmental constraints in road freight transport movements, including water catchment impacts; regional/local community impacts.
- Determine the likely commercial viability of re-establishing a ferry service between Port Lincoln and/or Port Adelaide and Kangaroo Island.
- Identify the implications from the sale or lease of the Island Seaway to another party-and/or the parking of vessel.

HINDMARSH ISLAND BRIDGE

In reply to **Hon. T.G. ROBERTS** (24 March).

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

The District Council of Port Elliot and Goolwa is responsible for the entire road network on Hindmarsh Island. The Government has no plans to build any further service roads, nor to transfer responsibility for any existing roads from the district council to the State Government.

ST PETERS WOMEN'S CENTRE

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to make a ministerial statement about the St Peters Women's Centre.

Leave granted.

The Hon. DIANA LAIDLAW: Earlier in Question Time today the Hon. Carolyn Pickles asked a number of questions about the future of the St Peters Women's Community Health Centre. I failed to state at that time that the funding contract expires at the end of June, which is a matter of some concern to my office in relation to the review that is being conducted at the present time, and therefore my office has undertaken that staffing commitments and programs will be funded at least until the end of the calendar year.

SEAFORD RISE SECONDARY SCHOOL

The Hon. C.J. SUMNER: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about Seaford Rise secondary school.

Leave granted.

The Hon. C.J. SUMNER: I have been approached by a constituent who is concerned about a decision by the Liberal Government not to proceed with the construction of the Seaford Rise secondary school until 1996. The Labor Government committed itself to having the school in place at least with the admission of some levels during 1995. Constituents in the Seaford Rise area have now been advised that work on the proposal has been slowed down and land for the school has not been purchased. Prior to the election the Liberal Party made many commitments to improve facilities in the south of Adelaide; despite this, however, a decision has been made to slow down the construction of the Seaford Rise secondary school.

Apart from the impact that this has on young families living in the area, it also impacts on the attractiveness of the development for new families. If there is no school there, families are less inclined to purchase houses. If there is a definite program then this can be planned for. However, if the program is chopped and changed around, as occurred in this case, then planning for both individual families and children and the Seaford Rise developers is difficult. Will the Minister confirm that the Seaford Rise secondary school will not open during next year? If not, why has the opening date for the school been deferred to 1996?

The Hon. R.I. LUCAS: It would be a nice story if it was true, but my understanding is that the decision in relation to the opening of the Seaford Rise high school was taken by the Labor Government prior to the last election. I will check my recollection on that. Certainly, my understanding was that the previous Minister had given some commitments but, when the Government went back to the department to look at the forward capital works program for the department under the previous Labor Government, they checked and found at the same time that the demographic projections did not necessitate a 1995 start-up but in effect meant there should be a 1996 start-up for the Seaford Rise high school and that the previous Labor Government, of which the Leader of the Opposition was a member, took the decision to delay the start of the Seaford Rise high school. As I said, it would be a nice story if it was true but my understanding is that it is not.

QUESTION REPLIES

The Hon. C.J. SUMNER: Will the Leader of the Government give an undertaking that Ministers will answer questions on notice and remaining outstanding questions without notice during the parliamentary recess?

The Hon. R.I. LUCAS: That has been normal practice. I will be happy to do that on behalf of the Ministers of this Chamber. I have a reply for the Hon. Anne Levy here which I will incorporate now, but one or two replies might be outstanding. On behalf of the Ministers in this Chamber I will do what I can to get answers back to members as soon as we can by way of letter during the parliamentary break. As has been the custom and practice in the past if, when the new session starts, members want to put something on the written record, my recollection is that Ministers have generally complied. We are anxious to follow existing precedents in most of these areas in relation to the last weeks and days of a session, and we would not wish to do anything that would act against the recent precedents in relation to what is the harmonious operation of the Council in these last days.

I must apologise to the Hon. Caroline Schaefer; although we have had a number of discussions about this issue I have not replied in Parliament to a question asked in February in relation to the children's assistance scheme. I will have a reply incorporated.

FREMONT HIGH SCHOOL

In reply to **Hon. ANNE LEVY** (24 March).

The Hon. R.I. LUCAS: Since the completion of the Joel Report, there have been several developments which have led to questions from school community members concerning the implementation of its recommendations.

New Principals have been appointed to Elizabeth City High School, Fremont High School and the Elizabeth West Adult Campus. (The position of Principal, Inbarendi College, has been replaced with that of Project Manager).

These changes in personnel have brought different perspectives to the long term organisation of education in Elizabeth/Munno Para.

Recent information provided by the South Australian Urban Land Trust now indicates possible substantial enrolment growth in Munno Para. Smithfield Plains High School and Craigmore High School will receive most of these new enrolments. Thus it is likely that some of the Joel Report recommendations might have to be reviewed in the light of this new information.

There appears to be concern from some school community members that issues associated with the implementation of the Joel recommendations were not canvassed thoroughly and that school management issues need to be considered in more depth.

For all of the above reasons, the District Superintendent of Education, the Inbarendi College Project Manager and Principals, will re-visit the Joel Report. Together with their school councils, staffs and students, they intend to work through the Joel Report recommendations to determine, in the light of the developments mentioned earlier, what is still relevant and needs to be pursued, and what needs to be reconsidered. Fremont High School, being a part of Inbarendi Colleges, will obviously be involved in this process.

I met with representatives of the Inbarendi College Board on 8 April 1994 and listened to a range of views on the desired course of action to be followed by Government. Due to a number of reasons some school representatives are now not convinced all the Joel Report recommendations should be endorsed.

After appropriate consideration the District Superintendent of Education, will forward a series of recommendations to the Chief Executive, Department for Education and Children's Services.

CHILDREN, ISOLATED

In reply to **Hon. CAROLINE SCHAEFER** (16 February).

The Hon. R.I. LUCAS: An answer to your parliamentary questions without notice regarding isolated children's assistance asked on 16 February is now available.

The PRESIDENT: Order! There is far too much visual pollution between the Chair and the Minister.

MOTOR VEHICLES (LEARNERS' PERMITS AND PROBATIONARY LICENCES) AMENDMENT BILL

The Hon. DIANA LAIDLAW (Minister for Transport) obtained leave and introduced a Bill for an Act to amend the Motor Vehicles Act 1959. Read a first time.

The Hon. DIANA LAIDLAW: I move:

That this Bill be now read a second time.

This Bill seeks to vary the penalties for failing to carry a learner's permit and a probationary driver's licence. However, it will still be compulsory for learner and probationary drivers to carry their permit or licence at all times when driving. This requirement is considered necessary as an aid to the police in the enforcement of learner and probationary conditions.

Under existing legislation a learner's permit or probationary driver's licence is cancelled and the holder disqualified for a period of six months if the driver fails to carry the permit or licence when driving. In addition, the driver is liable to an expiation fee of $42. The Government considers that the present penalty is out of proportion to the offence. This view is strongly supported in the community. The Bill removes the compulsory carriage requirement from a learner's permit and probationary licence conditions and establishes the requirement under a separate provision.

From a national perspective, South Australia is presently out of step with other licensing authorities. In New South Wales, Victoria, Queensland and the Australian Capital Territory, where it is also compulsory to carry the learner's permit and probationary licence, only a monetary fine is prescribed for failure to do so. In Tasmania, Western Australia and the Northern Territory, there is no requirement for the permit or licence to be carried.

A consequential amendment to the Summary Offences (Traffic Infringement Notice) Regulations 1981 will establish a penalty of $46 for the offence of failing to carry a learner's permit or probationary licence. The offence will not cause the permit or licence to be cancelled and will not result in a disqualification being imposed. This approach is considered to be far more equitable and will have the effect of bringing South Australia into line with most other licensing authorities. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 75a—Learner's permit

Clause 3 removes from section 75a of the principal Act the requirement for the holder of a learner's permit to carry that permit at all times whilst driving a motor vehicle. This section currently makes that requirement one of the conditions of holding a learner's permit, which means that a person who contravenes the requirement is liable, upon conviction, to cancellation of the permit and six months disqualification under section 81b. The requirement to carry the learner's permit is now to be placed in new section 98aab.

Clause 4: Amendment of s. 81a—Probationary licences

Clause 4 removes from section 81a of the principal Act the requirement for the holder of a probationary licence to carry that licence at all times when driving a motor vehicle. Like section 75a this section currently makes that requirement a condition of holding a probationary licence so that cancellation and disqualification under section 81b apply where the requirement is contravened. The requirement to carry the probationary licence is now also to be placed in new section 98aab.

Clause 5: Insertion of s. 98aab

This clause inserts new section 98aab mentioned above. The new section provides that the holder of a learner's permit or a probationary licence must carry that permit or licence at all times whilst driving a motor vehicle, and must produce it to the police upon request. A division 10 fine is prescribed for contravention of these provisions.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

LAND AGENTS BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to regulate land agents; to repeal the Land Agents, Brokers and Valuers Act 1973; and for other purposes. Read a first time.

The Hon. K.T. GRIFFIN: 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.

Ideas about regulation have changed significantly over the past 20 years. Consideration of the role that regulation plays has assumed growing importance in recent times due to the greater pressures which exist for Australian and South Australian businesses to compete nationally and internationally as to prices, standards and service. Regulation by its very nature involves the imposition of additional costs and other burdens upon business by Government, in the administration of legislation. Such costs ultimately are passed onto consumers.

Whilst in opposition the Government received many complaints from associations representing land agents conveyancers and valuers about the nature of and the effectiveness of the regulatory provisions relating to these occupations. The associations indicated a desire to play a more significant role in the administration of their industry and occupation. Shortly after taking up office, the Government instigated a review of the regulatory framework of all legislation in the Consumer Affairs Portfolio. A Legislative Review Team was appointed to conduct the Review and requested that they give priority to the review of the *Land Agents, Brokers and Valuers Act*. The Review Team has completed their review of the Act

Over many years the Real Estate Institute has played a significant role in the direction being taken by the real estate industry in this State. The Institute has clearly stated its preference for a more co-operative approach in the regulation of its profession. It has demonstrated a mature approach to issues concerning the real estate profession and the role that it plays in working with Government towards achieving high standards of behaviour and competence among land agents is acknowledged.

There are four key features of the Land Agents Bill. These are firstly, a recognition of the legitimate public interest in the continued imposition of education and probity standards for agents, but a simplification of the related bureaucracy. Secondly, the de-regulation of the controls on those employed by agents, with a compensating statutory duty of proper management and supervision of the business of an agent upon the corporation. Thirdly, the removal of anti-competitive restrictions on the licensing of corporate agents and fourthly the provision of mechanisms for the involvement of industry in the active enforcement of the duties of land agents including the monitoring of trust accounts.

The Bill introduces a system of registration for land agents. A registration system will be far more streamlined and efficient than the current licensing system. Registration is based on an administrative system, whereas licensing is based upon a quasi-judicial system which has regard to a person's fitness and propriety to hold a licence.

In essence registration requires an applicant to meet certain criteria before being granted registration. The administration costs associated with a registration system are less than for a licensing system. Resources can therefore be saved or diverted to other areas such as the enforcement of provisions of the Act, or for education and information purposes.

The Bill proposes that corporations will be entitled to register as a land agent. A statutory duty on the part of the corporation is provided which will require that a corporation with registration as

a land agent, properly manage its agency business through a natural person who is a registered agent. Under the Bill liability will exist against both the directors of the corporation and the agent corporation for failure to properly supervise and manage the agent's business. The interests of consumers will therefore be protected under this system, and it removes the potentially anti-competitive restrictions upon corporate registration.

Under the Bill hotel brokers, real estate managers and sale representatives will no longer be regulated. The registration and licensing of these groups appear to add extra levels of regulation to the profession without any additional responsibility being attached to them or benefit to the public. The need for the regulation of these occupations no longer exists in the 1990's, and their deregulation is supported by the Real Estate Industry and is also recommended in the Vocational Education, Employment and Training Committee report on partially registered occupations. Deregulation of these groups may enable the profession to move to a more efficient structure, yielding economies that could be passed onto consumers. The benefits flowing to consumers from such efficiencies are likely to outweigh the alleged consumer protection originally provided by regulation.

It is proposed in the Bill that the Commissioner have the power to delegate specific matters under the Act to industry organisations by means of a written agreement. This is a new and significant development. Government will be working with Industry to develop appropriate complaint resolution procedures and codes of conduct for real estate agents, to ensure that a balance exists between the rights of consumers and the responsibilities of agents. The Government favours the Institute taking a leading role in surveillance of its industry and will be working toward negotiating such an outcome upon suitable terms and conditions.

The Bill contains broad and extensive disciplinary provisions, including a power to discipline a land agent for a breach of an assurance that he or she may have entered into at the request of the Commissioner for Consumer Affairs, under the provisions contained in the *Fair Trading Act 1987.*

The substantive provisions of the existing legislation relating to trust accounts have been retained and an additional power has been given to the Commissioner to appoint a person as temporary manager of the business of the land agent to transact any urgent or uncompleted business of the agent under the circumstances prescribed in the Bill. This management provision reflects a similar provision contained in the *Legal Practitioners Act 1936*.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

Court is defined as the District Court of South Australia. The Court is given jurisdiction under the Bill—

- to deal with disciplinary matters;
- to determine appeals against decisions of the Commissioner with respect to the appointment of an administrator or temporary manager of an agent's trust accounts or business;
- to terminate the appointment of an administrator or temporary manager of an agent's trust account or business;
- to determine appeals against the Commissioner's assessment of compensation from the indemnity fund.

Director of a body corporate is given a wide meaning to encompass persons who control the body corporate. Under the Bill directors of a body corporate may be disciplined, or prosecuted for an offence, alongside the body corporate.

Clause 4: Meaning of agent

The definition of **agent** sets the scope of the Bill. An agent is defined as a person who carries on a business that consists of or involves—

- selling or purchasing or otherwise dealing with land or businesses on behalf of others, or conducting negotiations for that purpose; or
- selling land or businesses on his or her own behalf, or conducting negotiations for that purpose.

Land encompasses interests in land and strata titles. Dealing with land encompasses granting or taking leases or tenancies over land. Business includes an interest in a business or the goodwill of a business but excludes a share in the capital of a corporation. Sell includes auction and exchange.

A person is excluded from the definition of agent in so far as the person participates in any of the following activities:

- selling or purchasing or otherwise dealing with land or businesses on behalf of others, or conducting negotiations for that purpose, in the course of practice as a legal practitioner;
- selling land or businesses, or conducting negotiations for that purpose, through the instrumentality of an agent;
- engaging in mortgage financing. (Mortgage financing means negotiating or arranging loans secured by mortgage including receiving or dealing with payments under such transactions. Mortgage includes legal and equitable mortgages over land.)

Clause 5: Commissioner to be responsible for administration of Act

PART 2

REGISTRATION AND MANAGEMENT OF AGENT'S BUSINESS

Clause 6: Agents to be registered

It is an offence to carry on business as an agent or to hold oneself out as an agent without being registered.

A person who acts as an agent but who is not registered is not entitled to commission.

A registered agent must obtain a written authorisation to act as a person's agent and, if that authority is not obtained, the agent is not entitled to commission.

Clause 7: Application for registration

An application for registration as an agent must be in the form required by the Commissioner and must be accompanied by the relevant fee.

Clause 8: Entitlement to be registered

The requirements for registration as an agent are as follows:

- a natural person must have the educational qualifications required by regulation; and
- the person must not have been convicted of an offence of dishonesty; and
- the person must not be suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and
- the person must not be an undischarged bankrupt or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors or, in the case of a body corporate, must not be being wound up and under official management or in receivership.

Clause 9: Duration of registration and annual fees and returns

A registered agent must pay an annual fee and lodge an annual return. The agent's registration is liable to cancellation for non-compliance.

Clause 10: Incorporated agent's business to be properly managed and supervised

The business of an incorporated agent must be properly managed and supervised by a registered agent who is a natural person.

PART 3

TRUST ACCOUNTS AND INDEMNITY FUND

DIVISION 1—PRELIMINARY

Clause 11: Interpretation of Part 3

DIVISION 2—TRUST ACCOUNTS

Clause 12: Trust money to be deposited in trust account

An agent is required to have a trust account and to pay all trust money into it. **Money** includes any cheque received by the agent on behalf of another.

Clause 13: Withdrawal of money from trust account

Money may be withdrawn from a trust account only for the purposes set out in this clause.

Clause 14: Payment of interest on trust accounts to Commissioner

Interest on trust accounts is to be paid to the Commissioner for payment into the indemnity fund maintained under the Bill.

Clause 15: Appointment of administrator of trust account

The Commissioner may appoint an administrator of an agent's trust account if the Commissioner knows or suspects on reasonable grounds that the agent—

- is not registered as required by law;
- has been guilty of a fiduciary default in relation to trust money;
- has operated on the trust account in such an irregular manner as to require immediate supervision;
- has acted unlawfully or negligently in the conduct of the business;
- in the case of a natural person—is dead or cannot be found or is suffering from mental or physical incapacity preventing the agent from properly attending to the agent's affairs;
- has ceased to carry on business as an agent;

- has become bankrupt or insolvent or has taken the benefit (as a debtor) of a law relating to bankrupt or insolvent debtors or, in the case of a body corporate, is being wound up, is under official management or is in receivership.

Clause 16: Appointment of temporary manager
The Commissioner may, in conjunction with appointing an administrator of an agent's trust accounts, appoint a temporary manager of the agent's business for the purpose of transacting urgent or uncompleted business.

Clause 17: Powers of administrator or temporary manager
The administrator or manager is given powers with respect to the agent's documents and records and has any additional powers set out in the instrument of appointment.

Clause 18: Term of appointment of administrator or temporary manager
The term of appointment is a renewable term of up to 12 months but the appointment may be terminated sooner by the Commissioner or the Court.

Clause 19: Appeal against appointment of administrator or temporary manager
An agent may appeal against the appointment to the District Court within 28 days.

Clause 20: Keeping of records
An agent is required to keep detailed trust account records and to provide receipts to clients. The records are required to be kept for at least 5 years.

Clause 21: Audit of trust accounts
An agent's trust account must be regularly audited and the auditor's report lodged with the Commissioner. The agent's registration is liable to cancellation for non-compliance.

Clause 22: Appointment of examiner
The Commissioner may appoint an examiner in relation to the accounts and records, or the auditing, of an agent's trust account.

Clause 23: Obtaining information for purposes of audit or examination
An auditor or examiner of an agent's trust account is given certain powers with respect to obtaining information relating to the account.

Clause 24: Banks, etc., to report deficiencies in trust accounts
The report is to be made to the Commissioner.

Clause 25: Confidentiality
Confidentiality is to be maintained by administrators, temporary managers, auditors, examiners and other persons engaged in the administration of the Bill.

Clause 26: Banks, etc., not affected by notice of trust
Financial institutions are not expected to take note of the terms of any specific trust relating to a trust account but are not absolved from negligence.

Clause 27: Failing to comply with requirement of administrators, etc.
It is an offence to hinder etc. an administrator, temporary manager, auditor or examiner.

DIVISION 3—INDEMNITY FUND

Clause 28: Indemnity Fund
The Commissioner is to maintain an indemnity fund comprised of—
- the money standing to the credit of the current indemnity fund kept under the *Land Agents, Brokers and Valuers Act 1973*;
- interest paid by banks, building societies and credit unions to the Commissioner on trust accounts;
- money recovered by the Commissioner from an agent in relation to the agent's default;
- fines recovered as a result of disciplinary proceedings;
- interest accruing from investment of the fund;
- any other money required to be paid into the fund under the Bill or any other Act.

The fund is to be used for—
- the costs of administering the fund;
- compensation under the Bill;
- insurance premiums;
- educational programs conducted for the benefit of agents or members of the public, as approved by the Minister;
- for any other purpose specified by the Bill or any other Act.

Clause 29: Claims on indemnity fund
A person may claim compensation from the fund if the person has suffered pecuniary loss as a result of a fiduciary default of an agent and has no reasonable prospect of otherwise being fully compensated.

No compensation is payable if the default is that of an unregistered agent and the person should have been aware of the lack of registration.

Clause 30: Limitation of claims
The Commissioner may set a date by which claims relating to a specified fiduciary default or series of defaults must be made.

Clause 31: Establishment of claims
The Commissioner must notify the agent concerned of any claim for compensation and must listen to both the agent and the claimant on the matter. The Commissioner must determine the claim and notify the claimant and agent of the determination.

Clause 32: Claims by agents
An agent may make a claim for compensation from the fund if the agent has paid compensation to a person in respect of the fiduciary default of a partner or employee of the agent. The agent must have acted honestly and reasonably and all claims in respect of the default must have been fully satisfied.

No compensation is payable if the default is that of an unregistered agent and the person should have been aware of the lack of registration.

Clause 33: Personal representative may make claim

Clause 34: Appeal against Commissioner's determination
An appeal against the Commissioner's determination may be made to the District Court within 3 months by the claimant or agent.

Clause 35: Determination, evidence and burden of proof
Possible reductions for insufficiency of the indemnity fund are to be ignored in determining a claim.

Admissions of default may be considered in the absence of the agent making the admission.

Questions of fact are to be decided on the balance of probabilities.

Clause 36: Claimant's entitlement to compensation and interest
Interest is to be paid on the amount of compensation to which a claimant is entitled.

Clause 37: Rights of Commissioner
If a claim for compensation is paid out of the fund, the Commissioner is subrogated to the rights of the claimant against the person liable for the fiduciary default.

Clause 38: Insurance in respect of claims against indemnity fund
The Commissioner may insure the indemnity fund.

Clause 39: Insufficiency of indemnity fund
The Commissioner is given certain powers to ensure that the fund is distributed equitably taking into account all claims and potential claims, including the power to set aside a part of the fund for the satisfaction of future claims.

Clause 40: Accounts and audit
The fund is to be audited by the Auditor-General.

PART 4
DISCIPLINE

Clause 41: Interpretation of Part 4
Disciplinary action may be taken against an **agent** (including any person registered as an agent but not carrying on business as an agent and any former agent) or a **director** of an agent that is a body corporate (including a former director).

Clause 42: Cause for disciplinary action
Disciplinary action may be taken against an agent if—
- registration of the agent was improperly obtained;
- the agent has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*;
- the agent or any other person has acted contrary to this Bill or the *Land and Business (Sale and Conveyancing) Act 1994* or otherwise unlawfully, or negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the agent;
- in the case of an agent who has been employed or engaged to manage and supervise an incorporated agent's business—the agent or any other person has acted unlawfully, negligently or unfairly in the course of managing or supervising, or being employed or otherwise engaged in, that business;
- the agent has been convicted of an offence of dishonesty;
- the agent has been suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth;
- the agent has become bankrupt or insolvent or has taken the benefit (as a debtor) of a law relating to bankrupt or insolvent debtors or, in the case of a body corporate that is registered as an agent, the body corporate is being wound up, is under official management or is in receivership;
- the agent has otherwise ceased to be a fit and proper person to be registered as an agent.

Disciplinary action may be taken against a director of a body corporate if disciplinary action could be taken against the body corporate.

Disciplinary action may not be taken if it is not reasonable to expect the person to have been able to prevent the act or default.

Clause 43: Complaints

A complaint alleging grounds for disciplinary action against an agent may be lodged with the District Court by the Commissioner or any other person.

Clause 44: Hearing by Court

The Court is empowered to adjourn the hearing of a complaint to enable investigations to take place and to allow modification of a complaint.

Clause 45: Disciplinary action

Disciplinary action may comprise any one or more of the following:

- a reprimand;
- a fine up to $8 000;
- suspension or cancellation of registration;
- if registration is suspended, the imposition of conditions as to the conduct of the agent's business at the end of the period of suspension;
- disqualification from obtaining registration;
- a ban on being employed or engaged in the industry;
- a ban on being a director of a body corporate agent.

A disqualification or ban may be permanent, for a specified period or until the fulfilment of specified conditions.

Clause 46: Contravention of orders

It is an offence to breach the terms of an order banning a person from the industry or from being a director of a body corporate in the industry. It is also an offence to breach conditions imposed by the Court.

PART 5
MISCELLANEOUS

Clause 47: Delegation

The Commissioner and the Minister may delegate functions or powers under this Bill.

Clause 48: Agreement with professional organisation

An industry body may take a role in the administration or enforcement of the Bill by entering an agreement to do so with the Commissioner. The Commissioner may only act with the approval of the Minister. The Commissioner may delegate relevant functions or powers to the industry body.

Clause 49: Exemptions

The Minister may grant exemptions from compliance with specified provisions of the Bill. An exemption must be notified in the *Gazette*.

Clause 50: Register of agents

The Commissioner must keep a register of agents available for public inspection.

Clause 51: Commissioner and proceedings before Court

The Commissioner is to be a party to all proceedings.

Clause 52: False or misleading information

It is an offence to make a false or misleading statement in any information provided, or record kept, under the Bill.

Clause 53: Statutory declaration

The Commissioner is empowered to require verification of information by statutory declaration.

Clause 54: Investigations

The Commissioner may ask the Commissioner of Police to conduct relevant investigations.

Clause 55: General defence

A defence is provided for a person who commits an offence unintentionally and who has not failed to take reasonable care to avoid the commission of the offence.

Clause 56: Liability for act or default of officer, employee or agent

An employer or principal is responsible for the acts and defaults of his or her officers, employees or agents unless the employer or principal could not be reasonably expected to have prevented the act or default.

Clause 57: Offences by bodies corporate

Each director of a body corporate (as widely defined) is liable for the offence of the body corporate.

Clause 58: Continuing offence

If an offence consists of a continuing act or omission, a further daily penalty is imposed.

Clause 59: Prosecutions

The period for the commencement of prosecutions is extended to 2 years. Prosecutions may be commenced by the Commissioner or an authorised officer under the *Fair Trading Act* or, with the consent of the Minister, by any other person.

Clause 60: Evidence

Evidentiary aids relating to registration, appointment of an administrator, temporary manager or examiner and delegations are provided.

Clause 61: Service of documents

Service under the Bill may be personal or by post or by facsimile if a facsimile number is provided. In the case of service on a registered agent, service on a person apparently over 16 at the agent's address for service notified to the Commissioner is also acceptable.

Clause 62: Annual report

The Commissioner is required to report to the Minister annually on the administration of the Bill and the report must be laid before Parliament.

Clause 63: Regulations

The regulation making power contemplates, among other things, codes of conduct (which may be incorporated into the regulations as in force from time to time) and regulations fixing agent's charges or otherwise regulating those charges.

Schedule: Repeal and transitional provisions

The *Land Agents, Brokers and Valuers Act 1973* is repealed.

Transitional provisions are provided in relation to—

- licensed agents and registered managers becoming registered agents;
- the continued effect of approvals, appointments, orders and notices;
- mortgage financiers (These provisions are equivalent to those contained in the *Land Agents, Brokers and Valuers (Mortgage Financiers) Amendment Act 1993* but not yet in operation).

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

CONVEYANCERS BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to regulate conveyancers; and for other purposes. Read a first time.

The Hon. K.T. GRIFFIN: 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.

Conveyancers are relied upon by consumers to provide an expert service in relation to the conveyance of real estate. The sale or purchase of real estate can often be the single most important financial transaction a consumer makes and a high degree of reliance is placed upon the conveyancer's skills and expertise. In many instances, consumers place funds in the trust accounts of conveyancers and high standards of probity must be maintained in relation to those funds.

Although the occupation of non-solicitor conveyancing (landbroking) has been in existence for over one hundred years in this State, it is not until relatively recent times that conveyancing as a profession has taken a more professional approach. This is due to a number of factors including the development of competency based standards, the establishment of the Australian Institute of Conveyancers and the pressures placed upon the profession to gain a more competitive edge in the current economic climate.

Conveyancing is undergoing enormous change in Australia. In the past year conveyancers in this State and in Western Australia have seen their national ranks grow with the introduction of non-solicitor conveyancers in the Northern Territory and in New South Wales. Interest has also been expressed in introducing similar measures in Victoria and Queensland. It is possible that through the mechanism of mutual recognition we will eventually see non-solicitor conveyancing in all States and Territories. The Government has concerns about mutual recognition and, in particular, about ensuring that standards are maintained in the State. The work being done by the Institute in relation to competency standards will go a long way towards this goal.

The changing nature of conveyancing through the introduction of such innovations as electronic conveyancing and the moves towards community titles means that conveyancing is a dynamic as well as a growing profession. The Institute has played a significant

role in seeking change and accountability in the profession. The profession can be regarded as one with a high degree of sophistication and is one which is clearly committed to the maintenance of high standards of skill and behaviour. The local Division of the Institute is extremely keen to become more involved in the maintenance of these standards and sees a clear role for itself to work with Government in establishing entry standards and in resolving consumer issues. The Bill provides a scheme of regulation which can accommodate such a role. One of the reasons that the Legislative Review Team was asked to give priority to this Bill was because the Institute made representations to me for it to play a more significant part in the regulation of the profession. The Government is satisfied that the Institute can fulfil a useful role in maintaining standards in the profession and in protecting the interests of consumers.

As indicated in relation to land agents, the Legislative Review Team considered it appropriate to retain a scheme of regulation but it did not consider that the current scheme could be maintained. This Bill also provides for the registration of conveyancers and a recognition of the public interest component necessary in relation to standards for conveyancers. Similarly the Bill introduces mechanisms allowing for the involvement of industry in the active enforcement of the duties of conveyancers including the monitoring of trust accounts.

The Bill introduces a system of registration for conveyancers. This system will be far more streamlined and efficient than the current licensing system and, as with land agents, will require an applicant to meet certain criteria before being granted registration. It is also envisaged that the administration costs associated with a registration system will be less than for a licensing system allowing resources to be utilised for other purposes.

The Bill proposes that corporations will be entitled to register as a conveyancer and the present system of regulation which provides considerable accountability upon corporations will be continued.

It is proposed in the Bill that the Commissioner have the power to delegate specific matters under the Act to industry organisations by means of a written agreement. This is a new and significant development. Government will be working with industry to develop appropriate complaint resolution procedures and codes of conduct for conveyancers to ensure that a balance exists between the rights of consumers and the responsibilities of conveyancers. It is hoped that a great deal of surveillance of conveyancers can be delegated to the Institute after appropriate procedures have been negotiated.

A new provision is introduced into the Bill requiring conveyancers to have professional indemnity insurance. The Institute was particularly keen to have such insurance made compulsory as it sees it as a necessary component of ensuring the highest possible standards in the profession.

The Bill contains broad and extensive disciplinary provisions, including a power to discipline a land agent for a breach of an assurance that he or she may have entered into at the request of the Commissioner for Consumer Affairs, under the provisions contained in the *Fair Trading Act 1987*.

The substantive provisions of the existing legislation relating to trust accounts have been retained and an additional power has been given to the Commissioner to appoint a person as temporary manager of the business of the conveyancer to transact any urgent or uncompleted business of under the circumstances prescribed in the Bill. This management provision reflects a similar provision contained in the *Legal Practitioners Act 1936*.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

A conveyancer is defined as a person who carries on a business that consists of or involves the preparation of conveyancing instruments for fee or reward, excluding a legal practitioner. A conveyancing instrument has the same meaning as 'instrument' in the *Real Property Act* (*ie* 'every document capable of registration under the provisions of any of the Real Property Acts, or in respect of which any entry is by any of the Real Property Acts directed, required, or permitted to be made in the Register Book').

Court is defined as the District Court of South Australia. The Court is given jurisdiction under the Bill—

- to deal with disciplinary matters;
- to determine appeals against decisions of the Commissioner with respect to the appointment of an administrator or temporary manager of a conveyancer's trust accounts or business;
- to terminate the appointment of an administrator or temporary manager of a conveyancer's trust account or business;
- to determine appeals against the Commissioner's assessment of compensation from the indemnity fund.

Director of a body corporate is given a wide meaning to encompass persons who control the body corporate. Under the Bill directors of a body corporate may be disciplined, or prosecuted for an offence, alongside the body corporate.

Clause 4: Commissioner to be responsible for administration of Act

PART 2

REGISTRATION OF CONVEYANCERS

Clause 5: Conveyancers to be registered

It is an offence to carry on business as a conveyancer or to hold oneself out as a conveyancer without being registered.

Clause 6: Application for registration

An application for registration as a conveyancer must be in the form required by the Commissioner and must be accompanied by the relevant fee.

Clause 7: Entitlement to be registered

The requirements for registration as a conveyancer are as follows:

- a natural person must have the educational qualifications required by regulation; and
- the person must not have been convicted of an offence of dishonesty; and
- the person must not be suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and
- the person must not be an undischarged bankrupt or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors or, in the case of a body corporate, must not be being wound up and under official management or in receivership.

