LEGISLATIVE COUNCIL

Friday 13 May 1994

The PRESIDENT (Hon. Peter Dunn) took the Chair at 10 a.m. and read prayers.

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

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I have to report that the managers of the two Houses have been to the conference on the Bill, have conferred together and it was agreed that we should recommend to our respective Houses that:

The Legislative Council do not further insist on its disagreement to these amendments.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

In Committee.

(Continued from 12 May. Page 987.)

Clause 100—'Conference of parties.'

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

Page 41, lines 24 to 33—Leave out subclauses (3) and (4) and substitute—

(3) The person presiding at the conference must, at the conclusion of the conference, give an indication of the person's assessment of the merits of the application and may, if the person thinks fit, recommend the withdrawal of an application, or make recommendations on how the questions at issue might be resolved.

I am concerned that, as the legislation is drafted, a right of appeal can be denied by a commissioner who at this point has only been involved in a conference, and I understand that conference does not go into the taking of full evidence. In those circumstances, I cannot support the notion that an appeal may not proceed. Considering that we still have clause 103, whereby costs may be awarded, a person who proceeded beyond the conference would do so at his peril. I think that in itself is sufficient to discourage a frivolous or vexatious appeal.

The Hon. K.T. GRIFFIN: The Government supports the amendment. The Government has proposed that commissioners be required to make recommendations. The amendment gives effect to that policy intention in a slightly restructured form from the Bill.

Amendment carried; clause as amended passed.

Clause 101—'Question to be determined at hearing.'

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

Page 42, lines 3 and 4—Leave out all words in these lines and substitute 'whether, on the balance of probabilities, the dismissal was harsh, unjust or unreasonable'.

I believe that the words 'the applicant has established' should be removed. The test on the balance of probabilities is inadequate, particularly in the manner in which the commission works. We are not looking at a full court procedure and the applicant may or may not be legally represented. I think the commission must determine to its satisfaction whether on the balance of probabilities dismissal is harsh, unjust or unreasonable, and I think it is capable of doing so.

The Hon. K.T. GRIFFIN: The Government supports the amendment.

Amendment carried.

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

Page 42, line 5—Leave out ', who is redundant, on the ground of redundancy'.

I believe that the amendment has the effect that the Government was seeking, but I had some concern about the interpretation of the clause as it stands. I think the Government was seeking to achieve what the amendment would do.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. It would eliminate the requirement that the dismissal of an employee was genuinely on the ground of redundancy. We cannot see any reason for the amendment.

The Hon. Mr Elliott may have misunderstood the drafting of this clause, because it provides that, if an employer dismisses an employee on the ground of redundancy and makes a redundancy payment, the dismissal cannot be regarded as harsh, unjust or unreasonable. We are trying to put the onus upon the employer not just to say that it was on the ground of redundancy but that the person was in fact redundant, because the ground of redundancy does not necessarily mean that the ground can be satisfactorily established. That was our concern. Leaving the clause as it is provides a greater level of protection for the worker than having it deleted.

The Hon. M.J. ELLIOTT: I suppose it is a question of interpretation. The question of genuine redundancy is part of my concern, and I have spoken with a few other people who have similar problems with interpretation. I believe this amendment solves that difficulty.

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

Amendment carried.

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

Page 42, line 8—After 'dismissal' insert 'solely on the ground that the payment is inadequate'.

This amendment is consequential.

The Hon. K.T. GRIFFIN: The Government argues that this issue is not consequential on the previous amendment which was passed. It is our view that if the amendment is carried it would mean that redundancy cases could continue to be argued before the unfair dismissal jurisdiction on the ground of unfair selection procedures. Such cases are not solely the subject of this jurisdiction if the dismissal is a genuine case of redundancy. In these circumstances, the issue should simply be one of the adequacy of the redundancy payments and not a detailed analysis of the mind of the employer regarding selection procedures.

Amendment carried; clause as amended passed.

Clause 102—'Remedies for unfair dismissal.'

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

Page 42, lines 26 to 28—Leave out all words in these lines after 'the commission' in line 26.

I believe that the change effected by the legislation simply goes too far, and I do not accept it.

The Hon. R.R. ROBERTS: I refer to the explanation of our own amendment.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. The Government considers that a limit of six months compensation in the unfair dismissal jurisdiction is reasonable. The average quantum of compensation ordered is two to three months, and employees are unlikely to be disadvantaged by such a restriction, except perhaps some senior executives who could, in any event, access the District Court for breach of contract. That is where we think the

jurisdiction in relation to the high fliers ought to be. It is for those reasons that we oppose the amendment.

Amendment carried.

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

Page 42, after line 38—Insert:

(3) The commission may decline to make an order under this 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 remedy to the remedy available under this Part, or if it appears that the employee may pursue such a remedy.

This clause might need to be recommitted. I am seeking to ensure that it is possible for a dismissed employee to approach separate jurisdictions when he or she is seeking quite different relief. This is not about forum shopping; this is to ensure that, when people are seeking different relief, they have that opportunity. Last evening I gave the example of where that is perfectly justifiable.

The Hon. K.T. GRIFFIN: My recollection of the debate last night is that the honourable member indicated that he would be prepared to reconsider the matter in the light of some of the debate that occurred. It seems to me that this is, to a very large extent, consequential on what was debated last night, and which was carried. It is the Government's view that the amendment will have unintended consequences of handing over the entire State jurisdiction to the Federal unfair dismissal system because the phrase, 'Another Act or law', in line three is not qualified to a State Act or law.

The amendment endeavours to address the issue of forum shopping, and we acknowledge that, as well as the issue of double dipping, but I would suggest that it does have unintended consequences. Obviously, the Government prefers its own framework that is in the Bill but, if the honourable member keeps an open mind on the issue, if this amendment is passed for the moment, it is likely, I suggest, that we would be able to reach some accommodation which does not have those unintended consequences.

The Hon. R.R. ROBERTS: In the light of the debate I believe that the amendment does meet the concern. For example—and the Hon. Mr Elliott used a similar example last night—if a female or a male is being sexually harassed at work and refuses those advances and, as a consequence, is dismissed unfairly, two separate issues emerge: relief is required with respect to the sexual harassment, and some of those facts will emerge; and relief is necessary for the unfair dismissal. It is my assertion that this clause would deny an employee the right to seek relief in those two separate actions because many of the facts would be almost the same. Mr Elliott's amendment talks about the same sort of relief in two different places, and that is fine. He has indicated he wants to tidy up the wording, but in any event I agree with it.

Amendment carried; clause as amended passed.

Clause 103—'Costs.'

The Hon. M.J. ELLIOTT: It is not my intention to proceed with the first of my amendments. However, I move:

Page 43, line 3—Leave out 'must' and substitute 'may'.

The Hon. K.T. GRIFFIN: On the run, that is a reasonable proposition. It may need to be revisited, but at the moment I indicate support.

Amendment carried.

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

Page 43, line 8—Leave out 'must' and substitute 'may'.

It is my belief that the commission should have some discretion in this matter.

The Hon. K.T. GRIFFIN: I support the amendment.

Amendment carried.

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

Page 43, line 10—After 'employee' insert 'if the commission is satisfied that the employee has acted unreasonably'.

This amendment relates to the previous amendment. It makes the claim that the commission should decide whether or not the employee has been acting unreasonably.

Amendment carried; clause as amended passed.

Clause 104—'Decisions to be given expeditiously.'

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

Page 43, lines 14 and 15—Leave out subclause (1) and insert:

(1) The commission must hand down its determination on an application under this part, and its reasons for the determination, within three months after the parties finish making their final submissions on the application.

The amendment is a technical one. During the consultation process on the Bill, it was pointed out to the Government that the point at which the three month requirement for delivery of decisions commences may be unclear where the commission requires written submissions after its formal hearings. The amendment requires the three month period to start from the time that final submissions, including written submissions, are made. The Government will be moving a related amendment to clause 179 which involves the under-payment of wages jurisdiction.

The Hon. M.J. ELLIOTT: I support the amendment.

Amendment carried; clause as amended passed.

Clause 105—'Termination of Employment Convention 1982.'

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

Page 43, after line 26—Insert:

(3) The court may, on application by the Minister, declare what (if any) modifications to this part are necessary to provide an adequate alternative remedy as required under subsection (2).

(4) The modifications specified in a declaration under this section take effect as if they had been enacted by the Parliament.

The amendment provides a specific mechanism for orders to be made by the court in relation to subclauses 105(1) and (2). The amendment provides for the court to make declaratory orders as necessary to provide an adequate alternative remedy within the meaning of section 170EB of the Federal Industrial Relations Reform Act 1993.

By virtue of this amendment, the South Australian court will be in a position to maintain a viable State based unfair dismissal jurisdiction in the event the Federal system was to determine that the South Australian law was not an adequate alternative remedy. The Government has been advised that in a recent case in the past two or three weeks, Justice Von Doussa in the Federal Court has suggested that the existing section 31 of the South Australian Act itself may not be an adequate alternative remedy within the meaning of the Federal Act. Clause 105 and the Government amendment to clause 105 are made all the more necessary by virtue of such preliminary intimations from the court.

The Hon. R.R. ROBERTS: I am not supporting it.

The Hon. M.J. ELLIOTT: I will not move to oppose the clause at this stage, although I may as the debate proceeds. I was rather mystified earlier when there was a Government amendment relating to this clause which the Opposition supported. I was not quite sure what signals it was sending in relation to that support for that amendment.

I must say that clause 105 looks like a lawyers' picnic in terms of arguing about whether or not the existing legislation is an adequate remedy. You could have had that argument to start off with, but then you have to explore not just our

legislation but the termination of employment convention and the Federal Act. Now with the further amendments, it appears we are essentially asking the commission to start creating law itself. We have enough problem with the judges and their interpretation of the law, but we are almost inviting them to interpret and write the law as well, which they almost do *de facto* to some extent already.

Clause 105 is enormously worrying to me and seems to be almost an admission that the Government rather feels that perhaps its unfair dismissal section generally is not an adequate remedy. If it had confidence it was not an adequate remedy, this clause would have been unnecessary and the further amendments we are now seeing also would have been unnecessary. Quite clearly we have a patch job which is having more patches put on it, and that seems to be an absolute invitation for legal disaster.

The Hon. K.T. GRIFFIN: It is not really of the State Government's making. It is a constitutional issue about the extent to which a State court or tribunal ought to be involved in determining these sorts of cases. Under the Industrial Relations Reform Act of 1993, Federal law has begun to move into this area, but it does provide that, if adequate alternative remedies are available, the Federal jurisdiction does not apply. From a State Government point of view, we believe that South Australia ought to retain control over the jurisdiction. It is not only in this area that this sort of constitutional issue arises. The Hon. Mr Elliott may not have had time to look at some of the legislation that we have introduced in the Lower House in relation to the Native Title Act and the High Court's Mabo decision (and I would not be surprised if he had not had time), but under that Federal legislation is a provision that will allow recognition of a State jurisdiction if certain criteria are satisfied. As a State Government we find that offensive, because the Commonwealth is beginning to tell us what is and is not a satisfactory jurisdiction or a satisfactorily structured court or tribunal to determine particular issues.

It is almost as though the Commonwealth is seeking to hold the whip hand—and I think it probably does anyway—and to control what States do in relation to the application of the law through their own courts or tribunals. And it is offensive, not only because of the issue of State rights but, more particularly, because in my experience it is most frequently that the State Parliaments have a better feel for what would be the appropriate organs of State to deal with issues such as disputes than the Federal Government. There is a sense of isolation from the real world that frequently comes into many of the Federal Government's legislative enactments and the structures which they establish. However, it does frequently seek to have the upper hand in terms of saying, 'If you do not do it the way we want it, or if you do not provide something that is satisfactory in our view, we will override you.'

So, it is a constitutional issue and there is no doubt that it will be one of those issues that are addressed by the High Court in the challenge in relation to the Native Title Act from the Western Australian Government. In this particular instance, I do not make any apology for the fact that it is complex. It is something that we as a Government have had to address on the basis of what has been enacted in the Federal Industrial Relations Reform Act 1993. We do not want to encourage litigation or uncertainty, but I am afraid that the Federal Act has. Section 170EB of the Federal Act says:

> The [Federal] court must decline to consider or determine an application under section 170EA—

that is, an application in respect of termination of employment:

> if satisfied that there is available to the employee by or on whose behalf the application was made an adequate alternative remedy in respect of the termination under existing machinery that satisfies the requirements of the termination of employment convention.

The problem is not that the State Government believes that its own mechanisms, processes and tribunals are inadequate that we seem to have provided some flexibility and some authority in the State court to make changes to this part of the legislation; it is just that we are endeavouring to accommodate the provisions of section 170EB because, if we put in place a fixed system with no capacity to vary other than through the Parliament, if there is a decision (as there seems to have been in the Federal Court by Justice von Doussa) which makes a suggestion that perhaps our remedy is not a satisfactory alternative that meets the requirements of section 170EB, then we will need to move quickly and not wait either for the Parliament to be recalled or to deal with it in the ordinary process of legislation.

That is the reason for it. It may be that we can make some refinements, if the honourable member continues to express concern about the drafting, but I hope that, in the light of what I have indicated about the constitutional position, he will recognise the difficulty under which we as a Government labour in trying to rectify the problems and ensure that our State jurisdiction does not lose its authority to deal with these issues.

The Hon. M.J. ELLIOTT: This essentially says that if this is not an adequate remedy it is.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: That is really the logic: it says that if it isn't it is. It is likely that, if even doubt is created about whether the remedy is sufficient, the commission as a matter of course will then immediately move over to applying the Commonwealth Act, essentially.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: The court is almost going to, by degrees, modify this so that it ends up looking essentially like the provision in the Federal jurisdiction because the game is going to be a constant creation of doubt, and where there is doubt there will tend to be a lean towards what is in the Federal Act. I ask the Government why it did not take a different approach. Why did it not just go to the Federal Act and take the unfair dismissal section from that? If the Government had particular philosophical difficulties it could have amended it to the extent that there was a philosophical difference which did not at the end of the day lead to creating an inadequate remedy. It seems to me that that would have been a sensible way to go.

The Hon. K.T. GRIFFIN: The Government took the view that it would prefer to have some measure of control as a State over the jurisdiction and over the terms and conditions upon which it was exercised. In addition to that, the Federal provisions are very largely untested. There are a number of concepts there that are different from ours. We have picked up some, which are in our legislation; we have varied others; and we have made other provisions. I cannot give you a catalogue of all those places where that occurs, but the Government took the policy decision that it should in fact try to build upon what is in the South Australian system, a system which has been the subject of interpretation and with which employers and employees are familiar, and make

modifications to that, and that the State ought, as much as possible, control the jurisdiction.

Again, it can be regarded in terms of the Commonwealth imposing a totally uniform system over both those employees and employers who are covered by Commonwealth jurisdiction as well as those under State jurisdiction. However, the Government felt that it was more in the interests of South Australia that it try as much as it can to have some measure of control over it and that the South Australian court ought to be involved in making decisions.

This whole area of State-Federal overlap in the area of industrial relations and property law, which we are going to be addressing in the next session in relation to the native title legislation, raises complex issues that have not been resolved constitutionally. Under the Mabo decision and the Commonwealth Native Title Act we are seeking in several areas as a State to make a declaration, for example, as to the validity that we believe constitutionally we are entitled to make but about which there may be some dispute because of the Commonwealth legislation.

There are difficult areas and I cannot say anything more than this: in the light of the Federal Act which came into operation on 1 April and which has not been tested, we are trying to put in place a structure to ensure that as much jurisdiction as possible remains under the control of the State and the State organs—the court and the commission—and to endeavour to anticipate where there may be a problem that, as a result of some other court interpretation federally, even at the High Court level, may result in our losing, by the stroke of that judicial pen, that jurisdiction. It is a matter of trying to provide some safeguards and fall back positions.

The Hon. M.J. ELLIOTT: As I said, it is a pity that we did not largely adopt the structure of the Federal unfair dismissal section and then amend it, recognising the particular philosophical differences that this Government has.

The Hon. K.T. Griffin: But we would still have the same problem.

The Hon. M.J. ELLIOTT: You have to be careful in the way you do that. While it may be fair to argue that the Federal Act is untested, the fact is that it is going to have to be tested and, at the end of the day, there are great advantages if the two jurisdictions are sufficiently similar so that practitioners can readily move between the two and the differences are also obvious because of the similarities in many ways of the overall structure. It is a pity that it was not done that way. With due care in drafting we would not find ourselves in this position where we might still have had to have a clause like clause 105, but the traps that clause 105 is now setting for us may not have been triggered at all or very often.

The Hon. K.T. GRIFFIN: Even if that model were to be adopted, there would still be constitutional issues arise because of the differences. Also, it is not a matter of the Government having this sort of view. We certainly have a strong policy position on where the responsibility should lie, but on the constitutional issue the Solicitor-General has been involved and we have endeavoured to try to resolve it as much as we can. This is a new era on the High Court: they are embarking on a voyage of discovery that is opening up a Pandora's box and, whichever model one follows, if one is to endeavour to retain State responsibility for these sorts of areas, there will be constitutional questions arise over a period of time. We would like to minimise those, which is the reason for the flexibility we have sought to provide in the clause and in my amendment.

Amendment carried; clause as amended passed.

Clauses 106 to 108 passed.

New clauses 108A to 108G.

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

New clauses, page 45, after line 14—Insert new clauses as follows:

PART 8
IMMUNITY FROM CIVIL LIABILITY

Object of Part

108A. (1) The object of this Division is to give effect, in particular situations, to Australia's international obligation to provide for a right to strike.

(2) The Parliament considers that it is necessary to provide specific legislative protection for the right to strike, subject to limitations compatible with the existence of the right, in situations where—

(a) There exists an industrial dispute involving an employer and one or more associations members of which—
  (i) are employed by the employer to perform work in a single business, part of a single business or a single place of work; and
  (ii) are covered by an award; and
(b) the employer and the association are negotiating an enterprise agreement.

Joint employers

108B. A reference in this Part to an employer includes a reference to 2 or more employers carrying on a business as a joint venture or common enterprise.

Application of this Part

108C. This Part applies if—

(a) the Commission has found that an industrial dispute exists; and
(b) the dispute involves a particular employer and a particular association or associations of employees; and
(c) remuneration and conditions of employment of employees who—
  (i) are employed by the employer; and
  (ii) are members of the association or one of the associations,
  are regulated by one or more awards; and
(d) all or some of those employees are employed by the employer in a single business or a part of a single business or at a single place of work.

Initiation of bargaining period

108D. (1) If the employer, or the association or one of the associations of employees, wants to negotiate an enterprise agreement in relation to employees (the 'relevant employees') that are employed in the single business or the part of the single business, or at the single place of work, as the case may be, the employer or association (the 'initiating party') may initiate a period (the 'bargaining period') for negotiating the proposed agreement.

(2) The bargaining period is initiated by the initiating party giving written notice to the other proposed party or the other proposed parties to the agreement, and to the Commission, stating that the initiating party intends to try, or to continue to try—

(a) to reach agreement with that party or those parties in settlement of the industrial dispute in so far as it involve the relevant employees; and
(b) to have the agreement approved as an enterprise agreement.

(3) In this Part, the initiating party and the other proposed party or parties are called 'negotiating parties'.

Particulars to accompany notice

108E. The notice is to be accompanied by particulars of—

(a) the single business of part of the single business, or the single place of work, to be covered by the proposed agreement; and
(b) the proposed party, or proposed parties, to the agreement; and
(c) the matters that the initiating party proposes should be dealt with by the agreement; and
(d) the industrial dispute to which the proposed agreement relates; and
(e) the proposed period of the agreement; and
(f) any other matters prescribed by the regulations.

When bargaining period begins

108F. The bargaining period begins at the end of 7 days after—

(a) the day on which the notice was given; or

(b) if the notice was given to different persons on different days—the later or latest of those days.

Protected action

108G. (1) This section identifies certain action ('protected action') to which the immunity provided by this Part is to apply.

(2) During the bargaining period, an association of employees that is a negotiating party, a member of such an association who is employed by the employer, or an officer or employee of such an association acting in that capacity, is entitled, for the purpose of supporting or advancing claims made by the association that are the subject of the industrial dispute, to organise or engage in industrial action directly against that employer and, if the association, member, officer or employee does so, the organising or, or engaging in, that industrial action is protected action.

(3) Subject to subsection (6), during the bargaining period, the employer is entitled, for the purpose of—

(a) supporting or advancing claims made by the employer that are the subject of the industrial dispute; or

(b) responding to industrial action by any of the relevant employees;

of for both those purposes, to lock out all or any of the relevant employees from their employment and, if the employer does so, the lockout is protected action.

(4) The reference in subsection (3) to the employer locking out employees from their employment is a reference to the employer preventing employees from performing work under their contracts of employment without terminating those contracts.

(5) If the employer locks out employees from their employment in accordance with subsection (3), the employer is entitled to refuse to pay any remuneration to the employees in respect of the period of the lockout.

(6) This section has effect subject to the following provision of this Part.

The Opposition amendment is a direct take from the Federal legislation, more particularly, the Australian Industrial Relations Act 1988 and, in particular, the Industrial Relations Reform Bill passed by Federal Parliament in December 1993. These amendments provide at a State level the same protection as employees enjoy under Federal awards with respect to rights of workers to be able to go on strike in certain situations, during an enterprise bargaining period. The amendment that has been put forward by the Opposition does not contain all of the provisions of the Federal Industrial Relations Act on this matter simply because of the lack of time the Parliamentary Counsel has had to be able to draft all of the complementary legislation.

However, provided the Committee supports the Opposition's amendment, the Parliamentary Counsel can then draw up a complete set of legislation which complements the Federal legislation exactly. The basic principles should be simple for members to accept. They are that you cannot have a viable and credible enterprise bargaining system where all the negotiating power is in the hands of the employer and none in the hands of employees. You cannot countenance a situation where, as part of the bargaining process, employees legitimately seeking to advance their industrial interests are denied, by law, the right to withdraw their labour and hence to balance the bargaining power with their employer.

Doubtless those opposite will ridicule this notion of a level industrial playing field, but it is the employer who, at all times, the law recognises as having the right to hire and fire employees or whether to invest or not in a particular enterprise. A strike by workers is certainly no more economically damaging to the community than a strike by capital in the guise of employers. However, we see no attempt in the Bill to provide opportunities for individual employers to suffer for their industrial activity via the dollar strike.

If enterprise bargaining is to work as any more than just a short-term conditions of employment reduction program then mechanisms allowing more than concessional bargaining are needed. The right to undertake a range of accepted activities of an industrial nature indicates that the Legislature wants enterprise bargaining to work. Regrettably, whilst touting support for a greater role for bargaining as distinct from arbitration, the Bill also seems intent on tying workers' hands behind their back.

We do not say that the Bill provides no protections for workers, but those that do exist do not go far enough. To the extent that they exist at all, they are couched in the usual form of apparent even-handedness, which ignores the reality of the workplace—that being that the employer dominates the workplace and is in a much better position to harass the worker than the individual worker is to pursue the employer.

The only difference between a slave and a free working person is that the working person should be in a position to be able to withdraw their labour if they so chose, without fear of acting unlawfully and being sued by the employer for damages for loss of profits and the like.

Whatever the grounds the Government has had in the past to oppose the right to strike for employees under a compulsory arbitration system, there can be no excuse for the Government to ignore the legitimate rights of working people to be able to bargain freely over their own labour, in an enterprise bargaining context and subject to the strict limitations as contained in the Federal legislation to be able to withdraw their labour if that is part and parcel of the enterprise bargaining scenario. I ask the Committee to support my amendment.

The Hon. K.T. GRIFFIN: The Government strenuously opposes this amendment. We are fundamentally opposed to it. There is nothing in our law that prevents the opportunity for employees to strike. We provide remedies and procedures in our law under the previous Government's legislation and under this Bill which will address the issue of a strike, how to deal with it and the consequences of it. From the Government's perspective this is a critical clause because it builds in the so-called right to strike. Certainly in common parlance people talk about the right to strike. I do not think in common law there is that right to strike, but the law does not prevent people striking.

That is the important thing to recognise: it does not prevent people from striking if they wish to use that weapon for the purposes of an industrial dispute. But, of course, if one strikes there may be consequences of that. What happens in this legislation is that the so-called right to strike is unrestricted. Even if emergency services are involved, although the trade union movement may say that it will exempt emergency and essential services, the fact of the matter is that that is not permitted in this clause. Even if it was, I and the Government would still fundamentally oppose it.

The clause also confers the power of the right to strike with the union, the union's members and union officials. If one wants to take that criticism further, one can quite clearly identify from those clauses that no right to strike is given to individual employees who are not union members and that would have the consequence that, if a business was subject to strike action and if it had 50 per cent or more union members and around 50 per cent of non-union members, if all employees went on strike the 50 per cent who were union members would be immune from any legal action whereas the other 50 per cent of employees not union members would be subject to legal action. That is also contrary to the basic

spirit of this legislation and just demonstrates how much the Labor Party is not concerned about protecting the interests of employees as a whole but only the interests of trade unions and their members.

The Hon. T.G. ROBERTS: The provision of the Opposition's amendment makes the circumstances more practical and realistic in relation to where the Federal Act and the balancing of the power between the employer and employee exists. As the Attorney says, there is nothing in the law to prevent strikes, but if we look at the rest of the Bill we find sanctions to provide for breaking of contracts, and there are measures inherent in the Bill that make it unpalatable for individuals, particularly in circumstances the Attorney explained of a mixture of union and non-union membership.

In Victoria there have been outbreaks of violence in workplaces where these expressions of difference are being felt. The last thing employers require is those sorts of arguments between employees in relation to individual rights. The last thing you want in an industrial relations arena is to have those differences formulating at a workplace level.

There are rules and cultural understandings about strikes as being the last refuge for individual workers to put pressure on employers to come to reasonable negotiating positions. Unions do not take strike action as the first refuge. As regards the strike record in this State, the industrial relations programs are probably as good as anywhere in the country. We are making provision for the worst possible scenario, and our record in this State under the previous Act is as good as you will get anywhere. Problems are starting to emerge in some of the other States. If the negotiating tools are held between the employers and the employees through registered associations (and I know the Bill tries to break that down), they have the ability to exert disciplines within those arenas and form negotiated settlements that prevent the strike weapon from being used.

If the Bill goes through in its current form, it will affect the ability of registered associations to exert discipline upon their membership in relation to those differences of opinion that will emerge through enterprise bargaining. If a registered association exerts an influence and has one view and a large section of non-unionised members has another view, it is just another industrial relations difficulty that employers will have to deal with. So, the right to strike needs to be included in the Bill, because the weight and influence of a lockout are always available to an employer. It is not something that an employer uses lightly, either; like the strike, the lockout is the last refuge for employers to start exerting influence on their employees.

I can envisage, at the first sign of an enterprise bargaining agreement running out towards the end of the contract, a series of letters going out trying to weaken the individual's position in relation to collective bargaining and then the differences starting to emerge within that workplace. After such a dispute, where divisions of labour occur around common factors in relation to collective bargaining arrangements, those work premises are never the same. I would urge the Government to look maturely at writing into the Bill the provision for the right to strike. I am sure that if the provision for striking is written into the legislation it will not be used as an encouragement. It is not mandatory; it is in the legislation only to even up the negotiating balance for those people in associations and others who do not want the legal implications or repercussions that are inherent in the Bill.

We could look at the threats being made in some of the Bills interstate. Further, in New Zealand, if strikes result in any lost time or lost productivity, the individual who takes part is liable for some or all of the costs of the loss of productivity to those companies. Industrial relations are then put onto a higher plane, whole communities become involved and the position escalates to an undesirable level. I would like to see that right written into the Bill.

The Hon. T. CROTHERS: I am of a similar view to the previous speaker. I point out to the Attorney-General that the right to withdraw labour is in fact enshrined in a plethora of international covenants that have that particular application to limit. I wonder if the Attorney-General wants the State Government to be one of the few Governments in the world—and certainly the Federal Government is a signatory to those agreements—to be at odds with that which is recognised industrial practice the world over. The Attorney has been very fond of quoting Federal Acts and legislation to us. Let me now quote one back to him. The right to strike, the right to withdraw labour, the right to involve oneself in a strike that can be termed a secondary or a tertiary boycott, is of course opposed, with very significant and heavy penalties in section 45 of the Restrictive Trade Practices Act of the Federal Parliament.

I must stress in particular to some of the newer members in this Parliament, who believe the whole matter is a joke—and possibly some of them may well emanate from that well known State of Georgia in the United States where they have a particular appellation for people of that ilk, and I will not of course mention what that is; I will leave that to the imaginings of the members of this to Chamber—that the right to strike, the right to withdraw labour is, in part, a circuit breaker. As I have repeatedly warned the Government, there is an awful shortfall of conflict resolution in this Bill.

When we are at the height of the recession, even though it is said we are coming out of it, whilst it may seem a sound and sensible practice for the Government to involve itself in, when you find that levels of employment go up and the boot to some extent in respect of bringing pressure to bear is on the employees' foot, you will not then have the same capacity for conflict resolution as that which you would have if in fact you recognised the right to strike.

The corollary that flows from the Government's non-recognition of that in this Bill is that, if you do recognise it, it will be very difficult for you to involve yourselves in any form of conflict resolution, and in particular as it applies to the 90 000 or so State Government employees. In my humble opinion it is short-sighted in the extreme. The Government has cobbled together the Bill in haste. You will most surely repent in leisure in respect of the lack of conflict resolution in the Bill.

The Hon. A.J. Redford: The Hon. Ron Roberts said that his was cobbled together.

The Hon. T. CROTHERS: I am not the Hon. Ron Roberts. I know he is almost as bright as I am, but I put to you that there is a distinct physical difference between the Hon. Ron Roberts and the Hon. Trevor Crothers. For the honourable member's information I am the Hon. Trevor Crothers. I do not always have to agree with what my colleagues have said. On this occasion, in spite of the interjection to the contrary from the Georgian on the other side, from the Hon. Angus Redford on the other side, I am at full odds with the Hon. Ron Roberts on this. Your Bill smells of something cobbled together as a pay back to people who have supported the Liberal Party—right throughout the Liberal Party. That is what it smells of to me.

The CHAIRMAN: Order!

The Hon. T. CROTHERS: I do not say that all members of the Liberal Party—

The CHAIRMAN: Order! I think the member should stick to the clause, stick to the argument.

The Hon. T. CROTHERS: The clause, Mr President, not the cause! Righto, I will stick to the clause then. I know that there are decent and principled men and women in the Liberal Party; I speak to them every day. But when it comes to adopting a non-confrontationist approach there are some people who would have made the inhabitants of Mazada 2000 years ago look like absolute pikers.

I say to them as sincerely as I can that the Bill reeks in all clauses, whether by accident or design, of confrontation rather than conflict resolution. Whether you like it or not, failure on your part to recognise the right to withdraw labour is a breach of international covenants. Whether you like it or not, sometimes when people withdraw labour it acts as a circuit breaker because it gets people to the negotiating table and it prevents prolonged industrial action. When I was secretary of my union—and I know most other union secretaries are the same—I would tell my people, whatever industry they were in, that that was the last weapon in the pack and that, where possible, they should not be carrying resolutions to go on strike but should be giving us the opportunity to negotiate with the employer.

This Bill, and the lack of a clause that recognises the right to strike, to some extent diminishes the capacity for resolution of industrial problems. Again, I must say that I am appalled at the lack of practical hands-on experience which would have enabled the Government to ensure that there was a sufficiency of conflict resolution propositions. As there is not, it is a recipe for absolute confrontation to the detriment of South Australians and South Australia. I urge the Attorney-General, because I know there is a streak of decency running right down his back—mind you, I have had to put my glasses on over the past several days to observe it, but it is there—on the basis of my contribution to think the matter through much more carefully and to make sure that whatever happens with this Bill it does not adopt the principle, 'Let's have a confrontation.' It should adopt the principle of recognising the necessity to resolve disputes before the molehill becomes a veritable unclimbable mountain.

The CHAIRMAN: I thank honourable members for their speeches, but remind them that there is a lot of time at the end of the Committee stage, that is, on third reading, to make speeches that cover the whole ambit of the Bill.

The Hon. M.J. ELLIOTT: It did not come as any enormous surprise that the Opposition would move this set of clauses, nor that the Government would react by opposing them. The problem with this legislation is that it goes to the heart of the differences between the two Parties and to some extent this set of clauses indicates that situation. The comments of the Hon. Mr Crothers were correct in that this legislation does not provide for sufficient arbitration and conciliation and, for example, enterprise agreements. Indeed, it sets about making it more difficult. I believe that it has the capacity to produce rather than reduce confrontation. As this State has the lowest level of disputation in Australia, we should move gingerly. I think that much could be achieved generally in this legislation in terms of some of the principles that the Liberal Party has been chasing, such as freedom of association and more enterprise agreements, without trying to shift some of the other ground as much as it has. That is unfortunate and in the long run I do not think that the State will be thankful for it.

Whilst considering these clauses I have reflected on the sections within the existing Act which address the right to strike in some regard. I would like the Attorney-General to respond to the question why a clause similar to section 143a relating to the limitation of actions in tort did not find its way into this legislation. While it does not cover all the issues in these amendments, I believe it recognises that there will be strike action and it allows for the fact that there may be conciliation and arbitration.

It is really only after those processes have failed that there will be an action in tort. It seems to me that that is a genuine provision that could tackle this question, recognising that there will be strikes but attempting to put limitations on them and trying to get people into some form of conciliation and arbitration. The notions in that provision do not appear to have found their way into the new legislation, and I believe that is a major failure. In the absence of that sort of provision it makes the clauses that the Opposition is moving far more attractive. Before I respond to the Opposition's amendment, I would like the Government to explain why it has moved away from a provision such as section 143a which I think would enable some commonsense to exist regarding strikes and trying to bring matters to arbitration and conciliation.

The Hon. K.T. GRIFFIN: It is wrong to say that there is no compulsory arbitration in the Bill. There already was compulsory arbitration in the Government's Bill, but now that other amendments moved by the Hon. Mr Elliott have been carried by a majority of the Committee there is even stronger emphasis upon arbitration than existed previously. So, it is wrong to say that there are not sufficient compulsory arbitration powers in the Bill.

In relation to some of the observations about the involvement in industrial disputes—and I will come back to the direct issue raised by the Hon. Mr Elliott in a moment—I think it is important to point out that clause 218(1) provides:

> An employer must not discriminate against an employee by dismissing or threatening to dismiss the employee from, or prejudicing or threatening to prejudice the employee in, employment for any of the following reasons—
>
> (c) because of the employee's participation in an industrial dispute.

Striking can be part of an industrial dispute. So there is a protection there, contrary to what some of the emotional arguments on the other side have suggested.