In addition, a company is not entitled to be registered as a conveyancer unless the memorandum and articles of association of the company contain stipulations so that—

- the sole object of the company must be to carry on business as a conveyancer;
- the directors of the company must be natural persons who are registered conveyancers (but where there are only two directors one may be a registered conveyancer and the other may be a prescribed relative of that conveyancer);
- no share in the capital of the company, and no rights to participate in distribution of profits of the company, may be owned beneficially except by—
    - a registered conveyancer who is a director or employee of the company; or
    - a prescribed relative of a registered conveyancer who is a director or employee of the company; or
    - an employee of the company;
- not more than 10 per cent of the issued shares of the company may be owned beneficially by employees who are not registered conveyancers;
- the total voting rights exercisable at a meeting of the members of the company must be held by registered conveyancers who are directors or employees of the company;
- no director of the company may, without the prior approval of the Commissioner, be a director of another company that is a registered conveyancer;
- the shares in the company beneficially owned by any person must be—
    - redeemed by the company; or
    - transferred to a person who is to become a director or employee of the company or to the trustee of such a person; or
    - distributed among the remaining members of the company, in accordance with the memorandum and articles of association of the company,
    - in the case of shares beneficially owned by the person as a registered conveyancer who is a director or employee of the company or as a prescribed relative of such a conveyancer—on the conveyancer ceasing to be a registered conveyancer or a director or employee of the company;
    - in the case of shares beneficially owned by the person as the spouse of a registered conveyancer—on the dissolution or annulment of their marriage or, in the case of a putative spouse, on the cessation of cohabitation with the registered conveyancer;

- in the case of shares beneficially owned by a person as an employee of the company—on the person ceasing to be an employee of the company.

Clause 8: Duration of registration and annual fee and return
A registered conveyancer must pay an annual fee and lodge an annual return. The conveyancer's registration is liable to cancellation for non-compliance.

Clause 9: Requirements for professional indemnity insurance
Conveyancers must take out professional indemnity insurance as required by regulation.

PART 3
PROVISIONS REGULATING INCORPORATED CONVEYANCERS

Clause 10: Non-compliance with memorandum or articles
A registered conveyancer that is a company is guilty of an offence if the stipulations required to be included in its memorandum and articles are not complied with.

Clause 11: Alteration of memorandum or articles of association
A registered conveyancer that is a company is guilty of an offence if it alters its memorandum or articles so that they do not comply with the requirements of Part 2.

Clause 12: Companies not to carry on conveyancing business in partnership
Companies require the approval of the Commissioner to carry on business as a conveyancer in partnership with another person.

Clause 13: Joint and several liability
Directors are jointly and severally liable with the company in respect of civil liabilities incurred by a company that is a registered conveyancer.

PART 4
TRUST ACCOUNTS AND INDEMNITY FUND
DIVISION 1—PRELIMINARY

Clause 14: Interpretation of Part 4

DIVISION 2—TRUST ACCOUNTS

Clause 15: Trust money to be deposited in trust account
A conveyancer is required to have a trust account and to pay all trust money into it. Money includes any cheque received by the conveyancer on behalf of another. Money received in the course of mortgage financing is excluded from the concept of trust money. (Mortgage financing means negotiating or arranging loans secured by mortgage including receiving or dealing with payments under such transactions. Mortgage includes legal and equitable mortgages over land.)

Clause 16: Withdrawal of money from trust account
Money may be withdrawn from a trust account only for the purposes set out in this clause.

Clause 17: Payment of interest on trust accounts to Commissioner
Interest on trust accounts is to be paid to the Commissioner for payment into the indemnity fund maintained under the Bill.

Clause 18: Appointment of administrator of trust account
The Commissioner may appoint an administrator of a conveyancer's trust account if the Commissioner knows or suspects on reasonable grounds that the conveyancer—

- is not registered as required by law;
- has been guilty of a fiduciary default in relation to trust money;
- has operated on the trust account in such an irregular manner as to require immediate supervision;
- has acted unlawfully or negligently in the conduct of the business;
- in the case of a natural person—is dead or cannot be found or is suffering from mental or physical incapacity preventing the conveyancer from properly attending to the conveyancer's affairs;
- has ceased to carry on business as a conveyancer;
- has become bankrupt or insolvent or has taken the benefit (as a debtor) of a law relating to bankrupt or insolvent debtors or, in the case of a body corporate, is being wound up, is under official management or is in receivership.

Clause 19: Appointment of temporary manager
The Commissioner may, in conjunction with appointing an administrator of a conveyancer's trust accounts, appoint a temporary manager of the conveyancer's business for the purpose of transacting urgent or uncompleted business.

Clause 20: Powers of administrator or temporary manager
The administrator or manager is given powers with respect to the conveyancer's documents and records and has any additional powers set out in the instrument of appointment.

Clause 21: Term of appointment of administrator or temporary manager
The term of appointment is a renewable term of up to 12 months but the appointment may be terminated sooner by the Commissioner or the Court.

Clause 22: Appeal against appointment of administrator or temporary manager
A conveyancer may appeal against the appointment to the District Court within 28 days.

Clause 23: Keeping of records
A conveyancer is required to keep detailed trust account records and to provide receipts to clients. The records are required to be kept for at least 5 years.

Clause 24: Audit of trust accounts
A conveyancer's trust account must be regularly audited and the auditor's report lodged with the Commissioner. The conveyancer's registration is liable to cancellation for non-compliance.

Clause 25: Appointment of examiner
The Commissioner may appoint an examiner in relation to the accounts and records, or the auditing, of a conveyancer's trust account.

Clause 26: Obtaining information for purposes of audit or examination
An auditor or examiner of a conveyancer's trust account is given certain powers with respect to obtaining information relating to the account.

Clause 27: Banks, etc., to report deficiencies in trust accounts
The report is to be made to the Commissioner.

Clause 28: Confidentiality
Confidentiality is to be maintained by administrators, temporary managers, auditors, examiners and other persons engaged in the administration of the Bill.

Clause 29: Banks, etc., not affected by notice of trust
Financial institutions are not expected to take note of the terms of any specific trust relating to a trust account but are not absolved from negligence.

Clause 30: Failing to comply with requirement of administrators, etc.
It is an offence to hinder etc. an administrator, temporary manager, auditor or examiner.

DIVISION 3—INDEMNITY FUND

Clause 31: Indemnity Fund
The Commissioner is to pay into the indemnity fund maintained under the *Land Agents Act 1994* (currently a Bill)—

- interest paid by banks, building societies and credit unions to the Commissioner on trust accounts;
- money recovered by the Commissioner from a conveyancer in relation to the conveyancer's default;
- fines recovered as a result of disciplinary proceedings;
- any other money required to be paid into the fund under the Bill or any other Act.

The fund is to be used for—

- compensation under the Bill;
- insurance premiums;
- educational programs conducted for the benefit of conveyancers or members of the public, as approved by the Minister;
- for any other purpose specified by the Bill or any other Act.

Clause 32: Claims on indemnity fund
A person may claim compensation from the fund if the person has suffered pecuniary loss as a result of a fiduciary default of a conveyancer and has no reasonable prospect of otherwise being fully compensated.

No compensation is payable if the default is that of an unregistered conveyancer and the person should have been aware of the lack of registration.

Clause 33: Limitation of claims
The Commissioner may set a date by which claims relating to a specified fiduciary default or series of defaults must be made.

Clause 34: Establishment of claims
The Commissioner must notify the conveyancer concerned of any claim for compensation and must listen to both the conveyancer and the claimant on the matter. The Commissioner must determine the claim and notify the claimant and conveyancer of the determination.

Clause 35: Claims by conveyancers
A conveyancer may make a claim for compensation from the fund if the conveyancer has paid compensation to a person in respect of the fiduciary default of a partner or employee of the conveyancer. The conveyancer must have acted honestly and reasonably and all claims in respect of the default must have been fully satisfied.

No compensation is payable if the default is that of an unregistered conveyancer and the person should have been aware of the lack of registration.

Clause 36: Personal representative may make claim

Clause 37: Appeal against Commissioner's determination

An appeal against the Commissioner's determination may be made to the District Court within 3 months by the claimant or conveyancer.

Clause 38: Determination, evidence and burden of proof

Possible reductions for insufficiency of the indemnity fund are to be ignored in determining a claim.

Admissions of default may be considered in the absence of the conveyancer making the admission.

Questions of fact are to be decided on the balance of probabilities.

Clause 39: Claimant's entitlement to compensation and interest

Interest is to be paid on the amount of compensation to which a claimant is entitled.

Clause 40: Rights of Commissioner

If a claim for compensation is paid out of the fund, the Commissioner is subrogated to the rights of the claimant against the person liable for the fiduciary default.

Clause 41: Insurance in respect of claims against indemnity fund

The Commissioner may insure the indemnity fund.

Clause 42: Insufficiency of indemnity fund

The Commissioner is given certain powers to ensure that the fund is distributed equitably taking into account all claims and potential claims, including the power to set aside a part of the fund for the satisfaction of future claims.

Clause 43: Accounts and audit

The fund is to be audited by the Auditor-General.

PART 5

DISCIPLINE

Clause 44: Interpretation of Part 5

Disciplinary action may be taken against a **conveyancer** (including any person registered as a conveyancer but not carrying on business as a conveyancer and any former conveyancer) or a **director** of a conveyancer that is a body corporate (including a former director).

Clause 45: Cause for disciplinary action

Disciplinary action may be taken against a conveyancer if—

- registration of the conveyancer was improperly obtained;
- the conveyancer has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*;
- the conveyancer or any other person has acted contrary to this Bill or otherwise unlawfully, or negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the conveyancer;
- the conveyancer has been convicted of an offence of dishonesty;
- the conveyancer has been suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth;
- the conveyancer has become bankrupt or insolvent or has taken the benefit (as a debtor) of a law relating to bankrupt or insolvent debtors or, in the case of a body corporate that is registered as a conveyancer, the body corporate is being wound up, is under official management or is in receivership;
- the conveyancer has otherwise ceased to be a fit and proper person to be registered as a conveyancer.

Disciplinary action may be taken against a director of a body corporate if disciplinary action could be taken against the body corporate.

Disciplinary action may not be taken if it is not reasonable to expect the person to have been able to prevent the act or default.

Clause 46: Complaints

A complaint alleging grounds for disciplinary action against a conveyancer may be lodged with the District Court by the Commissioner or any other person.

Clause 47: Hearing by Court

The Court is empowered to adjourn the hearing of a complaint to enable investigations to take place and to allow modification of a complaint.

Clause 48: Disciplinary action

Disciplinary action may comprise any one or more of the following:

- a reprimand;
- a fine up to $8 000;
- suspension or cancellation of registration;
- if registration is suspended, the imposition of conditions on the conduct of the conveyancer's business at the end of the period of suspension;
- disqualification from obtaining registration;
- a ban on being employed or engaged in the industry;
- a ban on being a director of a body corporate conveyancer.

A disqualification or ban may be permanent, for a specified period or until the fulfilment of specified conditions.

Clause 49: Contravention of orders

It is an offence to breach the terms of an order banning a person from the industry or from being a director of a body corporate in the industry. It is also an offence to breach conditions imposed by the Court.

PART 6

MISCELLANEOUS

Clause 50: Delegation

The Commissioner and the Minister may delegate functions or powers under this Bill.

Clause 51: Agreement with professional organisation

An industry body may take a role in the administration or enforcement of the Bill by entering an agreement to do so with the Commissioner. The Commissioner may only act with the approval of the Minister. The Commissioner may delegate relevant functions or powers to the industry body.

Clause 52: Exemptions

The Minister may grant exemptions from compliance with specified provisions of the Bill. An exemption must be notified in the *Gazette*.

Clause 53: Register of conveyancers

The Commissioner must keep a register of conveyancers available for public inspection.

Clause 54: Commissioner and proceedings before Court

The Commissioner is to be a party to all proceedings.

Clause 55: False or misleading information

It is an offence to make a false or misleading statement in any information provided, or record kept, under the Bill.

Clause 56: Statutory declaration

The Commissioner is empowered to require verification of information by statutory declaration.

Clause 57: Investigations

The Commissioner may ask the Commissioner of Police to conduct relevant investigations.

Clause 58: General defence

A defence is provided for a person who commits an offence unintentionally and who has not failed to take reasonable care to avoid the commission of the offence.

Clause 59: Liability for act or default of officer, employee or agent

An employer or principal is responsible for the acts and defaults of his or her officers, employees or agents unless the employer or principal could not be reasonably expected to have prevented the act or default.

Clause 60: Offences by companies

Each director of a body corporate (as widely defined) is liable for the offence of the body corporate.

Clause 61: Continuing offence

If an offence consists of a continuing act or omission, a further daily penalty is imposed.

Clause 62: Prosecutions

The period for the commencement of prosecutions is extended to 2 years. Prosecutions may be commenced by the Commissioner or an authorised officer under the *Fair Trading Act* or, with the consent of the Minister, by any other person.

Clause 63: Evidence

Evidentiary aids relating to registration, appointment of an administrator, temporary manager or examiner and delegations are provided.

Clause 64: Service of documents

Service under the Bill may be personal or by post or by facsimile if a facsimile number is provided. In the case of service on a registered conveyancer, service on a person apparently over 16 at the conveyancer's address for service notified to the Commissioner is also acceptable.

Clause 65: Annual report

The Commissioner is required to report to the Minister annually on the administration of the Bill and the report must be laid before Parliament.

Clause 66: Regulations

The regulation making power contemplates, among other things, codes of conduct (which may be incorporated into the regulations as in force from time to time).

Schedule: Transitional Provisions

Transitional provisions are provided in relation to—

- licensed land brokers becoming registered conveyancers;
- the continued effect of approvals, appointments, orders and notices;
- mortgage financiers (These provisions are equivalent to those contained in the *Land Agents, Brokers and Valuers (Mortgage Financiers) Amendment Act 1993* but not yet in operation).

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

LAND VALUERS BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to regulate land valuers; and for other purposes. Read a first time.

The Hon. K.T. GRIFFIN: 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.

The *Land Valuers Bill* represents a major change from the present situation. No significant changes have occurred in relation to the regulation of the activities of valuers since the introduction of the *Land Valuers Licensing Act 1969*. However, since that time the nature of the valuing profession and the importance of the role that valuing has achieved in the business community has greatly changed. Significantly, the valuer plays a key role in the commercial sector and a great deal of reliance is placed upon realistic and soundly based valuations. To cope with this greater role, the profession has demonstrated a keen interest in moving towards higher standards of behaviour and accountability amongst its members. The profession is one which can be regarded as being remarkably stable and one which enjoys a high degree of professionalism amongst its members.

There is an extremely low incidence of complaints against valuers and formal disciplinary action has not been taken against any valuers for some time. One of the reasons for this occurring is the fact that the Australian Institute of Valuers and Land Economists maintains a high rate of membership amongst licensed valuers and that peer review aims to maintain high standards within the profession.

In reviewing the need for legislative intervention in the regulation of the activities of valuers, the Legislative Review Team established by the Government did not consider that it was necessary or desirable to continue the present system of Government licensing. Given the relatively high rate of compliance and the fact that in practical terms most valuations are done for business, the impact upon general consumers will be minimal. The majority of valuers' clients are banks, legal practitioners, finance companies and other financial intermediaries that seek a valuation for the purposes of loan assessment. It should also be noted that those parties which most often use the services of valuers are well placed to be aware of the general value of property being transacted. Any concerns such clients might have about valuations can be addressed by gaining further advice or further valuations. The Vocational Education, Employment and Training Committee in its 1993 Report on partially regulated occupations in Australia also recommended that the valuing profession should be deregulated as it also considered that the risk to the general public would not be great. Ordinary consumers rarely call upon the services of valuers and there would appear to be little concern that they would be disadvantaged by the deregulation of valuers.

Other methods of maintaining industry standards are available to the valuing profession. The Institute is initiating the development of competency based standards and is working with the Trade Practices Commission to develop a code of conduct. In light of these developments it is no longer considered appropriate for the Government to continue as the regulator of the valuing profession. Government's role should be limited to providing advice and supporting the profession's moves towards greater self-determination.

The *Land Valuers Bill* introduces a system of 'negative licensing' that provides an effective regime for the protection of consumers without the significant expense a traditional positive licensing regime would involve. The Bill replaces the existing licensing system with provisions aimed at protecting persons from the unlawful, negligent or unfair practices of land valuers. Under section 5 such behaviour would be the subject of disciplinary action and a possible outcome of such disciplinary action could be that a person is barred from working as a land valuer. In addition to the disciplinary provisions contained in the Bill, the Commissioner can also obtain assurances from persons whose behaviour warrants concern under the provisions of the *Fair Trading Act 1987*. The Bill also provides for a code of conduct to be developed with the Commissioner.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

A land valuer is defined as a person who carries on a business that consists of or involves valuing land. The definition includes a person who formerly carried on such a business so that disciplinary proceedings may be taken against such a person.

Court is defined as the District Court of South Australia. The Court is given jurisdiction under the Bill to deal with discipline of land valuers.

Director of a body corporate is given a wide meaning to encompass persons who control the body corporate. Under the Bill directors of a body corporate may be disciplined, or prosecuted for an offence, alongside the body corporate.

Clause 4: Commissioner to be responsible for administration of Act

Clause 5: Cause for disciplinary action

Disciplinary action may be taken against a land valuer if—

- the land valuer has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*;
- the land valuer or any other person has acted unlawfully, or negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the land valuer.

Disciplinary action may be taken against a director of a body corporate that is a land valuer if disciplinary action could be taken against the body corporate.

Disciplinary action may not be taken if it is not reasonable to expect the person to have been able to prevent the act or default.

Clause 6: Complaints

A complaint alleging grounds for disciplinary action against a land valuer may be lodged with the District Court by the Commissioner or any other person.

Clause 7: Hearing by Court

The Court is empowered to adjourn the hearing of a complaint to enable investigations to take place and to allow modification of a complaint.

Clause 8: Disciplinary action

Disciplinary action may comprise any one or more of the following:

- a reprimand;
- a fine up to $8 000;
- a ban on carrying on the business of a land valuer;
- a ban on being employed or engaged in the industry;
- a ban on being a director of a body corporate land valuer.

A ban may be permanent, for a specified period or until the fulfilment of specified conditions.

Clause 9: Contravention of prohibition order

It is an offence to breach the terms of an order banning a person from carrying on the business of a land valuer or being employed or engaged in the industry or from being a director of a body corporate in the industry.

Clause 10: Register of disciplinary action

The Commissioner must keep a register of disciplinary action taken against land valuers available for public inspection.

Clause 11: Commissioner and proceedings before Court

The Commissioner is to be a party to all proceedings.

Clause 12: Investigations

The Commissioner may ask the Commissioner of Police to conduct relevant investigations.

Clause 13: Delegation by Commissioner

The Commissioner may delegate functions and powers under the Bill to a public servant or, with the consent of the Minister, to any other person.

Clause 14: Liability for act or default of officer, employee or agent

An employer or principal is responsible for the acts and defaults of his or her officers, employees or agents unless the employer or principal could not be reasonably expected to have prevented the act or default.

Clause 15: Offences by bodies corporate

Each director of a body corporate (as widely defined) is liable for the offence of the body corporate.

Clause 16: Prosecutions

The period for the commencement of prosecutions is extended to 2 years. Prosecutions may be commenced by the Commissioner or an authorised officer under the *Fair Trading Act* or, with the consent of the Minister, by any other person.

Clause 17: Annual report

The Commissioner is required to report to the Minister annually on the administration of the Bill and the report must be laid before Parliament.

Clause 18: Regulations

The regulation making power contemplates, among other things, codes of conduct (which may be incorporated into the regulations as in force from time to time).

Schedule: Transitional provisions

An order of the Tribunal suspending a land valuer's licence or disqualifying a person from holding a land valuer's licence is converted into an order of the Court prohibiting the person from carrying on, or from becoming a director of a body corporate carrying on, the business of a land valuer.

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

LAND AND BUSINESS (SALE AND CONVEYANCING) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to regulate the sale of land and businesses and the preparation of conveyancing instruments; and for other purposes. Read a first time.

The Hon. K.T. GRIFFIN: 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.

The *Land Agents, Brokers and Valuers Act 1973* contains a number of important provisions which regulate the conduct of persons dealing with the transfer of land. These include provisions relating to the conduct of the business of a Land Agent and provisions dealing with contracts for the sale of land or businesses.

These provisions are an important mode of regulating the behaviour of land agents and also regulating the contractual procedure involved in the purchase of what is for most people the most expensive acquisition of their life, namely the purchase of land or a business.

The Bill encapsulates these provisions in one complete package. The provisions contained in the Bill largely reflect existing provisions in the Act.

The *Land Agents Brokers and Valuers Act 1973* also contains provisions designed to regulate the conduct of rental accommodation referral businesses. These businesses provide a service relating to the availability of rental accommodation. These provisions have been removed from the substantive legislation and it is intended that they be incorporated into a Code of Conduct which will be administered under the provisions of the *Fair Trading Act 1987*. This ensures a continuation of the consumer protection currently available in the Act.

Explanation of Clauses

The following table compares the clauses of the Bill to the provisions of the *Land Agents, Brokers and Valuers Act 1973*.

Land and Business (Sale and Conveyancing) Bill 1994		*Land Agents, Brokers and Valuers Act 1973*	
clause 3	*Interpretation*	sections 6(1), 86(1) and (2) and 87A(1) and (2)	The relevant definitions from the general interpretation section and the interpretation sections in Part 10 Divisions 1 and 2 have been brought together.
clause 4	*Meaning of small business*	section 87A(1) "small business" and (2)	
PART 2	*CONTRACTS FOR SALE OF LAND OR BUSINESSES*	PART 10 DIVISION 2	
clause 5	*Cooling-off*	section 88	The amount of deposit in respect of the sale of land or a small business that may be retained by the vendor if the sale contract is rescinded during cooling-off is increased from $50 to $100. The provision contained in clause 5(2)(b) has been altered to take account of the removal of the requirement for an agent to have a registered office by the *Land Agents Bill*.
clause 6	*Abolition of instalment contracts*	section 89	
clause 7	*Particulars to be supplied to purchaser of land before settlement*	section 90	
clause 8	*Particulars to be supplied to purchaser of small business before settlement*	section 91	
clause 9	*Verification of vendor's statement*	section 91A	
clause 10	*Variation of particulars*	section 91B	
clause 11	*Auctioneer to make statements available*	section 91C	
clause 12	*Councils and statutory authorities to provide information*	section 91D	
clause 13	*False certificate*	section 91E	
clause 14	*Offence*	section 91F	
clause 15	*Remedies*	section 91G	
clause 16	*Defences*	section 91H	

clause 17	*Service of vendor's statement, etc.*	section 91I	This provision has been altered to take account of the fact that no general service provision (as in the current Act) is included in this Bill.
PART 3	*SUBDIVIDED LAND*	PART 10 DIVISION 1	
clause 18	*Obligations and offences in relation to subdivided land*	section 86	The definitions related to subdivided land included in section 86(1) and (2) are incorporated in clause 3, the general interpretation provision.
clause 19	*Inducement to buy subdivided land*	section 87	
PART 4	*AGENTS' OBLIGATIONS*	PART 6	The requirements set out in sections 36 to 41 are not included.
clause 20	*Copy of documents to be supplied*	section 44	
clause 21	*Authority to act*	section 45(1) and (2)	
clause 22	*No agent's commission where contract avoided or rescinded*	section 45(3) to (4)	
clause 23	*Agent and employees not to have interest in land or business that agent commissioned to sell*	section 46	This provision has been altered to take account of the removal of the requirement for managers and sale representatives to be registered by the *Land Agents Bill*. The penalty has been altered to fit into the divisional penalty scheme.
clause 24	*Agent not to pay commission except to employees or another agent*	section 47	This provision has been altered for the same reasons as the previous provision.
PART 5	*PREPARATION OF CONVEYANCING INSTRUMENTS*	PART 7 DIVISION 3	The terminology has been altered in this Part. Conveyancing instrument is used in preference to instrument relating to a dealing in land. The term ties in with the *Conveyancers Bill*.
clause 25	*Part 5 subject to transitional provisions*		This is a new provision to take account of the transitional provisions included in the schedule. In the current Act transitional provisions appear in section 61 (1a), (4), (5) and (6).
clause 26	*Interpretation of Part 5*	section 61(3) and (13)	
clause 27	*Preparation of conveyancing instrument for fee or reward*	section 61(1)	
clause 28	*Preparation of conveyancing instrument by agent or related person*	section 61(2)	
clause 29	*Procuring or referring conveyancing business*	section 61(7) to (10)	
clause 30	*Effect of contravention*	section 61(11) and (12)	
PART 6	*MISCELLANEOUS*		
clause 31	*Exemptions*	section 7(2)	
clause 32	*No exclusions, etc., of rights conferred or conditions implied by Act*	section 92	
clause 33	*Civil remedies unaffected*	section 103	
clause 34	*Misrepresentation*	section 104	
clause 35	*False representation*	section 98	The penalty has been altered to fit into the divisional penalty scheme.
clause 36	*Prohibition of auction sales on Sundays*	section 98A	The penalty has been increased from \$500 to \$2 000.
clause 37	*Liability for act or default of officer, employee or agent*	section 99	This provision has been altered to bring it into line with similar provisions in the *Land Agents Bill*, the *Conveyancers Bill* and the *Land Valuers Bill*.
clause 38	*Offences by bodies corporate*	section 100	
clause 39	*Prosecutions*	section 101	The period for commencement of prosecutions has been extended from 12 months to 2 years in line with similar provisions in the *Land Agents Bill*, the *Conveyancers Bill* and the *Land Valuers Bill*.
clause 40	*Regulations*	section 107	Relevant provisions only included.

Schedule	*Transitional Provisions*	section 61(1a), (4), (5) and (6)	These transitional provisions have been altered to take account of the different time frame. In addition, the power of the Tribunal to vary or revoke exemptions has been transferred to the Commissioner for Consumer Affairs.

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

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

In Committee (resumed on motion).
(Continued from page 956.)

Clause 75—'Approval of enterprise agreement.'

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

Page 30—
Lines 20 to 22—Leave out paragraph (a) and substitute:
(a) the agreement—
(i) is, on balance, in the best interests of the employees covered by the agreement (taking into account the interests of all employees); and
(ii) does not provide for remuneration or conditions of employment that are inferior to the scheduled minimum standards; and
(iii) does not provide for remuneration or conditions of employment that are, when considered as a whole, inferior to the conditions prescribed by a relevant award (if any) that apply to the employees at the time of the application for approval; and.

Lines 26 to 34—Leave out subclause (2) and substitute:
(2) The commission must refuse to approve an enterprise agreement if a provision of the agreement discriminates against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
(3) In deciding whether to approve an enterprise agreement, the commission must identify employees who are covered by the agreement but whose interests may not have been sufficiently taken into account in the course of negotiations and must do whatever is necessary to ensure that those employees understand the effect of the agreement and that their interests are properly taken into account.
(4) Despite subsection (1)(a)(ii) and (iii) the Full Commission may, on the referral of an enterprise agreement by the member of the commission who considered the agreement at first instance, approve the agreement if the Full Commission is satisfied—
(a) that the enterprise is suffering significant economic difficulties; and
(b) that the agreement would make a material contribution to the alleviation of those difficulties; and
(c) that there are reasonable prospects of the economic circumstances of the enterprise improving within the term of the agreement.
(5) An enterprise agreement must also be referred to the Full Commission if the member of the commission before whom the question of approval comes the first instance is in serious doubt, for any other reason, about whether the agreement should be approved.
(6) If the Commission approves an enterprise agreement, a copy of the agreement must be kept available for public inspection at the office of the Registrar.

The Government made it quite plain at the time of the last election, that it was its intention that the awards would provide the safety nets for enterprise agreements. That was spelt out with no doubt at all. Page 3 of the Government's policy document states:

> The award system will continue to provide the basic safety net for employees.

The Government made it plain that any new agreements other than awards would be enterprise agreements. It also guaranteed there would be minimum hourly rates of pay, annual leave entitlements, sick leave entitlements, unpaid maternity leave, parental leave, adoption leave, and proportional employment benefits to weekly hired and part-time workers. What the Government has done in the legislation is to introduce a set of minimum standards, and they are meant to be one of the tests within this legislation in relation to whether or not an enterprise agreement can be entered. The legislation that the Government has brought forward allows people to go below the safety net.

The amendment I will be bringing forward will allow that but they will be under very special circumstances, which I will be spelling out. It must be noted that the Government had not suggested that you go below the safety net; it said that there would be a safety net, and that was it. Under my amendment the agreement must be, on balance, in the best interests of the employees covered by the agreement. It must not provide for remuneration or conditions that are inferior to the scheduled minimum standards, and must not provide for remuneration or conditions that, when considered as a whole, are inferior to the conditions prescribed by a relevant award.

Since the Government had promised minimum standards I spelt out quite clearly in my amendment (a)(ii) that an enterprise agreement will not allow standards less than those minimum standards. In my amendment (a)(iii), because the award is a safety net, I am making it plain that as a whole conditions cannot be inferior to the award. The reason for that is a recognition that awards are highly prescriptive, but, as a package, provide a certain level of benefits to workers. I understand that in some workplaces the prescription of the award, whilst it gives you security—you know what you are going to get and you know what your entitlements are—creates difficulties for the employer, and there are times when even the employee might like a somewhat different arrangement.

There may be some things under an award which they feel perhaps they would be willing to forgo or have less of, there are other things that perhaps they would appreciate a little more of. The concept is that if you give in one area you should be able to pick up in another. The important thing is that as a whole you should not be worse off than you are under the award. I realise that some of the benefits are in terms of leave, some of the benefits are in terms of remuneration, but, nevertheless, since commissioners in the past have been able to make those sorts of decisions, and those sorts of trade-offs in granting awards, I believe that a commissioner in granting an enterprise agreement should be able to make a decision as to what the effect is on the whole of variations in the award, as you construct an enterprise agreement.

The second batch of amendments I have moved delete subclause (2), which is the area where the Government allows for people to go below the scheduled minimum standards. Quite simply, I am not satisfied with the tests which are there, and in the circumstances install a whole new set of tests which need to be applied, and I will explain why I have done that. Hypothetically let us take perhaps a large factory in a large country town—or a small country town, for that matter—which is a significant employer. This factory is in temporary difficulties, and I stress the word, 'temporary'.

It would not be in the interests of the workers if the factory closed when forgoing benefits for a short term would have guaranteed its continuation. However, I would take quite a different philosophical position in terms of going below awards for long periods of time, in terms of the implications that it has more generally. In fact, if you allow people to go below awards in the long term what is the point of having an award? An award is supposed to be setting the conditions—

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: Yes, and setting a minimum. As I observed earlier, there would be no problem in having full employment in Australia if we were willing to go to low enough wages. We can compete with Bangladesh quite easily, if we are willing to lower our conditions enough for workers. The challenge is first, for the system to set sensible awards. Having set them you only go below them in exceptional circumstances, and you should never do anything which allows it to become the rule, otherwise de facto you have destroyed the award. What I have attempted to do is to set up a series of tests, which really say that you should not be going below the award and, if you do so, it is under special circumstances and really should be temporary.

So, I am saying that, first, the enterprise must be suffering significant economic difficulties. That should be self-evident. If the company is not going too badly, there is no justification for going below the award at any time.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: No, but that is picked up in the first part of the clause because on the whole you can go below on some things and above on others. Here, on the whole, you are going below the award and below the minimum standards. If you are going to do that, you really need some very strict tests. The first is that the enterprise must be suffering a difficulty. As I said, that is not enough in itself.

The second test is that the agreement would make a material contribution to the alleviation of the difficulties, and the final one is that there are reasonable prospects of the economic circumstances of the enterprise improving within the term of the agreement. A company could say, 'Look, we have problems. We are going to put in new equipment. As a consequence, in the longer term, we will again be viable, but because of cash flow difficulties we cannot do it, as it will take a couple of years to turn things around.' They might unfortunately have blown their own management, and the workers should not be blamed for that. However, if they structure their management, and it is a temporary problem that good management will again solve, I think that is reasonable.

If these enterprise agreements allow people going below this safety net for a set period of time (and I have other amendments which prescribe two years as the maximum life of an agreement), at the end of that term you would have to go back and renegotiate the enterprise agreement, and the employees again will ask themselves, 'Are we willing to go below?' I would suggest at the end of the day that they cannot continue just agreeing to go below under this test because I believe that the full commission in this case would be looking at paragraph (c) and saying, 'Two years ago you said there was a reasonable prospect you would recover, and you have not done so, and you are now asking to go below the award again'. The commission might see some signs and give the firm another two years, but it might say, 'You cannot keep coming back and saying, "We are just about to recover; we are just about to recover."'

My intention is that the commission, looking at the test under paragraph (c), would not indefinitely grant companies the right to enter into enterprise agreements which go below the award. So, I am allowing the Liberal Party to actually bend its policy a little—something that it was attempting to do within the legislation. I have said that I can think of some circumstances where it is justifiable, but it can only be in the short term, and I am trying to put in the tests which allow that to occur.

The Hon. R.R. ROBERTS: I move to strike out the existing clause and insert the following new clause:

Insert new clause as follows:

Approval of enterprise agreement

75. (1) The Commission may approve an enterprise agreement if it is satisfied that—

(a) the remuneration and conditions of employment of the employees covered by the agreement are regulated by an award or awards that are binding on the employer bound by the agreement; and

(b) the agreement does not disadvantage the employees covered by the agreement in relation to conditions of employment; and

(c) the agreement includes procedures for settling industrial disputes about matters arising under the agreement between the employer and employees covered by the agreement; and

(d) the agreement provides for consultation between the employer and employees bound by the agreement about changes to the organisation and performance of work or the parties have agreed that it is not appropriate for the agreement to contain provide for such consultation; and

(e) adequate consultation has taken place with the employees who are to be bound by the agreement; and

(f) the following requirements have been complied with by the employer—

(i) not less than 28 days before the agreement was signed by or on behalf of the employees to be bound by the agreement, the employer must inform the registered associations that are parties to the awards covering the affected employees of the full contents of the proposed agreement; and

(ii) the employer must allow representatives of the registered associations to meet with the affected employees during working hours and provide reasonable facilities for the representatives to explain how the agreement would affect their rights and obligations; and

(g) the agreement has been approved by a majority of at least two-thirds of the total number of the employees affected by the agreement.

(2) An enterprise agreement disadvantages employees in relation to their conditions of employment only if—

(a) the agreement would result in a reduction of entitlements or protections; and

(b) the Commission, having regard to their terms and conditions of employment as a whole, considers the reduction contrary to the public interest.

(3) The Commission must refuse to approve an enterprise agreement if—

(a) the agreement contains provisions which are inappropriate to an award or enterprise agreement; or

(b) an employee has been subjected to overt or covert pressure by the employer or a representative of the employer in negotiations leading to the execution of the agreement; or

(c) a provision of the agreement discriminates against an employee because of, or for reasons including,race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; or

(d) the agreement applies only to a part of a single business that is neither a geographically distinct part of the business nor a distinct operational or organisational unit within the business and the Commission considers that—

(i) the agreement defines that part in a way that results in the agreement not covering employees whom it would be reasonable for the agreement to cover having regard to—
- the nature of the work performed by the employees whom the agreement does cover; and
- the organisational and operational relationships between that part and the rest of the business; and

(ii) it is unfair for the agreement not to cover those employees; or

(4) In deciding whether to approve an enterprise agreement, the Commission must identify employees who are covered by the agreement but whose interests may not have been sufficiently taken into account in the course of the negotiations and must do whatever is necessary to ensure that those employees understand the effect of the agreement and that their interests are properly taken into account.

(5) If the Commission approves an enterprise agreement, a copy of the agreement must be kept available for public inspection at the office of the Registrar.

I note also that the Hon. Mr Griffin intends to make a contribution. In respect of some of the remarks made by the Hon. Mr Elliott on the question of going below the terms of the award, I make the point that the award has to be the minimum, and I have some problems with his prospect of saying that they could go below the award rate, bearing in mind that the award rates at the present moment have always been recognised as the minimum rate that should be applicable to any worker doing that sort of work.

There have been a couple of references to a situation that happened at SPC, and people always claim that they went below the award rate. In fact, what they did at SPC was not go below the award rate but work only for the award rate and forwent any other of their lurks and perks. The conclusion of the story, which often does not get told, is that, when they first put the proposition to the employees, the employees were prepared, unwittingly, to go below those conditions.

When the registered association came into play, it pointed out the folly of their taking that action, and it was agreed that they would stick with the award rate, bearing in mind that that was the minimum. There were agreements and tentative arrangements that, in the case of prosperity, the conditions that previously obtained would be reinstated. In fact, history now shows that because of major restructuring and a spirit of cooperation that developed at that time they got back into the black and those conditions forgone for that temporary period were reinstated. As a result, those employees now enjoy the conditions that they had before the incident at SPC.

I point out that the Opposition's amendment picks up much—in fact, the majority—of the legislation enacted in the Australian Industrial Relations Act 1988 under the Federal Government's 1993 reform Bill. This reform Bill provides, as do the Opposition's amendments, that any enterprise agreement entered into must be on the basis that there is no disadvantage test with respect to the conditions of employment concerning the employees. It also provides that an enterprise agreement can apply only to those employees who are covered by an award.

Unlike the Government's Bill, the Opposition's amendments provide that any enterprise agreement entered into must provide for there to be consultation between the employer and employees who are to be bound by the agreement and that adequate consultations take place. Further, the Opposition's amendment provides that an employer shall give registered associations which are parties to the awards that would otherwise cover those employees 28 days notice as to the full contents of the proposed agreement; allow representatives of those registered associations access during working hours; as well as provide them with reasonable facilities to discuss how the agreement will affect the rights and obligations of workers at that workplace.

Further, rather than the agreement simply providing for a simple majority of employees agreeing to the enterprise agreement, the amendment provides that the agreement must be ratified by two thirds of the majority of the workers.

In New South Wales, the Greiner Government's legislation with respect to enterprise agreements provides that to exit the award system there must be approval by 65 per cent of the employees to be affected. If the employees will forsake the safety and security of, say, an award, it should be based on an overwhelming proportion of the work force wanting to embrace the enterprise bargaining, rather than the tyranny of a simple majority. For example, under the Government's Bill, in a workplace of 100 workers, 51 of them could be day workers working from 9 a.m. to 5 p.m. who are quite happy to accept an enterprise agreement which takes away penalty rates from the 49 shift workers who may work on that same site. Under the Government's legislation, those 49 shift workers would be caught under the terms of an enterprise agreement because a simple majority had been achieved with those in favour of the agreement. No coercion would have been exercised because the 51 were quite happy to enter into an enterprise agreement where they were not affected, and indeed might receive a 5 per cent pay rise to sell out 49 per cent of their workmates who were shift workers.

The Government's Bill provides that the enterprise agreement commissioner simply has to ensure that a simple majority is in favour of the agreement and that they are not substantially disadvantaged. Under the above scenario of the workplace with 100 workers, if 51 of them have agreed to the enterprise agreement, even though 49 of them may be significantly disadvantaged, if not substantially disadvantaged, there has been no coercion and the Industrial Relations Commission will have to take into account all the relevant industrial, economic and commercial circumstances affecting the enterprise. So, it is the enterprise and not the worker who is to be disadvantaged.

Members of the Committee should remember that Dean Brown's pre-election promise was a Liberal Government would adopt the award in each case as the safety net for establishing minimum conditions in enterprise agreements.

Subclause (2) of the Government's Bill allows employers in effect to gently force employees to accept agreements for remuneration or conditions of employment inferior to the scheduled minimum standards of the Act. The Government's Bill does not allow for the maintenance of the independence and integrity of commissions. The Opposition believes that the interests of the employees to be bound by the agreement in this matter can only be referred to the full commission if the enterprise agreement commissioner has some serious doubt as to whether the agreement should be approved.

The Government's position is an invitation to unnecessarily force reductions in wages and conditions. As I said, it does not relate to the SPC situation. Pursuant to clauses that will become apparent later in this Bill, there is no provision for appeal on an enterprise commissioner's decision. The Opposition's amendment further specifies, as does the Australian Industrial Relations Act 1988, as amended, the terms under which the enterprise agreement can be rejected by the commission; that is, there is a reduction of entitlements to the protections to workers and that the terms and condi-

tions of employment as a whole are contrary to the public interest.

Under the Opposition's amendments the commission must refuse to approve an enterprise agreement if there has been overt or covert pressure by the employer on employees; if it discriminates against the employee by race, colour, sexual preference and so on; or if the agreement in some way does not cover all employees whom it might be reasonable for such an agreement to cover, having regard to the nature of the work performed or the organisational operational relationships between the single business and the rest of the business, and it is unfair for the agreement not to cover those employees.

In addition, the Opposition's amendments require the commission to identify those employees who are to be covered by the agreement and whose interests may not have been sufficiently taken into account, for example, migrant women workers from non-English speaking backgrounds who may not have understood the effect of the agreement with respect to their own particular interests. Importantly, the Opposition's amendments ensure that any enterprise agreement is subject to public scrutiny—we have canvassed this argument in another debate—and that they are available for public inspection at the office of the registrar.

One of the greatest problems with respect to enterprise agreements in the New South Wales, Victorian and other State arenas where Liberal Governments have gained power is that enterprise agreements are kept secret and therefore both the Government and the community are generally unaware of the quality of those enterprise agreements.

We are being told that we can have agreements with inferior conditions that are on file in the commission but we are not allowed to reveal them. We demand that registered agreements and awards be laid on the table of the commission and open for public scrutiny to see whether they are fair and equitable and that the public interest is being met.

The Hon. K.T. Griffin: Industrial agreements are not available now.

The Hon. R.R. ROBERTS: Registered industrial agreements are available now. You can go and get the BHAS one any time you like.

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: The Attorney-General is saying that we can have conditions which are inferior under awards and which can be made available, exposed and judged by people wishing to go to enterprise agreements. In other words, the award can be judged but the enterprise agreement cannot be, even though it would be accepted that it is possible for the enterprise agreements to contain bad conditions. So we have a situation where we say, 'This is bad; we know it is bad, but we will let them get away with it because it is in an enterprise agreement.' It is like saying incest is a bad thing but it is all right if nobody knows about it.

On the limited studies that have been made, the University of Sydney has found that enterprise agreements in the New South Wales system have concentrated on cost-cutting measures, for example, the abolition of penalty rates, and so on, as opposed to the enterprise agreements entered into at the Federal level, which have concentrated on upskilling of the work force and training and enhanced productivity in return for salary increases; lower costs of production; greater efficiencies; product quality; job satisfaction; and the industry's viability, ensuring ongoing security for its employees and providing meaningful work and profits for shareholders.

The Opposition believes that the clause as outlined and put forward by it covers most of the requirements of the Hon. Mr Elliott and that it has the advantages of uniformity and comparison within the Federal arena. It also has the ability on its own merit to stand and serve South Australian employees as well as it would people working under the Federal system. I ask the Hon. Mr Elliott to consider supporting our amendment on the basis that it embraces most of the things that he wishes to cover, that it has the added advantage of uniformity between the two systems and that it would provide, in the event of disputation occurring from time to time, the opportunity to compare the case law that will develop in both areas so that the commission may more efficiently undertake its duties in the interpretation of those disputes and make judgments on levels of conditions and remuneration that may come out of this arena. For all those reasons I prevail upon the Committee to support the Opposition's amendment.

The Hon. T.G. ROBERTS: I support the comments made by the Hon. Ron Roberts and cite a couple of cases that have arisen under the existing awards and agreements relationships. The case to which the Hon. Mr Elliott referred was the well known SPC one, but there have been a number in this State where workers have been encouraged not only to resign from their unions—

The Hon. M.J. Elliott interjecting:

The Hon. T.G. ROBERTS: No, it is an example of a case that allows the award to be the safety net. I will provide two illustrations as to why the Opposition's amendments should be picked up to provide extra protection against the potential for rorting by unscrupulous employers. A medium size enterprise in a small country town convinced its work force that members ought to resign from the union and become part of an enterprise bargaining arrangement. Those employees had to make some short-term sacrifices so that the enterprise would remain within that country town. Because of the community pressures, many people agreed to the request of this large international company, made a lot of sacrifices in terms of their own awards and conditions and went below awards in cases. It had the play-off against workers who had penalty rates, and this is where the trade-offs will be coming in. It will involve penalty rates and over awards; they will be the tradeable commodities. I do not think too many employers will try to move below the award. The problem that the employers in those industries will have is maintaining the award standards and upgrading those awards.

However, where the employers are able to convince workers to resign from a union because the company did not want any scrutiny in what it was attempting to do, it instituted a whole range of changes that brought about productivity lists to try to get itself out of a short-term problem when in fact it had no intention of staying in the business, anyway. The company shut its premises and laid off all its workers and at the end of day the sacrifices made by those workers in a whole range of areas came to nothing. No apology was made by the employers to the employees. In fact they had a break up and the manager was lucky to escape unscathed. It was a social event that was supposed to have been a celebration of the sacrifice that those workers had made to try to keep that enterprise viable, but it turned out that the manager had to run very quickly to his car because the employees— in that case it was mainly women—were so incensed by the decision to shift their enterprise to another place in order to gain advantages that were being negotiated at a local level for other advantages that that company was going to get.

So much for the exchange of information on an equal basis. Another case was in another country town in the Riverland or Murraylands where a company convinced its members to resign. A management buy-out was put forward and workers were encouraged to trade their superannuation entitlements for shares in that company. The company was on a very bad footing and the employees did not seek advice from their union, although unions have resources that I know the Attorney-General does not want used to check the Stock Exchange and the circumstances of companies in the market place.

The workers transferred their superannuation into shares on the basis that they thought they would get returns on those shares equal to the sacrifices they made in salary and penalties. The company went out of business; the shares were worth nothing and consequently the workers sacrificed their superannuation payments for a non-viable company that was never going to survive anyway.

The Hon. Mr Elliott's concerns about minimum standards in awards is commendable but, unfortunately, extra provisions need to be put into place, including the amendments announced by the Hon. Ron Roberts, to ensure that those unscrupulous employers do not use the under-resourced and ill-informed members and employees on those sites to take advantage of the circumstances in which they find themselves. Unfortunately, in this day and age those sorts of regimes and programs still prevail.

Another illustration involves a matter about which the Government can do nothing, nor in this case the unions, where an unscrupulous employer made provision for bankruptcy and moved much of his plant and equipment off-site overnight. He moved it to other premises, away from where the people who were going to do the shareholder audit would determine what value they would get for their dollars. The first instance employees and unions had of anything untoward was that the transport driver notified a night-shift worker that he was taking out half of the plant and equipment. That went out overnight. The job security of those people was nil. When the liquidators came in the company could not work its way out of its difficulties and company shareholders got nothing.

Our interest in the amendments involves not only the employees, regional economies, and management—sometimes sections of management are not aware of the intentions of senior people—but also the shareholders. Where the interest of all those people reside, our amendments pick up those interests and unfortunately the Government will not see any need for those sorts of amendments because its intention is to pit those workers with little or no protection or resources against employers of, in some cases, dubious credibility.

Another problem relates to fair share and trading of information. I accept the Attorney's position about fair enterprise bargaining. There is no problem with that. Unfortunately, there are circumstances for which we have to legislate in relation to those unscrupulous companies that do use such methods. A further problem that enterprise bargaining will bring for workers on site is to gain access to information for overseas registered companies.

If people go to the Stock Exchange to try to do an audit or investigation into the financial viability of overseas companies registered internationally, they find that their profit and balance sheets are often not available. They put out a group report at the end of the financial year that does not include any detail at all to allow people to assess the viability of those companies. It is an unfair fight. It is like throwing a bantamweight boxer into a heavyweight ring to try to negotiate some sort of fairness and equity out of the whole process. I ask the Committee to consider the Opposition's amendments.

The Hon. K.T. GRIFFIN: The Government opposes the Opposition's amendment and moves its own amendment. I move:

Approval of enterprise agreement

75. (1) The Commission must approve an enterprise agreement if, and must not approved an enterprise agreement unless, it is satisfied that—

(a) before the application for approval was made, reasonable steps were taken—

(i) to inform the employees who are covered by the agreement about the terms of the agreement and the intention to apply to the Commission for approval of the agreement; and

(ii) to explain to those employees the effect the agreement will have if approved and, in particular—

- to explain that the agreement will, if approved exclude the operation of an award except to the extent that provisions of the award are incorporated into the agreement; and
- to explain the procedures for preventing and settling industrial disputes as prescribed by the agreement; and

(b) the agreement does not, in relation to their terms and conditions of employment, disadvantage the employees who are covered by the agreement; and

(c) the agreement has been negotiated without coercion and a majority of the employees covered by the agreement have genuinely agreed to be bound by it; and

(d) the agreement is consistent with the objects of this Part; and

(e) the agreement complies with the other requirements of this Act.

(2) For the purposes of subsection (1)(b), an agreement is taken to disadvantage employees in relation to their terms and conditions of employment only if—

(a) the agreement, considered as a whole, would result in an overall reduction of entitlements or protections of the employees under an award that would otherwise govern the employee's employment; and

(b) in the context of their terms and conditions of employment considered as a whole, the Commission considers the reduction contrary to the employees' interest.

(3) If an enterprise agreement provides for remuneration or conditions of employment inferior to the scheduled minimum standards, the agreement must be referred to the full Commission for approval.

It seeks to do so to clarify clause 75. The new clause clarifies the Government's policy intention in relation to the conditions of approval of enterprise agreements. In the Bill the Government specifically provided that enterprise agreements should be negotiated without coercion and have the support of the majority of the employees who are bound by the agreement. The Government has considered it necessary to specify in greater particularity the requirement that the Enterprise Agreement Commissioner be satisfied that the employees have made an informed consent prior to entering into the enterprise agreement.

Proposed new clause 75(1)(a) provides specifically for this requirement and proposed new clause 75(1)(c) requires the agreement to have been negotiated without coercion and that a majority of the employees covered by the agreement have genuinely agreed to be bound by it. The phrase 'genuinely agreed' is considered to be a preferable phrase to the phrase in the Bill 'has the support of the majority'. The phrase

'genuinely agreed' is a phrase contained in the Federal Industrial Relations Reform Act 1993.

Proposed new clause 75(1)(d) specifically requires the Enterprise Agreement Commissioner to be satisfied that 'the agreement is consistent with the objects of this Part'. This is an important provision as it will ensure that the objects of the Part, about which the Government now has the support of all parties to include, are reflected in the actual terms of the enterprise agreement and its approval process. The Government's new clause also clarifies its intention in relation to the proposed no disadvantage test.

In the Government's Bill clause 75(1)(a) expresses the no disadvantage test as requiring 'the agreement. . . [to] not substantially disadvantage the employees to whom it is to apply'. This provision has been grossly misrepresented by the Labor Party and by some trade union officials in the debate on this Bill over the past two months. The word 'substantial' as used by the Government in this Bill was clearly intended to mean that enterprise agreements could not be refused to be approved merely because some inconsequential or insubstantial effect on employees existed when the terms of the enterprise agreement were compared with the terms of the existing award.

It also recognised that some terms of awards and enterprise agreements cannot be arithmetically measured so as to compare in identical fashion like with like. The Hon. Mr Elliott has already acknowledged that position. However, given the mischievous misrepresentation made by the Labor Party and the trade union movement in relation to this clause the Government's amendment clarifies its policy intention.

Proposed new clause 75(1)(b) provides that 'the agreement does not, in relation to their terms and conditions of employment, disadvantage the employees who are covered by the agreement'. The concept of disadvantage is then defined in proposed clause 75(2) to mean that when 'the agreement, considered as a whole, would result in an overall reduction in entitlements or protections of the employees under an award that would otherwise govern the employee's employment', then this will only be regarded as disadvantage if the commission considers that reduction to be contrary to the employee's interest.

The concept of defining the word 'disadvantage' in this manner is taken from the Federal Industrial Relations Reform Act 1993, although the Government's amendment requires the concept of disadvantage to be assessed by reference to the employee's interest and not the public interest as provided for in the Federal Act.

It is our view that the focus should be on the employees' interest and not that of the public at large. I think focusing on employee interest narrows rather than extends the concept. The amendment, together with the earlier amendment to clause 70A, ensures that awards operate as the safety net to enterprise bargaining. The amendment also ensures that the focus of any assessment of disadvantage is upon the employees' interest. The Government recognises that there may be special circumstances in which the parties seek to provide for a condition in an enterprise agreement inferior to the scheduled minimum standards, for example, by trading off a certain sick leave or annual leave entitlement for some other employee benefit, but in circumstances where that proposed sick or annual leave provision stipulates a lesser provision than the scheduled standard. This may also be necessary in case of economic incapacity upon a business, particularly a small business. In these circumstances the Government amendment proposes that the agreement be referred to the full commission for approval.

With respect to the Hon. Mr Elliott's amendment, it is the view of the Government that, whilst we will formally oppose it, there is merit in some of the proposals. The only significant difficulties we have relate to proposed subclauses (2) and (6). We have already debated a clause similar to subclause (2) where reference is made to age and also, I would suggest, in the broader context of the equal opportunity laws at State and Federal level which have certain qualifications and with which employers and employees must in any event comply. The danger is that expressing so baldly the principles in proposed subclause (2) will give rise to conflict with the established law of the State and the Commonwealth relating to equal opportunity matters. In relation to subclause (6), we have already made a very passionate argument for the parties to be able to make a decision as to what should or should not be kept confidential. I do not accept that because an award is public it necessarily follows that an enterprise agreement should be made public; they fall into two totally different categories. Apart from those two subclauses, the remaining subclauses are very largely without criticism as far as the Government is concerned.

The Hon. M.J. ELLIOTT: I see merits in various components of the two provisions that I am opposing. We may need to recommit this clause at the end of the Committee stage. I see some definite merit in the Government's amendment relating to clauses 75(1)(c) and 75(1)(d), and I think there may be something similar in the Opposition's amendment. The Opposition also proposes a two-thirds majority test in relation to agreements. Whether or not I will pursue that in terms of agreements generally is one question, but the other question is in relation to those agreements where they go below the safety net. That could be another test, particularly in that regard.

The Hon. K.T. Griffin: You want the safety net taken as a whole?

The Hon. M.J. ELLIOTT: Yes, and below minimum conditions. That is subclause (4). I would like to see a series of tests, because they have to be exceptional circumstances. Another could be a 65 per cent test, which is a general test used for all enterprise agreements in New South Wales, if my memory serves me correctly. With regard to my own amendments, particularly subclause (4)(c), I am not sure whether the word 'reasonable' is the best word as a qualifier for prospects, and I will give that further attention when I get some time, along with whether or not there should be an absolute deadline of so many years for an employer so this cannot go on indefinitely. Subclause (4)(c) is supposed to address that, but I am giving some thought to that question as well.

The Hon. M.J. Elliott's amendments carried; clause as amended passed.

Clause 76—'Effect of enterprise agreement.'

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

Page 31, lines 6 and 7—Leave out subclause (3) and substitute—

(3) An enterprise agreement operates to exclude the application of an award only to the extent of inconsistency with the award.

I mentioned at the beginning of our discussion on enterprise agreements that I believe that if people are to enter into enterprise agreements there really needs to be a full analysis of what is being given up from the awards as they go into the agreement. One way of ensuring there is a proper analysis of what entitlements you are giving up is to ensure that when you enter an agreement you specifically make clear not only

what you are getting but also what you are not getting. It is not that I am keen to see the award applying, because after all at the end of the day the enterprise agreement is supposed to be at least equivalent to the award, but I want to make sure that there is a full and frank discussion in the negotiation of the enterprise agreement so that, if properly drawn up, the enterprise agreement document can signify that that has happened. At the end of the day, that is what I am seeking to achieve more than anything else. It is not that I am trying to bring award conditions into the enterprise agreements, but I am trying to ensure that the negotiations are handled properly, and this is really just one tool for achieving that. I do not believe it is in any way an imposition on the people involved in the negotiations.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. To some extent it relates to the argument that we have already had on clause 73(1)(d), and I will not repeat that at length. I make the point that, if the Hon. Mr Elliott is seeking to ensure that there is a full and frank discussion of the provisions of the award, I would suggest to him that this amendment does not do that, because it applies after the enterprise agreement and does not apply to the negotiation process.

Another problem is that it exposes employers and employees to two instruments of industrial regulation. One is the enterprise agreement and the other is the industrial award. We have been trying to clarify the terms and conditions which apply to employers and employees and not introduce the prospect of disputes and arbitration and perhaps ultimately litigation because the award has to be taken into consideration in interpreting an enterprise agreement. For an enterprise agreement to exclude the operation of an award only to the extent of inconsistency with the award raises some difficult legal questions and matters of interpretation. They will not be the same in every case; they will vary from case to case. In those circumstances, this places an unreasonable burden on employers and employees without achieving the certainty which is important in industrial relations. For that reason, the amendment is opposed.

The Hon. R.R. ROBERTS: The Opposition will support the amendment. It is a mirror of the one that we have. I should like to make a quick comment on what the Attorney-General said. This provision has no fears for anyone who is serious about award safety nets and the award being the minimum. It embraces that principle and ensures that people will be treated fairly.

Amendment carried; clause as amended passed.

Clause 77—'Enterprise agreement may invoke jurisdiction of commission.'

The Hon. M.J. ELLIOTT: I oppose the clause and move:

Insert new clause as follows:
Agreement cannot affect jurisdiction of commission.
77 (1) An enterprise agreement cannot limit—
(a) the commission's powers of conciliation; or
(b) the commission's powers to settle industrial disputes between the employer and employees bound by the agreement.
(2) However, if the agreement itself provides procedures for settling an industrial dispute, the commission should ensure that the procedures have been followed and have failed to resolve the dispute before it intervenes in the dispute.

I have already discussed this subject in relation to a previous clause. I strongly support the Government's general aim of trying to get enterprise agreements to come up with methodologies for solving disputes. However, there will be times when the commission may need to intervene. The amendment recognises that need.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. We have to some extent had a debate on this matter in relation to other clauses, so I do not intend to repeat a lot of what I have already said. This amendment, if passed, would have the amazing effect of introducing compulsory arbitration jurisdiction by the commission over parties to an enterprise agreement. That jurisdiction could allow the commission to make orders relating to any industrial matter between the parties, including variation of the terms of their agreement. I suggest that is quite extraordinary. Not even the Federal Act confers such an arbitral jurisdiction capable of overriding the enterprise agreement.

The Government's position is that no limitation should be placed on compulsory conciliation, but to require the agreement to set out dispute resolution provisions. In many cases these will confer an arbitral jurisdiction on matters not inconsistent with the terms of the agreement. However, the statutory imposition of arbitral jurisdiction, often across the board, is nonsense and will significantly undermine the opportunities for employers and employees genuinely to endeavour to reach a satisfactory conclusion to a dispute. It will compromise the enterprise agreement process.

The Hon. R.R. ROBERTS: I support the amendment moved by the Hon. Mr Elliott. The Bill restricts the powers of the Industrial Commission to settle industrial disputes between employers and employees bound by an enterprise agreement. This is one of the fundamental reasons why we have an Industrial Commission. To say that it cannot perform within its linchpin operations seems quite silly.

The Bill, with respect to clause 77, prevents the commission from being able to issue orders or to settle industrial disputes on matters outside that which is contained within the enterprise agreement. For example, if an enterprise agreement related only to wages and the spread of hours and had no reference to annual leave or rostering and the like, the mere existence of an enterprise agreement would, under this legislation, prevent the commission from being able to issue orders with respect to an industrial dispute that arose concerning those rosters. Whilst the clause provides for the commission to exercise its powers of conciliation with respect to industrial disputes between employers and employees bound by an enterprise agreement, it does not contain the arbitral function that the commission needs with respect to matters not expressly covered by an enterprise agreement. These matters are well understood and are a fundamental tenet of the role of industrial commissions and will settle disputation that will arise from time to time, despite the best intentions or starry-eyed hopes of some that enterprise agreements will satisfy everybody and there will never be a problem. That is a myth.

Clause negatived; new clause inserted.

Clause 78—'Duration of enterprise agreement.'

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

Page 31—
Lines 15 to 18—Leave out subclause (1) and substitute—
(1) An enterprise agreement continues in force for a term specified in the agreement (not exceeding two years).
Line 19—Leave out 'presumptive'.
Line 23—Leave out 'the presumptive' and substitute 'its'.

I have grave reservations about the possibility, as the legislation stands, that an enterprise agreement could be of extraordinarily great length. When you marry that with what the Government have—that the agreement is secret and that

it might have its own arbitration procedures so you cannot go to the commission and many other draconian and inhibiting factors relating to employees—I do not think it is on.

I believe that there is great value in having an enterprise agreement which is regularly assessed. A maximum term of two years does not appear unreasonable. When one sets about the renegotiation into that period one would presume that you would not go back to the award as a base document, you would probably use the existing enterprise agreement. The process the next time around, in general terms, would not be a very complex process at all. My other amendments to clause 78 are consequential to the first of the amendments, and I do not think I really need to say more about that.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. The amendment, even in its amended form, would require an enterprise agreement to have a fixed life of no more than two years.

The Hon. M.J. Elliott: Do we have to deal with awards every year?

The Hon. K.T. GRIFFIN: This is an enterprise agreement. Just listen. What I wanted to go on to say, before the Hon. Mr Elliott interjected, was that the Government is not opposed to the insertion of a set limit, and recognises the concern expressed by the Hon. Mr Elliott. A period of, say, three years might be the limit of the presumptive term, as expressed in clause 78. However, there is another consequence of the amendment, and that is a more serious consequence to which I hope the honourable member will give further consideration, and that is that the amendment would have the effect of forcing employers and employees back into the award immediately the term up to two years expires.

The Hon. M.J. Elliott: No, it doesn't.

The Hon. K.T. GRIFFIN: It does.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Well, that is certainly what happens. If that is not the intention I am reassured by that. I make the point that the existing Act permits industrial agreements to continue beyond their fixed term. If the Hon. Mr Elliott wishes to have a reference, sections 112 and 113(j) have relevance to that. In circumstances where an enterprise agreement provides for a higher base wage as a trade-off for the reduction or elimination of penalty rates, the automatic falling back from the agreement to the award would have the effect of reducing the employee's pay from one week to the next, unless he or she work in penalty rate time during that week. For this reason the Government's scheme for rescission is preferred. On the basis of what the Hon. Mr Elliott interjected, as I say, I am to some extent reassured, and it may be that that is an issue, if this amendment passes we will have to revisit.

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

Page 31, lines 15 to 24—Leave out the clause and substitute new clause as follows:

78 (1) An enterprise agreement may be extended from time to time for a term not exceeding three years by agreement of the persons bound by the agreement.

(2) However, an extension does not have effect unless approved, on the application of a person bound by the agreement, by the commission.

(3) On an application for approval of the extension of an enterprise agreement the commission must approve the extension unless satisfied that the extension would not be in the best interests of the employees bound by the agreement.

I have some concerns in the areas that have just been discussed by the Attorney-General about the continuation of terms and conditions. In moving my own amendment, having indicated that we have some concerns about that, I understand what the Hon. Mr Elliott is trying to do, but it is not satisfying our concerns at the present time, and I will be interested to listen to what he has to say.

The Opposition amendment in respect to the term of an enterprise agreement is a good one because it allows for the agreement to be extended upon the application by a person bound by the agreement for a period not exceeding a further two years. The approval for the extension of an enterprise agreement must be given unless the commission is satisfied that such an extension would not be in the best interests of the employees bound by the agreement. This is far superior to the Government's legislation, with respect to clause 78, which allows the enterprise agreement, remembering that the agreement, under the Government's Bill, could have a life *ad infinitum*. The agreement is superseded by another enterprise agreement or is rescinded, and, given the provisions of clause 79 of the Government's Bill for an enterprise agreement to be rescinded, is extremely difficult to achieve without the consent of all parties.

The Hon. M.J. ELLIOTT: The question as to what happens to the agreement after the two years has been raised, and I have addressed that by amendments later on. Looking at clause 79(4), I will be amending 'the commission may' to 'the commission shall' rescind an enterprise agreement at the end of its term if satisfied that the employer or a majority of employees currently bound by the enterprise agreement want it rescinded. What I am saying is that at the end of that two years, if either party wants out, they can have out, and they go back to the award.

I will have to look through the flow of the amendments again, but the intention was that within clause 78 you fixed a maximum term of two years; 28 days before the end of that you start negotiating and if at any time after the 28 days has expired either of the parties is no longer satisfied they can say 'Look, we want to go back to the award', but in any other event the negotiations could continue on. It is only if the negotiations are getting nowhere, and, finally, if the employer or the employee is not satisfied they can then say, 'Look, we are going back to the award.' I think what the Opposition is trying to achieve I have been trying to do in a different way, but the effect is the same. I anticipate that 28 days out from the end of the two years, or whatever period is set, negotiations will commence for the next agreement. Once that 28 days has elapsed negotiations may continue but, any time after that, either party can opt back to the award.

The Hon. K.T. GRIFFIN: I am encouraged by what the Hon. Mr Elliott has said. It seems that if his amendment is passed there will be a prospect of reaching some accommodation on that.

The Hon. M.J. Elliott: I am very reasonable.

The Hon. K.T. GRIFFIN: I am reasonable, too.

The Hon. M.J. Elliott: I can see that.

The Hon. K.T. GRIFFIN: I have not lost my cool very much at all. I have indicated that we are prepared to accept some of your amendments and we are prepared to talk. I think we are going quite well at the moment, Mr Chairman. In the light of what the Hon. Mr Elliott has indicated, whilst we oppose his amendment we are encouraged that we might still be able to reach an accommodation.

The Hon. M. Elliott's amendments carried; clause as amended passed.

Clause 79—'Power of commission to vary or rescind an enterprise agreement.'

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

Page 31, line 31—Leave out 'presumptive'.

The amendment is a consequential amendment.

Amendment carried.

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

Page 31—
Line 34—Leave out 'may' and substitute 'must'.
Line 34—Leave out 'presumptive'.
Page 32—Lines 1 and 2—Leave out paragraph (b).

The first amendment is consistent with what I was trying to achieve. If either party wants out, then they should be able to have it. What you are really doing is saying, 'We are not happy with what we have got; we want to go back to the safety net.'

The second amendment is consequential and is similar to the first of the amendments, and third amendment is consistent with the requirement that if either party does not want to stay within the agreement at the end of the term, then it shall be rescinded. I will check to see if there is another amendment that has not appeared.