In relation to the existing provisions of the South Australian Industrial Relations Act 1972, as an Opposition and as a Government we have persistently rejected the concept that those who are engaged in industrial disputation are more likely to be employees, members of trade unions and trade union leaders than employers, and that employers should not be above the civil law which applies to every other citizen of South Australia. We resisted the inclusion in legislation in the early 1990s of clauses to significantly restrict the limitation of actions in tort.

On a number of occasions in the 1980s and the early 1990s when industrial relations legislation has been before us we have moved amendments to Bills to remove the provision which was inserted in the early 1980s to limit actions in tort. What the then Labor Government sought to do was to significantly restrict those who might be injured or who might suffer loss or damage as a result of an industrial dispute going to the Supreme Court.

In the late 1970s a number of very prominent decisions were taken by the Supreme Court granting injunctions against trade unions and individual leaders in the trade union

movement when they were involved in industrial disputation, and this caused serious and unreasonable disruptions. You only have to think of the Woolley case—the Kangaroo Island farmer whose bales of wool were black-banned. The late Jim Dunford, a former member, was involved in that case prior to being elected. The Seven Stars Hotel, Adriatic Terrazzo, and a whole range of cases sought to invoke the civil law to protect the rights of individuals within the community.

What was originally introduced by the former Labor Government in the early 1980s was a mechanism or a process by which the Industrial Court and Commission controlled the right of an individual to go ultimately to the civil courts. That provision was amended, I think in the past three or four years, when the Industrial Relations Act was last before the Parliament, to make some modifications to the limitation under section 143a of the existing Act. Section 143a(1) provides:

> . . . no action in tort lies in respect of an act or omission done or made in contemplation or furtherance of an industrial dispute.

However, the section does not prevent the following:

> (a) an action for the recovery of damages in respect of death or personal injury.
> (b) an action for the recovery of damages in respect of damage to property (not being economic damage);

So there is an insulating effect. The section also prevents the following:

> (c) an action for conversion or detinue;

or

> (d) an action for defamation.

The section goes on to provide:

> (3) Where—
> (a)—
> (i) an industrial dispute has been resolved by conciliation or arbitration . . .
> and
> (ii) the Full Commission determines . . . the industrial dispute arose or was prolonged by unreasonable conduct on the part of the person against whom the action is to be brought;
> or
> (b) the Full Commission determines on application under this section that—
> (i) all means provided under this Act for resolving the dispute . . . have failed;
> and
> (ii) there is no immediate prospect of the resolution of the dispute. . .

In those circumstances an action for tort can be brought. It is the industrial jurisdiction which determines whether or not a citizen has the right to go to the civil courts for a remedy. One has to really ask: why should the unions, employees, and employers in some instances, be protected from the normal law of the land, which applies through the civil courts, in effect putting them above the law in relation to tortious action?

The other point is that while this drawn out process is occurring, the employer, companies, and others are suffering loss and damage whilst the strike continues, perhaps for no reasonable purpose. Of course, section 45D of the Trade Practices Act provided significant protections. That section has been modified to some extent with the 72 hour cooling off period. Let me point out the policy upon which we went to the election, as follows:

> The right to industrial action must not be abused. Such action will not be undertaken in breach of an order of the commission, or in breach of a dispute settlement procedure provided for in an award or enterprise agreement. Associations and individuals who breach awards and enterprise agreements may be subject to action for damages. In the case of individuals personal liability will be limited by legislation. Associations engaged in such conduct or encouraging or inciting others to engage in such conduct will be subject to deregistration proceedings and, where appropriate, the sequestration of assets to meet damages fines and penalties. Essential services legislation will be reviewed to ensure that in services essential to the community the interests of the community are protected.

That really says it very clearly. We have not specifically drafted a provision similar to section 143a, because it was certainly clearly expressed in our policy—not in relation to that section in particular but in the general principles—that we believe that, by leaving it out, the general principles of the policy have thereby been honoured and are reflected in the legislation.

The Hon. M.J. ELLIOTT: I want to take that a step further. The policy that the Hon. Mr Griffin just read out provides that the 'right to take industrial action must not be abused'. The word 'right' has been used; precisely what right of industrial action does a person have? The reality is that, without a provision such as section 143a, after one day's strike it could be argued that economic damage has been created and it is now a matter for the courts. What rights do individuals really have in those sorts of circumstances that must not be abused? The legislation provides that it 'must not be abused'. Section 143a(3)(a)(ii) provides:

> the Full Commission determines on application under this section that in the circumstances of the particular case the industrial dispute arose or was prolonged by unreasonable conduct. . .

Given that the Liberal Party is talking about not abusing the right to strike and that section 143a involves industrial disputes arising from or being prolonged by unreasonable conduct, is that not completely sympathetic with what the Liberal Party appeared to say? If it is not, what does the Liberal Party mean by 'the right to strike'? What is unreasonable?

The Hon. K.T. GRIFFIN: It is an objective judgment in all the circumstances as to whether or not it meets the criteria of reasonableness in the minds of ordinary people. The courts have been interpreting what is reasonable or unreasonable for centuries. Of course, the law has developed over a period of time. I have not acknowledged the so-called right to strike. I pointed out the provisions of clause 218 in relation to action an employer may or may not take in relation to the employee's participation in an industrial dispute. I would suggest that section 143a does not reflect a reasonable limitation on what some would say is the right to strike because, first, it puts the control of it in the hands of the Industrial Commission and, secondly, it excludes what would normally be civil rights in relation to damages which have occurred and allows action only in very limited circumstances.

My understanding of some of the actions for injunctions in the Supreme Court in the 1970s under civil law related only to the issue of injunctions, but that was only after there had been quite extensive attempts to resolve disputes. My clear recollection of the Wooley and Dunford case was that the strike had been going on for some weeks. There had been negotiation, but the farmer was isolated; Kangaroo Island was isolated from the mainland because of the strike which tied up the old *Troubridge*. Finally, the injunction was granted requiring the employees to go back to work. In that case, it was a range of people who had struck, without necessarily having a direct relationship with the employer, Wooley. So, in a sense, that was what you would put into the category of a secondary boycott.

The Hon. T. Crothers: Is section 45d covered in the Federal Act?

The Hon. K.T. GRIFFIN: Section 45d is in the Federal Act. But in the State situation, there was a right to take action in the State civil courts. Ultimately, one has to rely upon the established principles of justice at common law implemented by a court such as the Supreme Court before a single judge, a court of appeal and even up to the High Court of Australia. The way the High Court is now making its decisions, in fact making new law based upon some basic rights and freedoms which have not been previously clarified and enshrined in statute law, it would seem to me that in an industrial disputation situation, if there was a strike for only one day, it would be most unlikely—in fact, I would say unlikely completely—that there would ever be a successful application for an action in the Supreme Court. But you ultimately have to come to terms with the fact that the civil courts must finally have the say, and the rights and interests of citizens ought ultimately be the subject of protection by the ordinary courts of the land.

The Hon. M.J. ELLIOTT: I prolong this because, first, it is important and, secondly, there are a whole series of consequential amendments that either stand or fail on this one. To that extent we might as well get most of these debates out of the way. They will probably relate to much later clauses as well. 'The right to take industrial action must not be abused' is open to some interpretation, but I am still not at all clear precisely what it was meant to mean as distinct from when I sit down and read it. I am a person who has not been involved in either side of any industrial action.

It goes on to say that 'such action will not be undertaken in breach of an order of the commission or in breach of a dispute settlement procedure provided for in an award or enterprise agreement'. When you read that paragraph as a whole, there is an implication to me that there is a right to strike, that it shall not be abused and that, before there is likely to be any action against people, you would need to demonstrate that they had breached an order of the commission or had been in breach of dispute settlement procedures. That is the way it appears to read. It does not read dissimilarly from what is contained in 143a; perhaps it is subject to some amendment, but in general terms, it is not dissimilar. I cannot find in the legislation as it now stands where there are structures which support what the policy said was the attitude in relation to industrial action.

I would like the Minister to tell me exactly what was meant by the term 'the right to take industrial action must not be abused'. How does the legislation recognise that? I think it has done it very narrowly. It says that you cannot lose your job. Why is there not at least some recognition of that right, where the major difficulties arise for the employee who strikes, if they have been unreasonable and if they have abused that right, and where they have been in breach of orders of the commission or breaches of dispute settlement procedures?

The Hon. R.R. ROBERTS: There has been a lot of passionate speech about all these things and a lot of philosophy has gone into it. The reality of the situation as encompassed in our amendment is that it is not solely a question of whether South Australia believes it ought to have the right to strike. There are conventions around the world. There are ILO conventions that provide employees ought to have the right to strike. Popes have written articles on this. If you say you can go on strike when it is reasonable, I would say that in 99 per cent of cases the Hon. Mr Griffin and I would probably disagree in an industrial situation. The employer, in any industrial action, would claim that it is unreasonable.

We have had some discussion about what is and is not in the policy. Again, it is a question of a fundamental right of employees to be able to negotiate with employers without being nailed to the wall every time they want to exercise the only bargaining tool they have, namely, their labour. The clause that we are proposing is not something that sounded like a good idea so that we are putting something in there today. This comes after a history of much involvement in this area and much discussion over the years. It is in the Federal Act now to take up the ILO convention on what is fair and reasonable. It says 'We accept the ILO proposition that there should be a right to strike,' and lays out how that should take place. It says what is reasonable and what is not.

Also, now that we are writing a new Act with new objects, when some of these things start to be reassessed under the new objects we may find completely different views of what is reasonable and unreasonable. If we apply the clauses outlined in the Federal Act, we know exactly what we are talking about. It is quite clear where these situations will occur, and it is not something that has not been tested. So, I certainly will not try to convince members of the Liberal Party or the Employers Federation to change their ideologies today, and I do not think they will change ours to a great extent. What I do say is that this is a fundamental tenet that is recognised by the International Labor Organisation and picked up in the Federal area. It is not earth shattering: it gives people the right to bargain on an even playing field, and for those reasons I suggest that we support the Opposition's amendment.

The Hon. K.T. GRIFFIN: It must be recognised that in the Bill there are these two streams: the award stream and the enterprise agreement stream. What we have provided in relation to enterprise agreements (and it is the position with any industrial agreement) is that it may contain by negotiation an agreement not to strike, as it has been amended in the Bill, in relation to matters—

The Hon. T.G. Roberts: That is implying that they have a right to strike.

The Hon. K.T. GRIFFIN: We talk about this right to strike. It has become an article of faith. It has always been an article of faith by the members of the Labor Party, and everyone talks about it as a right to strike in that sort of shorthand description. However, the fact of the matter is that there is not technically at law a right to strike. If there is a strike it is destructive and it may be, as part of the arrangement to settle that dispute, that they enter into an enterprise agreement and that that enterprise agreement provides that there is no right to strike, in shorthand terms.

In relation to awards one would have expected that the same might apply. But one does not have one's head in the sand: one must recognise that you do not resolve industrial disputes immediately they occur by running off to the court or the commission.

What you try to do is sit down to talk, and the Liberal Party recognises that the facts of life are that there will be disputation and there will be strikes. Some of those may be in the essential services area. I cannot accept that there is a right to strike in relation to ambulance officers, police and others who provide essential services to the community. We must provide a mechanism for resolving those disputes, and there is the process of conciliation and arbitration which is set out in this Bill and which has been strengthened as a result of the amendments that have been made.

In terms of the policy, the right to take industrial action must not be abused. All I can say in this respect is that, in relation to a safety, health and welfare matter, the courts have recognised that there is a right in those circumstances for employees to walk out and to refuse to work. That is one area.

The Hon. R.R. Roberts: Refuse duty.

The Hon. K.T. GRIFFIN: Well, refuse duty; they mean much the same. So, already in the common law that is recognised. You cannot quantify what is or is not abuse because it varies from case to case and depends on the extent to which it impinges upon the general welfare of the community. However, the procedure which is in section 143a is a significant restriction on any of the consequences which might flow from the strike and the right of any citizen to pursue his or her remedies through the civil courts to seek damages, an injunction or some other remedy which will provide relief from what, in those circumstances, the court will have to determine is reasonable or unreasonable. That is the essence of it.

The common law deals with what is reasonable and what is unreasonable, even in the context of injunctions and industrial disputation. You cannot quantify in simple English, which is beyond contest, what is reasonable or unreasonable in any particular set of circumstances.

The Hon. M.J. ELLIOTT: The Minister has used the term 'unfettered right to strike'. I do not take the view that the right to strike should be unfettered; I believe it should be fettered. Section 143a places some restriction in so far as where it has been resolved by conciliation and arbitration the strike cannot continue and, where it is found that the dispute arose or was prolonged by unreasonable conduct, a tort is possible. So, it is already fettered. Whereas section 143a, as it stands, does not perhaps suit the purposes of the Liberal Party, it seems to me that a clause such as section 143a with perhaps further variation, which effectively recognises the right to strike, could be even more prescriptive than the current one and certainly would be an improvement on the current situation.

I invite the Government to give some consideration to section 143a, and I would appreciate some response. I am not referring here to the clause as it stands, but section 143a with some variations may or may not be attractive.

The Hon. K.T. GRIFFIN: It is certainly not attractive but, in the light of the intimation by the Hon. Mr Elliott, one has to give some further consideration to it. All I can say in relation to what he has intimated is that over the next, hopefully, only one more day, the Government will give some further consideration to the matters that he raises.

The Hon. M.J. ELLIOTT: Subject to the response I get on this matter, I will not at this time be supporting these amendments. However, I indicate that, when we reach the end of the Committee stages, when we are recommiting a number of clauses, I would like a much clearer indication as to what the Government's response is going to be.

The Hon. R.R. ROBERTS: I am disappointed. The Attorney persists in provoking me. He asked why people should be treated any differently under the common law. We can go back 60 or 70 years and go through all those arguments again. We have an Industrial Relations Act because there has been a recognition that in this area it needs specific legislation. We are asking the Attorney and the Hon. Mr Elliott to recognise that it is a distinct area of legislation because of the peculiarities of the operations that take place.

We legislate in different areas for a whole range of activities. We make legislation to cover specific areas. We have made the judgment that the industrial relations system requires special circumstances. By promoting our amendment we are not seeking to strike out all common law in place. We are saying that within the specific limits of the legislation canvassing these matters we lay down something which is reasonable and which allows people the right to bargain evenly and, in the worst case scenario, if common law did come into it at least the conditions within the award would be considered by those persons making judgment about the circumstances surrounding the litigation taking place. We are not trying to pull the wool over anyone's eyes. We are trying to make the playing field even.

The Attorney says that people do not go to the commission every time they have a dispute. I can tell him that when I was in the industrial relations field, every time there was a dispute we were in before the commission before your feet could touch the ground. The employers always wanted to go to arbitration. They were happy to use a selective system of legislation to cover their industrial relations areas when it suited them. It is a great tool by employers and it is greatly liked by the Liberals: if you cannot bargain you get into a position where you can say, 'I have more buying power than a single group or a small group of employees. We will take them to court. We will take away their houses and we will be right.' You will not be right. That will not be honest and there is no integrity in that approach; it will be a dispossession of the work force.

As I said earlier, you people are hell bent on catapulting the best industrial relations record in Australia back into the eighteenth century, recreating the master-servant relationship. You seek to disempower workers who will have no right to strike or right of relief, unless under a specific set of laws. Not only that, you seek to introduce a new scheme to dispossess those people who may be in a position to organise themselves to give some balance in the equation and, when the debate takes place, you separate them and say, 'We will put in these tight prescriptions for you but, for the people over there whom we have dispossessed in the first place, there will be another stream.'

I am extremely disappointed that the Hon. Mr Elliott will not support the amendment on this occasion. It is the absolute foundation stone of any industrial relations system that the partners in those systems have some semblance of an even start in discussions and negotiations. The Government talks of freedom of choice and freedom to negotiate. It wants freedom to negotiate, but it wants to dispossess the other side before it starts. It is akin to taking the boots off a footballer and saying we will play evenly, or making one side kick up hill against the wind all day. That is the Government's idea of an even handed playing field.

As to the business of platforms, the ALP has won the last five Federal elections on a platform to get rid of sections 45d and 45e. What happens when we go in with our promise to get rid of those provisions? We get knocked off every time. I put that on the record because of the references to policy. I understand the Hon. Mr Elliott's point, because he is in a position where he has given a commitment to look at the Government's legislation and not gut it or turn it over. He has a commitment to do that; he continues to do that and that is fair and equitable. However, I am getting a little sick of the change in argument from one clause to another. We are going one way on one clause and another way on the next.

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: We do. One minute you say it is a new area, then you say it is in the present Act. It is hypocritical.

The Committee divided on the new clauses:

AYES (7)

Crothers, T.	Levy, J. A. W.
Pickles, C. A.	Roberts, R. R. (teller)
Roberts, T. G.	Sumner, C. J.
Weatherill, G.	

NOES (10)

Dunn, H. P. K.	Elliott, M. J.
Griffin, K .T. (teller)	Irwin, J. C.
Kanck, S. M.	Laidlaw, D. V.
Pfitzner, B. S. L.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.

PAIRS

Feleppa, M. S.	Lawson, R. D.
Wiese, B. J.	Lucas, R. I.

Majority of 3 for the Noes.

New clauses thus negatived.

Clause 109—'Freedom of association.'

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

Insert new clause as follows:

Discrimination against employee for taking part in industrial proceedings

109. (1) An employer must not—

(a) dismiss an employee from, or threaten to dismiss an employee from, employment; or

(b) injure an employee in, or threaten to injure an employee in, employment; or

(c) alter detrimentally the position of an employee in, or threaten to alter detrimentally the position of an employee in, employment,

in consequence of—

(d) the employee becoming a party to proceedings before the Court, or the Commission; or

(e) the employee taking part or being involved in an industrial dispute; or

(f) any evidence given or anything said or done or omitted to be said or done by the employee before the Court, or the Commission.

Penalty: Division 7 fine.

(2) If, in any proceedings for an offence against this section, it is proved that an employee was dismissed from, or injured in, employment with the defendant, or that the employee's employment with the defendant was altered detrimentally, within six months after any of the acts or matters mentioned in subsection (1), the burden of proving that the dismissal or injury was not in consequence of that act or matter lies on the defendant.

(3) A prosecution for an offence against this section may be commenced by—

(a) the employee against whom the offence is alleged to have been committed; or

(b) an inspector.

The Government's Bill in these areas is opposed. Again, it is part of the Government's ideological onslaught on trade unions and so-called freedom of association. When the United Nations International Labour Organisation carried the first resolution with respect to freedom of association, the Chairperson of that governing body at that time, Mrs Eleanor Roosevelt (the wife of the late President of the United States), ruled that it was not applicable to trade union organisations. That has never been challenged or overturned by any subsequent meeting of the International Labour Organisation.

The Opposition's amendment comprehensively takes into the account the rights of all workers, whether they be union members or not, to be able to belong to unions or not belong to unions and for them not to be discriminated against in their employment by reason of their membership or non-membership of a registered association. It also provides for penalties against employers who do discriminate against employees on those grounds. The Government's Bill with respect to these matters is simply ideologically driven and based on the hatred of the organisation of labour.

The Opposition's amendments contained in proposed new clauses 109, 110, 111 and 111A provide for all the protections that employers and employees might need with respect to this issue. I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: The Government opposes the removal of the three clauses and replacement with new clauses. The amendment goes further than just inserting a clause outlawing discrimination against employees: it seeks to remove a central and very important component of the Government's Bill relating to freedom of association. The amendments will have us continue compulsory unionism, continue preferential treatment for unionists and continue the monopoly of representation that unions have under Labor's legislation. So, we reject the amendments as a matter of principle.

It is important to recognise that our principle is one where employees should be able to belong or not belong to an organisation if they so wish and that the same ought to apply to employers—that, if employers choose to belong to an association, they should be entitled to do so. If they choose not to belong, they should be entitled to make that choice and no sanctions should flow from that. Our Bill seeks to provide that even-handed approach so that no discrimination can be allowed by law, either expressly or impliedly against or in favour of an employee on the ground that the employee or prospective employee is or has been, or is not or has not been, a member or officer of an association.

So, the principle is very clearly expressed. Obviously, in practice it will mean that people will not be coerced to join an association, either by direct confrontation or by indirect pressure. It is our view that we ought to seek to protect that policy position. For that reason I indicate very strong opposition to the Opposition's amendment.

The Hon. M.J. ELLIOTT: In many ways some of these proposed new clauses tackle exactly the same issues as those in the clauses being removed. For example, I do not have any particular difficulty with the Government's clause 109 but some of the provisions of proposed new clause 109 have merit, and I do not see why we have to delete the current clause 109 to insert new clause 109. In those circumstances I would like to debate with the other members of this place the relative merits of individual clauses, because I would like to accept the existing clause 109 and new clause 109, and that may apply to other clauses as well. I have no difficulties with the current clause 109—

The Hon. K.T. Griffin: In the Bill?

The Hon. M.J. ELLIOTT: Yes—but I would also like to support proposed new clause 109. I would like to have it inserted without deleting the original clause.

The CHAIRMAN: You would have to renumber it.

The Hon. M.J. ELLIOTT: Yes.

The Hon. K.T. GRIFFIN: As I understand it, the Hon. Mr Elliott is floating the possibility of leaving clause 109 in the Bill and then the Hon. Mr Roberts' clause 109 as a new clause. I must confess that I have not analysed the distinction, but we have covered in clause 218 a lot of what is in Mr Roberts' clause 109. Once we move through the Bill, if that still remains an issue, I would be happy to provide a more detailed analysis of what the distinctions are between

the Hon. Mr Roberts' clause 109 as against clause 218 and other provisions of the Bill. In any event, it seems to me that the principles in his clause 109 have been picked up under the general framework of clause 110. Clause 109(1), according to the Hon. Mr Roberts' amendment, provides:

An employer must not—

(a) dismiss an employee from, or threaten to dismiss an employee from, employment; or

(b) injure an employee in, or threaten to injure an employee in, employment; or

(c) alter detrimentally the position of an employee. . .

All that I would suggest can be covered by the concept of not discriminating, under 110(1), although, as I say, the Government picks up the same concepts under 218 where we talk about discrimination. It seems to me, on my quick analysis, that the protections are in our Bill. The concepts referred to in the Hon. Mr Roberts' 109 or 109A—whatever we call it—are already actually reflected in various provisions of the Bill.

The Hon. M.J. ELLIOTT: I indicate to the Hon. Mr Roberts that it was my intention to support clause 109 of the Bill. I do not have difficulties with his amending clause or now to be an additional clause 109; however, recognising that it appears to be covered in clause 218, I will not support his amendment now, but if the Hon. Mr Roberts feels that 218 is inadequate then I am quite happy to consider amendments to that at that time when we come to debate that particular clause.

Clause passed.

New clause 109A—'Conscientious objection.'

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

Page 46, after clause 109 insert new clause as follows:

109A(1) If a person satisfies the Registrar by the evidence required by the Registrar that the person has a genuine conscientious objection to becoming a member of an association, the Registrar must issue a certificate of conscientious objection to the person.

(2) The registrar must cancel a certificate of conscientious objection if asked to do so by the person for whom it was issued.

This new clause is necessary to ensure that employees and employers who utilise existing section 144 conscientious objections certificates are not prejudiced by the new Act coming into force. Whilst the transitional provisions provide for the continuation of all existing section 144 certificates, it has been pointed out that a number of industrial awards contain provisions which depend upon the granting of such certificates. For example, in the Clerks (South Australia) Award, the occupational superannuation provisions enable an employer or employee who is a member of the religious group The Brethren holding a section 144 certificate to be exempt from the award preferred superannuation fund. Unless new employees and employers holding the same conscientious objection can access a conscientious objection certificate, they would not be able to invoke this right under the award. The amendment reintroduces the right for such certificates to be issued to accommodate these circumstances. In most other circumstances the specific provisions of the Bill concerning freedom of association will suffice to protect the interests of employers and employees who have a conscientious objection to joining a trade union or employer association.

The Hon. M.J. ELLIOTT: I understand the need for this provision at this stage, but I would imagine that when the awards have been through their first renewal updating they will be amended to recognise that freedom of association exists and, as such, this clause would then become superfluous.

The Hon. K.T. GRIFFIN: That is basically correct. It depends to some extent whether the commission grants freedom of association in relation to the choice of superannuation funds. In a sense, this is transitional, but it depends on other action being taken by the commission in relation to awards in due course.

The Hon. T. CROTHERS: The Attorney-General recently commented about conscientious objection and the capacity for that to be granted via a certificate. First, what parameters have been set in respect of the conscientious objection being allowed? Secondly, what life will such a certificate have? I have seen avowed and professed Christians who have finished up back-sliding. I would not want anyone to be granted a conscientious objection certificate on the basis of Christian belief, only to find 18 months later that they have joined my mob and the certificate remains outstanding.

The Hon. K.T. GRIFFIN: That is a translation of certificates from one occupation to another.

The Hon. T. Crothers: Even that.

The Hon. K.T. GRIFFIN: Conscientious objection certificates have been in the law for some time. This provision seeks to cover the period where the Bill provides for freedom of association but awards provide specifically for section 144 certificates. If we do not have this amendment, it may compromise the ability of those who hold a conscientious objection to belonging to a trade union or to a superannuation fund from being able to exercise their rights because there is not that sort of transitional provision. Does that answer the honourable member's question?

The Hon. T. CROTHERS: In a sense, yes; but it is a bit of a misnomer to call it a conscientious objection certificate. If someone has a conscientious objection, the corollary is that they must have a conscientious objection to something that is bothering them. What are the parameters under which such a conscientious objection certificate may be issued? Are there any guidelines? Is the person who is arbitrating the position to be allowed to make the decision? I am well aware, as the Attorney-General has indicated, that currently there is provision for conscientious objection certificates to be issued, but that can only be done, I think, under three or four listed parameters.

The Hon. R.R. Roberts interjecting:

The Hon. T. CROTHERS: Is it one? Is that religious belief?

The Hon. R.R. Roberts interjecting:

The Hon. T. CROTHERS: Well, whatever. What does the Government envisage with this conscientious objection certificate, albeit it is an abridgment situation, in respect of giving directions to the arbiter, who will ultimately make the decision whether someone is exempt and should be granted a conscientious objection certificate? How long would such a certificate be issued for? I think the Attorney-General answered that question in the sense that it was an abridgment situation, but I am not certain whether that was the total answer.

The Hon. K.T. GRIFFIN: It is difficult to enshrine in statute the principles under which a conscientious objection is determined, because ultimately it comes down to an analysis of each individual's views about objection.

The Hon. T. Crothers: Can it be defined by saying that it is an issue of conscience? If you are a conscientious objector surely there must be something that you are conscientiously objecting against.

The Hon. K.T. GRIFFIN: Yes, belonging to a trade union. That concept has been around for a long time, but it

must be left to the courts and tribunals, having heard evidence from the person who is seeking the certificate, to determine whether he or she has an objection as a matter of conscience to belonging to an organisation. That is the issue. There have been many cases over the years which go back to well before the Vietnam confrontation and conscription, where there was a provision—

The Hon. T. Crothers: Going back to the Quakers, for instance.

The Hon. K.T. GRIFFIN: That may be. Those sorts of issues are addressed on a case-by-case basis. I think that currently there is a 12 month limit on a certificate, but we have not put a limit on it because essentially it is consequential upon the freedom of association provisions in our Bill being passed. It will be relevant only until an award is amended to recognise the principles enshrined in the Bill. As I said earlier, it is essentially a transitional matter.

The Hon. R.R. ROBERTS: I have some concerns. The Attorney-General is promoting his amendment as a procedural matter to enable things to happen, but the insertion of the new wider conscientious objection provision fails to state the grounds upon which someone may conscientiously object. No indication is given to the Registrar how an application for exemption should be tested. Where accountability for processes exists in terms of compliance with directions and orders of the court or commissions, these are usually effected by the registered association. Such accountability would be too easily avoided by individuals with the adoption of a wider association.

If the intention of the Government's amendment is to implement the procedural things that the Minister says must happen, I believe it should not be a broad-brush approach. Someone might say, 'I have a conscientious objection to becoming a member of the union because I do not like the colour of the secretary's hair', or for some other frivolous reason. There is now a prescriptive form. I have no personal objection to conscientious objectors if they are truly that. We have lived with this for many years.

I have worked in workplaces where this occurs; I do not have an objection to it. I am suggesting an amendment to proposed new clause 109A so that after 'objection' it reads 'based on a religious belief to becoming a member of an association, the Registrar must issue a certificate . . . ' That would reflect the present situation, as I am advised, in relation to proper grounds for conscientious objection. What we are really saying is that this specifies clearly that the grounds for conscientious objection have been established in the Federal area, and in other areas, and we reflect that in here. It allays my concerns, and I think it still achieves what the Government wants.

The Hon. K.T. GRIFFIN: I understand the point being made. It is broader than the present Act; that is acknowledged. I would still say that it is essentially consequential upon the principles of association and the freedom of association principles in this part. It does not really matter—well, it may not matter, because I have not had time to think about it or consider it in-depth—if it is either limited or unlimited because the principles of freedom of association will apply. I cannot really take it much further than that at this stage. It may be something we can revisit. Of course, the other issue is that you can be a conscientious objector on grounds other than religion.

The Hon. R.R. Roberts: But it is not accepted at the moment.

The Hon. K.T. GRIFFIN: No, it is not accepted at the moment.

The Hon. R.R. Roberts: You are doing this as a procedural thing, and I accept that.

The Hon. K.T. GRIFFIN: I did not intend to mislead. I apologise if that has occurred. It is very largely to deal with that situation. Even if it is broad—and this is just an on-the-run conclusion—it does not in any way prejudice anybody; it recognises conscientious objection but in the context of the principles of association, which are in this part of the Bill. I do not think anyone will be compromised by the fact that it is broader than just the ground of religious belief.

The Hon. M.J. ELLIOTT: It is interesting that we have a clause which has almost been made redundant due to a freedom of association clause. But it is necessary because of wording in an award which we expect will eventually disappear but which is needed at this stage. However, despite the fact that it is almost redundant and has now been broadened, the consequences of which may be almost nothing at all, the Opposition is now asking a question as to whether or not we cannot just maintain the *status quo*, and the Attorney-General appears to be a bit reluctant to do that. It is quite bizarre, when you stop and think about it. Why should the *status quo* not be maintained? It does not seem to be an unreasonable request. Nobody has been knocking on the doors asking for the definition to be widened. Perhaps at the end of the day it will not have a great effect anyway.

The Hon. K.T. GRIFFIN: So that the debate is not prolonged, let me just include it in that form at the moment, and we will give some consideration to it. What I do not want to do is to acknowledge that even the freedom of association principles are to be compromised by this, what is in effect, a transitional provision, and it may be that we will need to revisit it. I seek leave to amend my amendment as follows:

After 'genuine conscientious objection' insert 'by reason of religious belief'.

Leave granted; amendment amended.

The Hon. K.T. GRIFFIN: The Government will reserve its position. It will have a look at the matter. I do not have enough information at my fingertips to say whether or not that is a difficulty, but I will certainly revisit it if it becomes a problem.

New clause as amended inserted.

Clause 110—'Prohibition of discrimination by employers and employees.'

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

Page 46, lines 16 to 18—Leave out subclause (1) and insert:

(1) An employer must not discriminate against or in favour of an employee or prospective employee on the ground that—

(a) the employee is or has been a member or officer of an association; or

(b) the employee or prospective employee is not, or has not been, a member or officer of an association; or

(c) the employee or prospective employee holds or does not hold a certificate of conscientious objection under this Act.

This is consequential upon the previous amendment.

The Hon. M.J. ELLIOTT: Agreed.

Amendment carried.

The Hon. M.J. ELLIOTT: I ask the Hon. Mr Ron Roberts what he feels his new clause 110 adds that is not contained within the present clause 110?

The Hon. R.R. ROBERTS: This clause from our point of view was part of that raft of three, and it was designed to intermesh. I point out to the Hon. Mr Elliott that we did take action on a previous clause similar to this, and I was expect-

ing to receive the same treatment, on the basis of what he said about other things.

The Hon. M.J. ELLIOTT: I think the Hon. Mr Roberts needs to recognise the previous clause 109 that he proposed was covered largely by the content of clause 218 in the Bill. However, that is not true of his new clause 110 which appears to me, on the face of it, to be substantially a direct alternative to clause 110. In those circumstances, I was asking him to explain to me where he felt existing clause 110 was deficient such that I should support his clause rather than the clause within the Bill.

The Hon. R.R. ROBERTS: My briefing notes indicate that we needed to do these three together because, whilst it canvasses many of the other areas, it is believed that the proposition we have put forward in these areas fits in more with standards that are accepted elsewhere. Our belief is that we canvass the same areas better and in a way which is fairer to employees and employers.

The Hon. M.J. ELLIOTT: Looking at the amendment on file from the Hon. Mr Roberts, there is a reference in subclause (d) regarding where discrimination has occurred. I think that was the only matter I could pick up that was not covered in clause 110 in the Bill. In those circumstances, I will support the Government's clause 110 and, in relation to the question of awards and enterprise agreements, where they may have an effect upon discrimination, we can pick that up under clause 218 if the Hon. Mr Roberts feels there is still a difficulty.

Clause as amended passed.

Clause 111—'Prohibition of discrimination in supply of goods or services.'

The Hon. R.R. ROBERTS: Clauses 109, 110, 111 and 111A provide for all the protections that employees or employers might need in respect of these issues. So, the fact that the other three areas have failed I think indicates that there is a fairly constant view.

The Hon. M.J. ELLIOTT: My approach to clause 111 is the same as for clause 110.

Clause passed.

New clause 111A—'Employee not to cease work for certain reasons.'

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

Insert new clause as follows:

111A(1) An employee must not cease work in the service of an employer because the employer—

(a) is entitled to the benefit of an award or industrial agreement; or

(b) —

(i) is a member, officer or delegate of an association; or

(ii) is not a member, officer or delegate of an association; or

(c) —

(i) proposes to become a member, officer or delegate of an association; or

(ii) proposes to cease to be a member, officer or delegate of an association.

Penalty: Division 8 fine.

(2) Where it is established in proceedings for an offence against subsection (1) that an employee has ceased work in the service of an employer, the onus is on the employee to establish that the employee did not act for a reason referred to in subsection (1).

The Hon. K.T. GRIFFIN: I indicate opposition to the amendment. I must confess that I had presumed that new clause 111A was related to clauses 109, 110 and 111; it does relates to an employee. We will have another look at it if the vote goes in favour of it, but my initial reaction is that it is superfluous in the context of the Bill now being addressed.

The Hon. M.J. ELLIOTT: I have had a chance to take a closer look at clause 218, and it does appear that the matters are contained therein. In those circumstances, I do not need to support the clause.

New clause negatived.

Clauses 112 to 114 passed.

Clause 115—'Registration of associations.'