The Hon. K.T. GRIFFIN: I ask the honourable member to reconsider the removal of paragraph (b). Whilst one can live with changing 'may' to 'must', it is a mandatory provision, and it seems to me that you may have a situation, for example, where there is an enterprise agreement under which employees are paid at a certain rate, and they have certain benefits. The employer says, capriciously, 'I want out,' and there is no discretion in the commission to say, 'That is capricious, and it is not in the interests of the employees; therefore, we will not grant approval to do that.' With the employer saying, 'I want out,' it may have the consequence of reducing all the employees' terms and conditions to an award at a lower level.

It seems to me that you must allow the commission to be able to exercise a discretion. It does not make any allowance if you remove paragraph (b) for a discretion to be exercised by the commission. The principle may well be fine. If one of the parties wants out, maybe that is what ought to happen, but I would suggest that it may well not be in the spirit of the agreement or in the interests of the employees. I think there ought to be some means by which the commission can call a halt to the unilateral withdrawal on both sides and say, 'In all the circumstances, it is not fair and reasonable to rescind the agreement.' Whilst I would much prefer to see 'may' left in subclause (4) rather than to make it mandatory, one can live with that if paragraph (b) remains in. I very strongly oppose the removal of paragraph (b) and urge the honourable member to rethink his position in relation to that.

The Hon. M.J. ELLIOTT: I must say that there is an awful lot of swings and roundabouts in removing paragraph (b), and I was quite aware of that when I did it. It is certainly true that some employees might be on a good wicket and be getting more than the award and find the boss saying, 'I will just pull the plug and you will go back to the award and you will be worse off.' I suspect that in many enterprise agreements—and this is the other side—they will have to give a bit to get a bit, and at the end of the day they might decide that agreeing to work 12 hour shifts three days a week was not such a bright idea after all and they want out. The commissioner looks at it, and, as the Government currently has it, he 'may' rescind. Under what basis would the commissioner decide that it was fair and reasonable to rescind the agreement? As I said, it cuts both ways.

It is a question as to whom the agreement is beneficial at the end of the day. If it has been beneficial to employees *versus* the award, certainly they will have pressure brought to bear on them. Similarly it could have been an agreement where it was borderline, a marginal agreement, and employees at the end of the day were thinking that really this was not such a good idea and, since it was supposed to be a mutual agreement, if they mutually agreed to go in, they should have mutually agree to stay in. As I said, it cuts either way. On balance, I decided that if the award was a safety net it was everybody's safety net, both employer and employee, and I fell on that side of the argument. I am capable of being convinced, but at this stage I think I will persist with having paragraph (b) taken out.

The Hon. K.T. GRIFFIN: It may not be a borderline case. It may be that there is something of significance there for employees as much as for the employer. It may be to the employer's advantage to terminate the agreement after the end of its term. I would have thought that if there were some disagreements between the parties the commission ought to be able to make a decision as to what was fair and reasonable, that is, to act as the arbiter. I should have thought that the Hon. Mr Roberts would be interested in keeping in paragraph (b) for that reason alone.

The Hon. R.R. ROBERTS: I am having a little bit of a problem with it. I understand what the Hon. Mr Elliott is trying to do. What we are really saying is that the commission must rescind the enterprise agreement after the end of its term if it is satisfied that the employer or the majority of employers currently under the agreement want it rescinded or if, in the circumstances of the case, it would be fair and reasonable to rescind the agreement. If you take out the word 'and', to me it becomes 'or'. It contains the words '(a) satisfied that the employer or the majority', which picks up the point that has been made very strongly, and I understand that. If we take out 'and', paragraph (b) will provide that the commission may rescind the enterprise agreement after its term if it is satisfied that it would in the circumstances of the case be fair and reasonable to rescind the agreement. If you drop out the 'and', I do not have a problem with it.

The Hon. M.J. Elliott: Why would the commission want to rescind an agreement if both the employer and the majority of employees were satisfied?

The Hon. R.R. ROBERTS: You could have a situation where, in comparison with community standards, the commission, exercising its judgment, said, 'There are circumstances in the case where this will happen in the public interest or for other reasons.' I will think about it. I go along with 'must'. I can accept that.

Amendments carried; clause as amended passed.

Clause 80—'Commission may release party from obligation to comply with enterprise agreement.'

The Hon. R.R. ROBERTS: The Opposition opposes this clause as its amendments with respect to the preceding clauses in relation to variation and termination of enterprise agreements are fairer to all concerned. There are similar arguments in relation to clauses 81 and 82.

The Hon. K.T. GRIFFIN: I draw attention to the fact that this provision is already in section ll3h(6) of the Industrial Relations Act 1972, which provides:

> If a person or association bound by an industrial agreement under this division engages in industrial action in relation to a matter dealt with in the agreement, a party to the agreement who was affected by the industrial action may apply to the commission for a declaration that the party so applying is no longer bound by the agreement.

Why should the commission not have power to do that? After all, the whole essence of an enterprise agreement is to try to

avoid industrial action in return for appropriate terms and conditions of employment. I would have thought that if you did not have some sanction there it would make something of a mockery of the whole enterprise agreement process. And after all, it is a discretion which is exercisable by the commission.

The Hon. M.J. ELLIOTT: I have a question of the Attorney-General. While he quoted from section 113h, I point out that there is some variation, and I think a significant one, because section 113h talks about engaging in industrial action in relation to a matter dealt with in the agreement. That test is not present in clause 81, about a matter which is dealt with by the agreement. In fact, any industrial action is sufficient for clause 81 to be invoked. I ask first whether that is the intent of the clause and, if so, why.

The Hon. K.T. GRIFFIN: If one looks at the definition of 'industrial action', one will see that it relates to all those sorts of matters which are most likely to have been dealt with in an enterprise agreement.

Progress reported; Committee to sit again.

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

A message was received from the House of Assembly agreeing to a conference, to be held in the House of Assembly conference room at 8.15 a.m. on Friday 13 May.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

Adjourned debate in Committee (resumed on motion).
(Continued from page 987.)

Clause 80—'Commission may release party from obligation to comply with enterprise agreement.'

The Hon. K.T. GRIFFIN: The point that the Hon. Mr Elliott makes seems to be a good point and, rather than taking time to resolve the matter now but in order to leave the clause in but with an amendment which flags the issue (so that it is not lost), my amendment will accommodate the issue that he raised. I move:

Page 32, line 5—After 'action' insert 'in relation to a matter dealt with in the agreement'.

That picks up the matter in 113h(6) and keeps it alive. It introduces that qualification.

The Hon. M.J. ELLIOTT: I invite the Hon. Ron Roberts to state his case a little more clearly because I did not understand what he was expressing as a concern about this clause.

The Hon. R.R. ROBERTS: We have concerns about this clause. The terms and conditions in the agreement have been agreed by both parties. From time to time, despite the best of intentions, there will be disputes between the best of friends and a situation can arise where aggravation or pressure is applied from one side or the other. The commission ought to have the ability to resolve disputes involving enterprise agreements or awards. They ought to be able to make decisions about those matters on the basis of the merits of the case involved in the dispute.

For example, employees may take industrial action and decide to remove their labour because they cannot get relief about a genuine dispute. The employer can say, 'I am not going to do it. Under the agreement I believe I have the right to do this.' He can keep the dispute running.

The Hon. K.T. Griffin: What about the issue that it is already in the Bill in relation to 'industrial agreement', now that I am proposing to amend it to accommodate the point that the Hon. Mr Elliott made?

The Hon. R.R. ROBERTS: My point is that there may be circumstances within the terms of the agreement that are covered by the terms of the agreement about which a dispute arises. I have a philosophic view that the enterprise agreement ought to be looked at and all the industrial matters should be able to be considered by the commission, including disputes about things expressed in the award or disputes unforeseen that develop nonetheless.

One tactic here may be that, to resolve the dispute in favour of one party or the other, they will say, 'We will go and apply, because it says in the Act that we can knock the whole agreement off.' Conversely, one could argue that if the enterprise agreement was based on the award, there would be no disadvantage. If it was no less than the award, someone could say, 'I will go back to the award.' They could be told, 'That is fine. There is no disadvantage.' I have trouble conceptualising that that is exactly what will happen. This clause frightens me to the extent that something is being put into the award to deny employees a fundamental right, although some would argue the legal technicalities of it.

If we are to have fairness in the ability to bargain, the employer has his bank book on the one side and the employee has only one thing to bargain with—his labour. At the end of the day there ought to be a reasonable capacity for the employer and employee to exercise their basic positions. The Hon. Mr Elliott mentioned possible safety disputes. I am certain that the Hon. Mr Griffin would say, 'Well, go and get the industrial inspector.' I can tell him from sad experience that you cannot always get the safety inspector when you want him. There may be a safety dispute, the employer may be refusing to meet the employees' demands in respect of overcoming that dispute and there may be industrial action. The Attorney-General has picked up that point and I understand that, but there is that capacity.

My fundamental belief is that the commission should have the widest powers to conciliate and arbitrate, but others have expressed a different view. If everybody is operating within the enterprise agreement and within the bounds of decency, the commission should be, and in the past has been, well able to interpret that and conciliate on those matters. I do not believe this clause is necessary. If we take into account the concepts and the reasons for the Industrial Commission's being there—and resolving disputes as a significant part of that—we do not need this clause.

The Hon. M.J. ELLIOTT: Whether or not clause 80 stands depends on what happens to a whole lot of other clauses that we have already amended. For instance, if enterprise agreements are not regularly reviewed, that is, every two years, and if conciliation and arbitration are too severely limited, I have grave concern about clause 80. I have said before that it worries me that clause 80 might be the only way to get out of a problem that arises within an agreement because arbitration has been totally denied and conciliation, as I read it, severely limited. So, my final attitude will be affected in part by what happens in other clauses. That is true of so many of these things; they tend to interlink. I acknowledge some of the concerns raised by the Hon. Ron Roberts. If my other amendments are carried, I do not believe the problems will still exist. At this stage, it is not my intention to oppose clause 80; I understand however the concerns raised by the Hon. Ron Roberts.

Amendment carried; clause as amended passed.

Clause 81— 'Limitation on commission's powers.'

The Hon. R.R. ROBERTS: Our opposition to clause 81 is consequential on the amendments to insert other clauses which the Opposition has drafted with respect to extensions or variations of terminations of enterprise agreements.

The Hon. M.J. ELLIOTT: It is not my intention to oppose clause 81 at this stage. As with the previous clause, clause 81 does not cause me concern as long as certain other amendments that have so far been passed remain within the legislation.

Clause passed.

New clause 81A— 'Representation.'

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

Page 32, after line 12—Insert new clause as follows:

81A. An association of employers or employees may, subject to the provisions of any relevant enterprise agreement[1], represent members of the association in negotiations and proceedings under this Part.

[1] See section 73(2)(ca).

This new clause clarifies the Government's intention in relation to the rights of employees to be represented by a trade union or enterprise union during negotiations in relation to an enterprise agreement, and during proceedings before the enterprise agreement commissioner concerning that agreement. It provides that an association of employers or employees may, subject to the provisions of any relevant enterprise agreement, represent members of the association in negotiations and proceedings under this Part. It may be that is consequential on an amendment that I have lost. For the purposes of the record I move this amendment and we can sort out the consequential nature of it later.

The Hon. M.J. ELLIOTT: New clauses 81A and 81B are quite separate matters, and I would prefer to handle them separately. My proposed clause 81A is an alternative to the clause 81A proposed by the Hon. Mr Griffin except that his is wider than mine. I have directed mine to an association acting on behalf of employees who are members of their association in negotiations and proceedings, whereas the Attorney-General has allowed associations of employers or employees to represent members of their associations, so he has picked up the same notion and broadened it out so employer associations are covered in the same way as employee associations. On the face of it that seems reasonable so I will not proceed with my amendment and will support that of the Attorney-General.

New clause inserted.

New clause 81B— 'Notice to associations.'

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

Page 32, after line 15—Insert:

81B (1) As soon as practicable after application is made for the approval or variation of an enterprise agreement, the commission must cause a notice to be published, in accordance with the regulations, that the application has been made and indicating the award or awards covering work performed by the relevant group of employees.

(2) A registered association that is a party to an award referred to in subsection (1)—

(a) is entitled to receive a copy of the application from the Registrar on request; and

(b) may appear at any hearing to approve or vary the agreement.

Where an enterprise agreement is being negotiated and members of associations are not employees, I have no difficulties at all with unions not being involved during those stages and not being parties, and so on. However, once the agreement has come to the commissioner for final ratification, I should like the unions to be able to pass comment. The commissioner will have to make the decision. This is the commissioner's only decision according to clause 75. There is a set of conditions under which the commissioner says that the agreement will or will not be ratified. I believe that an association should be able to comment as to whether or not the agreement breaches clause 75. I do not see that it can be involved in any protracted manner, but it should be able to pass comment as to whether the variation does or does not comply with the requirements of clause 75. I had somebody react, when they saw this, and say, 'They could hold this up for months.' That is not the intention. I have already made it plain that agreements should be public, so I am not demanding anything new publicly. All I am suggesting is that a comment may be passed on the agreement. My expectation—and if it cannot be achieved by this clause, I am sure it can be achieved by a further amendment—is that the union will pass comment upon it as an interested party.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: No, not as a party to the agreement in that sense, but in a more general sense as an interested party. I am referring to clause 81B(1) at this stage. What you are pointing out is that the registered association is a party to the relevant award. I am not saying that the registered association becomes a party to the agreement; all I am saying is that it can pass a comment as to whether or not the agreement complies with clause 75.

The Hon. K.T. Griffin: It can appear at any hearing; it is not limited to making a comment. It can fight it, support it, object to it and argue like crazy and it may not have any members affected by it.

The Hon. M.J. ELLIOTT: You could open up a philosophical argument that will run for hours as to whether or not a registered association's members are affected. Plainly they are affected. This does not take away from the fact that the Government does not want any interference with the negotiation of the agreement. All the Government wants at the end of the day is for comment to be passed as to whether or not the agreement fits the test and as to whether overall it does not fall below the award safety net.

The Hon. K.T. GRIFFIN: It is not the job of the unions to pass judgment or make comment upon enterprise agreements; it is a matter for the commission.

The Hon. M.J. Elliott: The commission makes a judgment.

The Hon. K.T. GRIFFIN: Of course the commission makes a judgment. The enterprise commissioner has the responsibility for determining whether it falls within or without the minimum standards and below the safety net. That is what the commission does.

The Hon. M.J. Elliott: That's right.

The Hon. K.T. GRIFFIN: You do not need a union there to say to the commission whether it does or does not. This is an objectionable provision. Enterprise agreements may be between an employer and a group of employees who are not members of a union. It might be a small business, a hardware shop, with eight, nine or 10 employees who are not unionised and who have no interest in a union. Why should a union be involved in saying that the proprietor and the employees have made an enterprise agreement which provides benefits for both and does not infringe the safety net provisions and which goes before the enterprise commissioner for approval? In those circumstances, why should the union be involved? Why should there be public notice of that? Public notice can mean intimidation by the trade union and then application to the

court and involvement of the commission. There is a philosophical question as to whether a union in those circumstances ought to have any rights at all. We take very strong exception to this clause. The proposed clause 81B(2) guarantees that the association 'may appear at any hearing to approve or vary the agreement.'

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: It guarantees that they have a right to do it. You can imagine what will happen. They will all trundle up to the hearing and they will intimidate the small business employer and employee entering into an agreement which the enterprise agreement commissioner may ultimately say is to be approved. In those circumstances, it is an objectionable provision and is likely to militate against the enterprise agreement regime. Our intention is that the enterprise agreement commissioner should have the ultimate responsibility, and that remains. A commissioner does not necessarily operate on the basis of giving every Tom, Dick and Harry or Jenny, Jill, Judith or whoever an opportunity to appear and make representations if they are representing a union which has no members who are affected by the enterprise agreement.

It is objectionable on policy grounds. It is of particular concern to the South Australian industrial relations system which has to cater for employees and employers in small to medium size businesses and who are unlikely to become part of the Federal system. They are the major employers whose work force is either non-unionised or not significantly unionised. As I have said, this provision will have the effect of undermining in the gravest possible manner the potential effectiveness of the State's enterprise bargaining laws.

The Hon. M.J. ELLIOTT: That was really a great load of nonsense. The Minister talked about intimidation, yet at various stages he has said that coercion and intimidation are illegal under this legislation. The Minister has been quite happy to retreat to that from time to time, but in this case he says, 'No; it will happen.' Putting that to one side, my intention is that where there are no union members they will not be involved in the negotiation of the award. The employees and the employer sit down and nut it out and come up with an agreement. By that stage intimidation is too late because it has been done. The agreement has been reached and lodged with the commission and the commission—nobody else—then has to make a judgment. The commission will make the judgment and it will look at clause 75 when making that judgment. I am asking for something which I believe is incredibly mild, and that is that comment may be passed on the agreement.

The Hon. K.T. Griffin: But isn't the employee ombudsman involved in that process?

The Hon. M.J. ELLIOTT: Just wait a second. We do not know how well resourced that office will be. There is no way known intimidation can play a role because, as I said, the agreement has already been negotiated, and it is before the commission for the determination as to whether or not it complies. In those circumstances—

The Hon. K.T. Griffin: You did not answer the basic question: why?

The Hon. M.J. ELLIOTT: It is a question of trying to ensure whether or not there is indeed a safety net. There are many other amendments going on here. At this stage we do not know what sort of commission the Government will create, whether it will be a political animal or not. If it turns out to be an animal, which is largely full of the Minister's people and they have rather a loose notion of what the award and the safety net are, what will go below it, and particularly where they are using clauses which allow you to go below the safety net. They get very loose in their interpretation there. To say that you are not even going to allow somebody to come in and make a comment about an agreement is pretty amazing. As I said—

The Hon. K.T. Griffin: It is no business of the union.

The Hon. M.J. ELLIOTT: Of course it is business of the union.

Members interjecting:

The CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: At the end of the day it could also be in the interests of some employers. I am aware now that sometimes when something is going wrong in one place of employment, in particular where one employer has been getting advantage by abusing their employees, often the first ones to complain are other employers. The reason that they are prepared to complain is because they are trying to compete with somebody else who has artificially reduced their cost structures by abusing the system. It is not even a matter of interest to unions. The fact is that impacts can go beyond the workplace. If I had absolute confidence in the commission and absolute confidence in the other structures that are being set up, then I might have a different view about this but, at this stage, I do not know what final structure we will end up with. I must say, if the rest of the structure is appalling, then this sort of thing becomes necessary. As I said, at the end of the day it is pretty mild.

The Hon. R.R. ROBERTS: I have to concur with Hon. Mr Elliott. Much of what the Attorney-General was talking about was, with the greatest of respect, a bit of claptrap.

The CHAIRMAN: That is not a very parliamentary term.

The Hon. R.R. ROBERTS: What is wrong with it?

The CHAIRMAN: It is not a very parliamentary term, is it?

The Hon. R.R. ROBERTS: It is not offensive, unless you happen to be on the other end.

The CHAIRMAN: That is what I am saying: it is not a parliamentary term.

The Hon. R.R. ROBERTS: Well, he is wrong. There is a long tradition in the Industrial Commission with awards or agreements and parties who have an interest. There has long been the provision for intervention. Where an association has work in a different area or associations which represent employees see a provision being inserted into an award or an agreement registered with the commission, they have the right to intervene. So intervention is a well established principle. What the Attorney-General and the Government want to do here is say, 'Where it is an award, yes, everybody can come in and pick it over, look inside, see what it is all about, intervene and object, if they like, and put their point of view, but with our new system of enterprise agreement we have to cocoon this and it has to be secret and sacrosanct.'

What the Hon. Mr Elliott is saying, and I am supporting him, because I have already stated in other submissions that I believe that people entering an enterprise agreement ought to have the right to have some knowledgeable people advising them about the result once they enter these arrangements. The Hon. Mr Elliott is being very light on this. He is not imposing impossible provisions. He is saying that in a registered place, if somebody wants to do a comparison with what is applying generally in enterprise agreements and make a sensible decision when negotiating an enterprise agreement with their own employer, comparative wage justice has always been a fundamental tenet of industrial relations. When

people say, 'What we are proposing to you is fair and equitable', it means that it has been judged in a whole range of areas. I am certain that when the people proposing enterprise agreements make enterprise agreements they will be ticky-tacking backwards and forwards, looking to see what is going on in the awards so that they do not go over it. They will be making sure that they are within the limits.

What the Attorney-General is proposing is that there should be no oversight of what happens in the enterprise agreement. So that people who want to go into awards can say 'Well, generally what is available in the enterprise agreements is this standard; what we are asking is not unreasonable.' The very mild provision being proposed by the Hon. Mr Elliott is fair and equitable. As I understand it, the Hon. Mr Elliott is trying to achieve a situation where the interests of members of a registered organisation working in a certain area or an area of a similar nature are protected. When standards are being set they will have the right to say, 'I understand that you made the agreement'—and, as the Hon. Mr Elliott points out, the agreement has been made. They come to do the ratification and a person from a registered association says, 'We have an interest in this. This is our point of view. We understand what you are doing. We feel that this is a problem but the parties have agreed.' And the commissioner, as I understand it, where the parties, the employer and the majority of employees have agreed, and it is not below the safety net, has to register the thing anyhow, despite what interveners or other people might want.

New clause inserted.

Clause 82—'Confidentiality.'

The Hon. R.R. ROBERTS: This clause is opposed.

The Hon. K.T. GRIFFIN: We support the clause but the deletion of it is consequential on other amendments that have been passed so far.

Clause negatived.

Clause 83—'Special function of Enterprise Agreement Commissioner.'

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

Page 32, line 23—Leave out 'An Enterprise Agreement' and insert 'A'

Amendment negatived; clause passed.

Clause 84—'Power to regulate industrial maters by award.'

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

Page 33, lines 5 and 6—Leave out subclause (1) and insert:

(1) The commission may make an award about remuneration and other industrial matters[1].

[1] Any of the bodies or person mentioned in section 187 may bring an application for the making of an award.

Subclause (1) is really to ensure that there is a cross-referencing characteristic.

Amendment carried.

The Hon. K.T. GRIFFIN: In my second amendment we are seeking to ensure, again with the footnote, that this power of the commission is always subject to sections 68(3), 69(3) and 70(3). If one refers back to clause 68(3), one sees that there is a provision for the full commission to review a minimum standard in relation to sick leave. Clause 69(3) provides that the full commission may review the minimum standard for annual leave, and clause 70(3) is the power for the full commission to review the minimum standard for parental leave. Our amendment seeks to clarify the fact that paragraph (c) is subject to the full commission's power which has already been approved in those relevant clauses.

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

Page 33, line 8—Leave out paragraph (a).

The Opposition's amendment seeks to allow the commission to retain its current powers under the Industrial Relations Act 1972 which allows it to make awards or orders affecting the composition of an employer's work force. The Government's Bill prevents the commission from making an award with respect to the ratios of trainees to full-time employees or of apprentices to tradespersons, or as to the number of casuals or part-timers that are employed compared with full-time employees, or indeed any restriction on the hours of work that an award might contain, for example, with respect to the maximum number of hours that can be worked by a part-time employee.

The other evening, the Hon. Michael Elliott expressed concern about the potential abuse of junior workers who are employed and paid solely to enable employers to take advantage of low wages. He was told that the definition of 'industrial matter' allowed the commission via paragraph (d) of that definition to control such abuse. However, when the honourable member asked a consequential question about this clause, in particular with respect to paragraph (2A), the Attorney-General was required to come clean and state that his Party's philosophical position was not to allow the commission to consider such an issue—a turnabout which confirmed that either the Government is ignorant of the abuse of junior wage rates, which raises other concerns about its approach to regulating enterprise bargaining, or that it is well aware of it and condones it, or perhaps even encourages it, and that may go some way to explaining an award safety net and also the Government's passion for minimising union involvement in agreements.

Further, the Government's provision may well be later argued to prevent the commission from being able to demark the work between competing union coverages at a particular work site, that is, the clause may well affect the limits of power given by the Government recently through amendment to the commission to handle demarcation disputes. If an employee feels aggrieved or particularly restricted because of an award provision relating to, say, for example, the maximum amount of hours that a part-time employee can work, that employee is perfectly free under the Industrial Relations Act as presently constituted to make an application to the commission and seek to vary any such limits, and the case may be decided on its merits.

The Government does not allow the commission to have the power, irrespective of the merits of individual cases that may come before the commission.

The restrictions that may appear in awards are there for very good reasons. Predominantly, they are to enhance the role of full-time employment rather than simply to encourage employees to be hired purely by the hour and subject to dismissal on the hour as the Government would like them to be. To deal with these quite common issues and to prevent abuse of juniors alone, this amendment deserves support.

The Hon. M.J. ELLIOTT: This subclause certainly does tie back to an area that concerned me elsewhere. I had moved amendments which provided for no discrimination on the basis of age. I acknowledged at the time that there was some concern about this, and certainly we cannot expect changes overnight to address this issue. I have argued that the issue should be experience rather than age, and that we should be talking about training wages and these sorts of things.

Certainly I do not want to be in a position to cause disruption or disadvantage to young employees. However, I

now look at this, and effectively the Government is allowing quite a different set of disruptions, and that is where there is some regulation in terms of the number of people training or the number of young people in the work force that regulation will be gone. It simply allows some people—and this is one example; it could be a composition with regard to other matters—who abuse youth workers to further expand that abuse.

I have some sympathy for the amendment that the Hon. Mr Roberts is moving. I will wait until I have heard the Attorney's response, but I must say in general that I have sympathy with it because on the one hand we are being told, 'Look, at this stage give up the amendment about age because of the problems that it creates,' but on the other hand the Government, through clause 84(2)(a), appears to be creating another set of problems which my amendment would have begun to tackle.

The Hon. K.T. GRIFFIN: I am just amazed at these comments. What constitutes abuse of a young worker who has a job, at rates—

The Hon. M.J. Elliott: Not giving them real training and sacking them when they turn 18; that's what I call abuse. The retail traders do it all the time.

The Hon. K.T. GRIFFIN: That is nonsense.

The Hon. M.J. Elliott: They do. They are a disgrace to this community.

The Hon. K.T. GRIFFIN: You really have a jaundiced view of life, and it comes from your lack of—

Members interjecting:

The Hon. K.T. GRIFFIN: There are provisions about unfair dismissal, and that applies equally to young workers as it does to older workers.

Members interjecting:

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: In my view, there can be no abuse when you are giving a young person a job, and that is what it's all about. Here we have the Industrial Relations Commission getting involved in management but you cannot have young workers—

Members interjecting:

The CHAIRMAN: Order! Other members were heard in silence; let the Attorney-General finish.

The Hon. K.T. GRIFFIN: Members opposite are very sensitive about this because they want to get involved in the management of the business; they want to allow the commission to become a manager of business. It does not matter what might have been arranged by way of an award and the protections built into an award for any workers or the minimum standards which are here; it does not matter what may have been negotiated in relation to an enterprise agreement and approved by the enterprise commissioner. Too bad about all that; members opposite want to give the commission the power to intrude into a business and run the thing, and that is totally unacceptable.

The Hon. R.R. ROBERTS: That is a passionate if not inaccurate assertion. What the Hon. Mr Elliott has just asserted is exactly what has happened. The trouble with the Attorney-General—

The Hon. K.T. Griffin: You are talking jargon all the time. You have this class warfare mentality—

Members interjecting:

The Hon. R.R. ROBERTS: What was that you said about being heard in silence, Mr Chairman?

Members interjecting:

The Hon. R.R. ROBERTS: The Attorney-General has been cloistered in Parliament House for too long as the Leader of the Opposition. The Attorney should from time to time—

Members interjecting:

The Hon. R.R. ROBERTS: Protect me from this incorrigible interjector.

The CHAIRMAN: Order!

The Hon. R.R. ROBERTS: The Attorney-General should go out and work in some electorate offices in some of the disadvantaged areas and see the number of times that junior workers have worked in businesses such as fast food outlets and supermarkets for three years: they turn 18 one day and management makes a determination the next day that they are not suitable for the job, even though they have worked there for those three years on junior wages. When they go on to the senior wages all of a sudden management says that they are no longer suitable for the job.

There are other instances where this has occurred. For example, in relation to the number of tradesmen to apprentices under what was the old Apprenticeship Act and what is now the Training Act, it states that you must have so many tradesmen for apprentices. The reason why those provisions were made is that the employers would want to have one tradesmen and seven apprentices, and all the trench digging would be done by apprentices and not by a senior labour. That was when we had adult labourers and apprentices.

So, circumstances occur where abuse can take place. The Hon. Mr Elliott is exactly right and it is for those reasons, and a number of others, which will take too long to expound on at this time, that I am responding.

The Hon. K.T. GRIFFIN: Why do you think young people want jobs? They want jobs because they want some cash in their pocket.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: You are back in the days of the old industrial revolution. You ought to live in the real world. You ought to talk to the kids. If you have teenage kids and you meet their friends you will find that they are anxious to get a job. You do not hear very many instances of wrongful dismissal actions against McDonald's, KFC and all the other retail outlets that employ young people; you have young people queuing at the door waiting for a job.

Members interjecting:

The Hon. K.T. GRIFFIN: You have young people queuing at the door for jobs. And why should you not give them the dignity of a job? Members opposite want to manage the work force, and if they cannot do it one way they will come in and do it another way.

The CHAIRMAN: The question is that the amendment be agreed to—the Hon. Michael Elliott.

The Hon. M.J. ELLIOTT: You've been sitting on the tractor too much, with respect, Mr Chairman.

The CHAIRMAN: I have been on the tractor too much?. I hope that the honourable member is not reflecting on me.

The Hon. M.J. ELLIOTT: No, not at all.

Members interjecting:

The CHAIRMAN: It is quite clear how the debate and how the vote is going to go.

The Hon. M.J. ELLIOTT: Mr Chairman, it is within the Standing Orders for me to stand up and put a point of view, and it is not within the Standing Orders for you to stop me from doing so.

The CHAIRMAN: I am not stopping you; I am calling on you to say your piece.

The Hon. M.J. ELLIOTT: I was only seeking to do so, Mr Chairman. I do not know how many times in this place I have seen an accusation fly from the Government benches to the Opposition benches and vice versa last year and prior to that about, 'You people haven't been employers; you don't know what it's like.' It is also fair to say that many people on the Opposition benches can say, 'Look, we know what it is like being employees in a lot of occupations and you don't know what that's like.' I have actually been in the position of both employer and employee. I have had experience working for a retailer, packing groceries and losing my job once I reached a certain age.

The Hon. Diana Laidlaw: Change those schemes. It is the schemes that are at—

The Hon. M.J. ELLIOTT: How do you change the schemes?

Members interjecting:

The Hon. M.J. ELLIOTT: I am sorry, but I have seen ample evidence of this happening on a pretty regular basis. For some people these junior jobs are incredibly handy. If you are a kid from a family that is pretty well off, you are going to university and you need a bit of spare cash, you get a job on the weekend or on the odd night and you bring home some nice cash, and you are not really doing it in the long-term, anyway—

The Hon. K.T. Griffin: It is not just families that are well off; it is families that are not well off as well.

The Hon. M.J. ELLIOTT: Just let me finish.

Members interjecting:

The CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: A significant number of junior workers are not doing it for the rest of their life or anything else. It is not a career move; it is simply earning some cash to help themselves get by and, generally speaking, it is nothing more nor less than that. And they do not have any great long-term career prospects involved in that. There is another set of junior employees, probably equal in number, who go there as their job. They have finished their education and they go there to take up their job, and they are in the work force. They are committed and they work, but they are not really getting trained. Then, when these young people turn 18, they find that they are no longer required; they do not have a job; and they have gained no further training. Members say, 'Look, they were in a job for a while.' They might have been, but they really have been put at a significant disadvantage because at the end of the day they are actually worse off because they do not have future prospects. That happens to just as many kids. One does not see them quite so often in some suburbs as one does in others.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: Well, it is better than not having one. It also implies that you are out of work and you have not picked up particular skills. It happens in particular parts of the industry; it is not happening with the small retailers, generally speaking. You can very easily identify the major culprits.

That is just one example. The Minister will note that I have not said how I am going to vote on this clause, but I did say that it was an issue that I was trying to tackle elsewhere in the discrimination clauses to which the Government objected strongly. What is the Government's policy about junior workers? Is it that junior workers should be thankful that they have a job? I do not think the Government knows what is happening in the real world to a significant number of our youth workers. I can recall all the Government's accusations—

Members interjecting:

The CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: When you say that the award safety net is there—

Members interjecting:

The CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: The award actually allows junior wages, but as a concession to that some awards regulate the number of juniors and the like and I would expect in part that that would be a way of encouragement by having a fixed number of juniors to the number of seniors. There would be an inducement so that juniors would have somewhere to go when they are no longer juniors. If the Government takes that avenue away, there would just be many more juniors all facing the loss of their job at that time because there is no inducement for employers to take seniors. Indeed, with an award allowing reduced rates, employers will go for them much more frequently.

Amendment negatived.

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

Page 33, lines 9 and 10—Leave out paragraph (b) and insert—

(b) if there is an inconsistency between an award and an enterprise agreement, then, while the agreement continues in force, the agreement prevails to the extent of the inconsistency; and

The Opposition's amendment on this matter allows the commission to have the power to make an award regulating the rights and obligations of a person or persons bound by an enterprise agreement, provided that where there is a specific matter covered under an enterprise agreement, for example, wage rates, that any order of the commission that is inconsistent with the enterprise agreement fails for the life of the particular agreement concerned. The Bill, in spite of the Government's now saying that it accepts the award as a safety net, still uses every opportunity in fact and in perception to limit the award's impact.