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

Page 49, lines 3 to 8—Leave out paragraph (e) and insert:

(e) that there is no other registered association to which the members of the association might conveniently belong; and

The reason for this amendment is that the Government's Bill allows a non-registered association with 100 members to seek registration and, provided that its rules allow it to cover all the employees at an enterprise, it must be registered without regard to the existence of another registered association operating in the same enterprise. The Opposition's amendment allows the registrar to reject such an application for registration where, in his or her opinion, there is another registered association to which an employee can conveniently belong.

This has been a long established principle of the commission and has allowed for the rationalisation of union coverage—a long-held objective of both employers and, indeed, employee organisations for many years. The Government's Bill is part of its objective to create in-house staff unions beholden to the employer. The potential is for considerable industrial conflict as registered unions campaign against in-house staff associations. The aim of the Government is to give birth to thousands of tame cat staff associations at the expense of independent trade unions.

The Hon. K.T. GRIFFIN: The Government vigorously opposes this amendment, which will prevent the formation of enterprise unions. I take exception to the suggestion that they will be all beholden to the employer. They are in fact organisations of employees and they are entitled to form their own association without being compelled to join a larger organisation which may have no sensitivity towards the issues which concern those particular employees within that particular enterprise.

The Hon. M.J. ELLIOTT: I oppose the amendment.

Amendment negatived.

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

Page 49, after line 11—Insert paragraph as follows:

and

(g) in the case of an association of employees—that the association is not dependent for financial or other resources on an employer or employers and is, in other respects, independent of control of significant influence by an employer or employers.

The Hon. M.J. ELLIOTT: The amendment is supported.

The Hon. K.T. GRIFFIN: It is outrageous. What about the University of Adelaide Staff Association where facilities are provided on campus for the association? This says that 'the association is not dependent for financial or other resources on an employer or employers and is, in other respects, independent of control or significant influence by an employer or employers'. The association controls its own destiny, but it is dependent upon the employer to a significant extent for some of the facilities made available. That is nonsense and I oppose it.

The Hon. M.J. ELLIOTT: While the clause may be capable of further amendment, an important notion is contained within it. If an enterprise association becomes the tool of the employer, it is a farce. I had no problem in

supporting the notion of an enterprise based union or association under the concepts of freedom of association. I opposed an amendment proposed by the Hon. Mr Roberts that would have stopped that from happening but, if there is not a genuine attempt to ensure that it is an independent association that really does represent workers, that creates great difficulty. I have absolute sympathy with what the amendment is seeking to do. If there is need for an amendment, I will look at it. In the absence of any alternative, I am supporting the amendment.

Amendment carried; clause as amended passed.

Clauses 116 to 122 passed.

Clause 123—'De-registration of associations.'

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

Page 53, line 5—Leave out paragraph (c).

I have heard no substantial reason for the insertion of this subclause. In other respects this clause is the same as that in the existing Act. This creates the potential for the employers' chamber, in particular, to be in direct confrontation with union groupings. I can see that creating industrial chaos. The very fact that the Minister is capable of intervening is quite sufficient if there is such difficulty emerging that an association should be de-registered.

The Hon. K.T. GRIFFIN: I oppose the amendment. The Government believes that an association, which may include an employer association as well as an employee association, and whose members have an interest should have standing to apply for de-registration of an association. Without such a clause employers, in particular, would have no rights whatsoever to seek de-registration despite being adversely affected by possibly unlawful conduct by trade union officials.

Amendment carried; clause as amended passed.

Clauses 124 to 127 passed.

Clause 128—'De-registration.'

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

Page 55, line 21—Leave out paragraph (c).

This is consequential.

Amendment carried; clause as amended passed.

Clauses 129 and 130 passed.

[Sitting suspended from 12.48 to 2 p.m.]

QUESTION TIME

AMBULANCE SERVICE

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

Leave granted.

The Hon. CAROLYN PICKLES: The Minister for Emergency Services stated in another place on 10 May that he had asked the Audit Commission to do a special job on the ambulance service. He further announced that he had received a draft summary from the commission. Last Tuesday the Minister declined to table this report because it was just a draft. However, he said that he would provide the final report to the Opposition when it was given to him. However, the Opposition is aware that the Audit Commission closed its offices and all staff returned to their normal Public Service duties before the main report of the commission was presented to Parliament two weeks ago.

Yesterday the Attorney-General tabled a statement from the Minister for Emergency Services which accused two Ministers of the former Government of collusion in a decision to keep confidential the details of a redundancy agreement involving the former Chief Executive Officer of the St John Ambulance Service, Mr Bruce Paterson. This allegation was made in spite of the fact that the annual report of St John for 1991-92, tabled in this Parliament 18 months ago, recorded details of the transaction. Note 26 to the audited accounts on page 35 of the annual report states:

Included in the income and expenditure statement for the year is a termination payment of $650 000. This payment was funded by the long service leave reserve and will be repaid inclusive of interest within the next 10 years.

The Opposition believes that the Minister is resurrecting this and other issues to create a smokescreen over proposals to cut the ambulance service and increase fees. My questions to the Minister are:

1. Is it a fact that the Audit Commission has ceased operations and will not be producing further reports? Will he provide details of who is preparing this final report on ambulance services and will he say when, or if, it will be completed? If there is to be no final report, will he table the draft document?

2. Will the Minister rule out any increases in ambulance fees, any reduction in the area coverage of the ambulance service and any fall in ambulance service quality standards?

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

HOUSING TRUST

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Housing, Urban Development and Local Government Relations, a question about specific recommendation 16.4 of the Audit Commission report.

Leave granted.

The Hon. T. CROTHERS: The report of the Audit Commission recommends that the Housing Trust should review its cost structure with a view to reducing administrative costs and that this should include consideration of the existing regional staff network. In particular, recommendation 16.4 provides:

SAHT should review its cost structure with a view to reducing its level of administrative costs. This would include a consideration towards rationalising the existing regional office network in collaboration with the other community services authorities (principally the Department for Family and Community Services).

For its part the Government should consider the introduction of alternative housing policy approaches, for example, in relation to:

and one of the dot points states:

· setting public housing rents more closely in accordance with general market levels and dwelling attributes;

It is well known that the Commonwealth Government provides funding to the South Australian Housing Trust for public housing through the CSHA with the prime objective of ensuring that people on low incomes have access to secure, adequate, appropriate and affordable housing. It might be thought by some that if the Government endeavours to implement recommendation 16.4 it could have some detrimental effect on the continuation of the Commonwealth subsidy if low rental housing is not being made available to the extent that that Government's tight funding situation

would indicate ought to be the case. How many offices will close and how many staff will lose their jobs if the Government accepts the recommendation of the Audit Commission to rationalise the Housing Trust's regional network?

The Hon. DIANA LAIDLAW: As the honourable member is well aware, no decisions will be made on any recommendation until there has been an opportunity to receive feedback from unions and other people who wish to comment on the recommendations. The Premier has also stated that he does not anticipate that all recommendations will necessarily be accepted in the form proposed by the Commission for Audit. However, I will refer the specific questions to the Minister and bring back a reply.

TELEPHONE INTERCEPTS

In reply to **Hon. C.J. SUMNER** (11 May).

The Hon K T GRIFFIN: The Minister for Emergency Services has provided the following information in response to the honourable member's questions:

1. (a) The Anti-Corruption Branch officer used a speaker phone to talk to the Hon Mr Bruce and commenced to take handwritten notes. To assist the accuracy of the notes, he activated a portable tape recorder and placed it near the speaker phone.

   (b) Police Officers are neither directed nor trained to tape record telephone conversations. The usual practice is to make handwritten or typed notes of significant conversations.

   There are some circumstances in which telephone conversations are routinely recorded.

   All calls to the Police Communications Centre are taped. These are calls requesting the attendance of the police. The equipment which makes the recordings is Austel approved. All callers are alerted to the fact that their conversation is being recorded by a regular 'beep' sound on the line.

   Police Security Devices Division has similar equipment. Some senior officers of the Department have equipment which has the capacity to tape telephone conversations. It too is Austel approved and incorporates the 'beep' tone on the line.

   Police may also lawfully tape telephone conversations pursuant to a warrant issued under the (Commonwealth) Telecommunications (Interception) Act 1979. After a warrant is obtained, the taping is coordinated by the Australian Federal Police in Canberra. The technical alterations needed to intercept the conversations are made by Telecom. Intercepted conversations are relayed back to Adelaide and recorded here in accordance with the warrant.

2 (a) The Crown Solicitor provided the advice that there was no breach of the Commonwealth Telecommunications Act and the South Australian Listening Devices Act.

   (b) The Crown Solicitor was provided with a copy of the Legislative Council Hansard transcript of 10 March 1994, together with information from the Commissioner of Police, detailing the events relating to the taping.

SCHOOL SPONSORSHIP

The Hon. C.J. SUMNER (Leader of the Opposition): I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about devolution and sponsorship in schools.

Leave granted.

The Hon. C.J. SUMNER: The Audit Commission recommended giving more authority and responsibility to school communities through school councils. I appreciate that the recommendation has not yet been rejected or accepted by the Government at this stage. It is also true that from time to time schools and other bodies in the education area accept sponsorships from organisations, including commercial organisations. For instance, I understand that there is a system in New South Wales whereby Mars Bar wrappers can be cashed in by school children to purchase equipment for the school, and I also understand that McDonalds have a sponsorship program in that State. We know other sponsorships of various kinds operate according to certain guidelines.

With respect to the Mars Bar sponsorship, children are encouraged to hand in Mars Bar wrappers at school in exchange for sporting and other equipment. Obviously, this matter has been the subject of some criticism from time to time. However, the point of my question is to ascertain Government policy with respect to these issues, in particular, if devolution of management as recommended by the Audit Commission went ahead, whether these issues would still be dealt with by statewide guidelines or left up to individual schools. My questions are:

1. Would proposals for devolution of management mean that individual schools would be given a much broader charter to accept sponsorships, including commercial sponsorships?

2. If not, would these matters still be determined by statewide criteria?

3. What is the Government's policy with respect to this issue?

The Hon. R.I. LUCAS: As a Coke and Vili's pie man I am desperately looking to the time when Coke and Vili's pies will offer sponsorship for schools and educational units like the Minister for Education's office. The situation in South Australia at the moment is that under the previous Labor Government there was an agreement reached between all States and Territories in relation to national sponsorship guidelines to guide schools in their decisions as to whether or not they should accept sponsorship such as the ones to which the Leader of the Opposition has referred. As he would know, under the previous Labor Government those guidelines applied, schools were able to make decisions as to whether or not they participated in the Pizza Hut 'Read It' competition or the Coles computer hardware competition or a variety of other competitions.

The more recent competition, which is the Mars Bar sporting equipment goods competition, is entirely consistent with the previous competitions that were allowed within the national guidelines agreed to by the previous Labor Government. In relation to sponsorship, my approach as Minister has been to allow a continuation of the existing practice approved by the previous Government and agreed between all States and Territories. I do not have any intention at this stage to initiate any review of those particular procedures.

If the Leader of the Opposition or any other interested group in the community had a particular point of view to put to indicate the need for change in relation to those previously agreed guidelines, I would welcome a submission and would be prepared to consider it. Certainly, the current arrangements will be that the Labor Government guidelines will continue and that within the parameters of the national guidelines, school communities will be free to make decisions for themselves as local school communities as to whether or not they wish to participate within particular sponsorship schemes.

ROAD STANDARDS

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation prior to asking the Minister for Transport a question about road quality standards.

Leave granted.

The Hon. M.S. FELEPPA: In its review of asset management, the Audit Commission concluded at page 214:

> Road construction and maintenance engineering standards are developed at the national level but need to be matched against the community's ability to pay. Engineering standards should be reviewed to ensure that they are affordable.

Does the Minister agree with the Audit Commission that our roads may be too well constructed and maintained? What reduced standard does she believe South Australian motorists should accept in the interests of cutting costs?

The Hon. DIANA LAIDLAW: As I have indicated before, consideration is to be given by Cabinet to all recommendations over a period until October, in the first instance to provide an opportunity for others to comment. I would in general state that South Australia is the beneficiary of a superb quality of road building which is a tremendous advantage for the State, not only for economic development purposes but also in road safety terms. When one considers the cutback in road funding in recent years for road maintenance purposes, that cutback has not had the dramatic impact that similar cuts would have had in other States where the roads were not constructed to the same high standards initially. I would not advocate that we should lower the standards of road building and maintenance in this State. However, I do not deny that we have a large backlog of road maintenance and construction projects. We are seeking funds for those purposes, but those funds should not be at the expense of the quality of roads built in the first place.

ROAD FUNDING

The Hon. CAROLINE SCHAEFER: I seek leave to make an explanation before asking the Minister for Transport a question about road funding.

Leave granted.

The Hon. CAROLINE SCHAEFER: In the Federal Government's 1994-95 budget, announced this week, its estimated fuel excise income is $9 706 million, which is an increase of 13.2 per cent over the 1993-94 level. At the same time its road funding budget has fallen from $1.013 billion in 1993-94 to a mere $802 million in this budget. That is a cut of almost 20 per cent and it has almost halved since the 1992-93 budget of $1 627.8 million. In real terms Federal road funding is now less than the $850 million spent in 1982-83, and at the same time we all realise that roads throughout Australia have deteriorated to the stage that many are now life threatening. My questions are:

1. Does this savage cut in road funding affect the Minister's announced 10-year plan for the sealing of rural roads, which was greeted with so much joy in rural areas?

2. Does the cut affect announced plans for the upgrading of urban arterial roads?

3. Does the Minister have any plans to object to the Keating Government's petrol bowser banditry?

The Hon. DIANA LAIDLAW: The answer to the first question is 'No.' In fact, a draft strategy has been prepared looking at all unsealed roads in incorporated areas and ordering those in terms of priority for sealing. That draft strategy will be circulated to interested members of Parliament and to local government over the next three weeks for their comment. The strategy was based on a number of factors which are recognised nationwide for determining road building priorities. It includes economic benefit, road safety factors and the number of passenger and freight vehicles. That commitment made by the Liberal Party in its transport policy to develop a strategy for the sealing of roads over 10 years will not be compromised by the cuts in Federal road funding. Indeed, I recall answering a similar question from the Hon. Barbara Wiese a few weeks ago when it was suggested that we would not have the means to keep our commitments in this area. I denied that would be the case, and I repeat that we will be honouring our undertakings in terms of the road transport sector.

STATE BUDGET

The Hon. T.G. ROBERTS: I seek leave to make an explanation before asking the Minister for Education and Children's Services, representing the Treasurer, a question on the State budget 1994-95.

Leave granted.

The Hon. T.G. ROBERTS: 'Charting the Way Forward', the report of the South Australian Commission of Audit, has inherent in it many social consequences if the major recommendations are picked up by the Government. This document clearly puts forward an economic rationalists' position regarding the restructuring of the financing and delivery of Government services. I guess that the Government did not seek any response from the people who put forward the document regarding social consequences, but it will have to take into account the social consequences inherent in the themes that run through the recommended restructuring of Government services. Strong recommendations and themes run through all departments. The general theme is for privatisation and commercialisation—a hands-off approach by Government toward administration of or accountability for public assets and privatisation and, handing those responsibilities back to the public sector—which we all know will have social consequences for the whole of the State.

In fairness to the Federal Government, which is going down a similar path, the social consequences of its actions are being discussed in many of the arenas where the impacts will occur. However, I fear that the implications of a Federal budget strategy based on growth, which has been criticised by many people, may not be reflected in this State, as it appears that the theme running through the Audit Commission report is almost that there will be no growth in this State for some considerable time, and that we had better start to sell off the farm to make sure that the State's budget balances so that services can be maintained not in the public sector but in the private sector. In view of the way in which the Federal Government has based its budget on continuing growth, will the Treasurer abandon the slash and burn mentality inherent in the Commission of Audit report and adopt a budget strategy for this State which takes into account the serious concerns of citizens in this State regarding debt management?

The Hon. R.I. LUCAS: The Liberal Government will not be engaged in a budget that is directed solely towards slash and burn policies, to use the phrase mentioned by the honourable member. The social consequences of decisions across government will be considered by the Liberal Government, but the bottom line—however emotive a phrase one wishes to use, such as 'slash and burn'—is the inherent financial problems of this State, which have been stated simply by the Commission of Audit. In other words, we currently spend $350 million more each year than we take in. On each and every day of the year, we spend $1 million a day more than we take in. No family budget could survive if the

outgoings were $350 a week or a month more than the money that comes into it.

The Hon. Mr Roberts knows that in relation to his own personal financial circumstances as a hard working member of Parliament and also in relation to the members he previously represented as a union official. You cannot survive as a family if you spend more money in each and every time period than you take in. This State cannot survive if its family budget spends more money each and every year than it takes in.

No matter which way you look at it, the Liberal Government and the South Australian community will have to face up to the fact that this issue will need to be addressed. I assure the honourable member that the social consequences of decisions the Liberal Government takes across the public sector will be considered and will be a factor. However, in the end, if hard decisions have to be taken, this Government has been elected to do that and to try to put the State's finances right so that we can move on with some confidence in a new direction under a new Administration.

GENDER BIAS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Attorney-General a question about a report tabled in Federal Parliament regarding gender bias and the judiciary.

Leave granted.

The Hon. SANDRA KANCK: The report entitled 'Gender Bias and the Judiciary' emanating from the Senate Standing Committee on legal and constitutional affairs was tabled in Federal Parliament today. The report nominates reform in two broad areas: widening the selection process for judges; and the provision of professional education. The report refers to a discussion paper recently issued by the Federal Attorney-General, which states:

> . . . men of Anglo-Saxon or Celtic background hold nearly 90 per cent of Federal judicial offices, and that this indicates 'some bias' in the selection process, or at least a failure of the process to identify suitable females and persons of different ethnic backgrounds as candidates for judicial appointment.

The report says that, while South Australia is one of only a few jurisdictions that already draws judicial candidates from areas other than the ranks of the senior bar, the character of the judiciary remains largely unaffected.

The committee makes a number of recommendations to ensure that the process of appointing judges reflects the view of a wider range of people in society than presently occurs. These are as follows: first, that criteria should be established and made publicly available to assist in evaluating the suitability of candidates for judicial appointment. Secondly, that the Commonwealth Attorney-General should establish a committee, which would advise on prospective appointees to the Commonwealth judiciary. That committee should include representatives of the judiciary, the legal profession and the non-legal community. Thirdly, that the Commonwealth Attorney-General should urge the Attorneys-General of the States and Territories to establish a similar advisory committee in their respective jurisdictions. My questions to the Attorney-General are:

1. Compared to the Federal appointments, where 90 per cent are of the male gender and of Anglo-Saxon or Celtic origin, how does South Australia rate?

2. Does the Attorney-General intend to set up an advisory committee for South Australia similar to the one recommended for the Commonwealth jurisdiction?

The Hon. K.T. GRIFFIN: I have not seen the report. Obviously, I have been pre-occupied with other things today. I will look at the report when it becomes available in South Australia and make some assessment of the recommendations. I will obtain some information in relation to the first question. In relation to the second question, the answer is, 'No'.

TEACHERS

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

Leave granted.

The Hon. A.J. REDFORD: It has come to my attention that a number of officers of the South Australian Institute of Teachers—and for those members who do not know, that is the organisation that will make a contribution in relation to the Audit Commission by going on strike—are making statements to the effect that the Government has decided to close down some secondary schools during terms three or four this year, thus placing enormous distress and strain on students currently studying for SACE. Will the Minister indicate whether it is the intention of the Government, as a result of the Commission of Audit, to close down secondary schools during terms three or four thus disadvantaging, in particular, year 11 and 12 students at the most important time of the year?

The Hon. R.I. LUCAS: I am aware that scurrilous rumours have been circulated amongst some secondary schools, which has caused some fear and distress, not only to year 12 students but certainly to their families. I want to make it clear that the Government has not yet made any decisions in relation to the closure of secondary schools as a result of the Commission of Audit recommendations. If, however, the Government does make some decisions in the future about closing any schools, and secondary schools in particular, clearly the Government would not be closing down secondary schools during terms three and four in the lead-up to what is a most important time in relation to the education of year 12 students. So, I want to place on the record an assurance that the Government will not be closing down secondary schools through terms 3 and 4 and disadvantaging and causing distress to year 12 students whilst they are studying for their South Australian Certificate of Education.

ROCLA QUARRY

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

Leave granted.

The Hon. ANNE LEVY: Members probably know that south of Adelaide there is a sand quarry run by the Rocla company. The sand in this quarry is absolutely remarkable in terms of the striations of colour which occur in certain parts of the quarry. So remarkable are these coloured sands that people have come from around the world to see them. At least one artist from Germany came and took impressions of the sand and has used these to decorate the foyer of a remarkable new building, but I cannot remember where it is, in Germany. He speaks extremely highly of these remarkable coloured

sands. Efforts were being made to try to protect at least part of this quarry so that these incredible coloured sands would remain and not just be turned into sand material to be used in building, with the colours vanishing.

I know that the Art for Public Places Committee was preparing a report on the Rocla quarry on how at least some of it could be protected for the benefit of future generations. It is a work of natural art and should be preserved, and it could obviously have great tourism potential. I understand the Minister has received, some time ago, the report on the Rocla quarry in which various options are discussed. Will the Minister make public that report so that the general community can evaluate the various options for protection of the sand? Can she indicate to the Parliament whether steps have been taken to follow one of these options and protect at least part of these wonderful sands at the Rocla quarry?

The Hon. DIANA LAIDLAW: I do not recall receiving a report on this subject, but I will make inquiries with my office. However, I did visit the quarry on the Thursday before Easter with the Chairman of the Art for Public Places Committee and the artist who has been commissioned to prepare designs and schemes for a project within the quarry, Mr Hussein Valamanesh. I met him earlier and he had enthused about this project. I was keen to go down and see his work. The sands are unbelievably beautiful. As you walk through this quarry, it becomes apparent that without mining you would not see how beautiful the sands are—it is a dilemma. As the quarry has been terraced, you can see the huge wheel marks of the front-end loaders and trucks. It almost appears as if you should not be walking on the sands because they are so glorious, yet you see these huge truck tyre impressions in the sand. It is a very complex set of emotions that one has when one walks through this most magnificent area. I have visited the coloured sands north of Noosa on the way to Fraser Island, and what we have at the Rocla quarry is one million times better.

I was very excited about what I saw. I indicated that I would be more than pleased to act as a positive liaison between the Art and Public Places Committee, the Minister for Mines and Energy and the Minister for the Environment and Natural Resources. I am certainly keen to see that some of the quarry rehabilitation fund moneys are used to support this project. As it was outlined to me, the plan is for amphitheatres, so the artist and the mining company will be working out open spaces. In its normal duties, the company will remove the overburden and replace it in areas where there will be amphitheatres and the like in the future. There will be walking trails and fantastic works of art in terms of the sands, at one site. Impressions will be taken and there will be mining behind the sand trellises. As you walk through the quarry, you will see this trellising and screens of sand, and you will experience the feeling of changes in the sand colour and striations as you walk through areas that have been mined. It is a tremendously exciting project.

I can assure the honourable member that, if the report had come my way, I would have pounced on it to read it, because I was so keen to follow up this initiative in terms of not only the arts but also the environment and tourism and to support the company which was so keen to be involved in this project. I will make inquiries to see where the report is and I will certainly be prepared to share those findings with the honourable member.

LAW GRADUATES

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Minister for Employment, Training and Further Education, a question about law graduates undertaking practical legal training.

Leave granted.

The Hon. BERNICE PFITZNER: There has been immense concern in law students ranks, given the increasing number of law graduates, that the new scheme and the recent wage proposal currently under discussion are, as they say in the students bulletin of April 94, 'fraught with inadequacies, uncertainties and inequities'. In recent years the main funding for the Graduate Diploma of Legal Practice, or GDLP course, has been through the Department of Employment, Education and Training (DEET). This course has now been found to be inadequate for the numbers of law graduates as it will possibly also have to service graduates from not only Adelaide University but also later graduates of the Flinders University, the Northern Territory University and perhaps Bond University. There is the new Graduate Certificate of Legal Practice course (GCLP), which is now taken over a period of five months, which course will run twice a year for two groups of law graduates.

Members interjecting:

The PRESIDENT: Order! I am having difficulty in hearing the honourable member ask her question. There is a little bit too much background noise.

The Hon. BERNICE PFITZNER: Following this GCLP course, in order to obtain an unrestricted practising certificate or unrestricted admission, graduates will have to complete either 12 months of full-time continuous employment with a law firm and do three units of GDLP course at a cost of $900 per unit, amounting to $2 700 to be paid or, if unable to obtain 12 months legal employment, which at this stage is a strong possibility, the graduates will have to do four units of GDLP, which will cost $3 600 in total. That amount will be impossible to find for a significant number of these graduates. The GDLP course, due to begin in August, has not been confirmed.

Another issue is a proposal that the first year wages of these graduates be reduced in order to allow for the costs of further training and to create more employment opportunities for graduates. The main concerns are, therefore: first, the upfront fee for the GDLP course, which is up to $3 600; secondly, the uncertainty surrounding the GDLP courses; and, thirdly, possible changes to salary levels of young lawyers. These young people have trained for five years and are faced with frustration and discrimination in these requirements for full admission. My questions are:

1. Will the Minister make the necessary inquiries so as to encourage—and even pressure—the Law Society and the Supreme Court Board of Examiners to examine and address these problems?
2. What is the present status of the GDLP course?
3. Will the Minister inquire into the continued Federal funding by DEET?
4. Will the Minister look into the responsibility of providing a fair and equitable package for these highly trained law graduates to obtain an unrestricted practising certificate?

The Hon. R.I. LUCAS: I will refer the honourable member's question to the Minister for Employment, Training and Further Education and also to the Attorney-General who,

I believe, will also have an interest in the matter, and ask both Ministers to forward a reply to the honourable member during the parliamentary break.

SALISBURY DUMP

In reply to **Hon. M.J. ELLIOTT** (13 April).

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

1. The land in question, known locally as the Bosisto site, has been used for waste disposal since planning controls commenced in 1967. As a result, and following advice from the Crown Solicitor, the former South Australian Planning Commission in 1991, agreed with the view of the Salisbury Council, that no planning approval was needed for continued waste disposal as the site has 'existing use rights'. The relevant 'planning' Minister at the time had no role in the decision by the former Planning Commission.

2. The Salisbury Council informally consulted local residents when taking over waste disposal at the site. Council's intention is to allow waste disposal by itself, and the Elizabeth, Munno Para and Gawler councils, with a view to reaching final fill levels as soon as possible, and then development of the site for recreation.

MITCHAM RAIL SERVICE

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

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

1. National Rail Corporation (NRC) who are undertaking the design work on behalf of the STA have advised that an island platform could be constructed at the Eden Hills loop in the future, if required. This would require a 'slight widening of the formation to accommodate the platform of the desired width together with the acquisition of land on the eastern side which is presently owned by the Mitcham Council'.

2. There is no plan to construct a railway station at the Eden Hills loop, however, it is proposed to keep the options open for the long term.

3. No further information is required to this question.

MINISTERIAL OFFICES

In reply to **Hon. ANNE LEVY** (3 May).

The Hon. DIANA LAIDLAW: The Minister for Industrial Affairs has provided the following information:

The $66 000 that is proposed to be spent on the Minister's new office alterations is an estimate of costs to consolidate the staff of the Office of the Minister for Transport on the western half of the 12th floor of STA House. This will result in more effective utilisation of the floor space that is available and allow more staff to be accommodated on the floor. Operational efficiencies will improve as a result of the proposed changes.

The proposal to carry out this work, together with other planned works on the eastern half of the 12th floor to accommodate the Transport Policy Unit and the Office for the Status of Women have not yet been considered by Cabinet. Therefore, it is not possible to advise when the $66 000 for alterations to office accommodation in the Office of the Minister for Transport will be spent.

In relation to the question about usage of ministerial offices, the only office that was occupied by a Labor Minister that is not occupied by a Minister in the present Government is the office that was occupied by the former Minister of Public Infrastructure, Mr Klunder.

Temporary accommodation was leased on the 6th floor of Pirie Plaza at 63 Pirie Street for the Office of the Minister of Public Infrastructure. This was necessary because of the need at that time to temporarily relocate the Minister out of his office in the State Administration centre due to the progress of building refurbishment work.

The temporary office in Pirie Plaza was initially occupied by Justice Jacobs who was appointed to investigate and report on the Government's legal obligations to proceed with the construction of the Hindmarsh Island Bridge. It is now occupied by the Asset Management Task Force, attached to the Department of Treasury and Finance. This group took over the area from 15 March 1994. The lease was due to expire on 3 June 1994 but has been extended to 31 December 1994 to allow this group to complete its task.

GENDER BIAS

In reply to **Hon. ANNE LEVY** (16 February).

The Hon. K.T. GRIFFIN: My understanding is that to date there has only been one formal deadline sought which was the end of October 1993.

A whole of government submission was not made to Justice Elizabeth Evatt's inquiry entitled 'Equality Before the Law' prior to the release of the Interim Report in March 1994.

Submissions from both government agencies and community organisations have been made throughout the term of the Commissions' reference, which I understand is expected to finally report in September 1994.

The Hon. K.T. GRIFFIN: I make the observation that if the honourable member wishes more information over the break I will be happy to endeavour to provide further information.

SOUTH AUSTRALIAN PORTS CORPORATION BILL

Consideration in Committee of the House of Assembly's amendment:

Page 10, after line 29, insert new clause 23 as follows:

Liability for council rates

23. (1) Subject to subsection (2), land owned by the Corporation is not rateable under the Local Government Act 1934.

(2) If any land owned by the Corporation is occupied under a lease or licence by some person other than the Crown or an agency or instrumentality of the Crown, that person is liable as occupier of the land to rates levied under the Local Government Act 1934.

(3) Despite section 29(2)(b) of the Public Corporations Act 1993, the Corporation is not liable to pay to the Treasurer amounts equivalent to council rates that would, if the Corporation were not an instrumentality of the Crown, be payable by the Corporation in respect of land

(a) that is not being used by the Corporation; or

(b) that is being used by the Corporation predominantly for administrative purposes.

The Hon. DIANA LAIDLAW: I move:

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

This amendment relates to the liability for council rates. It was a matter that was incorporated in the original Bill when sent out for public discussion but, because it was a money clause and the Bill originated in this place, it was in erased type when the Bill was before this place and could not be debated at that time. When it was considered by the House of Assembly, there was no opposition or comment on the matter. Simply, the clause relates to land owned by the corporation that will not be rateable under the Local Government Act 1934.

Motion carried.

HARBORS AND NAVIGATION (PORTS CORPORATION AND MISCELLANEOUS) AMENDMENT BILL

Consideration in Committee of the House of Assembly's amendment:

Page 3, Lines 4 to 8 (clause 12)—Leave out this clause.

The Hon. DIANA LAIDLAW: I move:

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

It became apparent between the time that the Bill was debated in this place and then in the other place that it was no longer appropriate that we continue to place within this Bill clause 13, which relates to the property of the Crown. I will explain the reasons why the House of Assembly moved to delete this clause and why I am asking the members of this place to accept that amendment.

It came to the Government's attention that the amendments proposed to be made to section 15 of the Harbors and Navigation Act 1993 may affect land subject to native title. The proposed amendment converts the Minister's interest in Crown land held under trust or dedication into a simple fee interest. The purpose of the amendment is to facilitate dealings with the land. It is not clear without extensive research whether any of the land is affected by native title interests. The tenure history of each parcel of land would need to be examined to determine whether native title in the land has been exhausted in accordance with the principles established in the *Mabo* case.

Under these principles native title may be extinguished by the severance of the ties of the traditional title holders to the land or by the grant by the Crown of an interest in that land inconsistent with the continuation of native title. This is a factual question which must be determined case by case. In view of the above and the fact that the proposed clause is not urgently required, it was determined in another place—and I ask that honourable members agree—that we do not proceed with the clause at this stage.

The Hon. C.J. SUMNER: I understand from the Minister's explanation that the amendment moved by the House of Assembly has the effect of leaving open the possibility of a Mabo type native title claim in respect of land which is the subject of this Bill or which may at present be used in connection with harbours and navigation. I understand from the Minister that the Opposition supported the amendment in another place and, on that basis, the Opposition supports the amendment.

Motion carried.

POLICE (SURRENDER OF PROPERTY ON SUSPENSION) AMENDMENT BILL

In Committee.

Clause 1—'Short title.'

The Hon. K.T. GRIFFIN: The Leader of the Opposition raised some questions when the Bill was last before us and I undertook to obtain some information. The information provided to me from the Police Department through the Minister for Emergency Services is as follows. In recent times two police officers have been suspended and refused to hand back property immediately. Both were eventually convinced to comply. The first officer was suspended after a criminal investigation as a result of Operation Hygiene. The second officer was also charged with a criminal offence and suspended pending the outcome of the trial. He was ultimately convicted and dismissed. While both names are available, their release is strongly resisted on the grounds of fairness and privacy. In relation to administration, I am informed that the present legislation states that a person who ceases to be a member of the Police Force must forthwith deliver up property to the Commissioner.

The current Bill uses the term 'must immediately'. The advice I have suggests that this puts an unequivocal obligation on the police officer to respond immediately. I find it hard to distinguish the difference between 'forthwith' and 'immediately'. Be that as it may, that is the response I have.

No extension of time exists. However the realities are, as the Opposition correctly states, that some circumstances will require the strict letter of law to be insisted upon—for example, in relation to a suspended police officer in an unstable mental state in possession of an issued pistol—while others will lack the need for such urgency. Each situation can only be acted upon as circumstances indicate. The administration of the section will act accordingly, but with the overall tenor that prompt return is necessary.

The Hon. C.J. SUMNER: I thank the Attorney-General for his reply to my questions. Perhaps it might be interesting for the Council to know that the *Concise Oxford Dictionary* defines 'forthwith' as 'immediately'—

The Hon. K.T. Griffin: How does it define 'immediately'?

The Hon. C.J. SUMNER: —'and without delay'. The definition of 'immediate' is 'occurring at once, without delay'. 'Immediately' presumably is the appropriate adverb.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I just read that out. The adverb would be 'immediately', which is 'occurring at once, without delay'. I do not know what the difference is, frankly.

Clause passed.

Remaining clauses (2 and 3) and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (CONSTITUTION AND MEMBERS REGISTER OF INTERESTS) BILL

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

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

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

The disagreement in relation to this Bill is whether or not there should be an amendment to the Members of Parliament (Register of Interests) Act requiring members of Parliament to disclose transactions over $5 000 in their register of interests, whether that transaction has been entered into personally, by the member's spouse, by a child under the age of 18 years or by a related corporation or trust. The Government holds the very strong view that it is unworkable and places even heavier burdens than does the present provisions of the Constitution Act, which provide for forfeiture of a member's seat in the event that the member has entered into a transaction not specifically excluded from the operation of the Constitution Act.

The Hon. C.J. SUMNER: The Opposition holds the opposite view on this matter with equal fervour to that displayed by the Government in favour of the proposition and therefore asks that the Council insist on its previous attitude being upheld.

The Hon. M.J. ELLIOTT: The Democrats are of the view that the Legislative Council should insist on its amendments.

Motion negatived.

A message was sent to the House of Assembly requesting a conference, at which the Legislative Council would be represented by the Hons M.J. Elliott, K.T. Griffin, J.C. Irwin, Anne Levy and C.J. Sumner.

STATUTES AMENDMENT (COURTS) BILL

Consideration in Committee of the House of Assembly's amendments:

No. 1. Long title, page 1, line 6— Leave out 'the Courts Administration Act 1993,'.

No. 2. Clause 4, page 1, lines 24 to 30 and page 2, lines 1 to 13— Leave out this clause.

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

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

This is the first time the Bill has come back from the House of Assembly. It may be remembered that this Bill deals with a number of amendments to various Acts in relation to courts administration. The Legislative Council inserted an amendment to the Courts Administration Act dealing with power of the Government to give directions to the Courts Administration Authority. It particularly related to this issue of resident country magistrates. The Government has supported the reference of a Bill introduced by the Hon. Frank Blevins in another place to the Legislative Review Committee in conjunction with a request to the Chief Justice and the Acting Chief Magistrate to reinstate residencies in the interim period until the Legislative Review Committee reports on its investigation of the Bill which has been referred in the other place.

The Hon. C.J. SUMNER: The Opposition opposes the Government's proposition on this matter. We want to see the resident magistrates maintained, and this is a mechanism whereby that can happen. The Attorney-General might, however, be able to inform the Committee whether or not he has written to the Chief Justice yet and, if so, say what is the Chief Justice's reply, because I suppose if the Chief Justice agreed to reinstate the resident magistracies until the matter had finally been determined, then that might influence the Parliament in its view about the situation.

The Hon. K.T. GRIFFIN: A letter has been drafted in anticipation of the matter being referred to the Legislative Review Committee by the House of Assembly yesterday. That action was taken yesterday. That letter has been drafted, but it has not yet been formally forwarded to the Acting Chief Magistrate or to the Chief Justice. I would expect that to be done by Tuesday.

The Hon. M.J. ELLIOTT: This is an important issue. It is certainly causing a great deal of concern in regional South Australia. I think that it is a matter which is quite straightforward and I would not have thought that the time of the Legislative Review Committee needed to be taken up to come to a decision.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I understand that but I still think the issue is a pretty straightforward one and I believe we should be insisting on our amendments.

Motion negatived.

The following reason for disagreement was adopted:

Because the provision is necessary for the effective administration of justice.

CROWN LANDS (LIABILITY OF THE CROWN) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 May. Page 833.)

The Hon. DIANA LAIDLAW (Minister for the Arts): The Hon. Chris Sumner asked two questions to which I am now able to provide the answers. The first relates to a provision in the Act making the immunities simpler than relying on the common law. At the time the amendment was first proposed there was a greater need for legislative change as the Wilmot case had not been decided. The need for the legislation is diminished since the decision in Wilmot.

However, it is important to note that in Wilmot the Crown successfully appealed on a number of grounds, not all related to the Crown's duty with respect to Crown land. On one view of the decision, Ms Wilmot lost because any 'alleged' breach of duty by the Crown did not cause her injuries. In the absence of an amendment to the Act, it could be argued in future that a different version of facts could give rise to liability on the part of the Crown. In respect of liability for injury occurring on or emanating from Crown land, the amendment will serve as protection from future interpretations of the common law by either the Supreme Court or the High Court.

In relation to the second question, it is difficult to answer in the abstract how much more extensive the exemption to the Crown will be in view of the Bill; it will all depend on the facts. On the same facts as the Wilmot case (that is, people coming on to Crown land), the result would probably be the same. There are some fact scenarios that would not be covered by the decision in Wilmot which are envisaged by the Bill. For example, the Bill contemplates exemption from liability as a result of dangers emanating or escaping from Crown land. Further, the Crown would also be immune where the land was a reserve, wilderness protection area or wilderness protection zone, provided it is not being used by the Crown. This is not clearly the case on the common law principles in the Wilmot case. The statutory immunity is restricted only to those cases where the land is not being used by the Crown.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Liability of Crown in relation to Crown lands.'

The Hon. C.J. SUMNER: I should like to make a brief comment in the light of the Minister's response. It is clear that this Bill will extend the immunities to some extent beyond the effect of the Wilmot case given that that was confined to a particular set of facts. In particular, according to the Minister's answer, the immunity will now extend to dangers emanating or escaping from Crown land, which may not have been the case on the common law in Wilmot, although one can only speculate about that. The Opposition will not change its view on it or oppose the Bill.

It is acknowledged that we are talking only about Crown land that is not being used. In terms of the justice of the case, I suppose one could not draw a distinction between circumstances where people go on to unused Crown land for the purposes of trail bike riding and so on, because they take a positive action by going on to that land and, therefore, take the risks of doing so, and circumstances where, even though the land is not being used, there might be some danger that emanates or escapes from the Crown land and causes damage off the Crown land.

I suppose there could be some circumstances in which if the Crown or the Government knew of the potential for danger to emanate or escape from Crown land there would perhaps be some obligation to do something about it. That would not be picked up by this Bill. As I say, I do not want to debate the issue today or to oppose the Bill on that basis, but I wonder whether the Government and its legal advisers

could give further consideration to the point that I have raised and let me know, perhaps by correspondence, whether the Government is satisfied with the policy of the Bill which could extend to circumstances where, although the Crown is not using the land, it knows of some danger that might emanate from it and whether it would be reasonable in policy terms for immunity to apply. One can understand where it would apply to the situation of someone actively going onto Crown land that is not being used, but what if a danger that the Crown knows about, even though the Crown land is not being used, emanates from it and causes damage to an adjoining owner's property?

The Hon. Diana Laidlaw: Such as fire.

The Hon. C.J. SUMNER: It could be fire or a flood, and there may be other examples. The policy of the Bill gives the Crown immunity in those circumstances, but it strikes me that there is some distinction when one looks at the justice of the matter between the strict circumstances in the Wilmot case and circumstances such as those which I have outlined, not of a situation where someone voluntarily assumes a risk by going onto unused Crown land but where danger emanates from that Crown land even though the land is not being used but where perhaps the Government or the Crown knew about it.

We are giving a more blanket immunity than perhaps the situation justifies but, as I say, I will not hold up the Bill. I make these points only in response to the Minister's answer, but I wonder whether the Minister could give her departmental legal advisers the opportunity to look at that issue from a policy point of view to see whether or not there is a need to review the legislation in the future.

The Hon. DIANA LAIDLAW: I undertake to have the matters raised by the honourable member considered by the Minister and a reply provided during the forthcoming break.

Clause passed.

Title passed.

Bill read a third time and passed.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 1033.)

New clause 130A—'Limitations of actions in tort.'

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

Page 57, after line 10—Insert new clause as follows:

Limitations of actions in tort

130A.(1) Subject to this section, no action in tort lies in respect of an act or omission done or made in contemplation or furtherance of an industrial dispute.

(2) This section does not prevent—

(a) an action for the recovery of damages for death or personal injury; or

(b) an action for the recovery of damages for damage to property (not being economic damage); or

(c) an action for conversion or detinue; or

(d) an action for defamation.

The Opposition seeks to insert provisions which are already in the State Industrial Relations Act. The Opposition's amendment provides that an action cannot be taken against a registered association, although this should be extended to unregistered if such an unsound concept remains in the Bill.

At common law, an action cannot be taken in an industrial dispute until the matter has first been sought to be resolved by conciliation or arbitration before the Industrial Commission. Where the Full Commission determines that all means provided under the Industrial Relations Act for resolving industrial disputes either by conciliation or arbitration have failed and certifies to that effect, an employer may bring an action in tort. In determining the matter, the Full Commission must deal with it as expeditiously as possible. The record shows that this provision has worked efficiently for employers to this date.

This is an eminently reasonable provision of the existing Industrial Relations Act, and it was supported by the Australian Democrats when it was first introduced some years ago. Quite properly, it allows for the resolution of an industrial dispute, in the first instance, to be in the hands of the tribunal that has been especially established to deal with industrial disputes, that is, the Industrial Commission. The employer is protected in that, should the specialist tribunal, that is, the Industrial Commission, fail to be able to resolve that industrial dispute, that person has access at common law for actions against the relevant trade unions.

This issue is similar to that surrounding the right of workers to be able to engage in industrial action against their employer in pursuing legitimate industrial claims. Without the Opposition's amendment, the employer would always have the upper hand in negotiations and dispute situations involving trade union members or, for that matter, workers who are not unionists. This latter group is in even greater need of this minimalist position, for it will not have access to the resources of unions that will help with complex industrial dispute situations. The support for enterprise bargaining currently shown by employers and conservative politicians is as much a reflection of high unemployment, hence the enhanced bargaining position of employers, as of any fundamental issue of principle.

In industrial relations there should be, as far as possible, a levelling of the power relationships between employers and employees to ensure that neither party has so comprehensive a set of legal or other powers at their disposal that they can batter the other party into submission. The establishment of a special industrial relations jurisdiction reflects the failure of common or civil law to address the realities of work relationships. Employers, through the weight of onerous common law damages claims being made against trade unions or their members, seek a return to the industrial dark ages that created massive disputes with all their economic implications. The Opposition's amendment is not about putting trade unions above the law, as the Liberal Government would like to paint it, but simply to recognise the imbalance in power relationships between employer and employee and to have the matter settled in the first instance if at all possible by a specialist tribunal set up to conciliate or arbitrate, if necessary, on industrial disputes, that is, the Industrial Commission. I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: I oppose the amendment. We have largely had that debate in relation to making the unions and union officials accountable to the ordinary courts and exposing them to the same potential for civil action as any other citizen. I do not need to explore the matter further.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: I think it extends to everyone. The amendment provides:

Subject to this section, no action in tort lies in respect of an act or omission done or made in contemplation or furtherance of an industrial dispute.

If you look at paragraph (a) of subclause (3), it talks about 'the industrial dispute arose or was prolonged by unreasonable conduct on the part of the person against whom the

action is to be brought'. It seems to me that it is wide enough. It covers the field, in a sense. We oppose it strenuously. I noted what the Hon. Mr Elliott said on the last occasion we were debating this issue. I would hope that he will keep an open mind on some mechanism to at least allow ultimately, but without a lot of rigmarole and delay, matters being dealt with in the civil courts.

The Hon. M.J. ELLIOTT: We have already discussed this issue in relation to some previous amendments, and I expressed a view at that time that something similar to section 143a of the existing legislation should be in this Bill. It is one thing to talk about wanting to get people into the civil courts. But the moment you have done that, it appears to me that you also significantly reduce the possibilities that any genuine conciliation will occur.

I think the important thing is that we should be aiming to achieve a number of things through this one clause, and this clause comes fairly close to achieving a couple of goals. One is recognising that there are industrial disputes. In fact, the only genuine bargaining power that an employee has is their own labour. They have no other bargaining position essentially to come from in most circumstances. If a dispute arises, we want a mechanism which will settle it as quickly as possible. What we really want to do is to see the workplace working again, which is to the benefit of both the employers and the employees. It is a good thing not just for the employer that the workplace is at work: it is important for the employee as well. That is why it is so terribly important that we do get people, when a dispute arises, as quickly as possible into some form of arbitration or conciliation so that the dispute may be settled. If the arbitration or conciliation fails, the question is whether or not it should go to the—

The Hon. K.T. Griffin: Conciliation or conciliation and arbitration?

The Hon. M.J. ELLIOTT: And/or. Once we have gone past that step, if there continues to be a difficulty, if the commission continues to be ignored or if its efforts are ignored, I suppose you could say it is reasonable for the civil courts to become involved. Certainly, the fact that you can go straight to the civil courts means that a person can hold out and say, 'I am not interested in any conciliation process, because I have this mighty club with which I can beat people over the head.' I cannot see at the end of the day that that is constructive. I do not think that is helping employers in the general scheme of things any more than it is helping employees. If there is a difficulty in the workplace and it continues to simmer, that is to no-one's benefit either. I believe there needs to be something in a similar form to section 130a, and I will be supporting the amendment.

The Hon. K.T. GRIFFIN: I hope there is still an opportunity to have some further discussions on this, because it is an important issue. Whilst we would prefer as a Government the cleaner and more appropriate option, in our view, of not having the provision, if there is to be a provision, it has to be workable.

My information is that present section 143a is not workable because the Full Commission, under subsection (3)(b), has to determine an application—and it is the Full Commission that determines it, and it is not subject to any review. The Full Commission has control of the situation and has to determine that all means provided under this Act for resolving an industrial dispute by conciliation or arbitration have failed.

So, it is not just focused on conciliation; it also involves arbitration. Arbitrations can be long drawn out matters whilst the employees are on strike. But, in addition to that, the Full Commission has to determine that there is no immediate prospect of the resolution of the industrial dispute. So, all means under the Act for resolving the dispute by conciliation or arbitration must have failed and there is no immediate prospect of the resolution of the industrial dispute.

What I am told happens in some instances is that the arbitration is prolonged and the Full Commission says that it cannot yet say there is no immediate prospect of the resolution of the industrial dispute because it is still in the process of arbitration. When the arbitration has concluded the commission says, 'We will give it a bit of time to see if, in fact, it resolves the industrial dispute.' We find that a most unsatisfactory way of endeavouring to resolve such a dispute when, in some instances, civil action will resolve it more quickly, particularly when the issues in the dispute are not sufficiently strong and well held to be able to withstand such civil action.

What I suggest is that, in the light of the Hon. Mr Elliott's intimation of his support of the Hon. Ron Roberts' amendment, we push on, but I would like to invite the Hon. Mr Elliott to keep at least some option open for a review of clause 130a before the whole matter is concluded.

The Hon. T. CROTHERS: Would the Attorney care to tell the Committee who advised him that the present dispute resolution mechanism is not working? If he is not prepared to do that, or even if he is, will he then tell the Committee what percentage of current disputes are not working under the current Act, and say whether his department has done any research as to the way in which disputes might be exacerbated by the changing or deletion of the present dispute resolution clause?

The Hon. K.T. GRIFFIN: I am not prepared to disclose the source of my advice, and I do not have with me the details of the percentages to which the honourable member refers.

The Hon. R.R. ROBERTS: I thank the Hon. Mr Elliott for his indication of support. The fact of the matter is that, these days, the commission has the ability in these situations to resolve these disputes, and this is brought about by long experience and the accumulation of expertise. It is one thing to say that we can resolve a dispute by going straight to common law. That applies the big hammer but it does not normally resolve the dispute. On my advice, on many occasions it is a tool that the commission is able to use to attempt to resolve the dispute, by being able to say, 'Are we going to resolve this dispute or will I sign the order that says it is unresolvable and should go to common law?'

I am told that in almost 99 per cent of the cases the dispute is generally resolved within 24 hours. So I do not think there is any need for this clause, and I believe that the concerns expressed by the Attorney-General are unfounded. I thank the Hon. Mr Elliott for his indication of support.

New clause inserted.

Clause 131—'Association must act in the best interests of its members.'

The Hon. R.R. ROBERTS: The Opposition opposes this clause. The Bill already provides that a registered association can be deregistered if it breaks its rules and that if the leadership thereof behaves in a particular manner that is not acceptable to the general membership of that union that leadership can be replaced in regularly scheduled elections, and in most instances by secret ballots conducted by the Electoral Commissioner.

It is not for the Government or the judiciary to determine the question of what is in the best interests of its members,

as different parties may hold conflicting views as to the brightness or correctness of a particular course of action undertaken by a union. Ultimately the members of the union express their views about the role of union leadership through elections, in the same way that South Australian and Australian citizens do so in political situations. If elected union officials breach the rules of their own organisations, they can be dealt with in the courts on application of members of the registered association. There is no need for this particular clause and it is opposed.

The Hon. M.J. ELLIOTT: I concur absolutely with what was said by the Hon. Ron Roberts. There are already deregistration mechanisms available elsewhere in this legislation. I fail to understand the intended purpose of this clause. It looks highly political with the Minister making some decisions about what is in the best interests or otherwise of members. It would be one thing if this clause allowed actions to be initiated by any member—the people who are actually being affected by it—but for the Minister to be making the application in this circumstance is quite bizarre and looks highly political.

The Hon. K.T. GRIFFIN: The Government is certainly prepared to consider an amendment to allow a member to take this action. The Government felt it was necessary to have some mechanism which ensured that there was an accountability of associations to their membership. However, the more important issue is the question of transfer from State jurisdiction to Federal jurisdiction, and the clause was essentially directed towards developing a mechanism which would enable the State commission to have some involvement in determining whether or not an application to transfer coverage of members of an association from the State system to the Federal system, purely for political reasons or reasons of expediency, could be addressed.

Without a provision similar to this, or in some form, the State tribunal could have no role in assessing the merits of the conduct, and it really would be left to the Federal commission to refuse the expansion of its own jurisdiction. I think all members will agree that that is a course of action which is of limited value, particularly to employers who oppose a log of claims designed to achieve that transfer.

Again, we take the view that some mechanism needs to be in place in the Bill to enable that problem to be addressed and to give the State tribunal at least some opportunity to intervene in this movement towards Federal award coverage. That is the reason for it. It may not have been couched in the most appropriate terms, but it is designed to address that issue and weave our way through what may be constitutional difficulties in achieving that goal.

The Hon. M.J. ELLIOTT: I found the Attorney's explanation more enlightening than anything I picked up in the second reading speech about this matter. I could have read the explanation a thousand times and not picked up what the provision was for. It was obviously political, but I did not pick that up. I do not believe that the mechanism structured here and couched in such terms is appropriate in any sense. It underlines my reading of the whole thing that someone outside an association was going to make a decision about what is best for its members. That is quite bizarre. As to freedom of association, if you choose to be a member of an association and it is a democratically operating organisation making its rules appropriately and acting according to the rules, it is peculiar for someone outside the association to come in and say, 'We know what is best for you.' That goes right against any notion of freedom of association, choice and various other terms dotted through the Liberal Party policy.

The Hon. T.G. ROBERTS: I agree wholeheartedly with the views that the Hon. Mr Elliott and the Hon. Ron Roberts have put on the record. A certain hypocrisy is evident. People in the legal profession talk about the independence of the judiciary and the pressure applied to people at certain levels in various courts not to take decisions that are of some benefit to the Government. We have heard people being willing to fight to the death to protect that. Indeed, I have argued in this place to enable that to happen as well. However, we have the same people who will not apply that to union officials in relation to the carriage of their job in the best interests of their membership, officials who are elected on the basis of platforms that they expound, the same as in a political Party.

In most cases union organisations have constitutions that are registered in full agreement with the courts and the duties carried out by officials are in complete accord with the law. Indeed, union officials are elected on the basis that the rank and file know exactly what those members represent in terms of representing their interests in the organisation. Therefore, for an organisation outside that body to make some sort of an assessment, based on how it feels—with those people not being elected—that organisation should be run is an insult not only to democracy but to the members of that organisation itself. It is one of the irksome parts of this whole Bill that, if it was put together completely with an interest and an eye for industrial relations in this State and to allow small business to run its affairs using enterprise bargaining in a way to run more effectively and efficiently, I would not have any problem with that.

If it allowed middle-size business and big business to get on with their work in a democratic way, using enterprise bargaining as a model for increasing effectiveness, efficiency and productivity, I would have no problem. However, we find that the Bill is littered with restraining clauses that have nothing do to with the betterment of industrial relations, the interests of small business, or big capital, or middle-size capital. It is simply a philosophical run through on taking away the power of those organisations that the Government sees as standing between it and open slather in relation to capitalist control over labour. The indication is that during the Committee stages the Government's position will be rejected by the Democrats and the Opposition. I hope that not only this but that other motions put forward receive the same fate.

The Hon. K.T. GRIFFIN: I have indicated what I have been advised is the goal of this clause. The Government will give some further consideration to it in the light of the action to be taken. I acknowledge that the way in which it is framed certainly does not disclose the true goal of the provision.

In relation to the Hon. Terry Roberts' comments, one does have to acknowledge that although an organisations may be established as a so-called 'democratic' institution, the fact is that in many instances—and it does not matter whether it is trade unions, companies, associations under the Associations Incorporation Act, credit unions or whatever—they do not act in accordance with their rules and in the interests of their members.

In the Corporations Law, in the Associations Incorporation Act and in other corporations-style legislation, there are provisions which quite expressly require associations to act in accordance with their rules or articles and also in the best interests of the members. In fact, under the Corporations Law, if the association does not act in accordance with the best interests of shareholders then there are some legal

consequences to that. That is one aspect, and I wanted to ensure that we did not leave the Hon. Mr Roberts' statements unchallenged.

Be that as it may, the fact is that we will be giving some further consideration to the way by which we can address the problem of transfers from State to Federal jurisdiction without the State tribunals having any involvement in that process.

The Hon. M.J. ELLIOTT: The more one reads this division, which is called 'Purpose of association', the more one realises that it is all about what associations cannot do rather than what they can.

Members interjecting:

The Hon. M.J. ELLIOTT: You read a clause entitled 'Association must act in the best interests of its members' and you think that is not a bad idea. Then you find that the clause is all about the Government's trying to stop them from doing something it does not want them to do and has nothing to do with what the members might be able to do to ensure that the association is doing what they want to do.

As I look through the later clauses, it is all about restrictions and not doing anything in a very productive sense. I have a view that we want to be very confident that associations—be they unions or anything else—are very democratic and various other things. If we had legislation that was talking about the democratic functioning of associations, not just industrial associations but also others, I would say that that would be an extremely good thing. Rather than the Government's setting about defining an association and ensuring that it is acting in its best interests, it is actually inserting clauses ensuring that it is acting in the Government's best interests.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I see it as rather perverse that that is the way we are tackling these things. It has worried me that there are large slabs throughout this Bill that are simply not constructive. As I said before in this place, the Government went to the public and formed policies, and a number of things which the public wanted to see happen are in this legislation, but there were many matters which were never raised, which are largely bashing the unions over the head for the sake of it more than anything else, which look like an employers' wish list and which are unnecessary and over the top. That is what is so very disappointing about all of this. Then we hit a clause like this which has a totally different purpose from that which any reading could ever have constructed from it, unless we had been told what it was. Sorting out what this really means could well be in a book of puzzles. I find it very sad and disappointing.

The Hon. R.R. ROBERTS: I thank the Attorney-General for making that explanation, because this is what we have been saying right throughout the Bill. This is about tagging registered associations, and we will be addressing a couple of other issues in this area. I thank the Hon. Mr Elliott for his indication of support on this matter.

Clause negatived.

Clause 132—'Industrial services not to be provided to non-members.'

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

Page 57, line 25—After 'must not' insert ', except at the request of the person'.

I am not certain that I have interpreted clause 132 correctly; perhaps there is more to it than I have picked up. On the face of it, as it stands this clause provides that an association cannot represent a person who is not a member of the association or who has not applied to join. I am adding the words 'except at the request of the person', so that an individual non-member could invite an association to act on their behalf.

The Hon. K.T. Griffin: A request in writing?

The Hon. M.J. ELLIOTT: That does not cause me huge concern. It is more important that they should be acting at the request of the person. I recall the Government amending something in an earlier clause which indicated that the request had to be genuine—I do not think it had to be in writing—and it was not a problem. I am not sure where else in the Bill it was intended that this clause was supposed to have specific operation because if a non-member requested a union to represent their interests during award or enterprise agreement negotiations I would have been quite satisfied with that. The Minister might care to respond as to whether it is his understanding that, as the amended Bill now stands with the clause amended as I propose, they will not be precluded from acting at the request of either a member or a non-member.

The Hon. R.R. ROBERTS: The Opposition opposes this clause. It is outrageous in that it is a restraint of trade with respect to an association. Whilst generally speaking trade unions work only on behalf of their members, it is possible in an enterprise bargaining era for employees who are not union members to seek professional advice from a lawyer or an employee ombudsman or some other source. This would be a reasonable request by those non-members who may wish to access the expertise of a union which covers their occupations and who may make an arrangement with the union for them to be represented by that union upon payment of a commercial fee to the union.

The Bill, as worded, prevents organisations, such as the Employers Chamber of Commerce and Industry, from being able to represent non-members of those organisations, even though they do it now and presumably may wish to do so in the future as employers who are not members will use their services and pay a fee. Indeed, it is a lucrative practice for the Employers Chamber of Commerce and Industry, and I am sure it would not be too keen to lose the finances that it gains in that way.

There is also a greater and more important problem with respect to the Bill on this matter in that questions could be raised as to whether or not a trade union, acting in a common rule award situation, could appear in the commission and seek to represent the interests of employees generally covered by that award. For example, the Clerks (South Australia) Award has 12 000 employers bound by that award and some 20 000-odd employees are similarly bound by it. Only a relatively small number of those 20 000 employees are members of the union concerned. Nonetheless, the standard of living of 20 000 South Australians and their families is affected by what happens with respect to that award. It is important for them, as well as for members of trade unions, that the unions appearing in the commission on these matters are able to represent the interests of employees generally. In fact, one could argue that the Bill limits the application of these common rule awards only to members of associations, whether registered or not. Such a situation would substantially weaken the common rule award coverage and tear away the award safety net for literally tens of thousands of non-unionists.

The Hon. K.T. GRIFFIN: I indicate support for the Hon. Mr Elliott's amendment. We do not have any difficulty with

that concept. At the same time, I will move my amendment which addresses to some extent the issue that the Hon. Ron Roberts raised. I move:

Page 57, after line 28—Insert subclause as follows:

(2) However, if an association is authorised by a majority of the employees constituting a group to represent the group in negotiations and proceedings related to an enterprise agreement or proposed enterprise agreement, the association or an officer or employee of the association may represent the group in proceedings before the commission related to the agreement.

We are trying to recognise the principle that those who are engaged in enterprise agreement negotiations can, if they wish, have an association to represent them.

The Hon. M.J. ELLIOTT: I believe that this amendment conflicts with previous amendments. My understanding of previous amendments is that employees who are members of an association can be represented by that association.

The Hon. T.G. Roberts interjecting:

The Hon. M.J. ELLIOTT: Yes. I am certain we have created such an amendment; there did not have to be a majority. The difference was that the union really would not become a party to an agreement unless it represented a majority. I must say, again, that I am amazed that the Attorney-General should be denying to people their right to representation. I thought if anybody understood the right to representation a lawyer would. At this stage that is what is being done. If a person wants to be represented by somebody else most people accept that as being reasonable. That right is being denied by this subclause. I criticise it on those grounds, and I criticise it also because it conflicts with other amendments that we have already passed.

The Hon. R.R. ROBERTS: I prevail on the Hon. Mr Elliott to support the propositions put by the Opposition on this occasion. I accept that what he does is better than what is proposed, and the Attorney-General said he wanted it in writing.

The Hon. K.T. Griffin: I did not say that. It was a rhetorical question when the Hon. Mr Elliott was moving his amendment. It was not a request to put it in writing.

The Hon. R.R. ROBERTS: It might have been a rhetorical question but if he had said, 'Yes', I do not think you would have knocked the offer back.

The Hon. K.T. Griffin: You do not know what I would have done.

The Hon. R.R. ROBERTS: If I have been cruel or unjust to you, I am sorry.

The Hon. K.T. Griffin: Thank you. I appreciate the apology.

The Hon. R.R. ROBERTS: However, it is my expectation that you would have accepted the honourable member's offer. From time to time unions are invited into industry areas where there may not be members—cleaners, for example. If a cleaning company suddenly undercuts costs of other organisations, it is a fair indication that somebody is not paying the right fees. Unions do provide that service, normally free, but on occasions they could act for a fee, as has been outlined in previous contributions. It gives them the opportunity to say to people, 'We do in fact provide you with a service. We can give you good advice.'

It may be, from time to time, that people seeing the benefits of a union may wish to join it. This clause that is being proposed by the Attorney-General makes a clear definition. This is somewhat akin to the previous clause that we discussed, where there is a hidden agenda. The Government's clause stops unions from selling themselves. It is a restraint of trade on the legitimate operations of registered trade unions. The system works very well at the present moment. The service is available and it allows the unions to operate in areas where they have a right under their articles and rules, and the commission knows clearly what those positions are.

As the Hon. Mr Elliott observed in further discussion, this is about stopping someone from doing something. It is not empowering them or giving someone rights over and above: it is to stop people from providing a service, where there is a clear indication that the service is needed. The unions have been doing it quite well and, I believe, the best position in this situation is to follow our lead, and that is to knock out this clause altogether. However, I understand what the Hon. Mr Elliott is trying to do. I prevail upon him to go the full step with me and allow the *status quo* to remain.

The Hon. K.T. GRIFFIN: There is nothing sinister in this amendment at all. It is related back to clause 72(2). I will analyse, as follows, what is proposed to be inserted in this subclause:

However, if an association is authorised by a majority of the employees constituting a group. . .

The focus is on the group. If one looks at the definition of 'group' in clause 4(2), one sees that it talks about not just those who are members of an association of employees but the whole group employed in a single business. There is no doubt that an association can represent its members, but there may be a workplace where there are members of the association and non-members. What we are saying is that, if an association is authorised by a majority of the employees constituting a group to represent the group, members and non-members, then the association or an officer or employee of the association may represent the group, that is, members and non-members. We do not care whether or not this goes in. It is as simple as that. If it does not go in, we are not fussed. All we are trying to do is ensure that there is a consistency of approach with clause 72 and the definition of 'group'.

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

Clause 133—'Powers of officials of employee associations.'

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

Page 58, lines 9 to 12—Leave out subclause (3).

I am seeking to delete subclause (3) because I believe that an enterprise agreement should be accessible. I think my earlier amendment said it should be lodged with the Registrar. So, this is a consequential amendment.

The Hon. K.T. GRIFFIN: I oppose it, but I think it is consequential.

The Hon. R.R. ROBERTS: I support the amendment, and move:

To strike out the existing clause and insert the following new clause:

Inspection of records, etc., by officials of registered associations.

133. (1) An official of a registered association of employees may, after giving the employer reasonable notice, enter premises of an employer subject to an award or enterprise agreement or other premises where the employer's employees may be working and—

(a) inspect time books and records of remuneration of the employer at the premises; and

(b) inspect the work carried out by the employees and note the conditions under which the work is carried out; and

(c) interview employees (being employees who are members, or are eligible to become members, of the association) about the membership and business of the association.

(2) The Commission may, by award, impose conditions or limitations on the exercise of powers conferred by this section.

The Government's proposition is strenuously opposed, and the Opposition has put forward an amendment which allows for officials of registered associations to be able to inspect time and wages records, inspect the work carried out by employees covered by awards to which that registered association is a party, and to be able to interview employees, whether or not they are members of unions, about an issue of union membership and the business of the union.

The Government's Bill considerably restricts the union in that only the time and wages records of members of that union can be inspected, and only where written notice is given to the employer. Many employees are members of unions on a confidential basis; that is, they do not wish their employer to know they are a union member.

This is particularly true in relation to a large number of small employers where employees feel that their continued employment may be threatened if their employer knew that they were a member of a union. Under the Government's Bill the person would not be able to ask their union to discreetly inspect their particular time and wages records if they believed that they were being underpaid without dobbing themselves in about their union membership. Also it is extremely important that unions assist the inspectorate, who are usually well under-resourced and who cannot possibly cover all employers' premises throughout the State in an effort to ensure that the correct wages and allowances are being paid to employees who are bound by an award or an agreement.

It seems ludicrous that, in the last decade of the twentieth century, union officials wanting to speak to employees who are not members of the union about the advantages of joining a union can only do so outside of working hours and without any facilities being offered by the employer. In a practical sense it is extremely difficult to be able to talk to employees outside of working hours because of pressing domestic commitments of a large number of female employees, who are the primary family carers. For practical reasons it is also extremely difficult to address non-union groups of shift workers.

The Opposition's proposal simply reinstates the powers of the Industrial Commission to make an award with respect to this matter. The award that it orders can be subject to all sorts of conditions which are either agreed between the parties or, if necessary, through arbitration. This provision was first inserted in the South Australian legislation some few years back. To the Opposition's knowledge there has been no complaint laid with the Industrial Commission or court about any abusive processes by any registered association with respect to this matter. Indeed, a number of awards have been varied which provide for unions to be able to interview employees at the work site during working hours but only on an once-a-year basis except when the union is performing its time and wages inspection function, and then due notice has to be given to the employer. Importantly, the identity of the complainant does not have to be revealed to the employer, thereby maintaining confidentiality for those persons. I put that submission before the Committee and ask the Hon. Mr Elliott to support it.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. There are two basic reasons for that. The first is that there is already a provision in the Bill outlawing discrimination against an employee on the ground of belonging or not belonging to an association of employees. The second reason, and it is the more significant principle which is involved, is that the Bill provides that the official can have access to the employer's premises where one or more members of the association are employed, inspect the time books and wage records as far as they relate to members of the association, and do other things related to the members of the association who are employed at that workplace.

The Hon. Mr Roberts' provision is quite objectionable because it allows access to all time books and records regardless of whether the employee is a member of the association or not. Employees have a right to make a choice about membership and to expect that, in terms of questions of privacy, the work conducted by the employee, and the books and records relating to the remuneration of the employee, who is not a member of the association, would be respected. Of course, there are provisions in other parts of the Bill allowing inspectors to have access to records but it is quite objectionable to have this *carte blanche* provision, which in addition to the matters to which I have referred also allows for the representative of the association to interview employees, whether or not they are members, about the membership of the association. I do not believe, and the Government does not believe, that that ought to be a function which is permitted by associations in the employer's time. However, the more offensive aspects of the amendment are those which allow access to information relating to non-members of the association.

The Hon. M.J. ELLIOTT: There is probably a reasonable middle position between what the Government has and what the Opposition proposes. In clause 133(1)(b) the inspection of work would relate particularly to members of the association. Interviewing of employees relates to members of the association. The reality is that when you keep time books and records, it is not as if they are loose leaf in the main, and to suggest that you can look only at the records of members and not others is a bit of a nonsense.

The Hon. K.T. Griffin: Frequently they're on computer tape.

The Hon. M.J. ELLIOTT: Some of them may be, but I invite the Attorney to give me any known examples of abuses of that power, as distinct from the concerns he may have about the others. Can the Attorney give me any examples of abuses of that power that would be any different if there was access only to members as distinct from employees?

The Hon. K.T. GRIFFIN: I do not have those at my fingertips. It is unfair to be asking for specific instances. One ought to be looking at the principle. Why should the time books and records of remuneration of a particular employee who is not a member of an association and who may not want to have the information made available to the official of a trade union be made available? In those circumstances should the law say, 'Too bad about what your personal views are about access to your records. The law says that the union can have access to that information'? That is an outrageous imposition.