This amendment is particularly important and also takes into account earlier amendments that the Opposition has moved, whereby awards prevail except to the extent of any inconsistency with any terms in an enterprise agreement. The Government's Bill makes it impossible for the commission to be able to make an award or order against an employer or employees who are bound by an enterprise agreement. This is irrespective of whether the industrial dispute that may be taking place at that work site is about an issue which is not in fact covered; for example, shift workers often have difficulties with respect to rosters that employers want them to work from time to time. Even if the enterprise agreement did not provide for any method of settling disputes over shift rosters or, indeed, it made no mention of shift work in the enterprise agreement, the mere existence of an enterprise agreement would, according to the Government's Bill, be enough to oust the commission's jurisdiction to make an award resolving that matter.

However, in the Opposition's amendments if the issue of shift rosters was in fact a matter covered under the enterprise agreement, then the Industrial Commission could only issue an order or an award on that matter, provided that it was not inconsistent with any of the expressed provisions of the enterprise agreement. The Opposition's amendment retains the integrity of the enterprise agreement and the bargain that has been struck between the parties with respect to any particular issues but allows the Industrial Commission to

intervene and make orders in those cases where the enterprise agreement is silent.

The Government's position would basically allow the law of the jungle to be retained, where the party with the greatest industrial clout would end up and be able to bludgeon their weaker opponent into submission and that weaker party would not be able to have recourse to the Industrial Commission to settle that dispute. How can the award system survive as the safety net when the very existence of an agreement circumvents the award?

The Hon. K.T. GRIFFIN: This matter has already been covered in an amendment that has got through under the name of the Hon. Mr Elliott. I suggest that paragraph (b) remain as it is.

The Hon. M.J. ELLIOTT: The Attorney is right: the issue has already been covered by an amendment that has been carried, but I am not sure that if the amendment is not passed we will not end up with a contradiction concerning subclause (2)(b). If it is left as it is, it would then be contradicting the earlier amendment and that would not be a good idea.

Progress reported; Committee to sit again.

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

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That the Minister for Education and Children's Services take the place of the Attorney-General as a manager at the conference on the Bill.

Motion carried.

[Sitting suspended from 6.3 to 7.30 p.m.]

SUPPLY BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Appropriation.'

The Hon. R.I. LUCAS: I have two points to make. First, the Leader of the Opposition was kind enough to point out that I omitted to respond to one aspect of the questions he raised during the second reading debate. As I understand it, those questions related to the shape and structure of ministerial offices and the new position of chief of staff within Ministers' offices. The Leader of the Opposition may well have some questions to address to me after I make some initial comments.

In relation to my own office, I have appointed a chief of staff, as have most other Ministers. It is a new position. The Government, and the Premier in particular, took the view—and we respect the fact that the previous Government and previous Ministers might have a different opinion—that the Ministers' offices had not necessarily worked as effectively as we would like. We looked at the way Ministers' offices operate in many other States, and in a good number of them Ministers appointed chiefs of staff as senior advisers, but also to run their office as an office, so that there was a clear hierarchy of control. As I said, that operates in many other States with respect to the shape and structure of the Ministers' offices.

That clearly was not the view of the previous Government, but that is a judgment for it. However, this Government took a decision that that could be an option for the new Government and the new Ministers. It is certainly one that I strongly supported, having seen the operation of some of the Ministers' offices here in South Australia with which I was familiar.

The Hon. C.J. Sumner: Mine was very good.

The Hon. R.I. LUCAS: I wasn't familiar with yours. Having also studied the structure of Education Ministers' offices in other States—and I was familiar with those—I found that the best offices and the ones that ran most efficiently were those that had someone clearly in control as chief of staff. If one looked at the international experience in relation to the structure of ministerial offices, one would see that the model adopted by the new Government is indeed world best practice.

The Leader of the Opposition has told me that he wants to ask all Ministers questions during the Committee stage of the debate. The advice I have—certainly in relation to the Appropriation Bill debate, where there is a line-by-line allocation of expenditure according to various portfolios—is that that is an appropriate course of action.

In the previous Parliament on occasions certain Ministers were asked a series of questions in relation to the Appropriation Bill. The advice to me in respect of the Supply Bill debate is that that has never occurred in practice in this Parliament. A Minister is responsible for the legislation and questions are directed through that Minister to the Government, and generally the Minister gets a reply back either straight away or sends a reply to the Leader of the Opposition or the Opposition member as soon as possible afterwards.

If other Ministers are able to be in the Chamber during the Committee stage of this debate and are prepared to respond to questions in some way, that is a judgment for them. I do not want to indicate that a practice or precedent is being established in relation to automatic access to all Ministers during the Supply Bill debate because, as the Leader of the Opposition would know, that was never the practice for the 20 years of Supply Bill debates under the previous Labor Government.

The Hon. C.J. SUMNER: I appreciate the Leader's response in respect of ministerial offices, but I will have further questions to ask of the Minister and any other Minister who is prepared to answer questions in relation to the matter. As to the Committee stage of the Supply Bill, it is quite clear that clause 3 of the Bill appropriates a significant sum of money to continue the operations of the Government into the next financial year, and therefore it seems to me to be quite legitimate that questions be asked in relation to the expenditure of money—

The Hon. R.I. Lucas: They can be asked.

The Hon. C.J. SUMNER: Sure—and in fact that has happened on previous occasions. Obviously the Minister representing the Treasurer is the Minister principally responsible, and he has the responsibility to respond to the questions; and that is also true of the Appropriation Bill. As a matter of convenience and to get the best information possible, Ministers have made themselves available in the past on the general Appropriation Bill. I do not see that there is anything wrong with the principle of Ministers, if they are available, answering questions during the Committee stage of the Supply Bill. It is a matter of good management, I would have thought, in that the Ministers directly responsible can respond themselves, given that clause 3 deals with appropriation across all Government agencies.

Having said that, I would like to make a couple of general comments and then move on to some specific questions. I do

not want to get into a long and bitter debate this evening, but I must say that the decision by the Government to have only one Supply Bill does constitute a reduction in the accountability of the Government to the Parliament. The Labor Government had this proposition before it and did not agree to it because we thought that there would be that reduction in accountability. I have not researched the history of the two Supply Bills that have been introduced in addition to the Appropriation Bill, but I assume that there was a reason for it. One obvious reason is that it does provide an additional opportunity for members of Parliament in the House of Assembly and in this place to question the Government about its finances. I do not accept the Leader's refutation of my assertions about the reduction in accountability on this point.

I note that the honourable member has referred to a grievance debate and the possibility that that might be introduced into the Legislative Council. That is something this side of the Chamber is prepared to consider, although we would want it carefully looked at to make sure that it was not a device to reduce the opportunities for members to speak and express a point of view.

But, if it could be shown that a grievance debate would expand the opportunities, it is something we could look at and certainly I am happy to attend any meeting of the Standing Orders Committee designed to look at that and other issues. The honourable member also took issue with some of the remarks I made about the state of the State's finances. He asserted that the Audit Commission was the final word on the topic or at least that was the impression that I got from what he said. It is also fair to say that there are other views about the pace at which the recurrent expenditure should be brought into credit and the pace at which debt should be reduced.

Many of the things in the Audit Commission were proposed to the former Government and rejected. It was the Treasury wish list of what it would like in an ideal world. Those proposals were rejected and rejected for good reason. We believe that Meeting the Challenge did provide a plan for a reduction in recurrent expenditure over time and did provide a plan for reduction in debt over time. The Liberal Party's position essentially is that it wants recurrent expenditure reduced more quickly than what was proposed in Meeting the Challenge. That is a clear difference of view between the two Parties, but we believe that our position was sustainable.

Meeting the Challenge was credible and would work, albeit achieving the results at a slower rate than what the Liberals want and indeed slower than what the Audit Commission wanted. Nevertheless, it was a credible position. It is true that the Audit Commission is not the last word on the subject, as indeed the Minister has admitted, because he says that ultimately decisions have to be made by Government.

It is interesting to note that an independent Audit Commission Review Group, comprising academics from two South Australian universities, has been formed to assess the impact of the Audit Commission findings. That spokesperson on behalf of that group, Mr John Spoehr, of the University of Adelaide, Centre for Labour Studies, has been quite critical of some of the Audit Commission findings. Academics and economists take a different view from that being advanced by the Audit Commission. One cannot say that the Audit Commission is the final word on the topic.

I emphasise that there are differing but legitimate views and the Labor Government, before it was elected, did take a different view about the pace of the reduction in recurrent expenditure and the pace of reduction in debt. We acknowledge that the Liberal Party wants to do it more quickly, but that is a legitimate area of debate. It is not true that Labor took no action in relation to debt or recurrent expenditure: we did. We had a program. It was a program that worked and the assertions that I made in my second reading speech are correct. The Government is entitled to have its opinion that our proposal did not do as much as it wanted to do, but nevertheless Meeting the Challenge was a program, it was in place and was credible, depending on the assumptions that you use.

The Hon. A.J. Redford: Will the Labor Party put in a submission to the Government on the Audit Commission?

The Hon. C.J. SUMNER: I doubt it. Our view was that we had put in place the Meeting the Challenge document in April last year, we had the budget following that and essentially our plan for the reduction in recurrent expenditure and the reduction in debt was there for the community to see. The Liberal Party is entitled to criticise it if it wants. There is no secret about our view. It did not involve the sorts of expenditure cuts the Audit Commission has recommended.

The Hon. A.J. Redford: Meeting the Challenge is your submission?

The Hon. C.J. SUMNER: Meeting the Challenge was our response to the crisis that had developed principally over the State Bank in relation to recurrent expenditure and the level of State debt. Given where we are tonight and the amount of business we have, I do not want to repeat everything. I am sorry Hon. Mr Davis is not here to hear me being very eloquent in reference to these figures, but the honourable member will note that net debt as a proportion of Gross State Product in 1983 was 23 per cent; it got down to 15 per cent before the bank hit us and went up to 23 per cent again. I am not making any excuses for that but, whatever people say, the bank was the principal reason why all that work in the 1980s in the reduction of debt was squandered.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: I am not sure whether the honourable member wants me to go through the whole history of it. If he wants me to I am happy to, but I do not think his front bench will be happy about it. I am not making any excuses about the debt. All I am saying is that the Labor Government in the 1980s made a very significant improvement in the situation—from 23 per cent to 15 per cent—of net debt as a proportion of Gross State Product. I would have thought that was a very significant achievement and it was because that had been achieved that we were able to absorb the $3 billion loss of the State Bank. If you set the State Bank aside you saw a reduction, and it also included—

The Hon. A.J. Redford: We had a high debt, but we got something for our money. You didn't; that is the difference.

The Hon. C.J. SUMNER: I was not making a point about your having a high debt. If you go back to Playford and look at the budget papers you will find that debt was over 50 per cent of Gross State Product in the 1950s.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: Maybe the front benchers can put the fellow straight. All I am saying is that had it not been for the bank that was a good record in the reduction of debt. I think everyone would have to agree with that.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I'm sorry; the Hon. Mr Redford is interjecting.

An honourable member interjecting:

The Hon. C.J. SUMNER: I have, and I want to go on. I was trying to do it nice and calmly, but the honourable member wants to interject. You know what I am like; I like to respond to interjections. I do not want assertions on the record that are incorrect.

The CHAIRMAN: If you do not respond to them they will not go on the record.

The Hon. C.J. SUMNER: Well, they are out of order anyhow, Mr Chairman, as you know. The Leader provided answers to questions I asked about the budget. I do not find those answers particularly satisfactory, and perhaps if we had had time we could have had the Treasurer officers, Mr Boxhall and others, here to look at them, but I do not want to do that because of the time. I would like to put on the record some questions which I understand the honourable member will be happy to try to answer during the break.

The Minister has indicated that there are only two factors which impact on the 1993-4 budget—the Audit Commission $1.5 million and the jobs package of $1 million. In view of the Minister's response, have the following election commitments made by the Liberal Party before the last election been (1) scrapped, (2) deferred until 1994-5 or later or (3) been funded by cuts to other programs? If any of the commitments have been funded by cuts to other programs, how much has been spent on each commitment to date and which programs have been cut to fund the additional expenditure? The Leader gave an example of one reallocation within his own portfolio, but we want to know what those reallocations are within each portfolio. The election commitments to which I referred and to which I want responses in terms of what I have said are as follows:

1. Allocate an additional $6 million annually to public hospitals;
2. Provide $1 million in the first two years for the Lake Eyre Basin;
3. An extra $10 million per year for road funding;
4. An extra $500 000 per year for State bicycle committee;
5. $10 000 nursing scholarships;
6. An extra 200 police officers;
7. A study of the river Torrens—$260 000 for three years;
8. A new science block for Noarlunga High School;
9. $20 million over four years for school maintenance.
10. $4 million over 10 years for learning difficulties;
11. $300 000 extra for State Heritage Fund;
12. An extra $900 000 per year allocation from DRT to cycling infrastructure;
13. $100 000 to Wright Court Day Centre.
14. $10 million WorkCover subsidies;
15. Southern Vales effluent program—$13 million;
16. $4 million for Patawalonga.
17. Estimated $2.5 million for Wilpena and Arkaba station development;
18. $1.5 million for stage 2 of Southern Sports complex.
19. Feasibility study of bridge at Reeds Road ford;
20. $750 000 tourism centre for McLaren Vale;
21. $7 million waste recycling program;
22. Aldinga sewerage treatment works;
23. Halving of the payroll tax on new export production;
24. Additional special education teachers, speech pathologists; and
25. Stamp duty exemptions on transfer of family farms.

In addition to that, in my second reading speech I noted a couple of other matters that were not in that list that I have just cited. There is the jobs package of $28 million, which has been dealt with partially by the Minister in his response; the third arterial road of $80 million over four years, which was confirmed by the Premier in the House of Assembly on 22 March; and additional spending for the deregulation unit, $150 000. There are, of course, the pay-outs to Chief Executive Officers and the increased salaries to Public Service CEOs, plus the extra money for the committees of Parliament and Parliament House refurbishment.

One which is not in the list that I have given and which there is no answer for from the honourable member is the $700 000 for the Hindmarsh Island bridge. Those matters need to be added to the items that I have mentioned. Obviously, that is for the delays in the construction of the bridge, the consultants' fees and so on. I do not expect the Minister or any Ministers to respond immediately, but they are the questions we would like answered during the debate.

Further, I ask this question of the Minister: what is the nature of the extra $10 million of expenditure forecast for 1993-94 which was highlighted in the Treasurer's statement on 20 April when he released the March 1994 Consolidated Account figures? Was any of this additional expected expenditure related to election policy commitments given by the Government? If so, how much and what for? The next question is: are the Government's estimates of $13.1 million for the gross expenditure to fund its election promises in 1993-94—that was in its pre-election policy statement—still accurate and, if not, what is the exact figure for gross expenditure on election promises in 1993-94 and what initiatives contribute to this figure? Finally, what is the total cost of all inquiries instigated by the Government in 1993-94? To date, in excess of 50 inquiries have been established and I note that, in answer to question on notice number 71 in the House of Assembly, it was indicated that 11 of these inquiries alone will cost in excess of $2 million including the Audit Commission, to which the honourable member has already referred. There are others and we would like to know what the total costs are. As I said, presumably they could have been pursued in Committee with the relevant officers, but I am content, if the Minister is content, for it to be dealt with by correspondence during the break.

The next matter with which I wish to deal is the transfer of public servants within Government following the election, and the third issue relates to the ministerial office question, which has been partly answered but to which I would like an answer. The Hon. Mr Lucas may be able to answer these questions without the Attorney-General's presence. If not, I would appreciate it if the Attorney-General could be advised. We will see whether we can proceed without him, given his other very extensive load at present.

It is probably fair to say that this is a somewhat sensitive topic, but it needs to be raised and explored in the Parliament. After the Government came to office, a large number of people were moved from their positions in the Public Service. For instance, secretaries to Ministers, although they had Public Service positions, were moved. Others in that category also were moved because Ministers wanted other people in those positions. It is also fair to say that some were considered unacceptable to the incoming Government. Some ministerial officers had obtained Public Service positions within the Government. In my experience, that occurred after a proper Public Service selection process for a position, with advertising, a selection committee and appointment in accordance with the GME Act. There were also others who were on contracts of various kinds. I do not think it would be useful to name them all and I do not intend to do so, but I think members are aware that the Government would have to admit that, after coming to office, a number of public servants were shifted for various reasons.

At this stage I will not explore the rationale or the basis for it in terms of the GME Act or otherwise. That is in the past and may be pursued at some other time. We know that

a number of these people were shifted. Some had been ministerial officers, obviously some had also been candidates for the Labor Party at various times, others were on contract, some were associated with the Labor Party and others not, and I think that some were perceived to be associated with the Labor Party. People in Ministers' offices close to Ministers in secretarial positions—executive assistants, typing secretaries, appointment secretaries and so on—were shifted.

That has not happened normally, at least in the past, because those people were permanent public servants. Most of them were public servants who were selected after a proper advertising and selection process within the Public Service. As I am sure the Hon. Mr Lucas knows, some were associated with the Labor Party, but they were still public servants who, at least in my experience, worked very hard in the interests of the Government of the day and who, I am sure, would continue to work hard in the interests of the Government of the day in whatever position they found themselves. However, a good number of these people have not found positions. In the cruel, harsh world of politics, they are referred to as being in the departure lounge, whatever that means, and a number of them are legitimately trying to find jobs within the Public Service.

However, a question has arisen which I think needs to be explored. We need to determine the Government's view on whether, as they were shifted in the first place because of their alleged political opinions after the new Government came in, they are not now able to find jobs within the Public Service because of their political opinions and previous associations. I have heard stories which disturb me greatly. I believe in a Public Service where selections are made on merit, where people can be selected despite their political opinions. However, people have applied for jobs and been granted interviews but the interviews have been cancelled for various reasons. The suggestion is that people will never be able to get a job in the Public Service because of their association with the previous Government.

I hope that is not the Government's view or at least not the view of the Ministers, but it might well be that it is the view of the chief executive officers or those who are involved in selecting people, because they might be trying to please their Minister or whatever—I do not know. I am sure that the Leader, and the Attorney-General if he were here, would confirm that most of the human rights instruments to which Australia is a party and which have been promulgated by the United Nations prohibit discrimination on the grounds of political opinion or belief.

I will not go through it, but the International Covenant on Civil and Political Rights clearly states that there should be equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion or political or other opinion, and that every citizen has the right and the opportunity without any distinction mentioned in article 2 (including political opinions) and without unreasonable restrictions to take part in the conduct of public affairs directly or through freely chosen representatives.

The international perspective on this, which obviously is supported by the Australian Government through the Human Rights and Equal Opportunity Commission and our accession to that charter, is that political views should not be taken into account to discriminate against people who may be of a different political persuasion.

However, without going through it point by point, without making too much of a political point about it, I have received enough information to cause me to be disturbed about the approach that has been taken towards these people. Some of them are political people who know or who have associated directly with the Labor Party. Some are not; some are people who were shifted because the Ministers wanted to bring in their own people. Whatever category they are in, I think the community would agree that they should be given a fair go within the system.

I would like the Minister to speak on behalf of the Government on this point, and if the Government's view accords with what I expect it to be I ask the Minister to make clear to the chief executive officers that there is no political ban on the appointment of people as permanent public servants within the Public Service, provided that they are adequate for the job and can achieve the job on merit.

This is a serious issue. I ask the honourable member to respond to whether those people who are public servants are entitled to be treated like all other public servants. I would like him to say whether there is, either formally or informally, any bar on their applying for or appointment to any of these positions. I am referring to any informal pressure or statements that have been made by any Ministers to the effect that they should not be employed. If the answers to those questions are as I expect, I ask the Minister to indicate whether or not, in view of the concerns I have expressed and which undoubtedly exist, the Government is prepared to make clear to the people responsible for appointments that this Government adopts no such position.

The Hon. R.I. LUCAS: I would be pleased to respond to the comments made by the Leader of the Opposition, and I would be pleased to refer his comments to the Premier, as he has raised an important issue this evening. First, and quite clearly, as he would have expected, in relation to appointments within the public sector under the Government Management and Employment Act, a new Government is required to operate and act within the strictures and bounds of that piece of legislation, as the previous Government was in relation to that Act.

The overriding consideration of that legislation in relation to appointments in the public sector is to be one of merit, and we are bound by that. That will be the response, certainly from me as the Leader of the Government in the Legislative Council, and I am sure it will be the response I will receive from the Premier in relation to appointments within the public sector. I am pleased to be able to respond quickly and succinctly to the Leader of the Opposition's question.

Certainly, within the terms of the GM&E Act there can, of course, be no ban on persons within the public sector applying for, or being appointed to, Public Service positions solely on the basis of their political affiliation, real, apparent or otherwise, within the public sector. I am pleased to respond in that nature.

The Hon. C.J. Sumner: Do you care to make that response to the CEOs concerned?

The Hon. R.I. LUCAS: As I said, I will be pleased to refer my comments and those of the Leader of the Opposition to the Premier for his judgment. The Premier, through Mr Mike Schilling, as the head of Premier and Cabinet, attends regular monthly meetings of chief executive officers, and I am sure that there would not be a problem with the Premier's advising Mr Schilling to raise this matter with those chief executive officers.

The Hon. C.J. Sumner: Do you think he would be prepared to do that?

The Hon. R.I. LUCAS: I do not know; I would have to speak to the Premier. I would be prepared to recommend to

the Premier that that be done, but, of course, my influence is reasonable. Of course, I cannot require of the Premier anything that he might not wish to do, but I certainly give the undertaking that I will raise the issue with the Premier and recommend that these issues be raised and discussed in the context that I have just outlined.

I would like to make some general comment about two other issues because I do not want to extend unduly this discussion. I look at my own personal circumstances and compare the situation when previous Governments changed in 1979 and in 1982 and the notion of the 'departure lounge' which, in 1982, when the new Labor Government swung into power, was known not as that but as 'Siberia.' A number of people believed, rightly or wrongly, that they, too, had been treated by the incoming Government in the sort of fashion to which the Leader of the Opposition has referred.

A number of officers within the public sector claim that they have spent some years in what they term 'Siberia' under the Labor Government. There were two Cabinet Ministers in particular—not the Leader of the Opposition—who had a reputation for having to sort out not only public sector appointments but also board appointments in relation to the changeover of people in some positions. Again, I agree with the Leader of the Opposition: I do not intend to get into the business of naming names because that will only unduly extend the debate tonight, and I do not think it is productive. It is an important issue.

What I am saying is that the sensitivities many people are feeling at the moment, real or otherwise, are not new to this changeover of Government. If members in this Chamber are honest, and refer back to the changeover of 1982, and perhaps to that of 1979—and, I suspect, although I did not have personal experience of it, the changeover in 1970 when the Labor Party took over from the Steele Hall Administration—they will realise that again there may well have been the same perceptions.

The Leader of the Opposition would have to agree that the position of ministerial officers is obviously one of considerable sensitivity for any incoming Government of a different persuasion from that of the Government previously in power for a period of some years. In my own case an officer—and I will not name the person—had been an active member of the Institute of Teachers, and I may well have had some difficulty in keeping on that ministerial officer. I suspect that that officer would have had some difficulty in working for me. The position of ministerial officers is a matter that has been agreed between both sides of the Chamber.

In relation to GME Act appointments, in my case—and I did not know those people in my office who were GME Act appointees—basically, I wanted to started with a fresh slate. I suppose I wanted to look afresh at the positions in my office and to make judgments as a new Minister in relation to, first, the structure of the office which, as I explained earlier, was different because we were going to have a chief of staff and, secondly, the people I wanted to employ in my office.

Ministerial offices are extraordinarily sensitive areas. Ministers obviously have to be in a position where they have within their ministerial office people with whom they are exceptionally comfortable. The Leader of the Opposition would have to acknowledge that, within the public sector generally, some people would be more comfortable working with a Liberal or a Labor Government and some would be less comfortable working with a Government.

The Hon. Anne Levy: A lot of them just do their job.

The Hon. R.I. LUCAS: A lot of people are happy to serve and do so very well. I suspect that involves the vast majority. That was just a personal preference. Other Ministers have taken over their ministerial office and basically kept all the existing GME Act staff. We did have one small change such that the appointment secretary to the Minister was allowed to be a ministerial officer appointment as opposed to a GME Act appointment, which was the previous arrangement. I did not take that position: I appointed an appointment secretary from another Labor Minister's office into my office.

Other Ministers have appointed ministerial officers to the position of appointment secretary. Again, that situation was largely brought about by the unfortunate experience of one previous Minister who found himself in a position, when his Government was elected, where his appointment secretary was not as comfortable with him and the Government and had connections with people of a differing political view. Within a short space of time some considerable problems arose in relation to other people knowing many things that were going on within that ministerial office of which they should not have been aware.

They are the sorts sensitivities of which I am sure the Leader of the Opposition would be aware in relation to the staffing of a Minister's office. They are the sorts of judgments that Ministers have to make individually. That is a separate case. That involves ministerial officers, and it should be—and I certainly see that it is being—treated slightly separately from the public sector generally.

I do not know that I can add much more, other than that. The Leader of the Opposition may have some further questions, and I would certainly be pleased to attempt to respond to them.

The Hon. C.J. SUMNER: I am pleased that the Minister has given an indication on the part of the Government that there is no either formal or informal barrier to public servants being appointed to positions, even though they may have been associated or perceived to be associated with the Labor Government in the past. All I can tell him is that there is concern out there about that issue. Whether or not it is ministerial driven, it is not for me to say, but it is certainly a perception within the Public Service. If he is prepared to take up the matter with the Premier, as he is, to ensure that the merit criteria are applicable, I am pleased with that intimation, acknowledge that he has made it and thank him for the fact that he has made it.

There has never been a dispute about ministerial officers: it is always understood that they are there while the Minister is there. When Governments change—even when Ministers change within Government—the ministerial officers also may change. So, there is no real argument about ministerial officers, but there can be an argument about the Government Management and Employment Act appointments.

That takes me to the next point I wanted to raise, and that is the structure of officers under the new Government. The Minister said there was a Siberia in 1982. I am not quite sure who was in it, but I certainly did not send people to Siberia, as far as I can recall, or impose political barriers on people. It was not something in the Public Service that I did, certainly not consciously, as a Minister. The honourable member has said that a Minister was responsible for these matters. He apparently knows who the Minister was—I do not. I know that, in the interests I guess of good government but also in the interests of the notion that democracy is not something about the winner taking all, over the period of the Labor

decade a number of very prominent former Liberal members were appointed to various boards.

I do not think there was a conscious policy to clean out boards. In fact, when we came into Government in 1982, my recollection is that most people remained on their boards until their normal term expired. Indeed, a good number of them were reappointed, as I recollect. In addition, the honourable member knows of the appointments of a number of people: Michael Wilson, for instance, to the Taxicab Board; the Hon. Don Laidlaw to the Companies Securities Commission; Mr Chapman was appointed to a number of things; and Mr Carnie, Mr Cameron and Mr Nankivell were similarly appointed. I do not say that except to say that, if democracy is about winner take all, one is in a fairly unsatisfactory situation. It seemed to the Labor Government important that there be, particularly on boards, a representation of all spectrums of political opinion in the community. However, I will leave it at that and I am heartened by the honourable member's response to my questions.

The other matter on which I wish to comment briefly—and I am sorry that the Attorney-General is not here, because his is the office that I know best, for obvious reasons—concerns Ministerial offices. We do now have the benefit of an answer from the Government on ministerial officers. I suppose I could make a couple of comments about those in relation to the Attorney-General. First, I would like the Attorney to respond (by correspondence if he likes) as to whether he is comparing like with like in this answer he has given today. The Minister knows he asked questions of this kind when in Opposition and was given answers, and I would like to know whether or not the answer the Hon. Mr Griffin has given was exactly on all fours with the answer given by me in terms of the number of people categorised as being in the Minister's office, because there can always be an argument about whether you are in or out of the Minister's office.

However, it is true—and this is worthy of comment—that the nature of ministerial appointments has changed under the new Government. There has been a distinct shift in the role that ministerial officers will play. It has always been understood that ministerial officers, as we have conceded, are appointed by the Minister for the term of the Minister, subject to normal contractual proceedings. However, it has also been—and it certainly was in my office—that the ministerial officer had no direct online responsibilities for the operations of that office. He or she was attached to the Minister, to the side of the Minister. In more recent times I had only a press secretary, but before that I had one other executive assistant who was a ministerial officer, but who had no online responsibilities: policy responsibilities, liaison with Parliament, liaison with the Party and other groups in the community, but no actual online responsibilities.

It seems to me that what this Government has done is change that situation, and now ministerial officers (and some of these people have of course been appointed without any consideration of the merit principle; I am not arguing about that if they are ministerial officers) have been put into direct online management roles. People on ministerial contracts are at quite high salaries. I note that Ms Stapleton, for instance, in the Attorney-General's office, is now on $72 000, I assume with a car, and I would like the Attorney to provide more information on that.

The Hon. R.I. Lucas: No car.

The Hon. C.J. SUMNER: No car—that is answered. Still, $72 000 is undoubtedly a salary significantly more than a ministerial officer who worked for me was ever paid: and more, I think, than any ministerial officer was paid under the Labor Government.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Possibly; I am not sure that even he was on $72 000. There might have been one. However, as I understand it, for these chiefs of staff the going rate is $72 000. They may be people plucked out of the Public Service, and the Hon. Mr Lucas has taken his person from the Public Service, or they may be people brought from outside with no applications called for, no selection process, nothing; just brought in at the behest of the Minister. That is all right for a ministerial position, but the distinction between what happened previously and what happens now is that not only are these people just plucked from somewhere at the behest of the Minister but they are now put in online management positions; that is, they are ministerial officers but they have control over public servants; they control the access, if you like, to the Minister through the chief of staff.

I do not think there is any dispute about this. The only point I make, and no doubt people can write learned papers about it at the Australian Institute of Government Administration or whatever the appropriate academic body is and perhaps it may be the subject of political comment at some stage, is that this has involved a significant change in the role of ministerial officers in the South Australian context. The Hon. Mr Griffin has brought in three ministerial officers (the chief of staff, a press secretary and a personal assistant) all from outside the Public Service and all brought in without advertising and the like.

So, I assume—and the Hon. Mr Griffin can correct me if I am wrong—that his chief of staff did not follow the normal appointment procedure. There was no selection process involved and no advertisements placed for the job. I am not sure what her qualifications are but obviously from this she is on a ministerial contract. There are further questions I would like answered along with the other questions I have already asked, and they are: What is her role? What is her duty statement? For what and for whom in the ministerial office is she responsible? Who reports to her? Who does she have responsibility for managing?

I think those are questions that should be answered. I could go through each ministerial office but I will not. Perhaps others might take that up at a later stage. Suffice at this stage to say that the point is made about the changed nature of ministerial officers under this Government.

The final thing that I am a little bit interested in and bemused by is the use by the Government of private sector employment agencies to employ people. I note that the Minister responsible for both Mines and Energy and Primary Industries has used Speakman Stillwell and Associates to employ an executive assistant and a receptionist. That is a private sector employment agency. It probably calls itself something a bit more high sounding but nevertheless it is a private sector employment agency. The Government has used that agency to employ an executive assistant—and it does not say the salary exactly, but I assume it is in the range of $50 000 to $70 000 which is within the chief of staff range—and a receptionist presumably at a salary of about $30 000. It costs the Government money, obviously, to use a private sector agency of that kind. Under the previous Government that was inevitably done by the Commissioner for Public Employment, and I would have thought that using that private sector agency really is a waste of money. If it charges 10 per cent, assuming the total salary of those two officers is

$60 000 for the executive assistant and $30 000 for the receptionist, you end up with a $90 000 annual salary package, 10 per cent of which is $9 000. The Hon. Mr Davis would be pleased with those calculations. And I would have thought that that was really an unnecessary expenditure. However, that seems to be what happened.

It is not the time for lengthy polemics about these matters. I put on record those issues. There are some questions contained in that to which I would like the Hon. Mr Griffin to respond, and I thank the Hon. Mr Lucas for his response to the earlier questions I asked.

The Hon. R.I. LUCAS: I am pleased to indicate on behalf of the Attorney-General that he will undertake to respond during the parliamentary recess to the questions that the Leader of the Opposition has raised in relation to the ministerial office. There are a number of questions to which I can respond briefly. The Leader of the Opposition raised a question in relation to access to cars by Ministerial chiefs of staff. Ministerial chiefs of staff do not have access to a car. It is true that the chief of staff salary position is higher than the general ministerial assistant position used by the previous Government. The average salary range for ministerial officers under the previous Government was $51 000. There were a small number of select members of the Premier's staff who earned higher than that and I think—

The Hon. C.J. Sumner: One.

The Hon. R.I. LUCAS: No, there were a number of others. Mr Willoughby was paid in excess of $60 000.

The Hon. C.J. Sumner: But not $70 000.

The Hon. R.I. LUCAS: No, but he was paid in excess of $60 000. Mr Anderson was paid between $70 000 and $80 000 depending on what particular period one was looking at, so I acknowledge there has been a change in relation to all Minister's officers—

The Hon. C.J. Sumner: And the on-line responsibilities?