The Hon. T. CROTHERS: I never cease to be amazed by the lack of all hands-on knowledge displayed by the Attorney-General. The Bill seeks to restrict entry to time and wages records inspection in respect of unions having a right to inspect the books of all employees and not just those who are members of a registered association. As to my hands-on experience in the cafe and restaurant industry, the Department of Labour and Industry tells us that the industry contains some of the biggest cheats in any industry in South Australia.

The industrial inspectorate to which the Minister referred also has a right to check time and wages books. There are about five or six senior inspectors in the division who are very good, but in my time part of the department's policy was to throw young people who were going to work in the department into the deep end of time and wages books inspection to the extent that I had one *bona fide* employee ring me almost in tears. That man was an object lesson in humanity and an upright employer by any standards. He told me an 18 year old from the department had inspected his time and wages books and told him that he was up for $6 000 in underpayment.

I knew that that was not possible and immediately went around and checked the time and wages records and found out that he had overpaid employees by $200. It was easy for me to do that because the young inspector had done his calculations in a green pen. Therefore, I do not want the Minister to tell me about the capacity of the inspectorate. At senior level it is very good but there are not enough of them to police the sorts of situations that our amendment seeks to address. I have recovered tens of thousands of dollars for members and non-members of our association and we never abused access to time and wages records.

It is the younger members of our community who are frightened of getting the sack who are put at risk if they raise the matter of time and wages books inspections. It is those young people whom the Minister puts in even more jeopardy than is currently the case, and that is a fair amount of jeopardy in my experience. The Attorney claims this is not another question about privacy. If an employer is doing everything in complying with the conditions of an award or agreement, the employer has nothing to fear or hide from people inspecting time and wages records of employees.

On many occasions employers called us in because they knew that people in the same industry next door were cheating. When we looked at the time and wages books of cheating employers we would recover thousands of dollars. It is such employers who will leave no stone unturned to ensure that employees never become members of any association. The Government's proposition is an absolute outrage. If employers are abiding and paying by the agreement under the award they have nothing to fear from such inspections.

As the Hon. Mr Elliott said and as I have put on the record two or three times, every thread running through this total revamp of the legislation by the Government is aimed at curbing the power of employees to have the representation of their choice.

The Hon. J.C. Irwin interjecting:

The Hon. T. CROTHERS: It certainly is. It requires to be repeated; truth never grows dim by repetition. It is an absolute outrage that the people less able to defend themselves are the people who will bear the burdens imposed on them by this clause. The common thread that runs through this Bill seeks to strip unions of their capacity to represent members. How can a union sign up employees if it cannot do anything for them, if it cannot service them, because the State laws have been changed in such a way to rob the union of most of the power to act in giving people proper and legal protection? The Minister is encouraging people to cheat. The sort of people he wants to protect are the type of people who put bent washers in parking meters. If enough people decide not to pay their water or electricity rates how will his Government react? It is the same thing and that is what the Government is encouraging. The *bona fide* employer doing everything right is the employer penalised by the cheats. They are cheating on wages to the extent where often they keep two sets of time books—one for us and one showing the underpayment of wages, and that is kept under the counter. Often we have walked in and have not been able to get people to tell us about another set of time books until they left their job.

Then they came to us. Because the statute of limitations is three years I can tell members that it would not have been unusual for my own union during its normal inspections to recover underpayments of sums of $12 000, $15 000 and $20 000 over a period of three years. What does that do to the *bona fide* employer who is doing everything right? It destroys their capacity to act in a competitive fashion within the industries where cheats are rampant—and they are no more rampant in this State or anywhere else than they are in the cafe and restaurant industry. We have recovered large amounts of money with respect to people who are non-members because we used to come around to collect their union dues only every 13 weeks—university students who took jobs during their university vacation to try to pay their way through university. I inspected a particular motel on Kangaroo Island, because two non-members who were both university students had worked there for eight weeks as casuals. When I looked at this well-known motelier's time books he was up for $17 000 in underpayment, and that was for the period of only five or six months during which he had kept the time books.

One will always remember the words of Don Chipp, the founder of the Democrats, when he said, 'Let's keep the bastards honest.' He said it all. I make no more appeal. There are many genuine people in the industry. I am not anti-employer, but I am anti-cheats, whether they be employee or employer, the lowest or the highest of the land. The Hon. Mr Griffin, whom I regard as a fairly straight individual, obviously lacks the experience to back up the convictions that he has displayed here, because if he knew what I knew, coming from the industry that I come from, he would have no hesitation whatsoever either in this life or the next in respect to right of entry and unions or registered associations having the capacity to inspect not only the time books of their members but also the time books of all employees so the whole industry is operating on an even field in respect of competitiveness. I support the motion moved by the shadow Minister and I would hope and trust that others will do the same.

The Hon. R.R. ROBERTS: I will make perhaps a less passionate plea than my colleague the Hon. Trevor Crothers, whose experience in this area has been quite vast, but he has explained some of the problems that can be encountered. This comes back to the fundamental basis of this Bill. What is being said by the Liberal Party is that it will offer choices to people. They may choose to be in a union or not to be in a union and they can be under an award or an enterprise agreement; but then it sets about to take away the very tools or services which unions may provide and which will attract people to come into the unions. So, what it is saying is that it will give people the choice whether or not to join, but not the tools that you might find beneficial and attract you to join the union. The Hon. Mr Griffin talked about confidentiality. He often retreats to that argument when it suits him and he also retreats away from it when it suits him.

I must point out to the Committee that the provision for the inspection of books occurs now in all the areas we are talking about, and I am not aware that anybody has com-

plained that information about wages records—not about their personal records—of employees have been rorted. We had this discussion a few years ago, and the Hon. Mr Gilfillan and the Hon. Mr Elliott at the time agreed that this was a sensible provision and a proper function for a union to be able to undertake.

We are now proposing to take away that right, but we have had no example of abuse or rorting or personal information being used to anyone's detriment. We are asking for the continuation of an existing right for a registered organisation with all the responsibilities cast upon it by law so that it may offer its services to people, and, in some cases, having acted for these people and been successful, they may say, 'It is worth while being a member of an association that can represent and provide me with protection from time to time.' I make a final plea to the Hon. Mr Elliott to support the proposition put forward by the Opposition. I will say no more about it, but I intend to divide if we lose this one.

The Hon. M.J. ELLIOTT: Mr Acting Chairman, I wish to make a further amendment to clause 133(1)(a). I move:

Page 57, line 34—Strike out the words, 'as far as they relate to members of the association'.

The Hon. K.T. GRIFFIN: The Government's preferred position is to leave those words in. However, as I suspect they will be deleted, we will give further consideration to the matter.

The Hon. M.J. Elliott's amendments carried; clause as amended passed.

Clauses 134 to 138 passed.

Clause 139—'Sequestration orders.'

The Hon. R.R. ROBERTS: We oppose this clause basically because it enshrines the hypocrisy of the Government's approach to associations. We have raised problems of accountability for unregistered associations. We have pointed out the difficulties inherent in proposals which could see a burgeoning of such unaccountable groups and the impact that they would have upon the administration of the industrial relations policy. But still the Government persists.

However, this clause acknowledges the difficulty of applying the discipline of public policy to such bodies. This provision will apply only to registered associations and those who can be held to account in an association without formal structure, to which aspects of accountability in this Bill cannot be applied. Of course, one could try; but without the potential sanction of deregistration this would be ineffective.

The Hon. K.T. GRIFFIN: We support the clause. The fact of the matter is that all that it does is provide a mechanism by which assets of a registered association can be sequestrated if there is a judgment. There seems to us to be nothing wrong with providing a mechanism for dealing with those situations where there is a judgment—and it is a judgment. It has been through the process of perhaps a dispute before a court, the court has made a finding and determined a case and said that on the balance of probabilities the debt is owed. A judgment is entered against the association and, in those circumstances, it has a liability to pay, unless there is an appeal. But once all appeals have been resolved, it ought to pay its debts, just like any other association.

There is a provision in the Corporations Law for the winding up of associations; and in the Associations Incorporation Act for the same process. In the Corporations Law and the associations law the winding up is related, among other things, to the failure to pay a judgment debt. In those circumstances it seems to us that a mechanism for requiring an association to pay its judgment debts, and the mechanism to enable that to be achieved, is not unreasonable. It is not oppressive; it is not out of the ordinary. If a judgment has been ordered, why should not the judgment creditor, whoever that might be, have an opportunity to recover it without significant and considerable technicalities?

The Hon. R.R. ROBERTS: Why is it only registered associations that can have sequestration orders made against them?

The Hon. K.T. GRIFFIN: Because they are the only associations that are provided for.

The Hon. R.R. ROBERTS: What about the new associations—these in house associations?

The Hon. K.T. GRIFFIN: They may be registered or they may be under the Associations Incorporation Act and, if they are under the Associations Incorporation Act, there is a mechanism—

The Hon. R.R. Roberts: Will this apply to an employer who suffers a judgment in a similar way?

The Hon. K.T. GRIFFIN: It applies to all registered associations, and employers and employees. It applies equally to employer associations and employee associations that are registered. It applies only to registered associations because the legislation only provides for the incorporation of associations by registration. The legislation allows registered associations and other associations to represent the interests of employers or employees, but it may well be that those associations are not registered under the provisions of this legislation because registration results in incorporation and is subject to certain disciplines under this Act. They may be associations under the Associations Incorporation Act, or they may be companies because you can have a company limited by guarantee, which is akin to an association under the Associations Incorporation Act.

As far as I am aware, there is no other mechanism for obtaining from a registered association, with a reasonable degree of ease, the satisfaction of a debt which is the subject of a judgment of a court. So, it is a mechanism designed to put in place the means by which judgment debts can be recovered. The matter has been through the court process, there has been a hearing between the plaintiff and the defendant, and the court has found that maybe there is predominantly a civil debt. The court (maybe a civil court or the Industrial Court, but more likely a civil court) says that the debt is owed and makes an order that it be paid, and it then has to be enforced. This relates to the enforcement of that debt. There is no breach of natural justice inherent in it and it is even-handed in relation to registered associations for employers and employees.

The Hon. M.J. ELLIOTT: It is clear that there is some change to the current legislation, which allows for a penalty against an association and, where that penalty is not fully paid, it is then the members of the association themselves who become both jointly and severally liable. However, I also note that the maximum liability for any one member is $10 in relation to one conviction. I guess there are swings and roundabouts in all of this. It probably means that where there is a large penalty it may not all be paid out.

The Hon. K.T. Griffin: It's not a criminal penalty; it relates only to civil debt.

The Hon. M.J. ELLIOTT: Only to civil debt?

The Hon. K.T. Griffin: Yes.

The Hon. M.J. ELLIOTT: In those circumstances I was going to support the clause, anyway. I was simply noting

some of the differences and exploring the consequences of those. However, if we are talking about civil debts, I do not see any particular difficulty with this clause.

Clause passed.

Clause 140 passed.

New clauses 140A—140C.

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

Page 60, after line 22—Insert new clauses as follows:

CHAPTER 3A

RESOLUTION OF CONTRACT DISPUTES

140A.(1) A contract (not being a contract of employment) is a contract of carriage for the purposes of this Chapter if—

(a) a person (the contractor) is engaged to carry a load (not consisting of passengers) by motor vehicle for another (the principal) for the purposes of a trade or business carried on by the principal; and

(b) the contractor does not simultaneously operate more than one motor vehicle for business purposes; and

(c) the contractor is not a common carrier.

(2) A contract (not being a contract of employment or a contract of carriage) is a service contract for the purposes of this Chapter if—

(a) a person (the contractor) is engaged to perform work for another (the principal) for the purposes of a trade or business carried on by the principal; and

(b) —

(i) in the case of a contractor who is a natural person—the contractor personally performs all or a substantial part of that work; or

(ii) in the case of a contractor that is a body corporate—one person (being an officer or employee of the body corporate) personally performs all or a substantial part of the work undertaken by the body corporate.

(3) A reference in this Chapter to a contract of carriage or a service contract extends to a contract that is collateral to such a contract.

140.B(1) This section applies in relation to an existing, impending or threatened dispute relating to contracts of carriage or service contracts.

(2) Where a dispute to which this section applies arises, the Commission may, on its own initiative, or on the application of—

(a) the Minister; or

(b) the United Trades and Labor Council; or

(c) a registered association acting on behalf of persons who are parties to contracts of the relevant kind; or

(d) with the leave of the Commission, any other association, being a body corporate, that can show an interest in the dispute,

call a conference of the parties to the dispute for the purpose of attempting to settle the dispute by conciliation and agreement.

(3) The Commission may at a conference under this section make recommendations for the settlement of the dispute.

(4) Where the dispute relates to contracts of carriage, the Commission may, if of the opinion that it is desirable to do so, proceed to hear and determine any matter or thing arising out of the conference as if it were acting under section 27(9).

(5) The provisions of this Act relating to compulsory conferences apply, with necessary modifications, to a conference under this section.

(6) The Commission may, at any time during a conference under this section, refrain from proceeding further with the conference if it appears that the subject matter of the dispute is trivial, or that in the public interest further involvement by the Commission is not necessary or desirable.

140C.(1) Application may be made to the Commission to review a contract of carriage or a service contract under this section on any or all of the following grounds:

(a) that the contract is unfair;

(b) that the contract is harsh;

(c) that the contract is against the public interest.

(2) An application under this section may be made by (and only by)—

(a) a party to the relevant contract; or

(b) a registered association acting on behalf of a party to the relevant contract; or

(c) a registered association of employers whose members ordinarily engage persons in the industry to which the relevant contract relates; or

(d) a registered association of employees whose members work in the industry to which the relevant contract relates; or

(e) with the leave of the Commission, any other association, being a body corporate, that can show an interest in the matter; or

(f) the Minister.

(3) In reviewing a contract, the Commission may have regard to—

(a) the relative strength of the bargaining positions of the parties to the contract and, if applicable, any persons acting on behalf of the parties; and

(b) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, a party to the contract; and

(c) whether the contract may have an adverse effect on the development of the skills of employees performing work of the relevant kind in the industry to which the contract relates, including any system designed to provide a trained labour force (for example), apprenticeship or any arrangement for improving the skills of employees); and

(d) whether it appears that the contract was entered into to evade the provisions of an award; and

(e) any other matter that the Commission thinks relevant.

(4) If the Commission forms the opinion that a ground referred to in subsection (1) is established in relation to the whole or part of the contract (even if the ground was not canvassed in the application), it may, according to what is fair in the circumstances of the particular case, by order—

(a) set aside the contract (wholly or in part), or vary its terms, from the inception of the contract of from some later time;

(b) give consequential directions for the payment of money, or in relation to any other matter affected by the contract;

(c) prohibit the principal, or any person who is, in any way considered relevant by the Commission, associated with the principal, from entering into further contracts that would have the same or similar effect, or from inducing others to enter into such contracts.

(5) In framing an order under this section, the Commission must have regard to the principle that fair and reasonable remuneration should be paid for work but, despite this, the Commission must also have regard to any difficulties that would be experienced by the principal because of serious or extreme economic adversity if the principal were required to make payments at or above a certain level.

(6) While an application is pending, the Commission may make an interim order if it thinks it is desirable to do so to preserve the position of a party to the contract.

(7) A person must not—

(a) discriminate against another person; or

(b) advise, encourage or incite any person to discriminate against another person, by virtue only of the fact that the other person—

(c) is a person who has made, or proposes, or has at any time proposed, to make, application to the Commission under this section; or

(d) is a person on whose behalf an application has been made, or is proposed, or has at any time been proposed, to be made, under this section; or

(e) is a person who has received the benefit of an order under this section.

Penalty: Division 8 fine.

(8) If in proceedings for an offence against subsection (7) all the facts constituting the offence other than the ground of the defendant's act or omission are proved, the onus of proving that the act or omission was not based on the ground alleged in the charge lies on the defendant.

(9) A court by which a person is convicted of an offence against subsection (7) may, if it thinks fit, on application under this subsection, award compensation to the person against whom the offence was committed for loss resulting from the commission of the offence.

The Opposition amendment seeks to reinsert into the Government's Bill legislation which enables the Industrial Commission to regulate disputes between contractors and their principals, including contractors operating trucks. The Opposition amendment requires the commission to review any contract or carriage of a service contract involving independent contractors and their principals on any of the

following grounds: that is, that the contract is unfair, is harsh, or is against the public interest.

In reviewing such contracts the commission may have regard to the relative strength of the bargaining position of the parties to the contract; whether there was any undue influence or pressure exerted on, or any unfair tactics used against, a party to the contract; and any other matter that the commission thinks is relevant.

If the commission forms the opinion that the whole or part of the contract is not fair, then it must set the contract aside or vary any of its terms. This legislation, which has been in the Industrial Relations Act since 1972, for the past few years was supported by the Australian Democrats. It recognises that many employers are now subcontracting out their business. For example, companies selling their trucks to their former employees and inviting them to continue are essentially doing the same work as they did previously as an employee, but now as an independent contractor. Many of these contractors, when they find themselves in this situation, are financially bound to their principal and to their finance companies with respect to their trucks.

The principals set terms and conditions of the contract, and in all respects this essentially binds the so-called independent contractor in much the same terms as if they were an employee but without any of the protections of an employee, for example, in relation to workers compensation, superannuation and award rates of pay. The bargaining position of the so-called independent contractors with their principals is very limited, and this amendment seeks to redress that lack of bargaining power for the individual contractor, allowing the Industrial Commission to intervene in the matter where it deems that the contract is unfair for any of the foregoing reasons.

Similar legislation has been in force in the New South Wales industrial jurisdiction for very many years and has proved to be extremely beneficial to the independent contractors, and the Opposition's amendments should be supported, at least by the Australian Democrats in this Committee.

The Hon. K.T. GRIFFIN: This is quite different from the contract of employment, which has already been extended by the Opposition with the support of the Australian Democrats. Our policy, very clearly at the election, was that individual subcontractors will not be classed as employees under the Act. This clause seeks to go beyond the provision which is already in the Bill, having been amended, to extend the contract of employment in certain circumstances. And it does quite clearly relate to those situations in which there is a subcontractor, contractor, or contractor principal arrangement, and it relates particularly to the transport industry. It has not been in the Act for so very long. I must confess I cannot tell members exactly how long, but it is certainly not—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: It has not been in since 1972. I thought you said that, but it has not been in since 1972. We had the argument about it—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: No, it is the Industrial Relations Act. This has been in for only about two or three years or maybe a little longer. Since that time the Government has sought to ascertain where this provision has been used. According to our researchers, there have been only five cases where this has been raised. In one case in 1992 the order sought, either in its original form or as supplemented by further draft orders, was beyond the jurisdiction of the commission, and the matter was adjourned.

Another one concerned a preliminary point that failed, and the matter was to proceed on the merits. I have not got the detail of that. There is another one in 1994, when proceedings were issued, but they are only relatively recent so the matter, as I understand it, has not been heard. According to our researchers, there have been actually only three in the period that a similar provision has been in operation.

It was first introduced in 1989 and amended in 1992. I recollect that the 1992 amendment was really to broaden it out to the contractor whom it purports to cover. We strenuously reject the addition. It is inconsistent with our policy position at the election and is not a provision which has been the subject of significant claim, but rather it is a recruiting base for the trade union movement.

The Hon. M.J. ELLIOTT: I invite the Minister to explain what problems have been created under the existing Act by these clauses, because I have a very clear memory of what was happening just before these clauses came in. I do not need examples of the abuses that happened beforehand—

The Hon. K.T. Griffin: There were not very many. In fact, it has only been used on three occasions.

The Hon. M.J. ELLIOTT: The fact is that it has not needed to be used because you do not tend to need the law so much once you have brought it in. That is why you bring it in.

The Hon. R.R. Roberts: It has a deterrent effect.

The Hon. M.J. ELLIOTT: It is a deterrent effect. As I said, at the time these clauses came in some gross abuses were occurring. Without examining the detail of these clauses, I am firmly of the view that the issues which caused these to be inserted in the legislation in the first place were legitimate and required addressing. I was inviting the Minister to give us examples of where the presence of these clauses has actually caused problems. I certainly know the problems they have solved.

The Hon. K.T. GRIFFIN: One can speculate about what the effect of this may have been, but if there were abuses they have not been drawn to the Government's attention, and we were certainly not even aware of them when the matter first came up. When the matter first came up there was this assertion that there were abuses and, as a result of that, the Hon. Mr Elliott and his colleague the Hon. Mr Gilfillan supported the then Government in putting this into the legislation.

The fact of the matter is that this clause moves into the contract area unrelated to the contract of employment. We did not put it into the Bill partly because of the policy position we took, which was clearly expressed in the policy prior to the election, and partly also because we were not aware of any significant concerns about the way in which the transport industry was operating. The fact that we have found only three matters that have been up to the court and none of them resolved—they have all been bogged down in technicalities—suggests there is no need for such a provision.

I put to the Hon. Mr Elliott that, having previously been so insistent that the Government comply with its policy promises, I draw to his attention again the fact that this matter was very clearly expressed in the policy. For that reason, to be consistent with his previous positions, I suggest he ought to oppose the clause.

The Hon. M.J. ELLIOTT: I think what the Minister has really missed is that my major complaint was that I was complying with the policy more often than they were. I have

never at any stage said I was going to comply with all the policy. What I have found very hard to take over recent times was a consistent haranguing about the Liberal Party's mandate, whilst they were departing from their policy far more often than I was. That was the bit that was proving just a little hard to swallow. The Minister has been quite happy to avoid that point.

The Hon. R.R. ROBERTS: We have been lobbied fairly well over this. I have had a number of phone calls from people in the legal profession and people who have been working in the industry for many years, and they were absolutely appalled that there was a suggestion that this resolution of contracts was to be taken out of the scheme of things by the Government. I have had discussions with people from the Transport Workers Union. I am advised there was a long history of disputation in this area. The point made is that there has been very little need for this since its introduction, and that proves the point that the Hon. Mr Elliott touched on: because this relief is there, you do not need to have to use it. It is its deterrent effect.

The fact that these provisions do exist has reduced and minimised any dispute that might have occurred in this area. I think the proposition we are putting, to continue something that obviously works and provides the sorts of things it was meant to provide and has proved successful, ought to be allowed to continue.

New clauses inserted.

Clauses 141 and 142 passed.

Clause 143—'Proceedings to be in public.'

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

Page 61, lines 27 and 28—Leave out paragraph (b).

This is a mirror of the Hon. Mr Elliott's proposed amendment.

The Hon. K.T. GRIFFIN: This amendment is opposed. It is consequential on earlier amendments which have been carried, but we take exception to proceedings relating to an enterprise agreement being conducted in private if a person who is likely to be bound by an enterprise agreement requests that it be held in private. We think that ought to be their right. There is no public interest question involved, and it ought to be so conducted.

Amendment carried; clause as amended passed.

Clauses 144 to 145 passed.

Clause 146—'Intervention.'

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

Page 63, lines 12 to 14—Leave out subclause (3) and insert—

(3) In proceedings relating to an enterprise agreement matter the following are entitled to intervene as of right—

(a) the Minister; and

(b) the employee ombudsman; and

(c) a registered association bound by an award that would (apart from the enterprise agreement) apply to employees covered by the agreement.

The Opposition seeks to amend subclause (3) so that, if a person is able to apply for intervention in any industrial proceedings before the commission involving an enterprise agreement, the parties entitled to intervene in such matters as of right will be the Minister, the employee ombudsman and a registered association bound by an award that would (apart from the enterprise agreement) apply to the employees covered by the agreement. The Government's Bill restricts automatic right of intervention in such situations to only the Minister or the employee ombudsman. If an enterprise agreement is being entered into, particularly where the employees who are to be covered by the proposed enterprise agreement are either non-unionists or persons of non-English speaking background who may not be familiar with their industrial entitlements, a registered association which is a party to an award that would apply to those employees except for the existence of an enterprise agreement should be able to intervene as a right before the commissioner and to state its case as to whether or not the enterprise agreement meets the test laid down by the Parliament with respect to the making of enterprise agreements.

At the end of the day, it is for the commission to decide whether or not the various legislative tests have been met. However, it is in the public interest that the registered association be able to intervene in such matters and to express a point of view to the commissioner as of right. Simply to leave it on the basis provided under subclause (2)—that any person who can show an interest may with the leave of the court or the commission intervene in the proceedings—is not good enough in such situations, and those registered associations which do have an award coverage of the employees concerned should be able automatically to appear before the commission to state a point of view, in effect as a friend of the court.

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

Page 63, line 13—Leave out 'or their representatives' and substitute ', their representatives or registered associations acting under part 2 of chapter 3'.

This amendment is consequential on previous amendments under part 2 chapter 3. It makes clear that, where a union is acting on behalf of members at their request or as their representative, it can be involved in these proceedings.

The Hon. K.T. GRIFFIN: The Government opposes the amendment by the Hon. Mr Roberts. It also opposes the amendment by the Hon. Mr Elliott but recognises that his amendment is consistent and consequential upon an earlier amendment.

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

Clause 147 passed.

Clause 148—'Nature of relief.'

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

Page 63, after line 28—Insert subclause as follows:

(3) Any relief granted by the court of the commission must be consistent with the provisions of this Act.

This amendment puts this issue beyond doubt. When the court or commission exercises its jurisdiction and grants relief that relief must be consistent with the provisions of the Act, and provided that that is the case there is no difficulty.

The Hon. T. CROTHERS: In respect to moving this amendment, which sets out the parameters of the capacity for the Industrial Court to arrive at particular conclusions, what does the Minister say in respect to matters which are not covered in the Act but which are discovered by way of action being taken in the court? Does that have the effect then of tying the court's hands in respect to giving any decision at all?

The Hon. K.T. GRIFFIN: I draw members' attention to clause 147(1) which states:

In exercising its jurisdiction, the court or commission—

(a) is governed in matters of procedure and substance by equity, good conscience, and the substantial merits of the case.

So, the Government has set the framework within which it must exercise its jurisdiction. It has to observe the rules of natural justice. It is not bound by evidentiary rules and practices so, in terms of the exercise of its jurisdiction, clause 147 deals with that. Clause 148 requires the court or the

commission to exercise its jurisdiction on terms and conditions it considers appropriate and it has a discretion to give any form of relief authorised by the Act.

The Government wants to ensure that, for example, it is consistent with the objects of the Act. It does not want to suggest by the way in which clause 148(1) is drafted that that can override the provisions of the Act. I doubt that any court on appeal would hold that it could act in that way, but it is certainly open to an interpretation that it can do things which are inconsistent with the principles and with the objects of the Act. Rather than have that dispute the Government felt that it was important to put it beyond doubt and to provide that the court or commission has to act in consistency with the provisions of the Act. I cannot think of any situations which would arise which are outside—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: The Hon. Mr Crothers asks, 'What happens if something is outside the Act?' If it is outside the Act the commission and the court do not have jurisdiction any way, in my view, although the definitions of 'industrial matter' and 'industrial dispute' are very wide. In relation to the workplace environment and the relationship between employer and employee and, to some extent, the principal and contractor, in light of the amendments, I would suggest there would not be matters which were not covered in the Act in the sense of the jurisdiction of the commission to deal with them. If they were totally unrelated to the workplace environment, that is a different matter, but we are not dealing with that. When it is exercising its jurisdiction, in settling a dispute, improving an enterprise agreement, or conciliating, arbitrating or whatever, what we are saying is that, even though it can give any form of relief authorised by this Act irrespective of the form of relief sought by the parties, and it can exercise its discretion on terms and conditions it considers appropriate, we just felt that it was important to avoid any misunderstanding so that, when it exercised its jurisdiction, it did so consistently with the provision of the Act.

The Hon. T. CROTHERS: That certainly concerns me. On many occasions in the past couple of decades the American Supreme Court has taken upon itself matters which were at variance with the legislature of the United States. In more recent times on a number of occasions we have seen the Australian High Court adopt a similar practice. I will not argue the rights and the wrongs of that. It is my humble opinion that, in the type of democracy we have, Parliament must always be supreme. That is my view. But be that as it may, that is the case in point. What this does do is to wipe out any precedent—

The Hon. K.T. Griffin: It doesn't.

The Hon. T. CROTHERS: I think it does.

The Hon. K.T. Griffin: No, it doesn't.

The Hon. T. CROTHERS: I think you said that to me.

The Hon. K.T. Griffin: I didn't say that.

The Hon. T. CROTHERS: So, are you saying that you are prepared to put on record that any industrial precedent set by the State Industrial Court and Commission still stands? You are saying that if it is *ultra vires* this legislation will not stand.

The Hon. K.T. Griffin: Precedents apply.

The Hon. T. CROTHERS: You were saying to me that if it is *ultra vires* this Act it would not stand. What you have done is put a nobbler on the Industrial Court and Industrial Commission process of decision making. That raises this question in my mind: if Parliament is the supreme law making body in this State with regard to matters that come under our State's constitution, what mechanisms does the Minister have in his Bill to refer matters back to the Parliament for its further consideration that are not covered in the present Act? It seems to me that that is an extension of the logic he is using. I put the question to him: what mechanism does he have in his Bill that allows judges of the Industrial Court or commissioners of the South Australian Commission to refer back matters that they believe they cannot deal with, matters which have come up that have been unforeseen, that are *ultra vires* the present Act? What mechanism in the present Bill can allow those judges and commissioners to refer those matters back to this Parliament?

The Hon. K.T. GRIFFIN: I have not said that precedents do not apply: they do apply. This court and the commission have a specific jurisdiction, and I will not relate that; we have been through it on numerous occasions. From my point of view (as I think anyone looking at this objectively would acknowledge) the court or commission, in exercising its jurisdiction on the terms and conditions that it considers appropriate, is doing nothing more or less than what the existing court or commission is doing and, where relevant, it will enable the court or commission to take into consideration precedents, both at common law and otherwise. What we are saying is that, when it does exercise that jurisdiction, the relief it grants has to be consistent with the provisions of the Act. It cannot make an order, for example, which infringes the freedom of association principle. That is just an example. We could probably get away without the provision in there, but this just avoids any debate about what is intended.

The Hon. R.R. ROBERTS: I thank the Hon. Mr Crothers for drawing out those explanations and, in light of that, I am advised that the clause as expressed by the Attorney-General reflects what is implied in the Bill and qualifies it, so we will be supporting it.

Amendment carried; clause as amended passed.

Clauses 149 to 151 passed.

Clause 152—'Inspection and confidentiality.'

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

Leave out the clause and substitute new clause as follows:

152. Evidentiary material produced before the court or the commission may be inspected by the parties to the proceedings but information obtained from the inspection must not be made public without the permission of the court or the commission.

The Opposition's amendment basically retains subclause (1) of the Government's Bill, which is as far as confidentiality should go. The absurdity of the Government's position is highlighted in subclause (2) in that, if a company is producing material before the court or commission relating to any trade secret, profit or financial position of that company, except with the consent of the representative of the company, it cannot be inspected by anyone except by the court or commission. This is an absurd position in that, for example, the representatives of the employees in a hearing before the court or commission, including the employee ombudsman, would not be able to inspect the material to be able to cross-examine the employers relating to the materials they are putting forward to the court or commission.

Whilst it may be perfectly reasonable that matters involving commercial confidentiality should be restricted to the parties appearing before the commission, the Government's Bill does not allow the other parties to the proceedings in the commission to examine the material to be able to effectively cross-examine representatives of the employer or

to be able to make a proper submission in the court or the commission on the subject matter. Likewise, with respect to subclause (3), too much protection is afforded to corporation witnesses with respect to trade secrets, profits or the financial position of the corporation, thereby denying the ability of the other party to the proceedings effectively to represent the interests of that other party.

The Opposition's amendment effectively places all these matters in the hands of the individual judge or member of the Industrial Commission to make such rulings as he or she sees fit upon the application of any party who wishes to have information classified as confidential. This has happened on regular occasions in the past and I do not believe anyone has been able to show that the commission has not exercised its discretion in these matters other than with an abundance of caution and, in particular, having very high regard to the question of the confidentiality of sensitive commercial matters.

However, at the end of the day, the court and the commission have always allowed legal representatives, or the agent representing the other party to proceedings, to inspect any material that has been tendered by the applicant or respondent, as the case may be. For these reasons our amendments ought to be supported.

The Hon. K.T. GRIFFIN: I am surprised at the Hon. Mr Roberts' opposition to this and also his failure, in his own amendment, to reflect fully the position in the present Act. Our clause is merely a redraft, without any sinister extensions or inclusions, of present section 46(1)(c), (d) and (e). The only difference that I can see on a quick reading is that, at the end of our subclause (3), we provide an exception in relation to evidence relating to a trade secret, the profits or financial position of a witness where there is a reasonable ground to suspect the commission of an offence by the person. That may be otherwise provided in existing section 46. However, I urge the Hon. Mr Elliott to consider the provisions already in the Act because, as I said, it is my view, checking one against the other, that all our proposal does is reflect the current position.

The Hon. M.J. ELLIOTT: I have done a cross-check and it does not appear to introduce anything different. I am not sure what the concern is, unless the honourable member is capable of giving examples of where it has been a problem in the past.

The Hon. R.R. ROBERTS: There is a problem with this particular proposition in that you could get a situation where an employer says, 'I am unable to pay,' and produces evidence. Under this provision, the advocate representing the employee is not allowed to cross-examine on the situation. It is certainly similar to the provision in the present Act; that is true. However, it is our belief that it is deficient in that the right to cross-examine on the information is denied to anyone representing people before the commission.

The Hon. K.T. GRIFFIN: We do not believe it is; it is consistent with what is in the present Act. There is a discretion in the commission, anyway, to refuse to take into consideration certain evidence if it is not available for cross-examination or consideration. So there are discretions and protections there which I suggest provide the safeguard that is necessary to prevent abuse or any other disadvantage occurring to the party who does not have access to it.

Clause passed.

Clauses 153 to 157 passed.

Clause 158—'Joinder of parties, etc.'

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

Page 66, line 22—Leave out 'by' and insert 'be'.

This is typographical.

Amendment carried; clause as amended passed.

Clause 159 passed.

Clause 160—'Extension of time.'

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

Page 67, lines 3 to 5—Leave out subclause (2).

Again the Government Bill is draconian in that it has been a long-held power of the Industrial Court or Commission to be able to extend any limitation of the time provided for under the Act, for example, extension of time with respect to the filing of an unfair dismissal claim. The Government Bill provides that this power cannot be exercised with respect to any monetary claims or to extend any time within which prosecution for an offence must be commenced. The Government could advance no good reasons which would support the fettering of the court's or commission's discretion in this matter. There may be very good and cogent reasons why a person was not able to commence for example a monetary claim in the period of time allowed—simply through ignorance of their legal rights is but one example. In any event, an applicant seeking an extension of time has to demonstrate to the court or commission very good grounds why the court or commission should exercise that discretion.

The discretion that this amendment seeks to maintain for the court and commission allows Industrial Court judges or commissioners to be able to take into account extenuating circumstances for any individual in these matters. Parliament cannot comprehend all the possible scenarios that may occur in future whereby individuals may be severely disadvantaged because of Parliament's decision to fetter the commission's or court's discretion in this matter. It is best left in the hands of the individual member of the court or commission to determine each case on its merits. I commend the amendment.

The Hon. K.T. GRIFFIN: The monetary claim time limit is presently six years, and that is maintained; in relation to a prosecution, that time is 12 months. I find it objectionable that there should be a broad power for the court or the commission to extend the time within which a prosecution for an offence must be commenced. There are some provisions in the law where Attorneys-General can in special circumstances extend the time for prosecution of an offence, particularly where it might be difficult to identify the evidence, such as under the Corporations Law but, in terms of prosecutions for statutory offences, in 99.9 per cent of cases the period is a fixed time for a prosecution.

There is a very wide power in the commission to extend limitations of time. The present Act says that there cannot be an extension of time for lodging a notice of appeal. That is not excluded, so to some extent it is extended. Section 174(2) of the present Act—'Summary procedures'—provides:

> Proceedings in respect of an offence against this Act must be commenced within 12 months after the date on which the offence is alleged to have been committed.

We take the view that a six-year period for the monetary claim is long enough in which to make a claim. The Hon Mr Crothers at one stage talked about a three-year timeframe, but I think that was amended in the mid to late 1980s. I think it is most unwise to move down the track of allowing the court to extend the time within which prosecutions may be issued. It puts the citizen in jeopardy and encourages those who detect evidence of offences not to be diligent in the prosecution of those offences. In fact, prosecutions for

summary offences have to be issued within six months under the ordinary law, although in other statutes there are periods of 12 months or two years, as the case may be, but those times are not subject to any extension.

The Hon. M.J. ELLIOTT: I want to explore this a little further in relation to monetary claims. Records are required to be kept for only six years. It seems to me that once that period has elapsed an extension of time does not make a great deal of sense anyway. Subclause (2)(b) provides:

> . . . to extend the time within which a prosecution for an offence must be commenced.

The Attorney-General referred to a period of 12 months. At what point does that period start?

The Hon. K.T. Griffin: From the date of the commission of the offence. That is the law under the present Act.

The Hon. M.J. ELLIOTT: How does that compare with other offences in other Acts?

The Hon. K.T. GRIFFIN: I made the point that under the Summary Offences Act all prosecutions have to be instituted within six months of the commission of the offence; that is, for things like common assault, which is not an indictable offence, and road traffic offences. There is no limit at all for indictable offences. Indictable offences are offences in respect of which the accused person may seek to be tried by jury. None of these offences relate to that.

In respect of other offences, some statutes specifically provide for 12 months. I think that is the more common of the time periods. However, some go up to two years and others even longer—for example, company liquidations. Under the Corporations Law those offences must be instituted within five years of the commission of the offence, but the Commonwealth Attorney-General has power to extend. As I said, 99.9 per cent of statutory offences would fall within the six months time frame, which is a fixed time, and it cannot be extended. There are some very good reasons for that.

The prosecution of an offence under the Industrial Relations Act must be within 12 months. I think it would be wrong in principle to give the court the power to extend the time for instituting prosecutions, because the citizen has a basic right to know what the charges are at the earliest possible opportunity and not have threats of prosecution hanging over his or her head for an inordinately long period of time.

The Hon. M.J. ELLIOTT: I am still missing something here, I think. I will take it a step further. If a check of the time books indicates that two years ago a certain pay was not made properly, and an offence was committed, that is outside the 12 months. Surely the Minister is not saying that a prosecution cannot be initiated in those circumstances.

The Hon. K.T. GRIFFIN: Under the present Act, that is the position. As a matter of law, under the present Act—and I think I read that out—it is 12 months from the date of the commission of the offence. In those circumstances, if there is a claim for underpayment, that is not precluded by that 12 month period: it is the prosecution that is limited to the period of 12 months.

The Hon. R.R. ROBERTS: The introduction of common law procedures in other courts is really a bit of a red herring.

The Hon. K.T. Griffin: It is not; it is 12 months under the present Act.

The Hon. R.R. ROBERTS: The Attorney-General used the argument in a previous debate and introduced the premise on which the Industrial Commission and the Industrial Court operates—the basis of equity, good conscience, substantial merit and the evidence presented. The commission has discretion to act in those areas in accordance with the Act. What the honourable member is doing is placing a restriction on it or a determination that it must do these things.

The Industrial Commission ought to have the right to say that in all the circumstances it meets equity and good conscience, and there is substantial merit in making a determination which allows this for very good and cogent reasons. If natural justice is to be denied by the setting of a time limit, I take up the point of the Hon. Mr Elliott. What can happen here is that an offence or prosecution (or something which is justified) can be avoided by the time limit. In the common law courts I know that that is the law at the moment.

'It is a new day in industrial relations', the honourable member said. The courts have always had the right to make decisions on equity, good conscience, substantial merit and the evidence produced before it. What can be fairer than that? If the Industrial Commission and Industrial Court are to go into these new areas of enterprise bargaining and enterprise agreements, and if the enterprise bargains and enterprise agreements are registered, surely they ought to be able to have flexibility and discretion, based on the basic premises of equity, good conscience and substantial merit. They ought to be able to operate in the way in which they were set up—on the very premise that the commission's decision ought to be able to be applied. It should not be restricted by the imposition of stringent requirements which, of themselves, have the potential to limit an applicant's right to the provision of what is just and proper in the circumstances.

The Hon. T.G. ROBERTS: If you have legislation that takes away the statutory rights of working people in relation to power relationships with the industry collective or enterprise bargaining, those areas where the power shift has occurred must be supported and protected by the weight of law. I would argue that the emphasis in many of the clauses of the Bill is to transfer power away from wage and salary earners—employees—to employers.

If the Bill is to have any merit in terms of the protection that the Government says it has with regard to the courts protecting the interests of working people, some discretion ought to be applied or ought to be inherent in it to allow the courts to determine, on a case by case basis, whether any discretion is required to extend the period of 12 months.

In terms of the collection of evidence, there should not be any problem because records have to be kept. There are a number of extenuating circumstances that come into play in relation to the payment of wages. In some cases it may not be criminal intent and in other cases it would be an oversight or ignorance. People could argue both cases, and they are certainly common. Picking them up, even under the current arrangements in relation to the Act as it stands now, is very difficult, and it becomes even more difficult with less scrutiny being applied by the diversion of power away from union officials and associations to monitor the way wages are paid to a more *laissez faire* industrial relations system. The weight of the law should be applied at least more fairly in the cases before us to allow some discretion so that, if there is some history of underpayment of wages that are not paid equitably to wage and salary earners, there is some way for the courts to reclaim that.

The Hon. K.T. GRIFFIN: The practice of inspectors with regard to the underpayment of wages—and this was the case under the Labor Administration as much as it is under

our Administration—is not to prosecute but issue civil proceedings for the recovery of the underpayment. That is the first point that needs to be made. Prosecutions are not the only way to address breaches of the law. What you want to do is not always to punish but to recover in the interests of the employee.

The Hon. T.G. Roberts: If you have a recidivist who keeps doing it, you need the discretion to be able to prosecute.

The Hon. K.T. GRIFFIN: You don't. You need to talk to your Leader. The Leader will tell you that I am not trying to pull the wool over your eyes, but in terms of prosecution it is contrary to the principles of natural justice for someone who commits an offence today, is investigated tomorrow, the evidence is all there and the prosecution is not issued for three or four years. It is basically unjust.

What the law has recognised in statutes for decades and decades is that, in relation to offences, there has to be a time limit. The Summary Offences Act fixes six months. The Industrial Relations Act principally fixes 12 months in relation to prosecutions for offences. We make no change to that. There is no discretion in the court—because the court deals with offences—to extend the time. If we are talking of extensions of time, we are operating under a totally new ball game in relation to prosecutions for statutory offences where people are likely to be fined.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: We are talking about the Industrial Court or commission. The Industrial Court has jurisdiction to deal with summary offences, which means imprisonment for up to two years. In those circumstances, I take the very strong view that we ought to maintain the strict time limit, whether it is one year or two years, and preferably what is in the law presently. It ought to be fixed, and a citizen ought not be the subject of the uncertainty which the discretionary power of the court will give.

The Hon. R.R. Roberts: Even if he is a crook?

The Hon. K.T. GRIFFIN: You make this judgment about a person being a crook, but the fact of the matter—

The Hon. R.R. Roberts: You wouldn't prosecute him if he wasn't a crook.

The Hon. K.T. GRIFFIN: What the honourable member is suggesting is that it does not matter when an offence occurred, if the authorities cannot prosecute. Most of these offences are minor summary offences with division 7 fines. The fact of the matter is that that is the law at the moment and we are not seeking to change it.

The Hon. M.J. ELLIOTT: The Attorney-General is talking about summary offences and legalese—

The Hon. K.T. Griffin: Two years imprisonment.

The Hon. M.J. ELLIOTT: Okay. Let us just take an example. I recall the honourable member previously talking about cases where there had been underpayment. I think $15 000 or $20 000 was claimed. Would an offence of that size, if it was committed in another jurisdiction, be a summary offence?

The Hon. K.T. GRIFFIN: I will make it clear. There are two issues that one has to distinguish: one is failing to pay in accordance with the award. I am told that the maximum penalty is $1 000 for underpayment of wages. There are two courses of action: one is the criminal stream, and that means that a summons would be issued within 12 months if the offence occurred within that period of time, and many of these underpayment cases relate to a continuous pattern of underpaying. So, if it is discovered now—and the offence might go back six years, but consistently over that period of time—you still issue your prosecution if there was an underpayment within the last 12 months.

So the criminal stream means that you must prove your case beyond reasonable doubt. Concurrently with or as an alternative to that, the employer can be sued civilly and action taken in the commission, I think it is, for recovery of the amount underpaid. That is a civil action. There is a lower standard of proof: a case is determined on the balance of probabilities. That is not a prosecution. There is no fine; it is a recovery of an underpayment. You have six years within which to bring your action from the date of the commission of the offence. In the first case in the criminal stream you have 12 months from the commission of the offence.

If it is a continuing offence, and any part of that offence occurred within the past 12 months from the point of detection, then a prosecution can be issued. If an offence occurred five years ago then action can be taken to recover moneys plus interest, I think, as long as the offence did not occur more than six years ago. So, they are the two available streams.

The Hon. T. CROTHERS: There is, of course, a fairly major position which needs consideration and which the Minister has not addressed, that is, the question of the inhibitor that is now placed or the judiciary having any discretion about actions that people or registered associations might take in pursuit of moneys owing to employees. I talk, of course, in terms of long service leave, where there has been a transmission of business, and, of course, the outgoing employer has perhaps been there for four years, and on the way long service has accrued for his employees.

The outgoing employer is supposed to leave the moneys accrued to the employees who remain with the new employer; a sufficiency of moneys is supposed to be left relative to covering that. That, of course, does not happen, so the new employer is saddled, under the terms of the Long Service Leave Act, with the whole of the Bill. I will give members a case in point. Many years ago a new Australian person, with limited English skills, took over the licence of a hotel in Port Adelaide. One of his casual employees had been employed at the hotel for 32 years. Of course, the broker that handled the transmission had kept that liability hidden from the new licensee. The upshot of that situation was that the new employer was responsible when this fellow decided to leave about six months later. The new licensee was responsible for the whole of the moneys, amounting to several thousand dollars, which had accrued to this fellow during the currency of his 32 year employment. I think it was 28 years, but I do not think the Long Service Leave Act existed, nor did the award contain any provision when he first started.

The only way for that employer to recover those moneys is to take similar action at no inconsiderable cost, because one has to try to track down the previous employer, etc. If one totally dispensed with the discretion of the industrial judiciary, as is happening, relative to trying to follow up what could be a case of just plight by incumbent employers who had just bought a business and been saddled with many liabilities (as I know happens), when that employer had a staff of 20 or 30, their long service leave liability could be hidden from the incumbent employer, to whom the consequences would be passed and who would be saddled with that burden.

By not giving the industrial courts the discretion to pursue that you are then, because of your 12 months and lack of discretion provision, going to saddle the new employer with

even more additional costs than would be the case if in fact he had access.

Bear in mind that sometimes this transmission of business and long service costs that have accrued remain hidden for more than 12 months. They do not come to light until someone who has given seven years service decides they will leave the industry. My union handles hundreds of cases such as that on behalf of our members and new employers each year. Yet this provision in the Government's Bill seeks to have the additional costs of civil litigation, in pursuit of moneys owed, imposed on employers. In fact, for 99 per cent of the time this will affect small to medium business. How does the Attorney-General perceive that that can be circumvented without imposing those additional costs? We must bear in mind that new employers already have to pick up costs for moneys not transmitted to them at the point of sale of the business.

In addition, this clause could impose additional costs on the employer when he or she has to resort to civil law relative to the recovery of moneys that were his or hers by right of transmission but did not occur. As I said (and this is the key), those matters can be hidden at the transmission of a business for more than 12 months before they are uncovered. Does the Attorney-General believe that there is a necessity to put in the Bill something which will deal with matters such as that to which I have referred, at limited cost to the employer? This clause imposes additional costs on employers.

The Hon. K.T. GRIFFIN: I do not think it does.

The Hon. T. Crothers: Your answer shows that you have not got much respect because I am telling you what the facts are.

The Hon. K.T. GRIFFIN: With respect, I do not think it does because the prosecution time limit is already there. I again indicate that we oppose the amendment.

Amendment negatived; clause passed.

Clauses 161 to 169 passed.

[Sitting suspended from 6.1 to 7.30 p.m.]

Clause 170—'Punishment of contempts.'

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

Page 69, lines 12 to 14—Leave out subclause (2).

The Opposition amendment seeks to delete the power from the court or commission to essentially summarily proceed to hear any charge of contempt of the court or the commission without having the necessity of laying a charge or other formality and to convict and fine the offender. Whilst this power is in the existing Industrial Relations Act 1972, it is not necessarily a good law. It would be far preferable as a matter of natural justice, before the court or commission can proceed to convict and/or fine the offender, that the alleged offender has the opportunity to defend himself or herself, with the complainant setting out the charges or other formality against the alleged offender first, thereby allowing them time to seek advice and make themselves ready to defend themselves if necessary.

The Hon. K.T. GRIFFIN: We do not support the Opposition amendment. The provision in the Bill, subclause (2), is almost identical with the provision in section 166(2) of the Industrial Relations Act SA 1972. That provides that, 'where an offence against subsection (1) is committed in the face of the court or the commission [that is contempt], it may proceed forthwith, without the necessity of laying a charge or other formality to convict and fine the offender'. There is no reason at all to change the provision of the Bill. There must be provision for contempt of the court or the commission to be addressed immediately it occurs to ensure that the party in contempt is appropriately dealt with. Not to have that provision would mean that there would have to be a complaint and summons issued and for the prosecution process to be gone through, and that would take an inordinate amount of time.

Amendment negatived; clause passed.

Clause 171—'Rules.'

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

Page 69, lines 17 to 20—Leave out subclauses (1), (2) and (3) and insert—

(1) The President may make rules of the court and rules of the commission.

(2) The rules should, as far as practicable, be applicable to both the court and the commission.

This is consequential on other amendments that have been supported by me and the Democrats and opposed by the Liberal Party. I assume the same will occur this time.

The Hon. K.T. GRIFFIN: We oppose this amendment consistently with our opposition to earlier clauses. As the Hon. Ron Roberts says, this is a consequential amendment. Our preference is that the President of the court and the President of the commission are not necessarily the same person but, as those positions have been combined, it makes sense for the amendment to go through as a consequential amendment.

Amendment carried.

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

Page 70, lines 1 to 5—Leave out subclause (5) and insert—

(5) Subject to this Act and the rules, the practice and procedure of the court and the commission will be as directed by the President.

The same position applies.

Amendment carried; clause as amended passed.

Clause 172 passed.

Clause 173—'Who may make claim.'

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

Page 71, lines 8 and 9—Leave out subclause (1) and insert—

(1) A monetary claim may be made on behalf of a claimant by a registered association.

The Opposition seeks to delete subclause (1) and insert a new subclause. The Opposition amendment simply states that a monetary claim may be made on behalf of the claimant by a registered association. The Government Bill limits such a claim being able to be made on behalf of the claimant by an association with specific written authority from the claimant to make the claim. This is a very severe restriction on the rights of unions and the policing of awards and enterprise agreements. The Government's Bill gives such power to an association only upon the specific written authority of the claimant. This prevents the trade union from conducting its time and wages record inspections, and upon noticing award breaches—for example, overtime or penalty rates not being observed by the employer—the union is bound to get written authority from the claimant.

That particular employee might not be able to provide such a written authority for fear of losing their job because they authorised a union to make a claim on their behalf. It requires them to identify themselves to their employer as a union member or at the very least as a person who is dissatisfied with some aspect of the employment relationship. The Opposition's amendment allows the widest possible scope for the enforcement of underpayment of wages claims

and the like whereby the employee, the employee ombudsman or a registered association may launch legal proceedings. This canvasses some areas that we talked about earlier and revisits the assertion by the Attorney-General that claims must be made in writing—although he did not move it. The principle is well established.

The Hon. K.T. GRIFFIN: I oppose the amendment. Under the framework of this Bill not only registered associations but other associations may represent employees. So, the first objection to the honourable member's amendment is that it relates only to registered associations. Even if the word 'registered' was deleted we would still find it inappropriate. It is correct to say that the provision in our Bill differs from the provision in the Industrial Relations Act 1972 to the extent that the present Act provides that a claim may be made personally or, where the claimant is an employee or former employee, may be made on behalf of the claimant by a registered association.

One would expect that in proceedings there would be, as a matter of proof, a question to the claimant such as 'Did the claimant authorise the association to issue the proceedings?' The Government has taken the view that it is better to be upfront and, provided there is an authorisation in writing, an association may issue proceedings for a monetary claim on behalf of a claimant.

In the normal process in the civil area of the law it would not be possible to issue proceedings in the name of a claimant except with the specific authority of the claimant, and then only by a legal practitioner if it were not the claimant himself or herself. I am not suggesting that it should be so limited here; the Government is suggesting that specific written authority to make the claim—and not necessarily by the association on behalf of only a claimant who is a member of that association, but at-large—would ensure that the issue of authority was put beyond doubt. We see nothing wrong with the requirement for a written authority.

The Hon. M.J. ELLIOTT: With a number of these clauses there is a bit of a balancing act and, in relation to this particular one, I tend to fall on the side of the Opposition because if the association is going to make a claim, particularly if it is on behalf of someone who is not a member of the association, it would be a claim it had come across when checking books.

The Hon. K.T. Griffin: Why should the association do that without authority, or potentially without authority?

The Hon. M.J. ELLIOTT: I will turn it around. My first concern is that, if this has happened in a business, there is the capacity for pressure to be placed on an employee by an employer—despite the fact that it is illegal—that, 'It would not be a good idea if you pursued this claim; you will find you will be out of work fairly soon afterwards.' That is the real world; that sort of pressure is there. The reason why so many charges do not proceed in other courts is that people decide it is going to be more trouble than it is worth.

I have said previously that clauses in relation to coercion are not particularly useful at the end of the day; they look good but they will not work, and despite those clauses real pressure can be brought to bear. Therefore, I cannot see what harm is done if a person who is owed money pursues that claim. I do not see a great harm is going to be done to the employee if a claim is pursued. The employer will not be too wrapped in it, particularly if it was a deliberate mistake. And the sort of employer who makes a deliberate mistake is the same sort of employer who is going to lay pressure to bear on a person and threaten their job.

While I was willing to fall on the Government's side in terms of when unions could or could not enter a place, and that, in the first instance, it had to be on the request of a union, I feel that—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Yes, on the request of an employee. Having made that concession I feel that, if the association has gone through the books and has come across some form of abuse where the money has not been paid, it is reasonable in the circumstances that it might pursue it.

The Hon. K.T. GRIFFIN: If the honourable member is disposed then to support the Opposition's amendment, I wondered whether he would do so on the basis that the word 'registered' is removed. I understood from an interjection from the Hon. Mr Roberts that he would not be adverse to broadening it so that it encompasses both registered associations and other associations which have the right to represent employees.

The Hon. M.J. ELLIOTT: In a non-unionised workplace—at least one where the big unions are not in—where there has been a unionised agreement and where an association has formed among employees, once again some protection might be offered to individual workers if the association itself chose to look at the books and, if it found an error on behalf of the employee, it might pursue the claim. In those circumstances, the removal of the word 'registered' does not cause me any concern.

The Hon. R.R. ROBERTS: I would like to see 'registered' in. I would like to have the specific reference there.

The Hon. K.T. GRIFFIN: I will move an amendment to the Hon. Mr Robert's amendment as follows:

Leave out 'registered'.

Amendment to amendment carried; amendment as amended carried; clause as amended passed.

Clauses 174 and 175 passed.

Clause 176—'Award to include interest.'

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

Page 71, after line 34—Insert subclause as follows:

(3) If the court is satisfied that—

(a) before the commencement of the proceedings an inspector advised the defendant that, in the inspector's opinion, the claim was justified; and

(b) the defendant has no reasonable ground on which to dispute the claim; and

(c) the defendant should, in the circumstances, have satisfied the claim without putting the claimant to the trouble of taking proceedings to establish the validity of the claim,

the court may add to the amount awarded on the claim a penalty (not exceeding the amount awarded.)

The Hon. K.T. GRIFFIN: The Government opposes the amendment. It involves the inspector and, quite obviously, it will mean that an inspector will need to recalculate or require a recalculation of wages. It has the potential to create large additional costs in running the inspectorate. Secondly, it reverses the onus of proof, because it allows interest or a penalty to be added in certain circumstances where the defendant has no reasonable grounds for redress. If the court is satisfied that before the commencement of proceedings an inspector advised the defendant that, in the inspector's opinion, the claim was justified, the defendant has no reasonable ground on which to refute the claim and the defendant should in the circumstances have satisfied the claim without putting the claimant to the trouble of taking proceedings to establish the validity, then the court can add a penalty not exceeding the amount awarded.

So, it really puts a great deal of pressure on the defendant who may genuinely believe that he or she has a good ground on which to dispute the claim, but it all depends very much on the inspector's advice. If one looks at section 50A of the Industrial Relations Act 1972, even though I do not personally agree with that section, there is a rather complicated process by which one reaches the final conclusion that a penalty may be imposed in relation to unpaid wages. The proposed amendment lacks sophistication and, as I said earlier, does give rise to concerns about what appears to be reverse onus.

The other point is that, in relation to paragraph (a), all that must be done is that the inspector advise the defendant. Is that in writing? Is it verbal? What right has the defendant to dispute the inspector's advice? It is very much a unilateral decision by the inspector from a significant position of authority whereas, under the present provisions of the Act, as I said earlier, there is a rather extensive scheme that requires formal notice and certain other procedures to be followed before the penalty may be imposed by the court.

The Hon. M.J. ELLIOTT: I have sympathy with what the clause is trying to achieve, but I do think it is a rather blunt instrument as currently worded. At this stage I do not support the amendment. As the Attorney-General said, if there was a clause a little more sophisticated, there might have been a greater chance that I would support it.

Amendment negatived: clause passed.

Clauses 177 and 178 passed.

Clause 179—'Decisions to be given expeditiously.'

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

Page 72, lines 15 and 16—Leave out subsection (1) and insert:

(1) The court must hand down its judgment, and its reasons for the judgment, on a monetary claim within three months after the parties finish making their final submissions on the claim.

This is similar to the provision to which the Committee agreed in regard to including unfair dismissals. We want to clarify when the three month period begins, and the Committee did agree unanimously that it should be within three months after the parties make their final submissions on the claim, remembering that there may be oral and written submissions and there were some doubts when the date started to operate.

The Hon. R.R. ROBERTS: We oppose the clause. Once again the Government's Bill and its intentions may be laudable in that any monetary claims must be subject to judgment within three months of the date of hearing but, unless the Industrial Court can be assured by the Government of the day that sufficient resources will be granted to the court for it to be able to meet the Parliament's bidding in this area, it seems a ludicrous proposition.

The Hon. M.J. ELLIOTT: How common is it that courts are told that they will hand down a decision within a prescribed period? How does this compare with other jurisdictions?

The Hon. K.T. GRIFFIN: I am told that the court is presently taking well in excess of 12 months to hand down some judgments, and that is just intolerable for the parties. In the Domestic Violence Bill passed within the past week or so, we did not set a time limit but we did include a provision for matters to be given priority. My recollection is that the Youth Court legislation has provision for matters to be dealt with in a particular period: it is all based upon trying to deal with matters expeditiously. One always has concerns about trying to set rigid time limits for delivery of judgments and one does have to exercise some caution about it.

The Hon. M.J. Elliott: Why is this—

The Hon. K.T. GRIFFIN: Because in this case some judgments have been outstanding for more than 12 months. I am advised that they are largely related to unpaid wages that should have been paid and are still outstanding. It is a matter of judgment whether one seeks to put a time limit on them. They may find that there is some way by which that can be avoided but, as I say, there would be concerns on occasions about making the time limit too strict. The Government's intention was merely to get some speeding up of the process in this jurisdiction. I suppose the court would always say, 'Give us more resources and we will.' That is not always the reason why they take time to deliver their judgments.

Recognising that the payments are largely going to be wages owed, being told it could happen in three months on the face of it looks very attractive. I do not know anything about why the 12 month delay is occurring and I do not know what the impact will be of saying that it will be three months. Will it simply mean that they will be more organised than they have been, or is it possible that they will simply run out of time on some cases? Will they need more resources and will they get those resources? Without answers, while I think the aim is laudable, I feel extremely nervous about it and I do not have any information on which to base the decision.

The Hon. A.J. REDFORD: There is nothing more frustrating for parties in a litigious matter to have a judgment outstanding. One of the difficulties is that you are too scared to ring the judge to say, 'Why don't you get up off your bronze and give us a judgment,' because you think you might upset him and get the wrong judgment. It always a very delicate position.

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: Unlike the honourable member who interjects, we are very sensitive in our profession and we do not like to upset the people who actually make the decisions. That is part of advocacy process. We have this problem in a number of jurisdictions. Certainly, it is a matter that we need to start addressing and we may as well put it in the Bill today. If in fact there are not sufficient resources then that will be highlighted and we will have to revisit the section.

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: The problem with 12 months is that you set a very low standard. If I am a worker and I have not been paid my wages, I do not want to be waiting six months, nine months or 12 months. Quite frankly, I think three months is quite reasonable if you have a mortgage, ETSA and other payments to make. I make no specific criticisms, but in the rarefied atmosphere of being a lawyer or a judge you sometimes tend to forget these things. In support of this, let us try it and see how it works. If it does not work we will revisit it. It will highlight a lack of resources if the Government does not give that appropriate resource. It sends a very clear message to the Judiciary that the Legislature believes that wages should be paid promptly and efficiently. I am sure that if we go to a division on this some members opposite might even cross the floor.

The Hon. K.T. GRIFFIN: I make the point that in relation to the unfair dismissal provisions, we in fact put in a three month provision for judgments. Of course, they are made by the commission. However, we did in fact put that in. As I said earlier, it is a matter of judgment as to whether or not one puts in a time limit. The difficulty is that if you do not

send some signals through the Parliament and the statute, there is really no other way to bring the judges to account. The Parliament is, of course, entitled to do this if it so wishes. However, it should not do it if there are grave concerns as to the quality of justice that might result.

In terms of resources, although the present Industrial Court says that it is very short of resources and is listing matters now for hearing in the workers compensation jurisdiction through to December and January, what has to happen is that when a judicial officer has heard the case, whilst the evidence is still fresh in his or her mind, there should be a discipline to write the judgement and make the decision. Part of the difficulty sometimes is that you have judicial officers who cannot or will not make decisions. But I do not make that criticism in this case. I just make it as a general observation. In terms of what detrimental effect this may have on the court, it may mean that they just have to work a bit harder.

The Hon. M.J. ELLIOTT: I suppose an important point is whether or not it can have a detrimental effect on the complainants in any sense. One of the reasons for wanting to hurry it up is because you are concerned.

The Hon. K.T. GRIFFIN: I doubt whether it would. To be fair, how can I make a judgment? Each judicial officer is different. How can I make a judgment that in this case the plaintiff will suffer and in the other case the defendant will suffer or that no-one will suffer? It is an impossible question to answer.

The Hon. M.J. ELLIOTT: I am not questioning motivation; I am trying to make a judgment with insufficient information. Recognising that the Attorney-General is a practising lawyer I thought he would be able to give some guidance from his personal knowledge. He said he thinks it will be okay.

The CHAIRMAN: If in doubt, trust him.

The Hon. M.J. ELLIOTT: I would trust him if he could give me an answer that says 'Yep, no worries.'

The Hon. K.T. GRIFFIN: Lawyers are traditionally conservative and cautious about these sorts of decisions, because each case is different and it is impossible, I suggest, to make the judgment. I appreciate the difficulty the Hon. Mr Elliott has about it, but I think it is impossible to make an assessment of the potential consequences other than to say that we have to do something to improve the output and reduce the delay in delivering judgments.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: That would be contrary to the principles of judicial independence, I suspect.

The Hon. M.J. ELLIOTT: I would like to address the spokesperson of the Opposition on this matter and whether or not he has a view as to whether 12 months, six months or three months make a significant difference, because he has not stated an opinion yet.

The Hon. R.R. ROBERTS: I have stated our preferred position but having listened to the argument and taken further advice we can live with the position.

Amendment carried; clause as amended passed.

Clauses 180 to 183 passed.

Clause 184—'Appeal to Supreme Court.'

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

Page 73, line 7—After 'to the Supreme Court' insert 'on a question of law '.

I think it is self-evident that I am seeking to stipulate that if the matter is to go to the Supreme Court it should be on a question of law. I have grave concerns about the way companies, particularly large companies, use their financial capacity to go to ever higher courts to frustrate people who are making legitimate claims, and it is it is my view that in this matter they should only go to the Supreme Court on questions of law.

The Hon. K.T. GRIFFIN: I do not agree with that. The Supreme Court is the ultimate court of appeal in South Australia. It is the superior court and it is important to ensure that it has a general overview responsibility of what occurs in the various courts. I would be more comfortable if in relation to this jurisdiction, particularly in view of the changes which have been made to it, there were an appeal to the Supreme Court by leave. The other difficulty is that defining questions of law unnecessarily complicates matters. To distinguish between a question of law and a question of mixed law and fact is sometimes not easy, even for judges.

The Hon. M.J. Elliott: I am advised that they tend to look at it fairly broadly.

The Hon. K.T. GRIFFIN: They may do, and that is probably not a bad thing. The safeguard here is that it requires the leave of the Supreme Court. I suggest that the Supreme Court, as the ultimate court of appeal, will not grant leave without some significant reason being demonstrated for it to exercise its jurisdiction. It says that it always has more work than it can cope with, but it is a court of superior justices and it ought to be given the overriding responsibility to interpret the law relating to this area of community interest.

The Hon. M.J. ELLIOTT: I have grave concern that we have set up a specialist commission and a specialist court comprised of people who understand the issues involved and that there can be an appeal beyond the specialists to people who are specialists in law to get interpretations of the law. It makes a farce of having the specialist commission.

The Hon. K.T. Griffin: It does not.

The Hon. M.J. ELLIOTT: That is my view, but you disagree. One of the failings in the legal system generally is that we have people making decisions on evidence that they do not understand. It does not matter whether it is scientific evidence or whatever. In courts involving children, often the judges are starting to make decisions about psychology and other things about which they have no understanding. It is nonsense to ask non-specialists to override specialists in an area other than on a question of law. Going to higher and higher courts ends with the person who has the deepest pocket getting what he considers to be justice rather than getting other than a more learned opinion on the law. That is the role of the Supreme Court more than anything else. In many cases it should be the ultimate court of appeal on questions of law. That is not a criticism of members of the Supreme Court or of the more general courts; it is simply reality.

The Hon. K.T. GRIFFIN: The trouble with specialist courts is that on occasions they are isolated from the real world.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: The Supreme Court has a broad overview of all areas of the law and practice. It can provide an important balance against those who have only specialist knowledge of one particular area of the law. Industrial relations is not so much a specialist area that, if an important issue is to be raised, the Supreme Court is unable to come to terms with it. I do not accept what the Hon. Mr Elliott says about courts making judgments on matters about which they do not know anything. They have the responsibili-

ty to balance and to make judgments on the evidence which is presented to them and on the law which has been enacted in statute or which has developed in the common law.

The Hon. M.J. Elliott: Lindy Chamberlain.

The Hon. K.T. GRIFFIN: Everyone makes mistakes. Our system is human; it is fallible.

The Hon. M.J. Elliott: That's right; that is my point.

The Hon. K.T. GRIFFIN: That is why, even more so, we should ensure that in respect of the final review of very difficult areas, even under industrial law, the Supreme Court, whether in this area, planning or some other area, ought to be the umbrella or superior court of the State to make the final judgment on those difficult areas.

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

Page 73, lines 7 and 8—Leave out subclause (1) and insert—

(1) An appeal lies to the Supreme Court from a judgment, order or decision of the Full Court if—

(a) the appeal is based on an alleged excess or deficiency of jurisdiction; or

(b) the Supreme Court grants leave to bring the appeal.

I am advised that our amendment does precisely the same as the Hon. Mr Elliott's amendment—well, it meets his objective—and that it is the situation that stands today. Legal advice provided to us is that this is a better way of achieving the aims of the Hon. Mr Elliott. I urge him to support our amendment.

The Hon. K.T. GRIFFIN: The observation I make is that that is wrong. According to the Hon. Mr Elliott, what clause 184(1) deals with now are questions of law. It is not just a question of jurisdiction—an alleged excess or deficiency of jurisdiction—but a question of interpretation not necessarily limited to the question of jurisdiction. If it is to be a toss up, I would prefer the Hon. Mr Elliott's amendment which is less limiting than the Hon. Mr Roberts' amendment.

The Hon. M.J. ELLIOTT: The Hon. Mr Roberts knows he is in trouble because I am going to ask him for a legal interpretation of his amendment, because as a non-lawyer it has got me beat, although I must confess that it looks fairly impressive.

The Hon. R.R. ROBERTS: I, too, am not a lawyer. We have taken legal advice on this, which is that, to achieve what we are trying to achieve, this is the best way of doing it. All I can say to the Hon. Mr Elliott, on behalf of the lawyers, is, 'Trust me'.

The Hon. K.T. GRIFFIN: There is a clear difference between what the Hon. Mr Roberts seeks to do and the clause in the Bill which the Hon. Mr Elliott seeks to amend. What is in the amendment of the Hon. Mr Roberts is a very limited area of appeal. It is based on an alleged excess or deficiency of jurisdiction. It is not about interpretation of the law.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: Or the Supreme Court grants leave to bring the appeal: that is fine. It is essentially limited. I suppose we can argue about it for a long time, but in my view the Hon. Mr Elliott's amendment is a much broader proposition.