The Hon. R.I. LUCAS: In relation to on-line responsibilities, as I indicated earlier, there has been a difference, but it is the new Government's decision that the structure of Ministerial offices will run more efficiently if there is one person in charge. I make two comments about that. First, as I understand it, it is somewhat similar to the way the Premier and the Leader of the Opposition both ran their offices even under the old Parliament, where there was one person responsible. That was certainly the case with the Leader of the Opposition. Secondly, on my understanding, particularly when Mr Anderson was in charge of the former Premier Mr Bannon's office, no GME employee was able to in effect undertake a particular task which might affect the operations of the Premier and the Government without the authority of Mr Anderson. Mr Anderson made that quite clear.

The Hon. C.J. Sumner: Is that what went wrong?

The Hon. R.I. LUCAS: I don't know, but Mr Anderson made it clear that that was the way the office was to be organised. I have no criticism of that.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Sumner might, but I have no criticism of that. The Hon. Mr Sumner has raised questions about ministerial officers being appointed without going to panel selection, advertisement and, therefore, that version of merit selection.

The Hon. C.J. Sumner: Two aspects: no merit and on line responsibilities.

The Hon. R.I. LUCAS: As to 'no merit' as the Hon. Mr Sumner puts it, the new Government is appointing its ministerial officers in exactly the same fashion as the Labor Government appointed—

The Hon. C.J. Sumner: But they have different roles.

The Hon. R.I. LUCAS: Okay, but I am saying that the new Government is appointing its ministerial officers in exactly the same fashion as the previous Government appointed its ministerial officers, whereby Ministers select people to run their office or undertake tasks in their office. That decision is made solely by the Ministers. Under the previous Government, some Ministers—and I refer to the Hon. Ms Lenehan—selected Chief Executive Officers in exactly the same fashion: without advertisement, without panel selection and, on the former Attorney's own phraseology, without merit in relation to the Education Department, where the Chief Executive Officer has on line responsibility for about 20 000 GME Act and Education Act employees.

The Hon. C.J. Sumner: It's a contract—

The Hon. R.I. LUCAS: It doesn't matter whether it's a contract. My point is that you have a Chief Executive Officer who is appointed in exactly the same fashion and who has on line management responsibility for many more people within that department. I use that only as an example, because a number of other Chief Executive Officers were appointed in exactly the same manner without advertisement and without going through a panel process at all.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: No, there were a number of others.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: It doesn't matter whether or not there were many, because it occurred in a number of other offices.

The Hon. C.J. Sumner: Sometimes it occurred as a result of a reshuffle. When new people were coming in it didn't happen like that.

The Hon. R.I. LUCAS: It doesn't really matter whether it was a reshuffle or not if you are talking about a principle where there is something wrong with that process. I will not delay the Committee unduly. On behalf of the Attorney-General I have undertaken to obtain responses to a series of questions that the Leader of the Opposition has put to the Attorney, and I undertake to provide them during the parliamentary recess.

The Hon. C.J. SUMNER: I appreciate the Minister's indication that he will take up with the Premier the matters I raised earlier. Can the Minister let me know during the break the results of the representations to the Premier and whether any action has been taken through the forum of Chief Executive Officers on those topics, whenever it happens, if it does?

The Hon. R.I. LUCAS: I do not know how persuasive I can be, but I am certainly willing to correspond with the Leader of the Opposition during the parliamentary recess about how successful I might be in my submissions.

Clause passed.

Title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (WATERWORKS AND SEWERAGE) BILL

Adjourned debate on second reading.

(Continued from 10 May. Page 882.)

The Hon. SANDRA KANCK: I will be fairly brief, because the Democrats support this Bill. It accords with the Democrats' general philosophy of a user-pays principle. However, we always take into account that country people need special consideration when it comes to that principle. I have just one question in relation to clause 5, which is the main clause in the Bill. Presumably, every new dwelling or building that goes up will create an extra demand for water. Therefore, the cost we are debating must be included in the construction of any new building or any new allotment. How is this charge determined? Is it dependent, for instance, on the size of the block? Is it calculated as an average across the State? Is there any cross-subsidising from one area to another, and what is the cost per household, if that is possible to calculate? Further, is full cost-recovery made with this charge or is a further contribution made via general revenue? If it is possible, I would like to know specifically what the charge is in actual dollars. The Democrats support the second reading.

The Hon. T. CROTHERS: The Opposition supports the Bill. We understand the necessity of the Bill's being introduced with respect to ensuring that, once and for all, any legal technicality that might exist in respect of the Government's being able to gather up the charges laid down in the Bill will stand any test put on it. I want to place one comment on the record in relation to clause 2. The Opposition has never been loath, if it has thought that the occasion warranted it, to be retrospective in its thoughts relevant to certain Bills. Indeed, I well remember what occurred in the last Parliament when such a measure was debated when we sat on the Government benches. Of course, the then Opposition opposed it on the basis, as I recall one speaker saying, that it would never agree to retrospectivity in any Bill.

The Opposition must not be construed by the Government or anyone else as always being in support of retrospective clauses in any Bill. The Opposition will consider each matter on its merits as it presents itself. As I said, we support the Bill. We understand the need for the Government to introduce it. However, I place on record that we will look at any future Bills that have retrospective clauses and determine each matter on its merit. On this occasion we believe there is sufficient merit to enable us to support the Bill.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank members for their contributions and support for the legislation. The Hon. Sandra Kanck was kind enough, obviously knowing my expertise in matters relating to waterworks and sewerage, to advise me beforehand of the questions that she wanted to raise in an endeavour to expedite matters, and I thank her for that consideration. I now place on the record answers to those questions. I note that she requested further details in relation to actual dollar values and so on. I undertake to get that information for her as expeditiously as possible and correspond with her through the appropriate Minister's office to provide that information.

The first question was, 'Is the charge dependent on the size of the block or the building?' The answer that has been provided to me is as follows:

> The charge will be levied on an area basis for the most part, as this is usually indicative of and proportional to the demand. In some cases this may not be equitable—in an industrial development, for instance. Where it is equitable and practical to apportion charges on some other basis, say, the number of blocks, or if demand can be determined and apportioned in some other fashion, this will be done.

The second question was, 'How will the charge be calculated?' The answer that has been provided to me is as follows:

> The charge will be calculated by determining the cost of the additional capacity that must be built into the system and apportioned in proportion in the forecast demand by individual developments. The charge will be levied on developers as new developments are approved. Augmentation to improve the service to existing customers will not be included in the costs to be recovered.

The third question was, 'Is full cost recovery intended?' The answer is:

> Yes, for that part of the augmentation attributable to growth.

As I said, the honourable member did ask some further detailed questions in relation to costing, and I will undertake to get those replies back to her as soon as possible.

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

CONTROLLED SUBSTANCES (DESTRUCTION OF CANNABIS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 May. Page 882.)

The Hon. C.J. SUMNER (Leader of the Opposition): This matter has been dealt with in the House of Assembly where it received the support of the Labor Opposition which is also forthcoming in this place. I have no further questions to raise in relation to it.

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

The Hon. R.I. LUCAS: Ms Acting President, I draw your attention to the state of the Council.

A quorum having been formed:

IRRIGATION BILL

Adjourned debate on second reading.

(Continued from 4 May. Page 743.)

The Hon. R.R. ROBERTS: This Bill passed the other place. I have spoken to the shadow Minister and the Opposition has no objection to the Bill passing in its present form.

The Hon. SANDRA KANCK: The Democrats will support this Bill. It seems to be a fairly innocuous, administrative Bill, bringing together a whole series of Acts into one Act. The Democrats have spoken to people in the Riverland to ascertain their reaction and we have had no negative feedback about it, so we will support the Bill.

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

CONSTITUTION (ELECTORAL DISTRICTS BOUNDARIES COMMISSION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 May. Page 883.)

The Hon. C.J. SUMNER (Leader of the Opposition): The Opposition supports this Bill. It has come from the House of Assembly, where it was debated and received our support. The proposal is that the Electoral Boundaries Commission should publish a draft report before finalising it and, during that period of the draft report, give people concerned an opportunity to comment. This occurs at the

Federal level and seems to work reasonably well. I suppose whether or not it work works well depends on your view of the final outcome and whether your submissions on the draft have any favourable effect on the commissioners. The Labor Party has considered this and, although in the past we have not thought it was necessary, we now think it probably is a reasonable addition to the Electoral Districts Boundaries Commission process.

Under the current system, once a determination has been made after hearing all the parties and submissions, the only appeal is to the Supreme Court on a point of law. The commission could make an obvious error of fact and this provides an easy way for those to be corrected. It does have the disadvantage of prolonging the process by a month or so—or couple of months, I guess, by the time the draft is commented on and the commission considers it—but that extra time should not be fatal to the Bill. The extra time enables comment to be made, errors to be corrected and further submissions to be put. The Opposition thinks it is a reasonable proposition in the circumstances.

The only thing we can do, if there are concerns about it, is to see how it works over the next couple of redistributions and look at it. It is a position that the Labor Party was going to put to the commission on this occasion in any event as a matter of practice for the commission to adopt, but this Bill will ensure that it occurs as a matter of law.

The Hon. M.J. ELLIOTT: I support the legislation. In brief, this sort of process where you have consultation, where a determination is made and where, before the determination is made final, there is an opportunity for further comment is a healthy thing and an improvement on any consultation process. Too often consultation processes become a matter of information going into a black hole and there is no chance to analyse the conclusions reached. It appears to me that the opportunity being provided under this Bill is something that should be seen more frequently regarding other legislation. The Democrats support it very strongly.

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

STAMP DUTIES (CONCESSIONS) AMENDMENT BILL

In Committee.

Clauses 1 to 6 passed.

Clause 7—'Exemption from duty in respect of a conveyance of a family farm.'

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

Page 3, Lines 23 and 24—Leave out 'real property' and insert 'land'.

The Bill as drafted relates to the transfer of interests in real estate. A late submission to the Government received today raises the question whether the transfer of a Crown lease would be the transfer of an interest in real property. I am advised that there is a fine legal argument that it does not, as leases are traditionally personal property. The Government has always intended to include within the ambit of the concession situations where the relevant land is held by Crown lease. The Stamp Duties Act is not completely consistent with its use of the words 'real property' and 'land'. However, the matter can be put beyond doubt by the amendment. For those reasons and as a result of the submissions that were made late today, I have moved this amendment.

The Hon. ANNE LEVY: I do not pretend to be a lawyer, but if the lawyers say that this is a desirable amendment I am happy to accept it. If subsequently the lawyers disagree, I shall be prepared to admit that I did the wrong thing. However, I am quite happy to accept it at the moment.

The Hon. A.J. REDFORD: What will happen if a person has retired from a partnership or business some months or years earlier and at the same time has retained their interest in the real estate but is no longer a partner within the meaning of section 71cc(2)?

The Hon. R.I. LUCAS: The advice provided to me is that section 71cc(2) allows the Commissioner to have regard to a previous employment relationship as constituting a business relationship.

The Hon. A.J. REDFORD: My second question relates to the effect that this Bill has in conjunction with section 71e, which is an anti-avoidance provision that prevents written offers and oral acceptances avoiding the incidence of stamp duty. According to the wording of this section, there is a risk that it may exclude the benefits that this Act intends to provide in relation to a transfer not only of the land but also of the interest of the transferor in the partnership. It is common for people involved in the farming industry to own land and at the same time conduct a partnership with their son, daughter, brother or family. If they intend to transfer not only their interest in the land but also their interest in the partnership, will they secure the benefit that is intended to be provided under this legislation?

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I am advised that in relation to one aspect of that question a real property transfer that will be exempt under new section 71cc will not be liable to *ad valorem* duty under section 71e by virtue of the provision of section 71e(1)(b)(ii).

The Hon. A.J. REDFORD: I thank the Minister. In response to the Hon. Michael Elliott's interjection, in relation to superannuation, it has never been suggested, to my knowledge, that any benefit or existing benefit has been taken away from anyone as a result of any suggestion by this Government. In fact, there may well be some potential future benefits that might be affected. The big difference between that and this issue is that in this case we are giving a struggling segment of the community an advantage that it has not had before. They are two entirely different things, and it is disappointing to see—

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: I know, but you made the interjection, and I think it is important to note on the record that it is disappointing to see that the approach to the rural industry is treated with such a degree of cynicism, and I notice that the Hon. Ron Roberts has not interjected in the same way.

Suggested amendment carried.

The Hon. M.J. ELLIOTT: Before we move to the next amendment, during the second reading stage I asked a number of questions and all but one of those was answered. That question was: how many members of the present Government, either they or their families, stand to potentially benefit from this particular piece of legislation? That question has not been answered on the record.

The Hon. R.I. LUCAS: I apologise for that. I did speak to the honourable member in relation to the answer I intended to give in the Chamber. It was an oversight that I did not put it on the record. I indicate three things: first, when the matter was debated in the Cabinet two or three members of the

Cabinet withdrew, as they potentially had a conflict of interest, and therefore did not participate in the decision. Secondly, the Premier has indicated to me, and was happy to place it on the record, that he has, in the past few weeks, transferred property in such a fashion, but he did so consciously prior to the passage of this legislation so that he would not be seen to be benefiting at all from the passage of the legislation.

He has therefore paid stamp duty at the existing rate prior to the introduction of this concession. Thirdly, we now have 47 members of the Liberal Party. The publicly available list of members' pecuniary interests indicates—and I have not been through all of them in detail for the sake of the Hon. Mr Elliott, but they are on the public record—that around about 10 or so might be construed as being farmers with farming interests.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Yes, but do not take that as exact. I have not been through their pecuniary interests, but I have notionally or mentally run through the list of 48 members who I know to be either farmers or might have farming interests. That, of course, does not mean that any of them might take advantage of the particular—

The Hon. Anne Levy: The figure is now 47.

The Hon. A.J. Redford: That is what the Minister just said.

The Hon. Anne Levy: No, he just said 48.

The Hon. R.I. LUCAS: Did I? There are now 47 members. As I said, that does not necessarily mean that all of those members may well take or seek to take advantage of this particular concession or benefit but, as you can see, in the joint party room their numbers are a minority compared to the majority.

The Hon. A.J. REDFORD: I wish to make a point about what I would perceive to be a rather facile question on the part of the honourable member: the benefits to this usually apply when somebody has no separate income. Members of Parliament, as the honourable member would appreciate, have a separate income and there is no benefit to transfer the property from a parent to a son who is in Parliament earning a reasonable income. This is specifically directed at those young sons who are on the land earning less than the wages that many of the members opposite would have experienced in their previous existences working in trade union positions and the like.

The Hon. Anne Levy interjecting:

The Hon. A.J. REDFORD: I really cannot see in any way, shape or form how it can possibly be relevant. With the sorts of pensions that certainly the honourable member who interjected is likely to receive I cannot see how it can be relevant in that case, either. Quite frankly, it is facile when you start asking questions of that nature.

The Hon. ANNE LEVY: I move:

Page 3, line 24—Leave out 'used for the business of primary production'.

The amendment relates to a matter which I raised in the second reading debate and is the first of a number of amendments to achieve a particular aim, that is, to extend the exemption from stamp duty in conveyance of land (seeing that it is now land, not real property) so that it will apply not only to those who are engaged in primary production. As I am sure members can see, my amendments to later parts of this clause would, while maintaining the stamp duty exemption for conveyance of land used for primary production, also extend it to land which is a principal place of residence for the transferor. I stress that this obviously would not apply to people who are selling just their house: it is a transfer within the family, that is, to a brother or sister, spouse, son or daughter, the same as is indicated for primary production. I mention that because the debate in the other place appeared to suggest that this was an exemption from stamp duty for anyone who happened to change their principal place of residence. It would not be that at all but it would involve extending this relief from stamp duty to any transfer of land, including both land used for primary production, provided it is at least .8 hectares in area, and land which is the principal place of residence being transferred within a family.

The Government has claimed that the introduction of this Bill will be revenue neutral, because the land is not being transferred at the moment due to stamp duty. So, to transfer it without paying stamp duty will not cost anything because the transfers are not occurring, anyway. It seems to me that the same argument would apply to transfer of the principal place of residence within a family. Such transfers are not occurring at the moment, so no stamp duty is being collected. To accept my amendment would mean that such transfers could occur without payment of stamp duty. I emphasise that the Opposition acknowledges that the Government promised such stamp duty relief to certain primary producers. Our view is that they are not the only people suffering difficulties; that such exemptions could assist others in the community, and the transfer of a principal place of residence within a family—and I stress 'within a family'—should likewise be able to benefit from the proposed concession. Other of my amendments do relate to other matters, but this one and the subsequent one refer to stamp duty exemptions for transfer of principal place of residence within a family.

The Hon. R.I. LUCAS: As the honourable member will know, I indicated prior to the second reading that the Government, whilst it understands the point made by the honourable member, is unable to support the honourable member because of the potential cost implications. The honourable member therefore understands the reasons why the Government will be opposing it. I will not go through the Government's full explanation again, because it is included in the second reading explanation.

The Hon. M.J. ELLIOTT: I will not be supporting the amendment. This issue overall is not an easy one. I will explain the reasons why I have not seen it as an easy one. There are probably few members in this House who have spent as much time as I have working on issues related to agriculture, and I certainly understand very much the difficulties that people in agriculture have at present. As I said during the second reading debate, I can see a need for some assistance. Certainly the Government at this stage is giving some significant assistance, particularly to young farmers. It is also giving interest rate subsidies. This is not the only benefit it is about to give, particularly to younger families.

Certainly some assistance is going to them and there is no doubt it is assistance they can very much use at this stage. Until there is a real rebound in commodity prices, things will be grim in some parts of the agricultural sector for some time. If you happen to be into beef right now or if you are a larger holder of the right variety of viticultural plantings, you will be quite comfortable, so it is rather a hit and miss form of existence to some extent. Some people who are doing very well will get assistance, and some people who desperately

need it will also get it. The question of targeting is always a difficult one.

I have found this difficult because it is just as true to say that the small businesses in country towns are suffering every bit as much from the rural recession as are the farmers themselves—in some cases, perhaps even more so—and we are not offering them any assistance.

Members interjecting:

The Hon. M.J. ELLIOTT: Wait a second. I have lived in these small towns; I know what it means to them. We are giving assistance to one group who need it, and there is another group who needs it probably just as much, and we are not giving assistance. We could also come into the city and find just within the business community itself people who are suffering. I must say that the number of letters I have had over recent times particularly from small retailers talking about their plight has painted a horrendous picture. The number who are telling me they are about to lose everything they own, not just their business but their house and everything else, is horrendous, and again they are not getting assistance.

Then we have the Audit Commission that tells us that things in the State are pretty dreadful. That has not come as a surprise to anybody. We did not need the Audit Commission to tell us that. What was useful about the Audit Commission was that it actually put some numbers on it so we knew precisely how terrible it was, rather than approximately how terrible it was. Essentially we have been forewarned that we really have to pull our belts in, that schools will close, class sizes will increase and certain things will happen in hospitals, etc., etc. In the context of being told that there will be a general pulling in of belts and closing off of superannuation schemes and various others things, at the moment we are about to give a benefit to one sector of the community.

That is what I said has made this very difficult. I think the Hon. Mr Lucas is probably right: that we cannot afford to extend this beyond farmers to the rural businesses in the towns and to other small businesses, so the only way you can actually sustain this argument at all at this stage is to say that things are so terrible for farmers vis-a-vis anybody else that you might care to list that, at this stage, while we are still digesting the Audit Commission report, we are prepared to make a special case. I think it is at the margins. I am prepared to support what the Government is doing but, as I said, it is really at the margins and I do so only because I believe that things are particularly difficult—although it is not difficult for all farmers at the moment.

I realise that there are many feedback effects that can be set in train in country areas, if you are not careful. If you lose a number of farm families you will then lose a couple of businesses in the town. You then lose the odd teacher or two and you set this cycle going, which at the end of the day can destroy the community so, to some extent, assistance to the farms can also be assistance to the community more generally. I suppose at the end of the day that is the justification which at this stage sneaks it over the line. Whilst I am supporting the legislation, and I think in essence what the Opposition is trying to do is right, I do not think that, until we have done a proper analysis of the Audit Commission report, we really should be spending extra money somewhere else when we will be struggling to find the dollars to sustain much of what we already have.

Suggested amendment negatived.

The Hon. ANNE LEVY: I will not move the other amendments on file relating to clause 7. They are all consequential on the one that has already been defeated. However, that does not mean to say I am not moving on clause 8, which is a different matter.

Clause as suggested to be amended passed.

Clause 8—'Refinancing of rural loans.'

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

Page 5, line 10—Leave out 'real property' and insert 'land'.

This is consequential on the earlier amendment.

Suggested amendment carried.

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

Page 5, line 14—Leave out 'real property' and insert 'land'.

This is a consequential amendment.

Suggested amendment carried.

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

Page 5, line 15—Leave out 'that comprises the real property'.

This is consequential.

Suggested amendment carried.

The Hon. ANNE LEVY: In view of the debate on the previous amendment that I moved, I wish to move my amendment in an amended form, that is, not to include ' or (iii) the principle place of residence'. This clause relates to the refinancing of loans. Where a mixture of loans are perhaps currently on high interest rates it is of obvious assistance to the farmer, as set out in the amendment, to refinance the loans in one package, which may be very much to his or her advantage because of the lower interest rates that now apply. This legislation suggests that stamp duty is not payable because, as things now stand, it may not be worth refinancing because of the sums involved and because the savings through refinancing may in fact be less than the stamp duty which is payable.

My amendment quite clearly extends this exemption from stamp duty for refinancing loans so that it applies to not only primary production but also small business. The Hon. Mr Elliott's remarks are highly relevant in relation to this. He certainly expressed sympathy for many small businesses. There are many struggling small businesses not only in rural areas but in the metropolitan area, some of which could be helped considerably by the restructuring and refinancing of their loans. If they were encouraged to do this through an exemption from stamp duty payable on refinancing, it would be a step towards considerably assisting many struggling small businesses.

The reason I move my amendment in an amended form is that it is obvious that the House is not sympathetic to the question of assisting people with either refinancing or transferring their principal place of residence. However, I believe that this assistance with refinancing should apply to not only primary production but also small business, which as we all know is suffering considerably in many areas, and assistance with refinancing could make all the difference. I move:

Page 5, lines 15 to 17—Leave out all words in these lines after 'property' in line 15 and substitute:
(i) is used wholly or mainly for the business of primary production and is not less than 0.8 hectares in the area;
(ii) is used wholly or mainly for a small business;

The Hon. R.I. LUCAS: I indicated at the second reading that, whilst the Treasurer indicated that at this stage the Government must oppose the amendments because of the cost implications, the Treasurer has indicated sympathy for the amendments as they relate to small business and has advised

that, given the financial capacity, it is an area that will be looked at as a matter of priority. So, we have to oppose the amendment in relation to small business at this stage but it is an issue for which the Treasurer has some sympathy, and that is at least the first step along the road to—

Members interjecting:

The Hon. R.I. LUCAS: Well, knowing the Treasurer as well as we do that is a considerable step along the road.

The Hon. M.J. ELLIOTT: Is the Minister able to give any indication as to the cost just in relation to small business refinancing?

The Hon. R.I. LUCAS: We do not have that breakdown within the figures that are provided at the moment, but the Government's view is clearly that whatever it is we cannot afford it at the moment.

The Hon. M.J. ELLIOTT: Exactly how much is it costing for just this component of the refinancing in relation to farmers?

The Hon. R.I. LUCAS: It is revenue neutral because the advice available to Government is that that refinancing is not occurring at the moment and, given the current collections, it is therefore not a cost to Government against current collections.

The Hon. M.J. ELLIOTT: If refinancing is not happening in the agricultural sector, why would it be more or less likely to happen in the small business sector?

The Hon. R.I. LUCAS: I asked that question too, and I am told that there is a simple answer. Because of the size of the refinancing packages that occasionally occur within the farming sector, they are considerable and considerable sums of duty are involved. The small business sector is smaller and the impost is not quite so great in relation to refinancing in that sector. It can occur more freely because the sums involved are not so great. Because of the considerable sums of money involved in refinancing in the farming sector, as compared to a small business, the imposts are significantly different.

The Hon. M.J. ELLIOTT: Was this amendment moved in another place?

The Hon. Anne Levy: It was, as part of a package. There was only one discussion which did not really touch on this point. It was all over in about five seconds.

The Hon. M.J. ELLIOTT: If these amendments were moved in the other place and the primary reason for rejecting them was the basis of cost, I am disappointed that, when the Bill comes here some time later, we cannot be told how much it costs. That indicates a lack of homework by the Government. It is disappointing and it leaves me in a difficult position. I cannot support something without knowing its cost. I am critical of the Government for its failure to follow through.

The Hon. R.I. LUCAS: On behalf of the Government, we would do whatever we could if it were feasible. The tax office does not collect the information, because it does not exist. It is not a matter of the Government's not being able to provide it or not indicating to public servants to collect it and do the work on the breakdowns. I am advised that it is just not collected and is not available. It is not slackness on behalf of the Government and its advisers, because the information is just not available and therefore is not collected.

Suggested amendment negatived.

The Hon. ANNE LEVY: I move:

Page 5, after line 17—Insert new paragraph as follows:
(ca)—

(i) in the case of land used wholly or mainly for the business of primary production—that the sole or principal business of the mortgagor is the business of primary production.

This is a totally different matter, and Treasury need not feel worried about it. I am sure that the provision is more than revenue neutral and it might be to Treasury's benefit, so Treasury should support it. However, that is not why I am moving the suggested amendment.

The purpose of this amendment is to ensure that the farmers who will benefit from this reduction of stamp duty in refinancing are in fact primary producers whose main source of revenue is primary production. In moving this amendment, I want to ensure that what might be called 'Rundle street farmers', who have a small farm which may be mortgaged to the hilt and who could benefit by refinancing, but for whom the income from that property is only a minor proportion of their total income, are not able to benefit. The Hon. Mr Redford, when he made his comments, seemed to imply that this clause was already part of the Bill. He said that members of Parliament who own land for primary production would not be able to benefit because they have another income. If this amendment is carried that will be the case: members of Parliament who have a sizable income from their duties in this place would not be able to benefit from refinancing their primary production properties and thus avoid the duty payable. They do not need assistance and it would be quite wrong for us to allow a measure that is designed to assist people in great hardship to be subverted as a result of being used by people who really do not need that assistance.

The Hon. R.I. LUCAS: The Government opposes the amendment on the basis that it believes that the existing legislation sufficiently covers the point that the honourable member is seeking to cover. Proposed section 81d(1)(c) provides:

. . . that the land that comprises the real property is used wholly or mainly for the business of primary production and is not less than .8 hectares in area;

This sufficiently covers the point that the honourable member is seeking to address. For that reason the Government does not believe that the honourable member's amendment is required. We believe that the existing provision in the legislation will cover the sorts of circumstances that the honourable member is seeking to cover.

The Hon. ANNE LEVY: I stress that I am not a lawyer, but I would have thought that what the Minister has said does not cover the situation at all. He has indicated the situation where the land is used primarily for the purpose of primary production. I do not argue that at all. My amendment relates to the business of the mortgagor. The mortgagor might be a member of Parliament who has a sizable income from being a member of Parliament, or a doctor on North Terrace, a lawyer in Carrington Street, or wherever. I am not referring to what the land is used for, but that the principal business of the mortgagor is primary production—not being a member of Parliament, a lawyer or a doctor. People who have other sources of income, but who also have land for primary production, should not be able to benefit from an exemption of stamp duty if they refinance the mortgage on their primary production land. They are not in the difficult situation that we are trying to assist and do not need this exemption from their duty of contributing to the revenue of the State through paying stamp duty on refinancing a mortgage; they can afford to.

The Hon. M.J. ELLIOTT: I support this amendment. As I said, it is always a bit hard to differentiate the farmers who really need help from those who do not, in general terms. Because we cannot afford it, other small businesses have been precluded. The relief being offered to somebody who has a sole or principal business which is not primary production is really a matter of more money in pocket rather than anything else. In those circumstances, I think this is a place where we can draw a line quite comfortably, knowing that we are not affecting a person who is in primary production and who may be in difficulty and needing some assistance.

The Hon. R.I. LUCAS: The Government is always eminently reasonable in these sorts of things. We acknowledge the numbers, anyway—

The Hon. Anne Levy: You can count!

The Hon. R.I. LUCAS: And I can count. As I said, we are always eminently reasonable in these things. Further advice that is available suggests that the honourable member may have a point. Given that the numbers are there anyway, we willingly submit ourselves to the will of this Chamber. We do not have access to the Treasurer at this stage, but will have further discussions with him some time tomorrow as this Bill passes from this Chamber to the other. If we see that there is a significant problem in another place, we will seek to raise these issues again with representatives of the will of the majority in this Chamber. At this stage, we willingly submit to the majority numbers in this Chamber.

Suggested amendment carried.

The Hon. ANNE LEVY: I will not move the further amendment. It is consequential on one that has already been defeated.

Clause as suggested to be amended passed.

Remaining clauses (9 and 10) and title passed.

Bill read a third time and passed.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

In Committee (resumed on motion).

(Continued from page 993.)

Clause 84—'Power to regulate industrial matters by award.'

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

Page 33, lines 9 and 10—Leave out paragraph (b) and insert:

(b) if there is an inconsistency between an award and an enterprise agreement, then, while the agreement continues in force, the agreement prevails to the extent of the inconsistency; and

The Opposition amendment on this matter allows the commission to have the power to make an award regulating the rights and obligations of a person or persons bound by an enterprise agreement, provided that there is a specific matter covered under an enterprise agreement. For example, with wage rates, any order of the commission that is inconsistent with the enterprise agreement fails for the life of the agreement concerned. This Bill, in spite of the Government now saying that it accepts the award as a safety net, still uses every opportunity and perception to limit the award's impact.

This amendment is particularly important and takes into account earlier amendments the Opposition has moved whereby awards prevail, except to the extent of any inconsistency with any terms of the enterprise agreement. The Government's Bill makes it impossible for the commission to be able to make an award or order against an employer or employee bound by an enterprise agreement. This is irrespective of whether the industrial dispute that may be taking place at that work site is about an issue that is not covered by the enterprise agreement.

For example, shift workers often have difficulties with respect to rosters that employers want them to work from time to time. Even if the enterprise agreement did not provide for any method of settling disputes over shift rosters, indeed made no mention of shift work, the mere existence of an enterprise agreement would, according to the Government's Bill, be enough to oust the commission's jurisdiction to make an award resolving that matter. However, in the Opposition's amendment, if the issue of shift rosters was a matter covered under the enterprise agreement, the Industrial Commission could only issue an order or award on that matter provided it was not inconsistent with any of the expressed provisions of the enterprise agreement.

The Opposition's amendment retains the integrity of the enterprise agreement and the bargain struck between the parties with respect to any particular issues but allows the Industrial Commission to intervene and make orders in those cases where the enterprise agreement is silent. The Government's position would basically allow the law of the jungle to be retained, where the party with the greatest industrial clout would end up being able to bludgeon their weaker opponent into submission and the weaker party would not have recourse to the Industrial Commission to settle the dispute. How can the award system survive as a safety net when the very existence of an agreement circumvents the award? I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: I indicated before the dinner break that the Government opposes the amendment. I said at that stage and I reiterate that we have an amendment to clause 76(3) of the Bill. Clause 76 provides:

An enterprise agreement prevails over a contract of employment to the extent that the agreement is inconsistent with the contract.

In subclause (3), the amendment moved by the Hon. Mr Elliott, provides:

Avn enterprise agreement operates to exclude the application of an award only to the extent of inconsistency with the award.

Having entered into an agreement, it seems appropriate, therefore, to leave paragraph (b) in the Bill so that, where the employer and employee are bound by an enterprise agreement, it would be inappropriate to then allow the commission to come in and override that by making an award affecting the rights and obligations of the employer and employees bound by that enterprise agreement. So, we take the view that paragraph (b) is still consistent with the amendment which was moved by the Hon. Mr Elliott and which is now part of the Bill under clause 76.

The Hon. M.J. ELLIOTT: I would agree that this amendment appears to duplicate the effect of an amendment that I have moved elsewhere. However, unless amended, paragraph (b) would directly contradict my amendment. In the circumstances, we are left with the choice of deleting (b) totally or inserting into this clause paragraph (b) as proposed by the Hon. Mr Roberts. In the circumstances, I support his amendment.

Amendment carried.

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

Page 33 lines 11 to 13—Leave out paragraph (c) and insert:

(c) the commission cannot provide for annual leave, sick leave or parental leave in an award except on terms that are not more favourable to employees than the scheduled standards (unless the award is one made by the Full Commission substituting a new minimum standard for the scheduled standard[1]).

[1] See sections 68(3), 69(3) and 70(3).

This amendment is mainly a matter of drafting, because it recognises that the Full Commission may substitute a new minimum standard for the scheduled standard, and that proviso recognises clauses 68(3), 69(3) and 70(3) in relation to annual leave, sick leave and parental leave. It is essentially a matter of drafting, as I understand it, because there are express provisions already in those sections referred to in the footnote.