The Hon. M.J. ELLIOTT: I am advised that in fact the Hon. Ron Roberts' amendment is very similar to what is in the current legislation. No evidence has been brought before the Committee to suggest that the current legislation has caused any difficulties. As a consequence of that, and recognising that that reflects my general desire on the way I want to see courts working, especially when you have specialist commissions and courts, I will withdraw my amendment and support the Roberts amendment.

The Hon. R.R. Roberts' amendment carried; clause as amended passed.

Clauses 185 and 186 passed.

Clause 187—'Applications to the commission.'

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

Page 74, lines 18 to 21—Leave out paragraphs (d) and (e) and insert—

(d) a registered association of employers whose members, or some of whose members, are interested in or affected by the application or the outcome of the application; or

(e) a registered association of employees whose members, or some of whose members, are interested in or affected by the application or the outcome of the application; or

The Opposition amendment seeks to overcome the very restrictive nature of the Government's Bill whereby registered associations are able to bring applications before the Industrial Commission. The Government's Bill limits registered associations, both of employers and employees, to be able to bring applications before the commission upon specific instructions being given to that said registered association by an employee who is a member of the association. This is an administrative matter which adds unnecessarily to the burdens of registered associations of employers and employees.

The Opposition amendment provides that registered associations of employers or employees whose members or some of whose members are interested in or affected by the application or the outcome of the application before the commission have the right to commence proceedings in the Industrial Commission. That process has been well accepted by all parties in the industrial jurisdiction to the present time, and is more efficient for all parties concerned.

The commission has always recognised that registered associations of employers and employees, in commencing proceedings before the commission, are speaking on behalf of their members and have been authorised under their respective registered rules to undertake the proceedings that they have entered into. If there is any debate concerning the standing of a registered association to be able to bring proceedings to the commission, the parties are still free to put submissions along those lines to the Industrial Commission direct and seek a ruling at the commencement of those hearings. I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: The amendment is opposed. It is a fundamental principle in the Government's Bill to require employer and employee associations to act on behalf of their members in exercising the rights conferred by the Act on those bodies. The amendment would have the effect of permitting an association of employers or a trade union to issue proceedings without the specific authorisation of at least one member of that association. This would effectively allow a union official to issue proceedings at his or her whim without reference to any constituent member of the association. The proposed amendment would therefore have the effect of reducing the accountability of employer associations and trade unions to their members and is opposed on that ground.

The Hon. M.J. ELLIOTT: There is a bit of nonsense in the arguments put forward by the Attorney-General, with respect. The UTLC can walk in, and an employee or group of employees or employer or group of employers can also do it. When one realises that a group of employers could resemble closely the Chamber of Employers, without going by that name, one realises that, under subclause (b), the Government has have managed to empower the Chamber of

Employers, but not to empower any particular grouping of employee representatives. That is not a criticism of allowing the Chamber of Employers the right to go in, but it is logically inconsistent to be so pedantic in paragraphs (d) and (e), and not to be so in paragraphs (b) and (f).

The Hon. K.T. GRIFFIN: With respect, I disagree with that. An 'employer' or 'group of employers' means just that. Just as it means by 'an employee' or 'group of employees'. It is not talking about a formal association.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: No, it cannot, because a formal association is specifically mentioned in paragraph (d), which provides:

> by a registered association of employers specifically instructed to bring the application by an employer who is a member of the association.

The ordinary rules of statutory interpretation would mean that there is a distinction between paragraphs (b) and (d).

The Hon. M.J. ELLIOTT: A group of employers all of whom happen to be Chamber members, and perhaps they happen to be the ones who sit around the boardroom table, could walk through the door as a group of employers. However, they could not walk through the door if they called themselves the Chamber of Employers.

The Hon. K.T. GRIFFIN: What is your point?

The Hon. M.J. Elliott: I am saying that it is logically inconsistent.

The Hon. K.T. GRIFFIN: I do not believe it is.

The Hon. M.J. Elliott: I do not have any complaints about the fact that a group of employers can go in.

The Hon. K.T. GRIFFIN: I am sorry, but I have missed the point. I think it has to be recognised that paragraph (b) comprises actual employers. It is not an association, which is a registered association; it is a group of employers. The same applies to paragraph (c). You could make the same argument in relation to paragraph (c) as the Hon. Mr Elliott has made in relation to paragraph (b). But where a registered association of employers comes in, then at least one member of the association who is an employer has to authorise the association and, similarly, with paragraph (e).

I would challenge the Hon. Mr Elliott's assertion that there is a logical inconsistency. There is, in fact, a significant degree of consistency in the approach and certainly no illogicality.

Amendment carried; clause as amended passed.

Clause 188—'Advertisement of applications.'

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

> Page 74, lines 27 and 28—Leave out '(other than an application under Chapter 3 Part 2 or an application of another kind excluded by the rules from the ambit of this subsection)'.

The Opposition believes there is no justification for excluding the giving of reasonable notice by the parties to an enterprise agreement to enable any other person who may be affected by the enterprise agreement, or believes that they have an interest in the enterprise agreement, from knowing the substance of the application and thereby ensuring that they have an opportunity to seek to intervene in the proceedings before the Industrial Commission concerned to state their case. We have canvassed some of these arguments in other areas.

The Hon. M.J. ELLIOTT: I have a question of clarification to the Hon. Mr Roberts. Under amendments that I moved previously I acknowledged that an employee association may not be involved until after the agreement has been reached and lodged. After it has been lodged the employee association may be in a position to comment upon that. Under this amendment, at what point does the registered association become aware of the substance of the application? I presume that agreement has essentially been reached at that point.

The Hon. R.R. ROBERTS: I note the point the honourable member is making. When we had discussions in another area about this, we made it fairly clear that it was after the agreement. My opinion was that the agreement would be made and, when registration was to take place, the organisation would state its case. It would be assumed that any discussions in respect of an enterprise agreement would occur outside. That is not normally done in the proceedings of the commission. Discussions are held, notification is given to the parties and they have the right to express their point of view but not to change the decision.

The Hon. M.J. ELLIOTT: If that is the case, it is consistent with the view I put before. I accept that in the non-unionised workplace the unions would not play a role in the formulation of the agreement but would simply be in a position to comment. The only comment they could make was whether or not it goes below the award safety net. In those circumstances, they cannot interfere in the way the Government fears. In fact, it is paranoid about this. I think it would be satisfactory.

The Hon. K.T. GRIFFIN: I oppose the amendment. Although the Committee has changed the position in the Bill, we have consistently held the view that enterprise agreements are not public property and available to everybody. If the parties wish to keep them confidential, they ought to be able to do so. I point out the other consequence of the Hon. Mr Roberts's amendment: when the Bill becomes law with this provision deleted, it will mean that unfair dismissal applications will thereafter be advertised. That is not the current law, but it will be.

Amendment carried; clause as amended passed.

Clauses 189 and 190 passed.

Clause 191—'Assignment of commissioner to deal with resolution.'

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

> Page 75, line 9—Leave out 'one year' and insert 'two years'.

The Opposition amendment merely seeks to extend the term of assignment that a commissioner has in dealing with various award matters, assigned by the President, from one year to two years. The existing legislation provides for a two year assignment of commissioners to particular industries and has proved satisfactory. The prospect of annual relocation of commissioners to different industry groups is fraught with difficulties for all the industrial parties. Employers and employees, after a period of time, get to know the industrial commissioner concerned, and he or she in turn understands the parties and the industries that are appearing before him or her. Whilst there is nothing wrong inherently with there being a relocation of industrial panels amongst the industrial commissioners on a regular basis, a too frequent changeover period is not conducive to good industrial relations, in our submission. I ask for support.

The Hon. K.T. GRIFFIN: The amendment is opposed. The Government believes that there is a need for flexibility—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: Well, there are significant changes occurring in the workplace in industrial relations. It is not mandatory to change the panels but it is part of the club. What we are proposing is, if the panels are reviewed annually, it is more likely to meet the changing needs of the

workplace and industrial relations. There is no obligation for the President to shift people after every year. That would be stupid. But at least it gives the President the opportunity to review the structure on an ongoing basis. If the panels are working adequately, no changes would be made but, if they are not working adequately, they could be refined and adjustments made. That is the object of it.

One cannot be suspicious of it with a President who, under the amended Bill, will be there until age 70, so I would have thought that enhancing the opportunity for regular review rather than leaving it for periods of two years, particularly in such a fluid industrial environment where enterprise agreements, awards, different industry groupings and structures were occurring, would be at issue. The focus is very largely to make changes in industry classes. The Government's view is that we ought to maintain the one year because of the desirable outcome that the President has more flexibility in reviewing the panels, not necessarily to require change.

Amendment negatived.

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

Page 75, lines 12 to 14—Leave out subclause (2).

This amendment is consequential.

Amendment negatived; clause passed.

Clause 192 passed.

New clause 192A—'Demarcation dispute.'

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

Page 75, after line 29—Insert new clause as follows:

192A.(1) The commission, in making an award to prevent or settle a demarcation dispute, cannot—

(a) demark the work that may be carried out by a particular class of employees; or

(b) limit rights of industrial representation;

unless the parties to the dispute are bound by an enterprise agreement and the award is consistent with the agreement.

As previously discussed in the Government's amendments to clauses 4 and 73, the Government believes that the demarcation of work in favour of one union to the exclusion of another should be provided for only through enterprise agreements and on the basis contained in the Government's amendment to clause 73. This amendment inserts a new clause 192A, which qualifies the commission's jurisdiction to make orders in relation to demarcation disputes. The effect of the amendment will be to allow the commission to exercise its full powers of conciliation over demarcation disputes which are notified to it by employers or unions.

However, the commission's powers of arbitration will be limited. The commission will be able to make orders requiring, for example, industrial action associated with a demarcation dispute to cease, but it cannot itself demark the work unless an enterprise agreement contains a provision granting demarcation rights to one union. In this way, the commission's conciliation jurisdiction over demarcation disputes will encourage the parties to make an enterprise agreement whilst at the same time protect the public interest in the event of any immediate orders required to stop industrial action.

The Hon. T.G. ROBERTS: How does this sit with the dispute resolution procedure that may be negotiated at a local level? I know they must take into consideration the role of the commission, but under this prescriptive clause could an enterprise agreement contain a dispute settling procedure that does not refer to this method of settling a dispute? For instance, if it was agreed that an enterprise agreement could have a dispute settling procedure that was satisfactory to both parties, would this prescriptive model have to be picked up by the enterprise agreement in relation to dispute settling procedures or could the enterprise agreement contain a different dispute settling model?

The Hon. K.T. GRIFFIN: An enterprise agreement can contain its own dispute settling procedures. If it is included in that provision that the commission may be involved, that is fine, there is no difficulty with that. The commission remains involved under amendments which have been passed in relation to the conciliation and arbitration process involving enterprise agreements.

So, the power of the commission has been broadened in relation to enterprise agreements as I recollect. However, in essence the Government believes that, if enterprise agreements can in fact contain dispute resolution procedures, they can involve the commission but, in any event, under the earlier amendments which have been passed to this Bill the commission will retain a final responsibility in relation to at least some matters which are under dispute under the enterprise agreement. The demarcation responsibility applies only under Division 3, so in relation to demarcation it is a fairly limited provision.

The Hon. T.G. ROBERTS: But there is also the school of thought that demarcation can then lead to classification change and perhaps broad banding which is an extension of demarcation and which would then need the commission's verification. We will get a queue a mile long if that is going to be the case.

The Hon. K.T. GRIFFIN: The point I emphasise is that this is limited. The proposed new clause states:

(a) demark the work that may be carried out by a particular class of employees; or

(b) limit rights of industrial representation.

So, if there is an issue of classification, that is not constrained by this particular provision, and orders will be able to made by the commission in relation to that issue.

The Hon. R.R. ROBERTS: The Opposition opposes this new subclause. The demarcation issues were discussed earlier and decisions were made about demarcation and whether it became an industrial matter. We also canvassed the situation of whether, under enterprise agreements, enterprise commissioners could be involved in demarcation disputes. I am told that the effect of the Attorney-General's proposal is that it creates a way of setting up in-house agreements and that it would in fact bypass the legitimate operations of registered associations. It therefore encourages one group as opposed to the other.

So, we have voted on the issues in respect of demarcation on three different occasions: in relation to the definition; in relation to whether it becomes an industrial matter; and as to whether the enterprise commissioner can look at and settle demarcation disputes.

The Hon. K.T. GRIFFIN: It does not sidestep registered associations. It encourages those who may wish to go into enterprise agreements. You may still have associations involved.

The Hon. M.J. ELLIOTT: From the explanations I have heard, it is still not clear in my mind precisely what the Government is seeking to achieve. This situation will only occur in relation to an enterprise agreement, and so it is happening at an enterprise level. The implication is that the commission is not able to demark work under an award; it can only do so under an enterprise agreement. I am not quite sure what are the ramifications of that or what the purpose of it is and I invite the Minister to respond to that. Why is it that, in terms of limiting the rights of industrial representation, it

is applying at the enterprise level and what exactly is the Government seeking to achieve by that?

The Hon. K.T. GRIFFIN: There is a definition of 'industrial matter'; that is the first point. Secondly, a demarcation dispute is now an industrial matter, by definition. So, you start off at that point: you have a definition of 'industrial matter', and a demarcation is now an industrial matter. The commission has jurisdiction over an industrial matter, and it can make any orders in respect of a settlement of a dispute relating to an industrial matter, which means also a demarcation dispute. What the Government wishes to do is limit the authority of the commission to make orders in relation to a demarcation dispute, because a demarcation order denies, by its nature, the right of representation. Under our scheme, it is our view that the commission should not have power to make orders which infringe that general principle of freedom of association. But we are saying that, if parties enter into an enterprise agreement, we are prepared to recognise that there can be sole representation of the employees under that enterprise agreement.

The Hon. R.R. ROBERTS: But under the changed arrangements the demarcation would come between the classes of workers and not between members of an association. Demarking means that one class of workers can do the job, that another class of workers cannot or that they can both do it. So, it does not involve freedom of association. When you are talking about demarcation, you are talking about who can and cannot do the job. It can involve classes of workers. We have agreed to all these matters.

The Hon. K.T. GRIFFIN: The definition of 'demarcation dispute' in the honourable member's own amendment, which has been carried, includes a dispute about the representation under this Act of the industrial interests of employees by a registered association of employees. Therefore, it necessarily follows that, because a demarcation dispute is an industrial matter, the commission has powers to make orders in relation to industrial matters and thus demarcation disputes. It has the power to make an order in relation to representation in favour of one union as against another. That necessarily follows in the logic of the definition and the coverage and powers of the Industrial Commission.

The Hon. M.J. ELLIOTT: I am not sure that the previous questions have been answered yet, but I will throw another one in. It says 'in making an award to prevent or settle a demarcation dispute'. I have two questions. First, can 'making an award' in this context mean the striking of an enterprise agreement?

The Hon. K.T. Griffin: No.

The Hon. M.J. ELLIOTT: So, we are talking about an award in the ordinary sense.

The Hon. K.T. Griffin: Yes.

The Hon. M.J. ELLIOTT: It says 'to prevent or settle a demarcation dispute'. Assuming there is no demarcation dispute, it appears to me this is now suggesting that the commission may decide simply within the award to put in something in anticipation that there could be a demarcation dispute. What exactly is the significance of preventing a demarcation dispute?

The Hon. K.T. GRIFFIN: As a result of earlier amendments, the definition now in the Bill of 'industrial matter' includes a demarcation dispute. The commission's power under clause 190 includes the prevention of an industrial dispute, so it is possible for the commission to anticipate a demarcation dispute and in advance—and I am not sure upon what factual basis—to seek to prevent a demarcation dispute. It is all a matter of the drafting and the definition; because of the way the definitions have now come out, 'industrial matter' includes the demarcation dispute, and in dealing with an industrial dispute the commission may prevent or settle the demarcation dispute.

We are trying to deal with the definitional issues to provide, when it is making an award to settle a demarcation dispute, or looking ahead anticipating that there may be one if there have been some rumblings that might suggest that it should try to prevent that occurring in the future, that the commission cannot do certain things in respect of the making of an award but only in respect of the enterprise agreement.

The Hon. R.R. ROBERTS: What you are saying is that they may anticipate a demarcation dispute. It has never been my experience that you anticipate them: if you have a demarcation dispute you know you have it.

The Hon. K.T. Griffin: It is for no other reason than to try to come to grips with the definitions and the scope of the authority of the commission.

The Hon. R.R. ROBERTS: I understand that. However, again, work is between different classes of people. I think I can now see were you are trying to go. Having put all these powers into the commission, you are going back to your original philosophy, where the people under the enterprise agreements, the non-registered associations, will be protected from the things that we could not agree with during our discussions. This makes a nonsense of the other three areas we have decided through Committee debate. I stick to the original point I made: if you introduce what you are trying to do now, having given the commission the powers to do all these things, you now say, 'We have given you the powers, but in this area, which is enterprise agreements—

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: Well, what's the use of having it?

The Hon. K.T. Griffin: It has the power to conciliate and the power to arbitrate but not to the extent of—

The Hon. R.R. ROBERTS: Settling a dispute.

The Hon. K.T. Griffin: No, you can settle a dispute. 'Arbitration' means settling a dispute, doesn't it, partly?

The Hon. R.R. ROBERTS: Not necessarily, you can make a decision without settling a dispute.

The Hon. M.J. ELLIOTT: Having listened to all of that, I am absolutely confused that the Government is insisting on the amendment that it could almost explain. The Opposition is opposed to this amendment that it can almost explain. I do not feel terribly convinced by either of the explanations. We have two people who are not quite sure what they are explaining. That is no criticism but I think it is pretty right. If they are not sure about what they are explaining, I can guarantee that the person who has been listening to both of them has been left totally confused. I suspect also that the definition of 'demarcation dispute' that was put in at the beginning of the Bill is different from the one that the Government anticipated. We probably have an unholy mess in any case, and if there is one thing I am sure of it is probably that much.

The Hon. K.T. Griffin: Why don't you accept it on the basis of seeing it all written down, having a good look at it and keeping your options open as to what you might want to do later?

The Hon. M.J. ELLIOTT: This amendment means we will have to come back to it again. I will support it with a provision that almost has lines through it.

The Hon. K.T. Griffin: Semi-erased type.

The Hon. M.J. ELLIOTT: That is right, only in terms of the fact that I have left clauses in that have been moved by the Opposition sometimes. I am not convinced, but I think they should stay in there to live to fight another day—but not necessarily survive in the longer term. Quite clearly, the question of demarcation will come back to this place because this particular clause does not mesh terribly well with the definition of demarcation that we have at the beginning of the Bill.

New clause inserted.

Clause 193—'Voluntary conferences.'

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

Page 75, after line 36—Insert subclause as follows:

(3) The amount certified under subsection (2) will be paid out of money appropriated by Parliament for the purpose.

The Opposition's amendment specifies that any person who is called to attend a voluntary conference by the Industrial Commission is entitled to be paid for their reasonable expenses out of the general revenue of the Government. As the Industrial Commission is established to prevent and settle industrial disputes, and if in its view, as part of its process, a voluntary conference is called by the commission, the costs of such voluntary conference with respect to persons called to attend that conference should be met by Parliament. Ordinarily this would not be of any significance to most of the day-to-day types of disputes that occur before members of the commission. However, it may be that relevant witnesses or some other party from some remote part of the State need to be called to a voluntary conference and the costs of that person ought to be paid out of the general revenue as part and parcel of the Commission's task of preventing and settling industrial disputes.

The Hon. K.T. GRIFFIN: We support the amendment. Money still has to be appropriated, so it is not unreasonable.

Amendment carried; clause as amended passed.

Clause 194—'Compulsory conference.'

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

Page 76, after line 14—Insert subclause as follows:

(6) The amount certified under subsection (5) will be paid out of money appropriated by Parliament for the purpose.

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

Amendment carried; clause as amended passed.

Clauses 195 to 199 passed.

Clause 200—'Right of appeal.'

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

Page 78, lines 13 and 14—Leave out paragraph (a).

It is self-evident that what I am saying is that there could be appeal against approval, variation or recision of an enterprise agreement.

The Hon. R.R. ROBERTS: The Opposition supports the amendment; it is the same as mine.

The Hon. K.T. GRIFFIN: The amendment is vigorously opposed. As we have said all along, the essence of an enterprise agreement is that it is an agreement. If the parties go to the commission and the agreement is approved, who then is to appeal and in any event why should there be an appeal? The deletion of paragraph (a) would mean that, if an association of employees has been given a right to comment on the agreement, it may lead to the conclusion that that association has an interest in the matter and therefore has the power to appeal. It is a bizarre concept that an association which has only commented on the agreement, before it has been approved, should be able to appeal against the approval, variation or recision of an enterprise agreement. I do not know what else the Hon. Mr. Elliott and the Hon. Mr Roberts have in mind or what they see as sinister. However, it defies logic and commonsense that one should allow an appeal against approval, variation or recision. If that is to be allowed, the appellant might be someone who has come in and made a comment under the powers which have been given by the majority in the Committee.

The Hon. T.G. ROBERTS: If you want some specifics about the nature of appeals, in my experience of agreements awards are rarely struck and appeals made. In relation to enterprise bargaining arrangements and agreements, there is a whole range of matters in which the nature of information that is given to strike arrangements may change. It could include national variations of an award while negotiations are continuing; it could be a change in the nature and circumstance of community standards while negotiations have continued or are being finalised; and there may be matters relating to information supplied by the enterprise itself about its own financial position. I hope there will be an honest exchange of accurate information so that those carrying out the enterprise bargaining, either at local level or through their associations, can establish the *bona fides* of what their employer is saying in relation to the security of employment, the introduction of technology or the changing nature and circumstances of the operation. A whole range of issues may be changed if the value of the information is changed at some point.

Last night we gave an example in relation to SPC. Those negotiations took some time. It may take three months for the unions, the employees and the employers to reach an agreement and during that time there might be a change in international circumstances. With regard to SPC, there may be a frost in the Americas, the result being a pear shortage and therefore SPC may become a viable enterprise after the agreement has been struck but before it has been registered or perhaps whilst it is in the process of being registered. A whole range of variations could occur that warrant somebody appealing against the finalisation and determination of that enterprise agreement. They would be exceptional circumstances and I do not think it would happen very often.

The Hon. M.J. ELLIOTT: I make it clear that it was not my intention that the appeal would be made by anyone other than parties to the agreement.

The Hon. K.T. GRIFFIN: I appreciate that information. In the light of that, quite obviously it will be a matter for further consideration.

Amendment carried; clause as amended passed.

Clauses 201 to 203 passed.

Clause 204—'Review on application by Minister.'

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

Page 80, line 17—Leave out paragraph (b).

The Bill gives the Minister too much power to interfere with respect to the organisation of the commission. This paragraph allows the Minister to apply to have the Full Commission review any determination of the commission because in its opinion the determination does not adequately give effect to the objects of the legislation. The objects of any Act of Parliament are very broad, and the purpose behind the Bill with respect to this matter is to try to have the commission and its determinations give political decisions as to what the Minister believes the objects of the Act stand for at any time when a matter is being determined by the commission.

There is sufficient discretion under the remaining powers in clause 204 for the Minister to have the matter referred to a Full Commission. However, that must be based on the public interest rather than a political statement. For those reasons we commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: There already is provision in the Act for the Minister to apply to the Full Commission for a review of the determination. Section 100 provides:

> Where it appears to the Minister that an award or decision of the commission or industrial agreement is contrary to the public interest, the Minister may apply to the Full Commission for a review of the award, decision or agreement.

We have added paragraph (b) because objects have now been included in the Bill, and it seemed to us to be appropriate. Because the objects now govern the whole approach of the legislation, and if a determination does not adequately give effect to the objects, the Minister ought to have the power to refer the matter to the Full Commission for a review.

I would suggest that that is consistent with the power given in relation to paragraph (a), for the Minister to seek to have the Full Commission review the determination when the Minister is of the view that it is contrary to the public interest. There is a certain consistency of approach in relation to the two, and in view of the objects it is the Government's view that they ought to play an important part in the determinations of the commission; and, if they are ignored or inadequately provided for, there ought to be power to have that review.

The Hon. R.R. ROBERTS: I think we have made the point that the Minister should act in the public interest. Indeed, he has the power to do that, as has been expressed elsewhere (in clause 204). The objects of the legislation are very broad. If the Minister in his interpretation says that the wages may be too high and that would offend paragraph (b) and contribute to the economic climate in which employment opportunities in South Australia have maximised—

The Hon. M.J. Elliott: That has been changed.

The Hon. R.R. ROBERTS: I will give the Committee the following example. Many of those things are broad and, if that were to stay in there, could be interpreted widely. If there were a political will to do so, we could be rushing off to the commission on misinterpretation. Our view is that the public interest is all that is required for the Minister, and the commission has the power to determine and make decisions on behalf of the people of the State and to interpret the objects of the Act. To have the Minister override that and push those aside almost unilaterally is, in my opinion, wrong.

The Hon. K.T. GRIFFIN: If Parliament passes the objects, then Parliament expects that the objects will do some work. That is the basis for the legislation and the basis on which the legislation will be interpreted. If there is a problem with the objects, then change the objects.

The Hon. T.G. Roberts: Is that an invitation?

The Hon. K.T. GRIFFIN: No, I think there are one or two problems now—there weren't earlier. The Minister is responsible for the administration of the Act. It is the Minister who has responsibility for ensuring that the public interest is met. I would have thought it was equally the responsibility of the Minister to ensure that, if the objects have not been adequately given effect to, he or she could apply for a review of the determination. If the Minister does not do it, who does? We leave the objects to be implemented by the commission and the court whenever it suits them, without anyone having the general oversight of the implementation and putting into effect of those objects.

The Hon. M.J. ELLIOTT: My guess is that the major concerns that the Hon. Mr Roberts would have about the interpretation of the objects would be in relation to a situation where perhaps the Minister might intervene, thinking that the award was too generous in some way. As I look at the objects of the Act, the only clause under which such an objection would be lodged would be subclause (b), which currently provides:

> To contribute to the economic prosperity and welfare of the people of South Australia.

To me, to contribute to the economic prosperity and welfare of the people of South Australia is not much different from the public interest. At the end of the day, when I look at the other objects of the Act, I do not believe that an appeal in relation to any of those other objects is likely to be an area of major concern. If there is, I would like to know which one it is.

Amendment negatived; clause passed.

Clauses 205 to 210 passed.

Clause 211—'References to the Full Supreme Court.'

The Hon. R.R. ROBERTS: The Opposition opposes this clause. I am advised that this section would allow the Minister of his own volition—despite the fact that both the employer and the employee were happy with an arrangement—to act unilaterally, put aside their wishes and go straight to the Supreme Court. On that basis the Opposition recommends that the clause be opposed.

The Hon. M.J. ELLIOTT: I oppose this clause.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Let me finish. As it now stands, a question of law is actually broader than what we allowed under clause 184. I was going to suggest that it might be more appropriate that the Minister got a guernsey in clause 184, and went to court on exactly the same grounds as could the other parties in relation to an agreement. This, I understand, is broader than the grounds which are available to the parties to the agreement.

The Hon. K.T. GRIFFIN: I do not think clause 184 is appropriate because it deals with an appeal from an order or a decision of the Full Court—only the Full Court, not the commission.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: If I can explain the position, and then we might be able to pursue it a bit further. The Minister may not necessarily be a party. It might be convenient for the parties—and, in conjunction with that, it may involve an arrangement which compromises some aspects of the law to suit the parties—and in those circumstances it would be unwise to allow that to stand, particularly if it had some public policy consequences.

Clause 211 seeks to refer questions of law to the Full Court of the Supreme Court, where those questions of law have arisen in proceedings before the court, an Industrial Court, or the Industrial Relations Commission. It gives the Minister an opportunity to have referred to the Full Court, in effect, a case stated with respect to certain questions of law. That is not uncommon in other areas of the law, but the primary reason for giving the Minister this responsibility is to deal with those issues of constitutional overlap between the Commonwealth and the State following the passage of the Federal industrial relations legislation. There has to be some way by which that issue is addressed. I can think of a number of ways by which we can deal with it. As I say, I do not think it is appropriate in clause 184 and it would not be productive

to explore it in much detail now but, if the Hon. Mr Elliott keeps an open mind on it, it may be that there can be some mechanism introduced which addresses the concerns which the Government has if there is not somewhere a power for the responsible Minister to seek a clarification of the law from the Supreme Court.

The Hon. T.G. ROBERTS: We do not have an amendment on this, but we opposed it on a couple of points. The first one is: why is it that only the Minister can appeal on a point of law? Why cannot the other parties?

The Hon. K.T. GRIFFIN: The parties can, but it is limited in respect of the Supreme Court. The Minister has responsibility for the Act.

The Hon. T.G. ROBERTS: The other point being made is that, if an agreement is made that is unlawful, the agreement itself should fall. It should not have any status. There would not be the necessity for the Minister to intervene. For instance, there may be an agreement between an association and an employer to get rid of dangerous toxic chemicals and, rather than process them, they may dump them into traps and drains that lead into rivers or whatever. If that agreement is made, it is unlawful and has breached other Acts: that agreement should not have any status. The problem is that we could have the Minister intervening, taking matters to the Supreme Court, and it could be quite costly to the other parties, particularly the associations and/or the people on that site.

The Hon. K.T. GRIFFIN: There is a right of appeal by the parties from a decision of the Full Court in certain circumstances, but not from the commission.

The Hon. T.G. Roberts: The costs are the problem.

The Hon. K.T. GRIFFIN: Is that what you are focusing on? One of the questions was, 'Why don't you let people other than the Minister refer matters to the Supreme Court?' That is what I was addressing. First of all, in other provisions of the Act there is no power to allow appeals from decisions of the commission to the Supreme Court. The concern we have is that, if you allow individuals to refer matters of law to the Full Supreme Court from proceedings before the court or the commission, you may well have a disgruntled litigant who wants to be difficult and takes it up.

We felt that the Minister would be acting more responsibly in the public interest to be the person to take those proceedings rather than opening it up to everybody. There is less risk that a Minister would refer an unfair dismissal matter, for instance, for an opinion on a matter of law to the Supreme Court from the commission than would a disgruntled party. If something is going bad for one of the parties, they could decide to take the matter to the Full Supreme Court. That is all very destructive and might even be vexatious. So, we preferred to focus only on the Minister as the Minister responsible for the Act and having that day-to-day responsibility for ensuring that the Act is satisfying the public interest.

Certainly the question of costs is involved, but it is only in those circumstances where there is a substantial question of law that the Minister is likely to become involved. The costs are at the discretion of the court and the court would have to take into consideration all the circumstances before making an order in respect of who should pay the costs.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: That is a possibility but it becomes inflexible. It may be that one of the parties believes there is a significant issue of law to be resolved and requests the Minister to take the matter on to the Full Supreme Court. In the other areas of the law, the Attorney-General has a discretion in relation to test cases. Where the Attorney-General is a party, in the area of criminal law, for example, it is not uncommon for the Attorney-General to make a decision based upon the facts and circumstances of the matter to say, 'On this basis, we are prepared to fund you.' There is that flexibility.

I think Ministers of both political persuasions have accepted that there are circumstances in which it is fair for the costs to follow the event or to be in the discretion of the court but in others it is fair for the Government of the day or the Minister to pick up those costs. I think that has happened with Ministers of both political persuasions, whether Attorneys-General, Ministers for Labour or Ministers for Industrial Relations. There has to be a measure of faith, if this is passed, in the Minister of the day acting responsibly.

In my experience, in my areas of responsibility, caution is exercised before taking matters just on questions of law as a test case and putting parties to significant costs. That gives flexibility. There is a case at the moment where I, or the Attorney-General, was requested to and did intervene in a matter before the Supreme Court. In that case, the parties bear their own costs. They certainly do not pay the costs of the Attorney-General but, on the other hand, the Attorney-General does not pay their costs, because it is one of those matters that quite obviously had to go on appeal and the parties accepted that that was the proper course to follow to get clarification of the law regarding a deceased estate and a very substantial trust.

The Hon. T.G. ROBERTS: Given that reasonable response in relation to costs by the Attorney-General and as I understand the Hon. Mr Elliott has suggested that we look further at this clause, would it be fair and reasonable to suggest that, to prevent a series of challenges that might have to go to the Supreme Court based on the fact that the Government has rewritten the whole of the industrial law in this State, there be a filtering process and that the Industrial Commission become the filter to determine whether such cases should go to the Supreme Court? I think we can anticipate that the Government could be very busy intervening in a lot of precedents within the determination of the Act after the Act settles down and we decide what it means. It may be one way to solve the problem, including the determination of costs and the concerns that people have.

The Hon. K.T. GRIFFIN: I am not altogether happy with that suggestion because it would require leave of a tribunal which might be seized of a case and which might have some vested interest in its not going on appeal. One option which I would float, but we do not have to make a decision on the run immediately, is that it be by leave of the Supreme Court so that it is not an automatic reference. That happens in the High Court and the State Supreme Court. There are many occasions where it is not particularly expensive because you do not have to put forward all your documentation, you merely seek leave to appeal and the superior court makes the determination that either leave is granted or not granted. That is in relation to an appeal, but in relation to a reference on a question of law that same approach could be adopted.

The Hon. M.J. ELLIOTT: I will oppose this clause because I have a couple of reservations about it. At this stage I will not make any commitment as to what I will do other than have an open mind.

Clause negatived.

Clause 212 passed.

Clause 213—'Confidentiality.'

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

Page 85, lines 18 and 19—Leave out 'and the terms of enterprise agreements'.

This amendment is consequential. If the enterprise agreement is ultimately a public document, then clearly its terms are already public.

The Hon. K.T. GRIFFIN: The Government recognises that this is a consequential amendment.

Amendment carried; clause as amended passed.

Clause 214—'Notice of determinations of the commission.'

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

Page 85, lines 32 to 34—Leave out subclause (2) and insert—

(2) copies of all determinations of the commission (except those of an interlocutory nature) must be kept available for public inspection at the office of the Registrar.

There is a requirement that registered agreements be kept for inspection. The Attorney-General's proposition seeks to pull a veil of secrecy over the determinations of enterprise agreements. The Opposition is opposed to that. It believes that the determinations of the commission in both areas ought to be made available for inspection at the office of the registrar. We have canvassed some of these issues before.

The Hon. K.T. GRIFFIN: That is correct; we have canvassed the issues. The Government still asserts that it is wrong to require the details of enterprise agreements to be made available for scrutiny. I therefore oppose the amendment.

The Hon. M.J. ELLIOTT: I am supporting the amendment.

Amendment carried; clause as amended passed.

Clause 215 passed.

Clause 216—'Boycotts related to industrial disputes.'

The Hon. R.R. ROBERTS: I oppose the clause and move:

Page 86, line 6—Leave out the clause and substitute new clause as follows:

Secondary boycotts

216. The provisions of Part 6, Division 7 of the Commonwealth Act (Secondary Boycotts) apply as laws of the State with the following modifications:

(a) references to the Commonwealth Court and the Commonwealth Commission are to be read as references to the Court and the Commission; and

(b) any further modifications and exclusions necessary for the operation of the provisions as laws of the State.