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

Page 33, line 12—Leave out 'not more' and substitute 'not less'.

This amendment covers the same subject. I guess it is a matter of one's understanding of the English language, but I find it somewhat novel that in legislation we have what we call minimum standards and then, having put minimum standards into the legislation, we say that you cannot have more than the minimum standards. As I said, that is a novel use of the English language, and it seemed to me we really had a couple of choices. We could either knock out subclause (c), which is the present situation, anyway, because there are no minimum standards in awards—at least determined by the legislation itself; standards are set by the commission.

The other option, with the English language as we understand it was that, rather than saying 'not more favourable to employees' to say 'not less favourable to employees' because that would then reflect precisely what most people understand 'minimum' to mean. I decide on the latter, and have the amendment which I am now moving and which provides that 'minimum standards' means minimum standards.

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

Page 33, lines 11 to 13—Leave out paragraph (c).

This canvasses the same issues, and I take note of the comments made by the Hon. Mr Elliott in respect of minimums and maximums. The provision in the Bill provides, in effect, that the minimum standards set out elsewhere in the Act are not only minimums but they become the maximums. This arises because of the denial of the power for the commission to exceed the minimum standard. The standard then becomes not a minimum but an absolute standard.

In effect, the definition of 'industrial matter' elsewhere in the Bill is severely curtailed. These issues are either minimum standards, because they are recognised as significant issues, or they are not. If they are, then the degree of significance is the same as that of the limitation placed upon the commissioner's jurisdiction.

Once again we see in this clause the failure of the Bill's original drafters to embrace the award as the safety net concept. If that view had been adopted from the outset the contradiction involved in undermining the commission's ability to regulate award conditions would have been apparent. Now that the Attorney-General assures us this view is in place, contradictions such as are exposed in this clause need to be amended. We seek such necessary amendment via our proposal.

The Hon. K.T. GRIFFIN: I will just take it a bit further. We are dealing with that part of the Bill which relates to awards. The framework in which minimum standards are being addressed is this: there are minimum standards set in the Bill in so far as it relates to enterprise agreements. In an enterprise agreement you cannot go below the minimum standard but you can go above it. It is a base level.

The Hon. M.J. Elliott: Except when you are allowed to go below it.

The Hon. K.T. GRIFFIN: In terms of the minimum standard, the enterprise agreement provides that minimum standard. You can go above it. In terms of awards, what we are saying and what the Hon. Mr Roberts says is correct: that it is a standard, and if there is in the award stream to be—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Well, it is a standard—full stop. If you want to go above that, then there is provision for the Full Commission to hear a case and to hear argument in relation to a change in that standard so that there is uniformity in respect of the award stream; but it can be increased by a full hearing on the standard conducted before the Full Commission. If the Full Commission decides to change the standard then that applies across the board to awards, and it also acts to increase the minimum standard in so far as it relates to the enterprise agreement. So it flows through to enterprise agreements. I cannot see anything objectionable in that process.

The Hon. T.G. Roberts: Does that happen automatically?

The Hon. K.T. GRIFFIN: I am advised that it happens automatically: that it flows through. If the Full Commission makes a decision in relation to the award stream, it flows through the award stream and also through to the enterprise agreement stream.

The Hon. M.J. ELLIOTT: I draw the Attorney-General's attention to page 3 of the Liberal Party's industrial policy, under 'Awards.' I will read what I think is the relevant sentence. I can assure the Committee that I do not believe the sentence is out of context in any way. It states:

All awards of the commission will be subject to the minimum standards and provisions which are to be expressed in the Act.

There is nothing in the policy to suggest that one would go below the minimum standard.

The Hon. K.T. Griffin: We are providing the framework so that it can be varied without having to come back to Parliament.

The Hon. M.J. ELLIOTT: How would any normal person react to reading those words? Any reasonable, normal person would read the words and say that an award would be subject to the minimum standards.

The Hon. K.T. Griffin: That's right. What is the problem with that?

The Hon. M.J. ELLIOTT: I read that as the Government setting standards which will underpin the awards and that, when an award is granted, it will be that or more. That is the way I read it. I should have thought that 100 out of 100 people who read that would say, 'Goodness, you are putting in minimum standards. That sounds like a pretty good idea.' How else could any reasonable person read it? Now we hear this strange rationale at work trying to explain how it is all sensible and that you do not go above a minimum standard. The commissioners might shift the minimum standard up, but when they do so you cannot go above it; you will still be below it. It is a maximum standard and the commission may shift the maximum—

The Hon. K.T. Griffin: It is both a maximum and a minimum; it has to be. It is the standard, full stop.

The Hon. M.J. ELLIOTT: In the policy you said 'minimum standards'.

The Hon. K.T. Griffin: If you are so dedicated to all our policy statements, we will hold you to the letter of the law on every occasion that legislation comes up.

The Hon. M.J. ELLIOTT: Why should you be—

The Hon. K.T. Griffin: You are not complying with the policy in relation to voluntary voting. Why not?

The Hon. R.R. Roberts: He does not have to stick to your policy.

The Hon. K.T. Griffin: He is being so adamant this time. It is his bible.

The Hon. M.J. ELLIOTT: If the Minister would like to keep a score card at this stage—

The Hon. K.T. Griffin: I do not need to keep a score card, the way you are behaving.

The Hon. M.J. ELLIOTT: If you would like to keep a score card on how things have gone in Parliament so far this session, I reckon that we have been closer to Liberal policy than you guys by an enormous stretch. I think you could name perhaps one or one and a half things in your policy that we have breached. I find it amazing that you demand absolutely that we abide by your policy and you do not apply the same standard to yourselves.

The Hon. K.T. Griffin: If you want to keep us absolutely to the policy, you have to adhere absolutely to the policy of your Party.

The Hon. M.J. ELLIOTT: I can therefore take it from the Attorney's reaction that he is acknowledging that he is going against his Party policy. I appreciate that acknowledgment. As I said, it has happened on a number of occasions in relation to this legislation. My amendment simply adheres to how any reasonable person would read it. If we are to have a minimum standard, it should be set as such.

In relation to the long-term impact of this legislation, the Government is requiring awards to be reviewed annually. Whilst the transitional clauses in the first instance will carry over within award conditions that may be above the minimum standards, on the first review of an award and where an award carries conditions above the minimum standards, what instruction are we giving to the commissioners in relation to the standards within that award?

The Hon. K.T. Griffin: We are giving no instructions.

The Hon. M.J. ELLIOTT: As the Bill now stands, you are saying that the commission cannot provide for annual leave, sick leave, etc., except on terms that are not more favourable to employees. That is the instruction that has been given to the commissioners. If they have to review an award and if they cannot provide annual leave, etc., that is more than the minimum standard; on my reading—and I am not a lawyer—they have a very clear instruction at that point, on the review of the award, to take anything above the minimum standard back to or below it.

The Hon. K.T. GRIFFIN: What we are saying in relation to the standards is that the full commission conducts the inquiry and the hearing on the application of the United Trades and Labor Council, the Minister or the South Australian Employers' Chamber of Commerce and Industry to review the minimum standards for parental leave.

The Hon. M.J. Elliott: That's overall.

The Hon. K.T. GRIFFIN: Yes.

The Hon. M.J. Elliott: But, if a particular award comes up—

The Hon. K.T. GRIFFIN: I am sorry, I misunderstood the earlier question. If an individual award comes up, the standard is what is provided either in the Act or when it is amended by the full commission.

The Hon. M.J. Elliott: So, if an award applies more than the current minimum standard, they would be obliged to reduce the award?

The Hon. K.T. GRIFFIN: No, all current awards remain. We are talking about changes in the future. If we look at what has to be taken into consideration, clause 93(3) provides that the commission may vary an award to ensure that it is consistent with the objects of the Act, affects only to the minimum extent necessary the way work is carried out, leaves the practical application of its provisions to be worked out in the workplace—we have an amendment on that—and so on, and complies with other requirements prescribed by regulation. However, in terms of the minimum standards, the existing provisions in an award remain. If there are variations in the minimum standards after hearings by the full commission in accordance with the clauses to which I have referred, it means that those minimum standards will be applied in awards. If there is something there that is better than that standard, as I understand it, that remains, even on the annual review.

The Hon. R.R. ROBERTS: The Attorney-General's proposition flies in the face of what I would call equity. He admits that an enterprise agreement can involve more than the award rate—that it can be negotiated—but parties to the award who may wish to change the conditions in the award still provide the minimum required by the Full Bench plus a changed arrangement component by agreement of the parties to have it inserted in the award. It flies against all that the Attorney-General talks about with respect to evenhandedness of treatment and the matter of choice. He allows the enterprise agreement to go above the award, and does not allow the award system to go above the minimum standard of the award. However, if the Full Bench applies a decision above that, he allows it to flow through both, but again as a minimum. It seems to me that, if the Attorney-General is genuine about giving employees a choice of whether to have an enterprise agreement or an award situation, that choice ought to be made on the basis of an even playing field.

Some awards will want to take up principles that the Government espouses for enterprise agreements by varying their alterations. Some employees may be prepared to have a different shift rostering system and trade that off for increased annual leave. It seems logical to me that if the association, the unions, or whoever is representing those in that award situation, and the employer agree to change those circumstances for the benefit of the industry covered by that award, it only mirrors the Government's proposition in relation to enterprise agreements that, if it is fair and equitable in an enterprise agreement, surely it is fair and equitable in an award.

Our proposition recognises the point that Mr Elliott makes with respect to the minimum standard. It simply says, 'That is a minimum but you can go above that in circumstances on which the parties can agree; in circumstances which the court may confirm with the agreement of both parties.' If it is fair and equitable in the circumstances to allow the commission to operate to overview awards and agreements and apply standards on the basis of equity, good conscience and substantial merit, you deny both parties the right to do that.

The Hon. K.T. GRIFFIN: In answer to the Hon. Mr Elliott's question, I draw attention to clause 5 of schedule 1, which deals with transitional provisions in the award. Clause 5 provides:

> An award in force under the former Act immediately before the commencement of this Act continues in force, subject to this Act, as if it were an award of the commission under this Act even though the award makes provisions for conditions of employment that cannot be made by award under this Act.

That confirms what I have been saying about an award. If there are standards in there which are in excess of what we suggest by this legislation are the minimum standards for an award, they are not compromised even on the annual review.

In relation to the Hon. Mr Roberts, it seems to me to be quite sensible that there be a standard set in relation to awards across the board, and that if they are to be varied, instead of having awards leap-frogging over each other, the Full Commission sets the standard. But it is also quite proper in an enterprise agreement that if the minimum standard is exceeded then it may well be in relation to some trade-off in another area. Agreements are about adjusting the conditions to suit the employees and the employer, but they must not be *in toto* less than the safety net of the award.

Members interjecting:

The Hon. K.T. GRIFFIN: I cannot listen to two of you. One at a time.

The Hon. M.J. ELLIOTT: I was commenting that in most enterprise agreements the standards are absolute. There is no suggestion of trade-offs between the different items to make up the minimum standard.

The Hon. K.T. GRIFFIN: If you want to go higher you may have to trade off in productivity. I did not mean to say a trade-off in the minimum standard; it is a trade-off in other areas across the spectrum of the work related conditions covered by a particular enterprise agreement.

The Hon. M.J. ELLIOTT: I was quite aware of the transitional provisions within the schedules, but I am not convinced that they will survive the first annual review.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: That is exactly the point I make. On the first annual review I cannot see anything in relation to the transitional provisions that would suggest that whatever the conditions are will prevail past each review.

The Hon. K.T. Griffin: Just make it clear when you get the transitional arrangements. I think it is clear.

The Hon. M.J. ELLIOTT: I think it is capable of clarification here. My amendment in the first instance is quite clearly to spell out what 'minimum standard' means, and it should not mean maximum standard. The other alternative I see at this stage is to strike out paragraph (c), which is the Hon. Mr Roberts' preferred path. What it basically does is leave awards functioning as they are at the moment, and that has some attraction in that area too. I will withdraw my amendment and support the Hon. Mr Roberts' amendment.

The Hon. R.R. Roberts' amendment carried; the Hon. K.T. Griffin's amendment negatived.

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

Page 33, after line 13—Insert subclause as follows:

(2A) The commission may refrain from hearing, further hearing, or determining an application for an award or variation of an award for so long as the commission—

(a) considers that, in all the circumstances, the parties concerned should try to negotiate an enterprise agreement to deal with the subject matter of the application; and

(b) is not satisfied that there is no reasonable prospect of the parties making such an agreement.

(2B) So far as the commission considers appropriate, an award must establish a process for agreements to be negotiated, at the enterprise or workplace level, about how the award (as it applies to the enterprise or workplace concerned) should be applied or varied to make the enterprise or workplace operate more efficiently according to its particular needs.

What the amendment does is to introduce into the Bill a specific provision which requires the commission to consider whether an enterprise agreement should be made in preference to an award. This provision is consistent with the Government's policy that enterprise bargaining is a preferable method of regulating wages and conditions, particularly where an award may have limited employer respondency. It is a very similar provision to section 113(4)(a) in the Federal Industrial Relations Act. The proposed subclause (2B) requires awards so far as the commission considers appropriate to contain provisions which provide for agreements to be negotiated at the workplace level. Again, this provision is almost identical to section 113A of the Federal Act. It is a provision which will give further impetus to the award modernisation clauses which the parties to awards and the commission have inserted in many awards as part of the award restructuring process in the past five years. A similar provision is proposed by the Government in an amendment to clause 93 dealing with annual review of awards.

The Hon. M.J. ELLIOTT: This amendment is quite amazing. We have a Government that certainly wants people to go to enterprise agreements; I do not have any problem with that. However, the Government also says that awards will be safety nets. It appears to me that, if people are seeking to have an award reviewed or examined in any way, they have a right to do that. How else will the award change over time? Indeed, is it the Government's intention that awards should ossify, become obsolete and be struck out? In which case we would then have a system of enterprise agreements underpinned by no safety net. That is precisely what this cause is capable of producing: it is capable of going against everything that we have been told this legislation is supposed to be about.

There are no problems about encouraging enterprise agreements, but if the Government is serious about the safety net I do not believe that it has the right to tamper with the safety net in the way it is doing and pull the thing away. You must not have the people swinging through the air and then not tell them that the safety net has been removed. It is not on. I will not support it.

The Hon. K.T. GRIFFIN: The Hon. Mr Elliott does not understand the process. All we are seeking to do is give the commission a discretion. I would have thought it was quite appropriate to give that discretion. There is certainly no intention to ossify the award process and the safety net will continue to apply in a living form and not the ossified form which the honourable member asserts.

The Hon. R.R. ROBERTS: I thank the Attorney-General for his valiant effort to bring some humour into the Chamber at this late stage of the night. It has to be a joke for all the reasons put by the Hon. Mr Elliott. We will not be supporting it.

Amendment negatived.

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

Page 33, after line 13—Insert subclause as follows:

(2A) The commission may provide in an award for annual leave, sick leave or parental leave on terms that are more favourable to employees than the scheduled standards.

This falls into line with the discussion we had a couple of paragraphs ago. It embraces the same principle about minimums and maximums. For the same reasons, I ask the Hon. Mr Elliott, and indeed the Attorney-General, to support my amendment.

The Hon. K.T. GRIFFIN: Oppose.

The Hon. M.J. ELLIOTT: Support.

Amendment carried; clause as amended passed.

Clause 85—'Who is bound by award'.

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

Page 33, line 24—Leave out subclause (2).

The Opposition's amendment with respect to subclause (2) is consequential to its amendment with respect to clause 84. According to the Government's Bill, every award must state that, with respect to enterprise agreements, any rights or obligations relating to an award are not binding on the employer and employees who are bound by the said enterprise agreement.

We believe this concept is nonsense, as the enterprise agreements in many respects will contain information that may be relevant only to those parties. For example, the agreement may cover only wages and the spread of hours. A range of industrial disputes may arise involving other issues outside those matters expressly contained within the enterprise agreement. These matters, according to the Government's Bill, would not be able to be settled within the forums of the commission. When this Bill was originally presented to the Parliament it did not make the award the safety net. Now that we understand that the Government will comply, it will be required to match its public face and, therefore, much of the wording of the Bill requires revisiting.

This is one clause that clearly on the face of it promotes the perception that the award is a secondary document to be brushed aside at will. Such a perception is a contradiction of the notion of the award as a safety net, and such a contradiction will only cause confusion with lay users of the industrial system. Whilst recognising a desire to promote enterprise bargaining, we do not see that this is in any way contradicted by opposition to this aspect of the Bill.

The Hon. K.T. GRIFFIN: I have now sorted out my position. I think my amendment is no longer relevant, because clause 73(2)(d) has been deleted by an amendment of the Hon. Mr Elliott. What the Hon. Mr Roberts is putting is certainly consequential on an earlier amendment that has been carried.

The Hon. M.J. ELLIOTT: I had an identical amendment. It can be argued more briefly by saying that it is a consequential amendment.

Amendment carried; clause as amended passed.

The Hon. K.T. GRIFFIN: Mr Chairman, I draw your attention to the state of the Committee.

A quorum having been formed:

Clause 86—'Retrospectivity.'

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

Leave out the clause and substitute new clause as follows:

86. (1) An award of the commission has, if it so provides, retrospective operation.

(2) However, an award cannot operate retrospectively from a day antecedent to the day on which the application was lodged with the commission unless—

(a) there is a nexus between the award and—

(i) another award of the commission; or

(ii) an award or agreement under the Commonwealth Act,

and, in view of the nexus, it is desirable that there should be common dates of operation; or

(b) the award give effect, in whole or part and with or without modification, to principles, guidelines or conditions relating to remuneration enunciated or laid down in, or attached to, a relevant decision or declaration of the Commonwealth commission; or

(c) the day from which the award is to operate is fixed with the consent of all parties to the proceedings.

This clause is in respect of the Government's proposition that an award of the commission cannot operate retrospectively unless all parties appearing before the commission agree. The Opposition's amendment seeks simply to reinsert into the Government's Bill the provisions that currently apply in the Industrial Relations Act 1972. The Government's proposal is entirely unfair and operates exclusively in favour of the employer. The Government's Bill provides that there cannot be any retrospectivity unless all parties appearing before the commission agree.

Therefore, employers are encouraged to deny unnecessarily any proceedings before the commission; to use technical points of argument; to consume large amounts of witnesses' time; and to adopt every delaying tactic that can be used within the system, knowing that every day delayed is a dollar saved.

The Opposition's amendment provides for the power to be given to the Industrial Commission to award retrospectivity in special circumstances, but not preceding the date of the lodging of the application in the commission unless there is a nexus between that particular State award and an award operating under the Commonwealth Act—for example, the so-called mirror State award of the metal trades award. Over many decades the commission has enunciated principles with respect to the awarding of retrospectivity, and they are extremely conservative. Retrospectivity will be granted only where it can be demonstrated that an employer has clearly acted unreasonably and has gone out of their way to delay unnecessarily the conclusion of any award hearing or where, for example, a member of the Industrial Commission hearing the matter has not been able to hear the matter as expeditiously as possible due to such things as a heart attack, illness, pressure of other business of the commission and so on.

The maintenance of the power of the commission to award retrospectivity is an encouragement for all parties to get on with the job and to ensure that the case before the commissioner is handled as expeditiously as possible and in a way which is fair to all parties. I think we have outlined precisely what the position should be. I would point out that my experience in the commission has been based on those principles, and that has been very helpful in the settling of cases before the commission because everyone knows that once it is settled they get on with the job and they start getting paid. From time to time some unions would seek further retrospectivity. Our proposal allows the commissioner to take into account all the arguments by both parties in respect of retrospectivity and apply it from a date after the application for hearing has been lodged. This amendment is reasonable and it ought to be supported.

The Hon. K.T. GRIFFIN: The amendment is vigorously opposed. The Government opposes the concept of retrospectivity. The amendment of the Hon. Mr Roberts reflects the provisions under the existing Act, but that does not mean it is right. The provisions of the amendment and the existing Act reflect a desire to maintain a centralised system which is inextricably linked with the Commonwealth system, and I would suggest to honourable members that such an attitude is outdated, and it is certainly costly and limiting. Retrospectivity and nexus concepts cannot be justified in current times. Before the Government's Bill was emasculated by the amendments so far it certainly encouraged and supported independence and opportunities to make choices.

The Hon. M.J. ELLIOTT: I will not comment on the issues relating to nexus because I do not pretend to understand them, but I do understand the issue of retrospectivity. It appears to me that when this Bill was being drawn up there was an employer's wish list and this was on it, and I understand why that would be. Quite frankly, knowing that you can delay negotiations and save yourself a few dollars along the way—

The Hon. R.R. Roberts: Especially if you have 1 000 employees.

The Hon. M.J. ELLIOTT: Yes, it is a perfectly understandable reaction. It would be far cheaper to have a lawyer on retainer than to pay the additional amounts that the award will grant. Just as it has in other parts of this legislation, the Government has included provisions to stop unions from procrastinating in certain areas, and I have heard that complaint being made during discussion on other clauses of the Bill, and the Government has had support from me in some of those areas. Here is an area where it is more likely to be the employers who will procrastinate; they are the ones who stand to gain. For the same reasons that I have supported some Government amendments, I am supporting this one.

Clause negatived; new clause inserted.

Clauses 87 and 88 passed.

Clause 89—'Effect of multiple award provisions on remuneration.'

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

Page 34, after line 19—Insert subclause as follows:

(3) If—

(a) an employee is engaged in work of different classes; and

(b) a rate of remuneration is fixed by an award for some, but not all, of the classes of work,

the employee is entitled to remuneration for the work covered by the award at the award rate, and for work not covered by an award, at a rate that is the highest applicable to any class of work in which the employee is engaged covered by an award.

(4) If—

(a) an employee works for an employer in different areas in work of a similar kind; and

(b) an award governs the employment in some but not all areas, the award is taken to apply to the whole of the employee's work.

The Opposition's amendment seeks to reinsert existing section 83 of the Industrial Relations Act 1972. The existing Act recognises that there are employees engaged and performing work in different classes, and that these may be covered by different awards that affect different rates of remuneration for the different classes of work. Where this occurs the employee receives the highest rate of remuneration for their work. The Government's Bill only allows employees in such circumstances to be paid at rates of pay where the relevant award is concerned.

This goes away from the established general principle that a person is paid for the highest functional skill that they perform as part of their job with a particular employer. For example, members of Parliament are paid at a rate of pay based on the highest function of skills for their work. Much of their work may be tedious and time consuming (like sitting here at this time of the night), signing, filing and answering routine questions etc., work which if performed by an ordinary member of the work force might well be covered by an award such as the Clerk's Award, South Australia.

At the other end of the scale the work includes the complex legislation before Parliament and the drafting of appropriate legislation. There is no suggestion that a member of Parliament should only be paid at the low end of the scale with respect to the application of lesser levels of skills which they perform as part of their day to day job, but the Bill invites such a notion. In addition, this provision creates the potential for an administrative nightmare for employers, and hence increased costs. To give effect to the notion set down in the Bill, instead of a worker clocking on and off once a day, they would need to clock on and off at the beginning and end of each period of discernibly different work. If this is not sufficient of a nightmare, who will determine which duties fall within the scope of each award?

This Bill will be a major source of industrial regulation for small employers in this State. Can they afford, and do they want, the disputes and litigations that can arise from this clause with all of its implementary problems? No evidence exists to suggest that the current arrangements have caused significant difficulties. I would have thought that the issue itself is not central to ideological agendas, and hence the change seems not really necessary nor adequately considered. Maintenance of the existing provisions, even if it does have some minor problems, is preferable to creating an administrative monster with its inherent potential for legal argument and costs. We ask the Committee to support our amendment.

The Hon. K.T. GRIFFIN: The amendment is opposed. It introduces significant inflexibility into the award structure and does not allow what the Government believes ought to be permitted, that is, if there is work of different classes and there are different rates of remuneration fixed for the different classes of work, then the employer is entitled to fix the remuneration according to the work done by the employee in relation to the different classes of work. The amendment would prevent the employer agreeing with the employee to a composite rate which may be higher than the rate of remuneration fixed for the award. We therefore oppose the amendment because of the essential inflexibility which is brought into this clause.

The Hon. M.J. ELLIOTT: I think the Hon. Mr Roberts its correct in saying that there is no question of ideology here—idiocy perhaps. I think that the Government is probably making things more difficult for employers. I may be wrong; they may be setting themselves up for more litigation. The Government can have its way, because I think that, at the end of the day, it is a decision it is making that is not ideological.

The Hon. R.R. ROBERTS: Mixed functions clauses have been around since awards were written. In circumstances where an employee is engaged to do two or three different classes of work many awards stipulate that the worker has to be undertaking the work for four hours before the mixed function applies, and you get the higher of the two rates. Those things were brought in by employers because they did not want to deal with segmenting tasks and having a timekeeper keep records.

The Attorney-General is wrong: as we move to greater flexibility in awards and we go to broad-banding and all these different things, there is nothing to prohibit agreements in awards or enterprise bargaining for broad-banding. In fact, it is happening all the time. We say, 'You perform a whole range of skills. We will fix a rate for a person who has that range of skills so that we can get out of this stupid business of documenting each class of work on each hour of each day.' Employers will go to enterprise bargaining and broad-banding. These agreements are being lodged in the commission every day. The employers want to remove this complexity of timekeeping and the Government wants to reinsert something that it has given away because it is old hat and yesterday's technology.

The Hon. T.G. ROBERTS: In many cases mixed functions were brought in to eliminate demarcation disputes, not only over pay rates but also over-allocation of work. Most employers will not want a bar of it, but there will be some that will be finicky enough to take people off a higher rate of pay, allow them to sweep for an hour and put them on a sweeper's rate. It is one of those conditions that enterprise bargaining is set up for, to eliminate the cluttering and the administrative layers that many employers do not want to go back to. The stated intention of the Bill is to eliminate

administrative time sheets and changed rates of pay on an hourly or daily basis.

Amendment negatived; clause passed.

Clause 90 passed.

Clause 91—'Effect of amendment or rescission of award.'

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

Page 34, lines 15 and 16—Insert new clause as follows:

91. The variation or rescission of award does not affect—
(a) legal proceedings previously commenced under or in relation to the award; or
(b) rights existing at the time of the variation or rescission.

This amendment relates to subclauses (1) and (2). No explanation or rationale is provided in subclause (1), and I would have thought that, if the subject of the accrued right was an industrial matter, the commission could hear an application to vary such rights in accordance with the usual principles of equity, good conscience and substantial merit. There would be, I suggest, strong opposition to such a change given the nature of current accrued rights—for example, sick leave, annual leave and long service leave.

Cancellation of accruals in effect amount to a retrospective cancellation of an entitlement. This would be another good reason to oppose such a measure. No-one I have spoken to who is involved in industrial relations has been able to tell me of a single situation, other than a blatant attack on current entitlements, where this condition could be applied. If it is not needed for legitimate purposes and simply exists as another avenue of attack on conditions, employers consider it an unnecessary on-cost. Our amendment removes the objectionable part of this clause but retains in principle the legitimate aspects of subclause (2).

The Hon. K.T. GRIFFIN: The amendment is opposed. The present position in the Act is a difficult one. The Government believed it was necessary to vary it because of a decision of industrial magistrate Cunningham in the Industrial Court in *Kruger and Others v. Kennedy Cleaning Service* in August 1993. That was a case where the cleaning service sought to make the employee redundant and, when the redundancy occurred, there was an entitlement to redundancy pay, but I think the next day or within a very short time after that the employer, in accordance with the award, found the employee another job and therefore sought to retrieve some of the redundancy pay.

That was in the context of the caretakers and cleaners award, which has a specific provision dealing with alternative employment. It provides:

An employer in a particular redundancy case may make application to the commission to have the severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

It seems, on any normal reading of that, that if on day one, for example, a redundancy occurs, severance pay automatically, under the award, accrues; on day two, the employer, consistent with the award, finds acceptable alternative employment for the employee and seeks to have the severance pay adjusted, as the award suggests it can be. What magistrate Cunningham has decided is that that cannot occur and that the severance pay, even in the circumstances which I have related and even though the employer has acted in accordance with the provisions of the award, is unable to be adjusted. This is retrospective in the sense that it has accrued, but subsequent events quite legitimately occurring in accordance with the award have allowed the adjustment of a severance pay which did accrue earlier. That is the reason for the provision in the Bill and the reason why we oppose the amendment of the Hon. Mr Roberts.

The Hon. M.J. ELLIOTT: I understand the case that is being raised. However, my reading of clause 91(1) is that the potential for that is far broader than is necessary for this case? I wonder, even in the absence of clause 91(1), whether or not the award itself could not be rewritten to ensure that those sorts of problems do not arise. Our talking about variation or cancellation of accrued rights here is in a very broad context. The award has created something at a particular point. In the way that it is written, it should have been able to overcome the problems without this very broad capacity.

The Hon. K.T. GRIFFIN: Subclause (2) seeks to limit the effect of subclause (1). I would have thought that was an appropriate limitation. However, except to the extent that an award specifically provides the variation or cancellation of accrued rights (and that is the case with the caretakers and cleaners award), the amendment or recision of an award does not affect accrued rights or legal proceedings related to accrued rights. That reads down the effect of subclause (1). We recognise that, if you just had subclause (1), it would be an outrageous provision, but we have attempted in subclause (2) to write it down quite significantly and limit it to the circumstances referred to in subclause (2).

The Hon. M.J. ELLIOTT: I ask the Attorney-General whether the problem struck by the commissioner in this case was a problem with the award and its implementation in relation to a particular individual, because that is where it appears the problem lies—that the award itself was deficient and could have been rewritten without our having to change the legislation itself in the way we are currently doing.

The Hon. K.T. GRIFFIN: I am informed that the clause to which I have referred relating to alternative employment is a standard clause relating to redundancy and the power or right to make an application to have severance pay prescription varied if the employer obtains acceptable alternative employment for an employee. My understanding is that it applies in most, not all, awards and for that reason there is a concern that the decision made by the industrial magistrate will have wide-ranging consequences if it is allowed to stand. If there is some alternative means whereby one can address that decision, certainly the Government is prepared to consider that.

In the terms in which the magistrate made his decision, it seems that the principle upon which he is relying has some broader application than just the application to that clause. If there is some alternative that the honourable member can propose that will enable us to deal adequately with it, we are certainly prepared to listen to that. The mechanism we have sought to put in place we believe will adequately address it without unreasonably prejudicing other accrued rights.

The Hon. R.R. ROBERTS: We are talking about accrued rights.

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: What you are saying has occurred with this cleaner is that his employer, who was covered by a requirement to pay accrued rights under certain circumstances, has made the decision that that employee is redundant for his purposes. In fact he said, 'Right, you are finished today', and under those conditions he has to pay out the money. Then his mate in another industry comes along and says, 'Hey, I am looking for a cleaner.' The employer says, 'Hang on, I know where there is one; go and get him.' So, he employs that person in his business, and then the first

employer says, 'Hey, give us back the money; give us back the rights you have accrued.'

The Hon. K.T. Griffin: Well, that's what the award allows.

The Hon. R.R. ROBERTS: No, it does not. He does not have to pay it if he finds acceptable alternative work for the employee before he makes him redundant. The Attorney is trying to overcome the situation when the employer has made the employee redundant, has found alternative work for him and then says, 'Give us back the dough.'

The Hon. K.T. Griffin: That's not what this relates to.

The Hon. R.R. ROBERTS: That is what you are trying to overcome; that is the case you have outlined.

The Hon. K.T. GRIFFIN: The alternative employment clause arose out of a test case situation and has flowed through a number of other awards. I would have thought, if one looked at it, that one could come to only one conclusion, but the magistrate has obviously come to another, namely, that an employer in a particular redundancy case may make application to the commission to have the severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

That can occur only after the event. The severance pay right does not accrue unless there is a redundancy and then there is alternative acceptable employment. The honourable member should consider this position. On day seven, at the end of the week, the employee is made redundant and pockets the money. On day one of the next week the employer says, 'I have now found acceptable alternative employment for you' and the employee goes into employment. What has the employee lost? Nothing; he has gained redundancy pay, and we are saying that that is wrong.

The Hon. R.R. ROBERTS: It is certainly not wrong. It is an application of the award. Normally, if someone was going to be made redundant the employer could say, 'Look, unfortunately I was going to finish you up on Friday night, but I have now found you a job doing similar or acceptable work with an another employer,' and in such a case he has met his requirement under the contract. The case that the Attorney-General put forward was that an employer made someone redundant so he had no job. If a job was found for that person a week later, the Government is proposing that the employer involved could say, 'Give us back the dough' a week later. That is not on.

The Hon. M.J. ELLIOTT: I still stand by the view that, whilst I understand the problem, it could have been addressed differently. Clause 91 as the Government currently proposes is inappropriate. I am concerned about its possible scope, and at this stage I am suggesting that the Government should be looking for another mechanism to tackle the problem that it has set about solving in this case.

Clause negatived; new clause inserted.

Clause 92 passed.

Clause 93—'Annual review of awards.'

The Hon. R.R. ROBERTS: I oppose this clause and move to insert the following new clause:

Review of awards

93. (1) The Commission must review each award in every third calendar year from the appropriate date.

(2) The appropriate date is—

(a) if the award was in force at the commencement of this section—the date of commencement of this section; and

(b) if the award came into force after the commencement of this section—the date on which the award came into force.

(3) At least 21 days before it begins a review under this section, the Commission must give notice of the review—

(a) to associations and other persons that appeared in the proceedings in which the award was made; and

(b) to associations that have members in the industry or industries regulated by the award; and

(c) to any other association or person the Commission thinks fit to notify; and

(d) in a newspaper circulating generally throughout the State.

(4) On a review under this section, the Commission may vary an award to ensure that the award—

(a) provides for secure, relevant and consistent remuneration and conditions of employment; and

(b) does not discriminate against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national or social origin (except the extent the discrimination is inherently necessary to the nature of the employment); and

(c) is consistent with the objects of this Act; and

(d) is consistent with industrial and technological developments in the relevant industry; and

(e) is expressed in plain English.

(5) If on review of an award it appears that the award is obsolete, and has no potential application, the Commission may rescind the award.

(6) Before it varies or rescinds an award under this section, the Commission must give the parties to the award a reasonable opportunity to make submission on the proposed action, and take any submissions made by the parties into consideration.

The Government's Bill provides that the commission must review an award every calendar year. In our view this is a ridiculous situation, given that there are in excess of 400 awards of the State commission. Whilst awards need to be reviewed on a regular basis, the Opposition proposes that it be done every third calendar year, as is the case under the Federal Industrial Relations Act. In addition, the Opposition's amendment sets out a far fairer way of undertaking this review. Under this provision, notice must be given by the commission to ensure that all relevant parties who would have had an interest in a particular award being reviewed can have an opportunity of stating their case to the commission. I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. Our view is that there ought to be annual reviews of awards to ensure that variations are consistent with the objects of the Act and that awards provide minimum standards. This will be a mechanism by which awards and enterprise agreements will be credibly distinguished by the commission. The Opposition's amendment would be very limited in its capacity to upgrade or modernise awards. It would not require the parties to address the many detailed, inflexible and unnecessary provisions in awards which need to be subject to reconsideration and amendment by the parties and the commission.

The Hon. Mr Roberts said that there were about 400 awards. The information we have is that there are about 199 awards and about 200 industrial agreements. This clause does not deal with industrial agreements; it deals with awards. Our view is a very strong one that there ought to be more frequent reviews than once every three years.

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

Page 34, lines 26 and 27—Leave out subclause (1) and substitute:

(1) The commission must review each award at least once in every three years.

I, too, believe that every year is a little too frequent and unnecessary. Currently, I think it is once every five years. I am saying that it should happen not every third calendar year but at least once every three years. I suppose it recognises

that, aside from a review which may be instigated by the commission itself, if nothing else happens within three years, there may have been a review on request earlier by interested parties. I think it is probably more sensible to say that the award will be reviewed at least every three years.

The Hon. M.J. Elliott's amendment carried.

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

Page 35, lines 5 and 6—Leave out paragraph (c) and insert:

(c) leaves the practical application of its provisions to be worked out in the workplace and, in particular, provides, so far as the commission considers appropriate, a process for agreements to be negotiated, at the enterprise or workplace level, about how the award (as it applies to the enterprise or workplace concerned) should be applied or varied to make the enterprise or workplace operate more efficiently according to its particular needs; and

This amendment qualifies clause 93(3)(c). It is in the same terms as an earlier amendment to clause 84 which was not successful. The amendment specifically requires that on reviews the awards contain a process for workplace flexibility to the extent that the commission considers appropriate. As I indicated previously when we dealt with a similar concept, the amendment is consistent with section 113a of the Federal Industrial Relations Reform Act 1993. It seems to us to have merit.

Amendment negatived; clause as amended passed.

Clause 94—'Adoption of principles affecting determination of remuneration and working conditions.'

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

Page 36, lines 12 and 13—Leave out subclause (2) and insert subclause as follows:

(2) The Full Commission may, on its own initiative, or on the application of—

(a) the Minister; or

(b) the United Trades and Labor Council; or

(c) the South Australian Employers Chamber of Commerce and Industry Incorporated,

conduct an inquiry to determine the conditions on which leave of absence should be provided to employees to care or support persons for whom the employees have a responsibility to provide care.

(3) On an inquiry under subsection (2), the Full Commission must have regard to—

(a) any relevant decision of the Commonwealth commission; and

(b) the Workers With Family Responsibilities Convention 1981[1]; and

[1] The Convention is set out in schedule 12 of the Commonwealth Act.

(c) The Workers with Family Responsibilities Recommendation as set out in schedule 12 of the Commonwealth Act.

(4) On completing an inquiry under subsection (2), the Full Commission must make recommendations for legislative change to the Minister and the Minister must have copies of the recommendations laid before both Houses of Parliament at the earliest practicable opportunity.

I commend this amendment to the Committee.

The Hon. M.J. ELLIOTT: Does such a provision exist in the current Act? I suspect that it does not. I definitely have sympathy for the content of this amendment, but I wonder why the Opposition when in Government until six months ago did not raise the matter then, because at this stage in legislation of this complexity to throw in a few things on our wish list right now is unrealistic. While I have sympathy for this clause, I will not support the amendment, simply because I realise that it will never get through this place. With the task that is in front of us I do not think we should spend too much time on it now but that does not devalue in any way whatsoever the issues it involves.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. It seeks to remove our subclause (2), which provides that a declaration may be made only if the terms of the declaration are consistent with the objects of this Act—that relates to subclause (1)—and if the Full Commission, on its own initiative, or on the application of the Minister, the UTLC and the employers' chamber makes a declaration adopting certain principles, guidelines, conditions, practices or procedures. It seems to us that it is quite wrong to remove subclause (2).

It also seems inappropriate, whether or not subclause (2) is deleted, that these new provisions should be included which seek to allow the conduct of an inquiry on a specific issue such as that when in fact what we are now talking about in clause 94 is a more general approach by the commission in relation to the making of a declaration. As the Hon. Mr Elliott has observed, these provisions are not in the current Act and there is nothing to prevent the Full Commission, in a more general sense, undertaking a review of the leave provisions provided in the Bill.

The Hon. R.R. ROBERTS: In respect of clause 94, we propose to delete subclause (2) and insert a new subclause. The Opposition amendment allows for the Full Commission either of its own initiative or on the application of the Minister, the Trades and Labor Council, or the Employers' Chamber to conduct an inquiry and determine conditions on which leave of absence should be provided to employees to care or support for persons whom the employees have a responsibility to provide care. At the completion of the inquiry the Full Commission must make recommendations for legislative change to the Minister, and the Minister must have copies of the recommendations laid before both Houses of Parliament at the earliest practical opportunity.

This is an important amendment being put forward by the Opposition, in that it is far better that our amendment be supported with respect to assisting workers who have family responsibilities, who are responsible for the care of sick children or other dependents and have no access to time off from work other than by using up their annual leave to care for sick dependents. The Government's general position has been that it would allow, through an enterprise agreement, workers to take time off without pay to look after sick dependents.

In addition to their sick leave this is totally inadequate for the worker in that the worker concerned should not have to use their own sick leave, which is assigned to them on the basis of providing them with an income during periods of their own illness, rather than recognising their rights as workers to be able to care for sick dependents over and above their paid sick leave entitlements. In addition, this would allow for the Full Commission to award paid care for sick dependents rather than unpaid, subject to the investigations of the Full Commission.

As members would be aware, the ACTU has launched a test case before the Federal Industrial Commission on this very issue and should it be successful or, indeed, whatever the outcome of that full bench hearing in the Federal Commission, the ACTU will take the matter in hand. I have heard what the Hon. Mr Elliott said but I provide that explanation anyhow.

The Hon. CAROLYN PICKLES: I have heard some very strange reasons for people opposing clauses but to oppose a clause—

The Hon. M.J. Elliott: Come on, the Labor Party was in Government four or five months ago.

The Hon. CAROLYN PICKLES: I have already explained the situation to the Hon. Mr Elliott. I know it is

very late and he is feeling very tired, as we all are but this is a very important clause—

The Hon. M.J. Elliott: Nobody said the issue was not important.

The Hon. CAROLYN PICKLES: —for people with family responsibilities. Here is an opportunity, Mr Elliott, for you to get something through this Chamber that you consider to be important, as we have discussed, and that I consider to be important, and so should everybody in this Chamber consider to be important. So, for you to give up so easily, I find extraordinary. This Committee has gone over the issues contained in this clause this morning, and I do not intend to go over them again. The Hon. Mr Roberts has explained them fully, but I honestly find the Hon. Mr Elliott's attitude extraordinary.

Amendment negatived; clause passed.

Clause 95—'State industrial authorities to apply principles.'

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

Page 36, line 24—Leave out paragraph (9d).

The Local Government Officers Classification Board no longer exists.

Amendment carried; clause as amended passed.

Clause 96—'Records to be kept.'

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

Page 37, lines 5 and 6—Leave out ', subject to the terms of the award or enterprise agreement,'.

This amendment links to a couple of amendments later on as well. Under clause 96, as currently drafted, it is possible under an enterprise agreement or award for any of the records listed in clause 96 not to be kept.

That information should be kept regardless of enterprise agreements. I draw to members' attention that subclause (6) does specifically allow for time books not to be kept and allows for specified information not to be included in the time book. As I understand it, that is the most likely measure that might be sought to be left out of an enterprise agreement. I cannot see that there is any justification for employers not keeping other information, particularly records of their annual and sick leave, age and the like. I do not think it is an unreasonable or onerous requirement that that information be kept by an employer. However, the place to exempt the time book by way of enterprise agreement is not in this clause but in clause 96(6).

The Hon. K.T. GRIFFIN: There is nothing sinister in the words 'subject to the terms of the award or enterprise agreement'. What it was intended to do was really to deal with the issue in subclause (6) and to take that into account. You still need to do something to address that issue, because if you take out 'subject to the terms of the award or enterprise agreement' an employer who is bound by an award or enterprise agreement must keep a record, etc. My advice is that you do need something in there to at least accommodate subclause (6). So, if the honourable member was prepared to move it in a form, which is to delete those words, but insert the words 'subject to subsection (6)' then that will accommodate the concern that we have.

The Hon. M.J. ELLIOTT: I am quite happy to move such an amendment. I move:

Page 37, line 6—Leave out 'subject to the terms of the award or enterprise agreement,' and insert 'subject to subsection (6),'.

The Hon. K.T. GRIFFIN: I indicate support for that.

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

Insert new clause as follows:

Records to be kept

96. (1) An employer who is bound by an award or enterprise agreement must keep or cause to be kept in relation to the employees to whom the award or enterprise agreement relates—

(a) a record of the name, address and date of birth of each of the employer's employees who is under 21 years of age; and

(b) a record in which are entered as far as practicable—

(i) each employee's times of beginning and ending work on each day (including a note of time allowed for meals and other breaks); and

(ii) the remuneration paid to each employee and the date of each payment; and

(c) a record of annual leave, sick leave and long service leave granted to each employee.

Penalty: Division 7 fine.
Expiation Fee: Division 8 fee.

(2) The record referred to in subsection (1)(b) must, wherever practicable, be verified by signature of the employee; if the employee works in the building industry the employee must, if practicable, sign the record on each day the employee works in the industry to verify the time worked by the employee on that day; in other cases the employee must, if practicable sign the record on, or as soon as practicable after each pay day; the record verified as required by this subsection is evidence of the correctness of the entries made in it.

(3) An employer must retain a record kept under this section for six years after the date of the last entry made in it.

Penalty: Division 7 fine.
Expiation fee: Division 8 fee.

(4) An employer must—

(a) at the reasonable request of an employee—produce for inspection a record relating to the employee kept under this section and permit the employee to make copies of, or take extracts from, the record; or

(b) at the reasonable request of an inspector—produce for inspection a record kept under this section and permit the inspector to make copies of, or take extracts from, the record.

Penalty: Division 7 fine.
Expiation fee: Division 8 fee.

(This subsection does not derogate from the operation of a relevant award or enterprise agreement.)

(5) When a business or part of a business is transferred or assigned, the transferor or assignor must give the transferee or assignee all records referred to in this section which relate to employees who become employees of the transferee or assignee in consequence of the transfer or assignment.

Penalty: Division 8 fine.
Expiation fee: Division 9 fee.

(6) An award or enterprise agreement may, if the parties agree, provide that a time book need not be kept in relation to some or all the employees bound by the award or enterprise agreement.

(7) Unless otherwise provided by an award or enterprise agreement, if an employee is paid on an hourly basis, or on some other basis where the rate of pay varies according to the time worked, the employer must, at the time the employer makes a payment of remuneration, provide the employee with a written record showing the following information:

(a) the number of hours worked by the employee during the period to which the payment relates (distinguishing between ordinary time and overtime); and

(b) the rate of pay that has been applied in working out the remuneration.

Penalty: Division 9 fine.

(8) Unless otherwise provided by an award or enterprise agreement, if an employer makes a contribution to a superannuation fund of a prescribed kind in accordance with this Act or an award or enterprise agreement for the benefit of an employee, the employer must, on the next occasion the employer makes a payment of remuneration, provide the employee with a written record showing the amount of the contribution.

Penalty: Division 9 fine.

The Opposition amendment seeks to re-insert the provision of the Industrial Relations Act 1972 with respect to this matter. The existing legislation is far more comprehensive than the clause in the Government's Bill. The Government's Bill provides that an award or an enterprise agreement may direct that, in relation to some or all of the persons bound by the award or agreement, a time book need not be kept or other specified information need not be included in the time book.

This is extremely dangerous, particularly in the area of enterprise bargaining. Non-unionists, many of whom are not aware of industrial rights, may find that the absence of records will lead to a great deal of litigation as a result of the absence of those written records for use as evidence. This is not a matter of an employee bargaining away a specific remuneration or condition of entitlement in return for some alternative benefit. It is a question of whether records fundamental to the pursuit of legal entitlements should be kept. It also raises a question about the recording of matters relevant to other legal obligations such as WorkCover premiums, payroll tax and the like.

How does the Bill envisage an employee pursuing an underpayment of wages claim in the absence of written records? What benefit might be offered to an employee to agree to waive the keeping of records? If the absence of such records was later found to be part of a scheme of arrangements by the employer to avoid some legal obligation, would the worker be found to be in breach of the law having been paid to do so? We believe that the keeping of records is not a bargaining issue; it is an issue of effective administration and as such we oppose this part of the Bill. The Minister has not said what complaints employers or employees have had with respect to the existing legislation on this matter. In the absence of any compelling evidence to the contrary, the members of the Committee should stick with the existing legislation.

The Hon. K.T. GRIFFIN: We oppose the amendment.

The Hon. M.J. ELLIOTT: I oppose the amendment.

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

Clause 97—'Employer to provide copy of award or enterprise agreement.'

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

Page 39, line 3—Leave out '28' and substitute '14'.

This is a relatively simple amendment. As the Bill is currently drafted, if an employee is bound by an award or enterprise agreement, the employer is required to give the employee a copy. The Bill provides for 28 days. I do not believe that 14 days is an unreasonable request.

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

Page 39, line 3—Leave out 'within 28 days after the date of the request' and insert 'within 24 hours after the time of the request.'

This is not an unreasonable request in these days. Once the agreement is written and typed, with modern technology, it is only a matter of putting it under a copying machine and everybody can get on with the job. I understand what the Hon. Mr Elliott is saying.

The Hon. K.T. GRIFFIN: The Government is not happy with 14 days, but it could live with it, provided subclause (3) remains as it is. My concern is that, in a very large workplace which might have several hundred employees, we are providing that the employer must give each employee a copy of the award or enterprise agreement but, under subclause (3), is not obliged to do so if the employer has within the preceding 12 months given an employee a copy—obviously that stays in—or if the award or enterprise agreement is exhibited at the employee's workplace.

That means that it is accessible. Some of these awards are very extensive, containing up to 10 000 words. It is the Government's view that, if the award is exhibited at the employee's workplace, that is appropriate. It must be recognised that the right we are giving to employees is a new right. We think that in those circumstances it ought to be approached reasonably and not be an undue burden on the employer.

The Hon. M.J. ELLIOTT: I do not believe that 14 days is unreasonable. In fact, in many ways an employer with 700 employees has probably a better chance of complying than a small employer. A large employer will probably have a very good photocopier: very few people with that many employees are not pretty well geared up. The number of copies is not going to be a major burden. I note that later on there are provisions about not needing to provide copies if the material is displayed. I have a later amendment to deal with that. I might discuss that now and perhaps, with your consent, Madam Acting Chair, I will move that amendment as well.

The ACTING CHAIRPERSON (Hon. Carolyn Pickles): You may talk to it now and canvass your views but not move it at this stage, otherwise it will complicate the procedure.

The Hon. M.J. ELLIOTT: I do not think it is enough for an award to be pinned up. I heard the Attorney comment that awards may run to 10 000 words. If you really want to analyse your award, I do not think many people, including the Attorney-General, would be too keen on standing at a notice board trying to read and digest a 10 000 word award. With a document that size you would probably like to find a relatively quiet place at which to read at leisure, and I do not believe that a workplace notice board really fits into that category. So, I really do not think that having it exhibited is sufficient.

The Hon. K.T. Griffin: At the moment the employee has to go out and buy it.

The Hon. M.J. ELLIOTT: I fully understand that and appreciate the fact that the Government is tackling this issue, and it should be congratulated for it.

The Hon. K.T. Griffin: It is not even in our policy.

The Hon. M.J. ELLIOTT: I congratulate you even further: not only have you gone outside policy but in a positive direction as well! I understand that the requirement for it to be on display is already there, and I suppose the Government is acknowledging that that may not be sufficient. I can only suggest that having it on display will not suit the purposes of many people.

The Hon. R.R. ROBERTS: The Attorney-General says that he is giving employers this new right and that under present conditions people have to go out and buy it. Decent employers throughout South Australia and Australia normally give employees copies of the award when they start. I do not think we are going to be suffering noise induced hearing losses from the 'whoopees' coming from the workers over this issue. But it is a sensible thing—now that we are going to enterprise agreements and/or awards—that it be made mandatory that every employee at least receives a copy. We also have another amendment later down the track that seeks to remove subclause (3) and insert another subclause, which I will move and talk on in a few moments.

The Hon. Mr Elliott's amendment carried.

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

Page 39, line 10—Leave out paragraph (b).

I suspect that, as a matter of drafting, the word 'or' in the previous line should be deleted as well. I will confirm that. In any event, the current structure of the Bill is such that an employer is not obliged to give an employee a copy if either a copy has been supplied in the previous 12 months or it is on display. My amendments agree with paragraph (a) of that clause in so far as if it has been supplied in the previous 12 months the employer does not have to supply another copy.

However, I believe that the award or enterprise agreement should be required to be on display rather than that provision being inserted just as a reason why the employer is not obliged to provide a copy.

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

Page 39, line 6 to 10—Leave out subclause (3) and substitute—

(3) An employer must keep a copy of an award or enterprise agreement that is binding on an employee exhibited in a prominent position at the employee's workplace.

Penalty: Division 9 fine.

Expiation fee: Division 10 fee.

We have canvassed most matters relating to this issue. I think that the question of whether or not the employer gives the employee a copy of the award has been covered. The issues canvassed in the current subclause (3) are not worth leaving in the Bill. My amendment is self-evident and covers the issues canvassed by the Hon. Mr Elliott in some respects. I think that it is an adequate situation given that we have now agreed that we will give these employees this new right to have a copy of their own award.

The Hon. K.T. GRIFFIN: I indicate that the Government opposes the leaving out of paragraph (b). However, if paragraph (b) is left out the Government prefers and will support the amendment of the Hon. Mr Elliott to insert a new subclause (4).

The Hon. R.R. Roberts' amendment negatived; the Hon. M.J. Elliott's amendment carried.

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

Page 39 after line 10—Insert—

(4) an employer bound by an award or enterprise agreement must ensure that a copy of the award or agreement is exhibited at a place that is reasonably accessible to the employees bound by the award or enterprise agreement.

This is consequential.

Amendment carried; clause as amended passed.

Clause 98—'Powers of inspectors.'

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

Page 40, lines 1 to 4—Leave out subclause (7) and insert:

(7) If an inspector puts a question to a person through an interpreter, the question will, for the purposes of this Act, be taken to have been put to the person by the inspector and an answer to the question given by the person to the interpreter will be taken to have been given to the inspector (and in any legal proceedings it will be presumed that the interpreter's translation of the answer is the person's answer to the question as put by the inspector unless it is shown that the interpreter mistranslated the question or the answer).

This amendment is technical and relates to the use of interpreters by inspectors. During the consultation process on the Bill the drafting of the Bill was considered to be unclear. The amendment includes a presumption that the interpreter's translation will be the answer to the inspector's question unless it is shown that the interpreter mistranslated the question or answer.

The Hon. M.J. ELLIOTT: The amendment is accepted.

The Hon. R.R. ROBERTS: The amendment is accepted.

Amendment carried; clause as amended passed.

Clause 99—'Unfair dismissal.'

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

Page 41, lines 4 and 5—Leave out subclause (1) and insert—

(1) If an employer dismisses an employee, the employee may, within 14 days after the dismissal takes effect[1], apply to the commission for relief under this Part.

[1] This period may be extended under section 160.

Essentially, my amendment inserts the footnote. It is a notation that the period may be extended under section 160. It is not uncommon to have a provision for an extension of time. It is in the interests of the employee and the footnote signals that there may be such an extension as dealt with under clause 160.

Amendment negatived.

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

Page 41, after line 5—Insert—

(Note: The commission may extend the 14 day period under section 160 of the Act.).

I will comment on the clause as a whole because there are a couple of issues in it. Subclause (1) provides:

If an employer dismisses an employee, the employee may, within 14 days after the dismissal takes effect, apply to the commission for relief under this Part.

My amendment seeks to make it clear that beyond the 14 days an appeal is still possible, at the discretion of the commission.

The Hon. K.T. Griffin: That is the same as my amendment, except that the footnote is in a slightly different form.

The Hon. M.J. ELLIOTT: Under section 160 it is possible for an extension and it is simply a matter of clarification, and my amendment inserts that note. My amendment also deletes subclauses (2) and (3). I understand why the Government has moved the clause in the way it has, but I have some real difficulty with it. I think the claim is basically that it does not want people forum shopping. The point that has to be made is that people can go to more than one jurisdiction for a number of reasons. One can be simply a genuine error, where they have gone to one particular jurisdiction, either simply not knowing how things work or because they have bad advice.

The second possibility is that they have gone to two different jurisdictions because they are seeking different relief. For instance, a person who has perhaps been subject to sexual harassment at work and that has led to this person's being sacked could, before making a claim under this legislation, be seeking to have their position restored and could have action under the Equal Opportunities Act seeking relief in terms of addressing the behaviour of the individual responsible for sexual harassment. You cannot accuse a person in those circumstances of forum shopping, because they are seeking quite different relief.

In those circumstances I do not believe that what the Government has at present is anywhere near adequate. My amendments seek to make it clear that proceedings can be going on under more than one jurisdiction.

The Hon. K.T. GRIFFIN: With respect to the Hon. Mr Elliott, the Government's view is that his clause does not adequately address the issue of overlap and also the election. If one looks at our subclause (3)—

The Hon. M.J. Elliott: I address it later in relation to clause 102(3); there is more to come. I probably should have referred to that as well.

The Hon. K.T. GRIFFIN: It may be that when we see what comes out of it we will need to rationalise. The important issue is that, if you have the same set of facts and you are making an application for damages in one jurisdiction, you should not be running two or three different cases. If you succeed on one, it would be inequitable to endeavour to succeed on the others. However it comes out, that is the principle we are seeking to identify and to embody in the provision.

The Hon. M.J. ELLIOTT: I will quickly draw the Attorney-General's attention to my amendment to clause 102(3), because it links back to this. The amendment provides:

The commission may decline to make an order under the section, or to grant any other form of relief, if the employee is also pursuing

another remedy that may be available on the same facts under another Act or law and offers a similar relief to the relief available under this part, or if it appears that the employee may pursue such a remedy.

Whether or not I have the wording right, I am seeking to make it clear that, when the commission is making its consideration under clause 99(2), it needs to look at what relief is being sought in those two jurisdictions.

If they are seeking quite different relief, the commission should allow it to proceed. If they are seeking the same, it is a different case.

The Hon. K.T. GRIFFIN: It may need further consideration. What the Hon. Mr Elliott's amendment does is to still give a discretion, so there is still the capacity to forum shop. There may still be two applications—

The Hon. M.J. Elliott: But the commission may decline.

The Hon. K.T. GRIFFIN: The commission may decline, but the commission may also proceed, and then you still have two parallel applications running. That is the problem, I think. There is no estoppel. It is a discretion in the commission and it may proceed in parallel with an application in another jurisdiction for a similar remedy arising out of the same set of facts. That is the problem, I think. It may be that we can accommodate that by some compromise drafting, but at the moment we would still find that unsatisfactory.

The Hon. M.J. ELLIOTT: I make it clear that I will be insisting that this be changed. It might be a matter of tidying up the wording, but it is totally unsatisfactory when a person is seeking different relief that that be denied, and that is what the legislation does at present. That is just not acceptable, regardless of whether or not we need to tidy up the wording a bit.

Amendment carried.

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

Page 41, lines 6 to 15—Leave out subclause (2) and substitute—

(2) If proceedings to appeal against or review the employee's dismissal have been commenced under another law of the State, an application can only be made under this section with leave of the commission.

The Hon. K.T. GRIFFIN: I am disappointed that the Hon. Mr Elliott will not move for the insertion of new subclause (3) which is contained in his amendment on file. It is my understanding that subclause (3) is in the Federal Act. I would have thought that, if it is good enough to be there in the context of this provision, it is good enough to be here. Section 170(cc) provides:

Regulations may exclude specified employees from the operation of specified provisions of this division. An exclusion has effect only if—

(a) it is permitted by paragraph (ii) of article 2 of the termination of employment convention; and

(b) it is limited in such a way as to provide safeguards as mentioned in paragraph (iii) of that article.

I would have thought in the context of our Bill that subclause (3) is quite appropriate, and the Federal Government has just moved to promulgate regulations to do just that.

Amendment carried.

The Hon. R.R. ROBERTS: I move to insert the following new clause:

Unfair dismissal

99. (1) Where an employer dismisses an employee, the employee may, within 21 days after the dismissal takes effect, apply to the Commissioner for relief under this section.

(2) An application cannot be made under this section where the dismissal of the employee is subject to appeal or review under some other Act or law.

(3) Where in proceedings under this section the Commission is of the opinion that the dismissal of the applicant was harsh, unjust or unreasonable, the Commission may—

(a) order that the applicant be re-employed by the employer in the applicant's former position without prejudice to the former conditions of employment; or

(b) where it would be impracticable for the employer to re-employ the applicant in accordance with an order under paragraph (a), or such re-employment would not, for some other reason, be an appropriate remedy—order that the applicant be re-employed by the employer in some other position (if such a position is available) on conditions determined by the Commission; or

(c) where, after considering whether to make an order under paragraph (a) or (b), the Commission considers that re-employment by the employer of the applicant in any position would not be an appropriate remedy—order the employer to pay to the applicant an amount of compensation determined by the Commission.

(4) Where the Commission makes an order for re-employment under this section, then, subject to any contrary direction of the Commission—

(a) the employee must be remunerated for the period intervening between the date the dismissal took effect and the date of re-employment as if the employee's employment in the position from which the employee was dismissed had not been terminated; and

(b) the employer is entitled to the repayment of any amount paid to the employee on dismissal on account of accrued entitlement to recreation leave or long service leave; and

(c) for the purposes of determining rights to recreation leave, sick leave and long service leave, the interruption to the employee's continuity of service will be disregarded.

(5) Where an application under this section proceeds to hearing and the Commission is satisfied that a party to the proceedings clearly acted unreasonably in failing to discontinue or settle the matter before it reached the hearing, the Commission may make an order for costs against that party (including costs incurred by the other party to the application for representation by a legal practitioner or agent up to and including the hearing).

(6) Before an application is heard by the Commission under this section, a conference of the parties must be held in accordance with the rules for the purpose of exploring the possibility of resolving the matters at issue by conciliation and ensuring that the parties are fully informed of the possible consequences of further proceedings on the application.

(7) If the parties to an application are located in a remote area of the State, the President may authorise an industrial magistrate or a stipendiary magistrate to call and preside over a conference under subsection (6) on behalf of the Commission.

(8) A legal practitioner or registered agent may represent a party to proceedings under this section for fee or reward.

The Opposition's amendment seeks to reinsert within the legislation virtually the whole of the existing section 31 of the Industrial Relations Act 1972. The Government's Bill is extremely unfair in its operation and indeed does not provide an adequate remedy within the meaning of the Federal Act dealing with unfair dismissals. If the Government's Bill was successful in going through unamended on this matter, then virtually all employees would be required to use the Federal escape route for adequate protection.

Clause 99 limits for a start the number of days within which an employee can lodge an unfair dismissal claim, that is, it reduces from 21 to 14 days. In addition, the employee is forced at the very time of their dismissal to make a choice as to whether to pursue their relief under the unfair dismissal legislation or, for example, under the equal opportunities legislation.

Under the current legislation, an employee cannot prosecute an employer under both sets of legislation and, at the date of whichever hearing the matter comes on first (either before the Equal Opportunity Commission or, more

likely, before the Industrial Commission), the employee must choose under which piece of legislation they will lodge their prosecution. So, already the employer is protected from double jeopardy. However, the Government's legislation would prevent an employee being able to launch their actions initially in whatever jurisdictions they believed best suited their circumstances and then allow them to take relevant industrial advice from their union or lawyer as to which jurisdiction their case should best be prosecuted under.

The Government's Bill does not allow employees sufficient time to have themselves fully acquainted with respect to their legal rights in the whole of these matters, and to be able to make an informed choice as to which piece of legislation they would seek redress under. Also, it is scandalous that the Government would seek to grant itself power by regulation to exclude a class of employee from being able to launch an unfair dismissal case. Any employee, irrespective of their rates of pay or bargaining position with their employer, could simply, by the Minister's exercising his powers by regulation, be excluded from being able to prosecute a case for unfair dismissal within the State jurisdiction. This part of the Bill, if for no other reason, would on its own in the Opposition's submission render this legislation an inadequate remedy under the Federal Industrial Relations Act.

Other parts of the Government's legislation on these matters in sections 100 onwards also discriminate against employees. The Bill seeks to have the person presiding in a conference court first to hear the application for unfair dismissal and to make a recommendation on these issues as they have heard it, which can prejudice either employer or employee party to the conference without their being granted natural justice. Under the conference situation, in the existing section 31 unfair dismissal cases in the pre-trial conference, the commissioners are able to assign only up to a maximum of 45 minutes per case. No party is able to call witnesses at the conference to support their respective contentions, nor are the parties sworn under oath and subject to cross-examination. That would be the same situation with respect to the Government's proposals, yet despite this lack of natural justice the commissioner or presiding officer hearing the matter can make recommendations at conferences, which will undoubtedly last more than 45 minutes, where no witnesses have been called and, if they were called, they are not subject to being sworn in or subject to cross-examination.

In addition, the Government's Bill puts a limit as to the amount of compensation that can be awarded for an unfair dismissal, that is, 26 weeks' wages at the person's average weekly wage over the three month period immediately prior to the date of the dismissal. The current Act has no maximum limit, and indeed the Government's Bill is an open invitation for employers to behave appallingly, in that no matter how bad the dismissal may have been and how unfair or unjust, the maximum penalty by way of compensation that the employer might find themselves having to pay is 26 weeks. The employers themselves could engineer a situation where the hours worked by an employee who was subject to dismissal were reduced significantly three months prior to the date of their actual dismissal.

In the matter of costs, the commission already has under its existing legislation and has provided in the Opposition's amendments an opportunity to be able to award costs against parties who unreasonably continue with their applications. There is no need for the heavy-handed approach of the Government with respect to its own Bill; where, for example, an employee fails to discontinue proceedings more than 14 days after the conclusion of the conference of the parties, the commission must on the application of the employer make an order for costs. This again is a denial of natural justice and in many instances settlements are often reached at the last minute immediately prior to the hearing date taking place, when the maximum pressure is placed on both the employers and employees to realistically assess the likelihood of their success in the proceedings.

The Government's proposed section 103(2) is unfair to employees in that often they are represented by lawyers or by lay advocates and that the employee concerned may not be able to get sufficient advice as to the likelihood of success with respect to their application much before the arbitral proceedings commence, simply because, given the pressure of work, their representative is simply unable to provide that advice in the time frame required under the Act. In so far as the Government Bill seeks to have the commissioner hand down reasons within three months after the date of the hearing, whilst laudable, it can do no more than that, and it is somewhat of an insult to the members of the Industrial Court and commission to put it in legislation, as the Bill does not take into account Government policy which may restrict the amount of resources that are allocated to the Industrial Commission to be able to do its work, for example, the number of commissioners' support staff and the like.

The Hon. K.T. GRIFFIN: I oppose the Hon. Mr Roberts' amendment.

Clause as amended passed.

Progress reported; Committee to sit again.

ADJOURNMENT

At 12.10 a.m. the Council adjourned until Friday 13 May at 10 a.m.