I will actually speak to both clauses 216 and 217. The Government's Bill with respect to clause 216 seeks to introduce for the first time into State legislation the secondary boycott legislation under sections 45D and 45E of the Trade Practices Act. These provisions have now been deleted from the Trade Practices Act and brought into a special jurisdiction under the Industrial Relations Act 1988.

The Opposition's amendment with respect to clause 216 seeks to duplicate exactly the provisions of the Commonwealth Act into the laws of South Australia. The Commonwealth legislation, which is the basis of the Opposition's amendment, allows the Industrial Commission at first instance to seek to resolve the matter through conciliation. The Commonwealth legislation applies only in cases where an alleged secondary boycott is taking place, that is, as a result of the worker seeking to obtain an improvement in their remuneration or other conditions of employment.

The commission must act swiftly when notified of a dispute in relation to this matter and an application can be made by an employer after the expiration of 72 hours. If the commission believes that the dispute cannot be resolved promptly as a result of its intervention it must certify accordingly. Upon certification being granted by the Industrial Commission the matter can be brought forward to the Industrial Court for an injunction to be issued against the offending party. Penalties are provided for persons not adhering to the injunctions issued by the Industrial Court, and any person who suffers loss or damage as a result of the boycott conduct may recover the amount of loss or damage by actions in the Industrial Court.

Federal legislation, which we seek to emulate in the State legislation, is far preferable to that of the Government's. This keeps industrial disputes within the purview of specialist industrial tribunals established to prevent disputes, that is, the Industrial Commission. However, if the Industrial Commission is unable to resolve the dispute, the party being affected can promptly seek remedies in the Industrial Court. It is an absurd situation if a firm based in South Australia employs one group of people pursuant to a Federal award, which is covered by the Commonwealth legislation, and another group of people, for example clerks, who work under State awards and who therefore would be liable for action under the Government's Bill with respect to secondary boycotts and be without the same protections as their fellow employees who work under the Federal award. I seek the support of the Committee.

The Hon. K.T. GRIFFIN: The Government opposes the amendments to delete clauses 216 and 217, and I intimate that I have an amendment to clause 217 when we get to it. I will speak to both clauses for the moment. These amendments are a further example that the Labor Party is simply doing the bidding of the trade union by seeking to remove from the proposed State industrial laws reasonable provisions relating to offences by unions who damage employers' businesses through industrial action.

The Federal Act (secondary boycott provisions) are an unsatisfactory response to the serious consequences of strike action to employers and their business. They will do nothing to provide real deterrents in the law to irresponsible and excessive strike action by those trade unions who should be immediately called to account through the making of court injunctions stopping unlawful strike action. As I have indicated the Government opposes this amendment and supports the original clause.

The Hon. M.J. ELLIOTT: I spent quite some time pondering the clause and took counsel with some of our Federal members who were involved in discussions at the Federal level. I note that our Party supported secondary boycott provisions there. Without entering into the substance of those provisions, I first stress that in the Federal jurisdiction our Party has supported the introduction of secondary boycott provisions. I do not have any difficulties with the concept of secondary boycott provisions in State legislation.

However, given the terms that we have, the clauses are dangerously simplistic. Whether or not you agree with what is happening in the Federal jurisdiction, their secondary boycott provisions run to some 14 pages, and in State legislation it has been handled in a matter of about five sentences. The issues are complex and we cannot legislate in a complex area with simple provisions.

I have indicated previously that in some ways the Government has bitten off too much in this legislation, and this area is one on which I would suggest the Government should go away and do some more work. It is not capable of being resolved in the sort of timeframe that we have available to us. Presumably we are aiming at trying to conclude

handling this and other legislation at some revolting time Sunday morning. If we continue to try to nut out this one, I can assure members that I am not sure which Sunday it will be, but it will be not this one. All I am saying is that we are prepared to consider the concept of secondary boycotts with provisions. We have supported them in the Federal jurisdiction, but really what we have here is not capable of easy amendment—and certainly not amendment on the run.

The Hon. K.T. GRIFFIN: To make an observation in relation to the Hon. Mr Elliott's reference to the 14 pages of the Commonwealth statute, one has to be careful that one does not make a judgment about the quality of legislation by its volume. My experience of Commonwealth drafting is that it is ponderous and quite unintelligible in many respects, and that is just a general reflection of the way the Commonwealth approaches legislation. On many occasions our Parliamentary Counsel draft things brilliantly and simply. They frequently express the same principles but in very much less verbiage than the Commonwealth draftsmen. As I said, the Commonwealth drafting style is frequently quite unintelligible.

I am disappointed that the Hon. Mr Elliott is not supporting clause 216, and I indicate that, although I have expressed concern about the Federal legislation and I have concerns about merely adopting what is in it, for the moment I would be happy to support the Hon. Mr Roberts' amendment if the clause is deleted.

The Hon. M.J. ELLIOTT: I certainly concede that lengthy legislation does not make good legislation but nor does short legislation make good legislation, either; otherwise you would need only one law for the State, and it would provide that people should not be bad. Quite clearly, if you have something that is complex you cannot handle it in just a few sentences. That is the point I was really making, and I do not believe that that should have gone unanswered.

The Hon. R.R. ROBERTS: I agree with the proposition put by the Hon. Mr Elliott and the Hon. Mr Griffin to delete it completely. My amendment actually says 'oppose and insert'. What we are now doing is opposing it.

The Hon. K.T. Griffin: I put you to the test and you wouldn't rise to it! Are you going to put clause 216 back in, secondary boycotts, or are you just going to oppose?

The Hon. R.R. ROBERTS: The Hon. Mr Elliott says he wants it taken out altogether.

The Hon. K.T. Griffin: But I am saying that I am happy to support your amendment to insert.

Existing clause struck out; new clause inserted.

Clause 217—'Interference with contractual relations.'

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

Page 86, lines 21 to 27—Leave out the clause and substitute new clause as follows:

217. (1) A person must not—

(a) interfere, without justification, with contractual relations; or

(b) attempt, by intimidation, to prevent or dissuade another from entering into a contract, or from exercising contractual rights or carrying out contractual obligations:

with the purpose of causing, or influencing the course or outcome of, an industrial dispute, bringing about or influencing the course or outcome of negotiations on an industrial matter, or causing or encouraging a contravention of this Act.

(2) A person who contravenes this section commits a tort that is actionable in damages before the court or any other court with jurisdiction to hear and determine claims in tort up to the amount of the claim.

(3) This section does not derogate from other rights and remedies available by statute or at common law.

This amendment relates to a new provision in the Government's Bill. Clause 217 of the Bill includes into the statute the existing economic torts of interference with contractual relations. The Government's Bill, as originally drafted, expressed these torts in a broad fashion, not restricted to industrial matters as an offence. The Government has taken further advice on this clause and it has been redrafted more accurately to reflect the Government's intention to incorporate into the statute civil cause of action and remedy. The Government considers this statutory recognition of the industrial tort to be a necessary element in its tightening of the boycott and secondary boycott provisions, particularly in light of the Federal Act's willingness to provide a right to strike and 72 hour strike free bargaining period.

The Hon. M.J. ELLIOTT: I indicate my opposition to this clause.

Existing clause struck out; new clause negatived.

[Sitting suspended from 10 to 10.15 p.m.]

Clause 218—'Discrimination against employee for taking part in industrial proceedings, etc.'

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

Page 86, lines 29 to 31—Leave out 'An employer must not discriminate against an employee by dismissing or threatening to dismiss the employee, or prejudicing or threatening to prejudice the employee in, employment' and insert 'An employer must not harm or disadvantage an employee'.

It was our original intention to seek the deletion of this clause because of earlier amendments we had moved to clause 109. Being mindful of the failure of that amendment but aware of the comments made about the adequacy of this clause vis-a-vis the Government's position by the Hon. Mr Elliott, I again address the question. The Government wants to encourage enterprise bargaining and seeks to entice workers away from close reliance upon the court and commission as settlers of dispute. In a range of areas we have pointed to previously it has sought a range of subtle and sometimes less subtle limitations on the commission's role. Whilst seeking to limit access to an umpire and hence some sense of civilised conflict resolution, it also seeks to limit the ability of workers to empower themselves for alternative forms of such resolution.

In essence, it is a vision of industrial relations which envisages more disputations over conditions of work, but the control of this in a punitive way rather than by conciliation. In this clause the Bill seeks to maintain the appearance of protection—and hence gives its public face some appearance of even-handedness—but attacks, by deletion, important related protections. If it is the Bill's intention to provide true protection as claimed in the identifier to this clause, the clause itself needs rewording. As it is, the only protection is narrowly related to the employment relationship. But work is much more than a narrow legal construct. What is the point in preventing an employer actually fixing an employee if we do not prevent the employer seeing the employee?

The first action prejudices the employee by taking away her or his employment, but there are other jobs and social safeguards during transition. The second action also prejudices the employee, arising directly from the work relationship. However, this prejudice may mean that the worker keeps her or his job but loses their house and indeed all their material possessions. How can the worker be said to be protected from discrimination by the employer over industrial action when such events are possible? However, a relatively minor wording change to subclause (1) will provide the protection

the Bill's drafters claim of it. I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: Having just received a copy of this amendment, I have not yet had an opportunity to fully analyse the consequences of it.

The Hon. T.G. Roberts: It almost guarantees fair play.

The Hon. K.T. GRIFFIN: It guarantees that I might talk for longer!

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: No, I am tending to be on the more conservative side, and I presently tend to the view that I will not be supporting it.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: I do not want to keep this one alive, because I think the provision is satisfactory as it is. The language of clause 218 is consistent with other provisions to which we have given consideration, which relate to the issue of discrimination. For example, there is clause 110, and there are others, all of which focus upon discrimination. Because that is the thread throughout the Bill, I believe that we ought to maintain the consistency of language and concepts.

Clause 110 is one of those, and clause 111 is another. I think it is quite clear that the employer must not discriminate, prejudice or threaten to prejudice an employee for any of the reasons that are clearly identified. When I read the Hon. Mr Roberts' initial amendment, I decided to oppose the whole clause, because I thought that it was just not in the interests of anybody, but I tend to the view that the amendment which is now before us ought to be rejected.

The Hon. M.J. ELLIOTT: Before I consider my final position on this I would appreciate if the Hon. Ron Roberts could give an example of discrimination which he feels his amendment would cover and which is not currently encompassed within the clause as it stands.

The Hon. R.R. ROBERTS: I am advised that the definition is broader where it deals with dismissals. Other forms of pressure can be applied by shifting employees from one section of a plant to another section, or by putting them—

The Hon. K.T. Griffin: That would be prejudice, surely. There would be no harm or disadvantage in that, but it could be prejudice.

The Hon. R.R. ROBERTS: It could be harm or disadvantage by changing classifications of work, shifting them around and still providing them with useful work but disadvantaging them nonetheless. I am told that the crux of it is to take away actions against employees which cause disadvantage because of some action that they have been involved with which does not confine it just to dismissal or threats of dismissal or harm.

The Hon. K.T. GRIFFIN: I suggest that what is in the Bill is adequate. It deals with prejudice or threats to prejudice and dismissal or a threat of dismissal. I should have thought that what the Hon. Ron Roberts is doing—and I suppose we should be happy to accept it—is limiting rather than broadening because he said that an employer must not harm or disadvantage an employee. There is nothing about threats to harm or disadvantage. Therefore, I believe it is an inadequate response and that the Bill should stand as it is.

The Hon. M.J. ELLIOTT: My reading is that it has the potential to be narrower. In the circumstances, I shall not be supporting the amendment.

Amendment negatived; clause passed.

Clause 219 passed.

Clause 220—'Improper pressure, etc., related to enterprise agreements.'

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

Page 87, lines 24 and 25—Leave out 'A person must not harass an employer or employee or apply improper pressure to an employer or employee' and insert 'A person must not coerce an employer or employee'.

The amendment seeks to provide the same test for employees as exists for employers with respect to improper pressure, etc., related to enterprise agreements. The Bill provides that a person must not harass an employer or employee or apply improper pressure to an employer or an employee to prevent or discourage the employer or employee from supporting or entering into an enterprise agreement or seek to induce them to seek a variation or rescission of the said agreement.

However, there is a higher test with respect to employers in that subclause (2) provides:

A person must not coerce an employee to enter into an enterprise agreement.

The Bill says that if a union official, for example, at a meeting sought to dissuade employees from entering into an enterprise agreement because they believed the terms of the agreement were below the standard, that would be an offence. However, for an employer to be convicted of an offence, it must be shown that they have coerced the employee to enter into an enterprise agreement. Therefore, an employer who sought to discourage employees from seeking advice from a union official or employee ombudsman, for example, as to their rights under the enterprise agreement or who harassed them or sought to induce them so that they would not seek a variation or rescission of an enterprise agreement would not be convicted of an offence as it must be coercion. The amendment simply makes the same ground rules applicable to all concerned in relation to coercion.

The Hon. K.T. GRIFFIN: I oppose the amendment. I think that the Government's provision is broader. It deals with harassment and improper pressure in relation to an employer or employee, so it is even handed. Coercion is dealt with in subclause (2). The Hon. Mr Elliott's amendment seeks to address the issue of the provision of advice to a party or potential party to an enterprise agreement. I do not suggest that I will support that, but at least there is an issue to be addressed in relation to it, although I guess the difficulty with the Hon. Mr Elliott's amendment is that it refers to a registered association rather than to what has been consistently referred to throughout the Bill as an association. I cannot see how what the Hon. Mr Roberts seeks to do can be an improvement. I do not believe it is an improvement; I think it tends to limit the operation of clause 220(1).

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

Page 87, after line 31—Insert—

(1a) The provision of advice in a reasonable manner to an employee about issues surrounding an enterprise agreement (or potential enterprise agreement) cannot be regarded as improper pressure under subsection (1).

This is an alternative way of handling the problem that the Hon. Mr Roberts is addressing. When I looked at clause 220 I was concerned about precisely what entails harassment or improper pressure. That is difficult. I am not absolutely confident that even replacing it in the way that the Hon. Mr Roberts has by the word 'coerce' clarifies things an awful lot.

I sought to further qualify this harassment or improper pressure, or at least to define what it is or what it is not. My amendment says that the simple provision of advice in a reasonable manner, if you are providing advice to people, cannot in itself be construed as being improper pressure. There is a question as to what harassment or improper

pressure implies. I want to make it plain that the provision of advice is in itself not unreasonable. If you grab someone by the collar and want to lecture them rather loudly you certainly would not be behaving in a reasonable manner.

The Hon. K.T. GRIFFIN: I oppose the Hon. Mr Roberts' amendment and support the amended amendment of the Hon. Mr Elliott.

The Hon. R.R. Roberts' amendment negatived; the Hon. M.J. Elliott's amendment carried; clause as amended passed.

Clause 221—'False entries.'

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

Page 88, line 10—Leave out 'Division 7' and insert 'Division 8'.

This amendment seeks to leave at the same level the fines as they are presently in legislation, that is, to go from a Division 7 fine as in the Bill to a Division 8 fine.

The Hon. K.T. GRIFFIN: Division 7 is a $2 000 fine and Division 8 is a $1 000 fine.

The Hon. R.R. ROBERTS: My advice is that it was Division 8.

The Hon. K.T. GRIFFIN: According to my advice, it is presently a Division 7 penalty, and that is a $2 000 fine. It seems not unreasonable to have it at that level, whatever the present position. However, I am assured that the present position is Division 7.

The Hon. R.R. ROBERTS: The advice provided by the Attorney-General picks up the principle involved in our amendment that it be the same. Obviously the advice which was received and on which this amendment was drafted was wrong. We accept the Attorney-General's point and it should stay the same as it is. I will therefore withdraw my amendment.

The Hon. K.T. GRIFFIN: I can give a positive assurance on the most up-to-date statute that breach of section 160 brings a penalty of a Division 7 fine.

Clause passed.

Clause 222 passed.

Clause 223—'No premium to be demanded for apprentices or juniors.'

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

Page 88, lines 19 and 20—Leave out subsection (2).

The Opposition amendment would allow the existing legislation with respect to this matter to be maintained. The Government's Bill allows for the very thing that is supposed to be outlawed by this clause of the Bill, namely, that a person, for example an employer, cannot ask to receive any consideration or premium for engaging or employing a person as an apprentice or a junior. Under subsection (2), the Minister is able to approve of any scheme that the Minister deems appropriate. This is not done by regulation and is not subject to any parliamentary scrutiny: it is entirely the Minister's discretion and as such should not be approved by the Parliament.

The Hon. K.T. GRIFFIN: Section 162 of the present Act deals with a similar provision in relation to premiums to be demanded for apprentices or juniors, and it is correct that the present section 162 does not allow for an arrangement approved by the Minister. Present section 163 relates to illegal guarantees, but that provides that the Minister may consent to a guarantee or promise to pay a sum of money in the event of the behaviour, attendance or obedience of an apprentice or employer not being satisfactory to the employer.

Section 162 relates to apprentices or juniors; section 163 relates to an apprentice or employee. The Government took the view that, because the present section 163 relating to guarantees allows for an arrangement to be approved by the Minister—and that is already in the existing Act—it was anomalous not to include that provision also in section 162. If the present Act allows that consent to be given by the Minister in relation to one provision, which is similar, why not the other? We were just ensuring that the anomaly was eliminated and that in the event of some special circumstances there was somebody who could quickly give an approval, and do it cheaply, rather than having to go to a commission to get that approval. What we have done, as I say, in relation to clauses 223 and 224, is to ensure that there is a consistency of approach in relation to ministerial consent.

The Hon. M.J. ELLIOTT: Who precisely does the Minister contemplate is likely to be making these payments—premiums, bonuses or whatever?

The Hon. K.T. GRIFFIN: I must confess that my first reaction was that I could not think of a reason, but it has been explained to me that it is designed to deal with a situation such as a training scheme. It may be that there is some charitable organisation which pays a premium or bonus to an employer to employ and train a person as an apprentice or a junior. I am not aware of what such schemes might be available from time to time. It does not seem to me to be unreasonable in those sorts of circumstances that, rather than outlawing it completely, one ought to provide at least some mechanism by which an approval in the really deserving cases and quite independent cases can be approved. The Hon. Mr Roberts gives a quick laugh to the side, but—

The Hon. R.R. Roberts: The person must not ask for or receive any consideration of the premium or bonus or engage or employ the person.

The Hon. K.T. GRIFFIN: Yes, I am talking about—

The Hon. R.R. Roberts: You cannot ask for it, and then the Minister can approve it being paid. It is illegal to ask for or receive it. In what circumstances can a Minister say, 'Well, you can handle it.'?

The Hon. K.T. GRIFFIN: The point is that you must not do it and there is an offence created. What this allows is that, if someone has a scheme—it is not so silly as you might at first think—you are prevented from doing it—

The Hon. R.R. Roberts: By law.

The Hon. K.T. GRIFFIN: By law, but there is an exception that, if you get the approval of the Minister, you can do it. That is what this proposes. It is simple.

The Hon. R.R. Roberts: Take the first one.

The Hon. K.T. GRIFFIN: No, they relate to different matters. They follow the scheme of the existing Act except we now have the provision for approval by the Minister in both clauses. If you look at it carefully, it means it is illegal to ask for or receive any consideration, premium or bonus and so on.

The Hon. R.R. Roberts: Ask or receive.

The Hon. K.T. GRIFFIN: That is right. That is no problem. You have to read it in context. You cannot ask for it, you cannot receive it, but you can go to the Minister and say, 'I have a scheme which can be subject to your approval and, if you approve it, there is no offence.' What is so stupid about that?

The Hon. M.J. ELLIOTT: Quite plainly clause 223 is as much as anything about either a person or their parents not having to pay out money for their child to get a job. That is clearly to be supported and very necessary. Subclause (2) is applicable only where the Minister approves, and I cannot believe that even the worst of the Ministers in this or the

previous Government would have approved of a scheme where Mum and Dad would be paying up front to buy their kids a job.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: No. So, clearly what the clause is initially aimed at will not be circumvented. Although I do not think it is very tidily done, recognising that it is at the discretion of the Minister, I am sure the Minister will not approve the buying of jobs by relatives or even by the individuals themselves. I think that JobStart schemes and those sorts of things are possible. In fact, it would appear that JobStart schemes might even be illegal in the absence of this subclause (2).

The Hon. T.G. ROBERTS: It appears to me that it is one of those clauses that really does not need to be in there. The identification by the Opposition of the removal of line 20 recognises that there are complications in it. If the sign of the times is that provisions are made for parents not to bribe employers to put on trainees and apprentices, then we are moving into very sad times. There are other ways in which pressures are applied to employers, rather than monetary amounts. It is generally friendships being taken into consideration, dues being called and old favours being repaid. Very rarely do people get on the auction block. We do not want to get into a position in this State where we write into legislation rules or regulations that do not allow us to take into account some of the Federal schemes that are being offered.

In relation to the employment of juniors and trainees, we should take into account the myriad of schemes or rules that are running in relation to Federal schemes. The essence of all the schemes is that you do not offer incentives over and above the ones already offered to employers to take on young people, because you end up then with some displacement from genuine schemes and jobs. What we want to do is encourage people to take on extra young people. If we are going to leave the clauses in the legislation, they should not only apply to young people. They should apply to all positions. It has not been explained very well to me.

The Hon. K.T. Griffin interjecting:

The Hon. T.G. ROBERTS: I can tell you now that some schemes are operating amongst the migrant communities, such as the Vietnamese, where they pay a section of their weekly wage to people who they think were responsible for employing them. There are schemes running out there that apply to adults.

Amendment negatived; clause passed.

Clause 224—'Illegal guarantees.'

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

Page 88, line 24—After 'A person must not' insert 'without the consent in writing of the Minister'.

The Opposition's amendment simply reinstates the current provisions regarding illegal guarantees with respect to the employment of apprentices or juniors as currently exists under the Industrial Relations Act 1972.

The Hon. K.T. GRIFFIN: I think the Bill as drafted covers that point under subclause (2), which deals with the approval of the Minister. Therefore, the amendment is not necessary. This clause is now consistent with clause 223.

The Hon. M.J. ELLIOTT: On my reading of it, it is only a drafting matter. I think it is adequately covered, so I do not support the amendment.

The Hon. T.G. ROBERTS: One of the problems involving guarantees to young people and apprentices is that employers take on young people with a promise of an indenture or of being taken on as an apprentice but, as soon as the age limit of 18 is reached and the bonuses are offered for employment, they are put off. The parents then chase the employers to find out how their indenture has been cancelled only to find that they have not signed an indenture. If something is to be written into legal guarantees and there is no reference to it in the section before us—and I do not think it is included in any of the amendments—I wonder whether it could be considered at a later date.

The Hon. K.T. GRIFFIN: I am happy to give consideration to that matter.

Amendment negatived; clause passed.

Clause 225 passed.

Clause 226—'Recovery of penalty from members of association.'

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

Page 89, line 8—Leave out 'or other monetary sum' and insert 'under this Act'.

The Hon. M.J. ELLIOTT: I understand that this is meant to be a rewording of the old Act, but it does not leave in the words 'under this Act'. So, effectively what the Hon. Ron Roberts has done is to return this to the same form as in the previous Act, and I was under the impression that that was the Government's intention with this clause.

The Hon. K.T. GRIFFIN: I think it is okay, and for the moment I will not oppose it.

The Hon. M.J. ELLIOTT: I support the amendment.

Amendment carried.

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

Page 89, line 11—Leave out 'or other sum'.

The Hon. K.T. GRIFFIN: This amendment makes a nonsense of the provision. Subclause (1) provides:

If an association is ordered to pay a penalty or other monetary sum. . .

Therefore paragraph (a) has to refer to 'the penalty or other sum'.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: You have not deleted 'or other monetary sum'; you inserted—

The Hon. M.J. Elliott: That was the amendment which was carried unanimously.

The Hon. K.T. GRIFFIN: Sorry, I misunderstood the earlier amendment. I thought we were inserting 'under this Act' rather than deleting 'other monetary sum'.

The Hon. M.J. Elliott: He just conned you; don't worry about it.

The Hon. K.T. GRIFFIN: That is probably not unexpected at this hour of the night. We will review that, anyway.

Amendment carried; clause as amended passed.

Clause 227—'General defence.'

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

Page 89, after line 24—Insert subclause as follows:

(1A) An industrial agreement in force under the former Act immediately before the commencement of this Act continues in force under this Act until superseded by an award or enterprise agreement under this Act.

This amendment allows that, where an employer is able to make out a defence under subsection (1) that another person is responsible for the act or omission constituting the offence, that person can be held responsible and can be prosecuted and convicted of the offence as if the person were the employer. If the Opposition's amendment fails an absurd situation could arise where employers, to avoid their obligations under the Act, could set up other employees to take the consequences

of what was in reality the employer's act or omission, and thereby no-one could be held responsible or be prosecuted for the offence.

The Hon. K.T. GRIFFIN: This subclause is superfluous. Clause 227 deals with the defence; the new subclause (1A) provides that, if the defence is made out, the person responsible may be prosecuted and convicted of the offence. I would have thought that it is a matter for the prosecuting authorities and that there are actually two different processes. We are talking about proceedings against an employer for an offence, in which the employer would be entitled to raise a defence.

If that defence is established then the employer is not guilty. However, that does not mean that the prosecuting authorities either must or must not prosecute the person who has actually committed the offence. That question is one for the prosecuting authorities depending upon whether or not there is sufficient evidence. All that subclause (1A) states is that that person may be prosecuted; so what? That is going to be the approach of the authorities, anyway; if they have the evidence which they believe establishes a *prima facie* case the prosecution will be initiated. If they do not have sufficient evidence the prosecution will not be initiated. However, that is unrelated to the capacity of an employer to establish a defence. I therefore oppose the amendment.

The Hon. M.J. ELLIOTT: This clause is supposed to be a rewording of section 170, and I understand that it was not meant to produce a substantial change. The last sentence of section 170 provides:

> . . . and on such a defence being made out that other person may be charged and convicted of the offence as if the person was the employer.

In other words, exactly what is being proposed is what was in the old legislation. I understood the Government's intention with this clause was to modernise its wording but essentially to keep it the same. In those circumstances, I would argue that what is being proposed by the Hon. Ron Roberts is not unreasonable at all.

The Hon. K.T. GRIFFIN: It was also our intention to remove unnecessary verbiage. I acknowledge what the Hon. Mr Elliott said, but even in the present Act it does not make sense. If it makes everybody comfortable, I suppose it can be put in. I can tell the Committee that in real life—

The Hon. T.G. Roberts: If it doesn't make sense, it suits the Bill.

The Hon. K.T. GRIFFIN: It might suit those who want to argue consistency with the old Bill. It is technically incorrect to put it in that provision, anyway. But in practice and in accordance with the law, if someone has committed an offence, it does not need the Act to say, 'If you've established a defence that somebody else did it that other person may be prosecuted,' because that person will be prosecuted if there is sufficient evidence. So, I just say that it is superfluous—

The Hon. R.R. Roberts: You're ignoring the situation where an employer nominates someone to act on his behalf.

The Hon. K.T. GRIFFIN: No, it—

The Hon. R.R. Roberts: You don't prosecute the individual: you prosecute him as the employer's agent.

The Hon. K.T. GRIFFIN: With respect, that is not the issue. The issue is that, in a prosecution against an employer, if the employer can establish a case that someone else committed the offence or was responsible for the act or omission constituting the offence, then the employer is not guilty. That is the first point. The next point is that the employer may have satisfied the court that someone else was responsible for it, to establish the defence, but that is not the same as satisfying the next court that the other person has been guilty of an offence and, therefore, ought to be convicted. In the normal course, once the defence has been established and the employer acquitted, the prosecuting authorities would then have to prosecute the next person, provided they had sufficient evidence to establish a *prima facie* case and then to prove it beyond reasonable doubt. So, you have different steps. That is why I argue that technically it is superfluous. Let us not spend hours arguing about it, because it is of no consequence.

The Hon. M.J. ELLIOTT: It is not my intention to spend hours arguing about it, but the point is that quite often the boss disclaims any knowledge of the offence. When they find themselves in the courts, some people suffer an amazing loss of intelligence, have serious lung problems or whatever else.

The Hon. T.G. Roberts interjecting:

The Hon. M.J. ELLIOTT: That's right. There is a host of things from which they could very quickly suffer. Nevertheless, presuming that somebody else has been responsible, the implication of the amendment and in what was contained in the Act is that somebody else should be charged. The real difficulty is—and this is what the Attorney-General may be saying—that that in itself does not actually create an offence—there is no penalty there—but the problem is that, if you go to any other provision in the Act, I doubt very much that you could actually prosecute anybody other than the employer.

An employee has been severely disadvantaged, underpaid, whatever else: an employer's defence is, 'Well I didn't do it, somebody else did,' and, as a consequence, although the employee suffered, nobody has ever been found responsible for anything. There is an obvious internal inconsistency with all this and the question is: what responsibilities does an employer ultimately carry? I must say that neither this clause nor the clause that is replacing the provision in the present Act essentially addresses that question.

Both this amendment and the clause in the old Act then tried to pass it off to somebody else and said they should be prosecuted but, in fact, I do not think the instrument is actually there to do it, nor is there any obvious penalty. So, there are problems. I wonder whether the Attorney-General, recognising those difficulties, might at least give an undertaking that that might be examined, so that it might be considered at another time. Obviously, we will not do it in this session, but I ask for an undertaking that that might be examined to see whether or not that matter could be better handled. In the interim, in terms of keeping consistency with the old Act, I will support the amendment.

The Hon. K.T. GRIFFIN: I do not think that it makes sense but, if someone else has committed an offence then, provided there is evidence sufficient to prove it beyond reasonable doubt, I would expect the prosecuting authorities to prosecute. That is really as far as I can take it.

Amendment carried; clause as amended passed.

Clauses 228 and 229 passed.

Clause 230—'Proceedings for offences.'

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

> Page 90, line 12—Leave out 'before' and insert 'summarily by'.

This is a technical amendment. It seeks to recognise that offenders are dealt with summarily before an industrial magistrate.

The Hon. R.R. ROBERTS: Seconded.

Amendment carried; clause as amended passed.

Remaining clauses (231 and 232) passed.

Schedule 1—'Repeal and transitional provisions.'

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

Page 91, lines 23 and 24—Leave out paragraph (b).

The Opposition allows that whatever right of entry and inspection has been conferred by an award made prior to the coming into force of the Government's Bill will remain in force for so long as the award continues. The Government's Bill states that it must be read down to be consistent with this Act. If the Opposition's amendment with respect to the right of inspection is upheld by the Legislative Council, then paragraph (b) is redundant. If it is not, it is most important that the Council uphold the right for existing awards that have the right of entry provisions in them to continue in force until they are superseded either by a new award or a new enterprise agreement.

The Hon. K.T. GRIFFIN: This is consequential on what has already been considered by the Committee. The right of entry and inspection has been amended. It has been established but it has also been written down to a certain extent under the amendments that have already been passed. Members should remember that these relate to transitional issues and, in order to ensure that the awards are interpreted consistently with the new legislation, it is essential that paragraph (b) remain in the Bill.

The Hon. M.J. ELLIOTT: I agree that this issue has already been treated. It is a matter of consistency once the decision has been made and I am not supporting the amendment.

Amendment negatived.

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

Page 91, lines 33 to 35—Leave out subclause (1) of clause 6 and insert—

(1) An industrial agreement in force under the former Act immediately before the commencement of this Act continues in force under this Act until superseded by an award or enterprise agreement under this Act.

The Opposition's amendment allows industrial agreements to continue in force until superseded by an award or enterprise agreement made under the new industrial Act. The Government's Bill provides that the industrial agreements at the very latest cease after 12 months from the commencement of the Act or, if superseded by the enterprise agreement, within that time frame. There are literally hundreds of industrial agreements in force in South Australia and, as such, the parties to such industrial agreements are perfectly happy with them to continue. It is an administrative burden on employer and employee organisations to have to try to renegotiate all of these industrial agreements within such a tight time frame of 12 months, and no harm is done in allowing those industrial agreements to continue in force until such time as the parties determine to have them superseded, either by a new enterprise agreement or an award under the provisions of the new Act.

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

Page 91, line 35—Leave out '12 months' and insert 'two years'.

We have passed amendments concerning enterprise agreements that had a maximum term of two years. It would appear internally consistent that agreements now in force would have a life of two years as well.

The Hon. K.T. GRIFFIN: The Government opposes the Hon. Mr Roberts' amendment and it is not happy with the two year period moved by the Hon. Mr Elliott.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: The Hon. Mr Elliott needs to recognise that there are a large number of industrial agreements and we want to reduce the different categories of agreements and awards and minimise them as soon as possible. Two years is a long period.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: Some of the industrial agreements have been in force for a considerable time and it is time to move towards the enterprise agreement stream or an award.

The Hon. M.J. Elliott: If you have only one enterprise commissioner with all these industrial agreements coming on at the same time, it would not be too clever.

The Hon. K.T. GRIFFIN: Anyway, we are saying that we think 12 months is correct. The Hon. Mr Elliott says two years. We can give further consideration to that, but his amendment is better than nothing.

The Hon. Mr Elliott's amendment carried; the Hon. R.R. Roberts' amendment negatived.

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

Page 92, Lines 1 and 2—Leave out paragraph (b).

I understand that this is consequential on other matters, and I understand the outcome of it. The Opposition's amendment with respect to the right of entry under industrial agreements is the same argument that the Opposition put in respect of clause 5.

The Hon. K.T. GRIFFIN: I oppose the amendment for the same reasons I expressed in relation to clause 5.

Amendment negatived.

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

Page 92, line 4—Delete '10' and insert '20'.

This is another amendment on the run. I wish to replace the 10-month period with 20 months. We are now looking at a two-year period during which industrial agreements would be converted to enterprise agreements. I argue that the 10 months was meant to relate to a year. Now that we have two years, I think a period of 20 months is more suitable.

The Hon. K.T. GRIFFIN: I have some concerns about that. I recognise that it was 10 months in a period of 12 months. If one looks at the purpose of calling such a conference, one sees that it is to facilitate the renegotiation of the agreement as an enterprise agreement, and I wonder whether in the light of the longer period of 24 months it might not be wise to keep it at 10 months or some period close to that so that at least the process commences. It is not for the purpose of renegotiation but to facilitate the renegotiation of the agreement. If there is the longer time frame there seems to be no harm in leaving it at 10 months to ensure that, in the following 14 months, if nothing has been done at the point where the first conference is convened, the parties will at least be in a position where the pressure is on to negotiate.

The Hon. M.J. ELLIOTT: The clause already contains the words 'as soon as practicable'. I also note that, while previously the commissioner may have held that meeting within two months of the end of the period, I am now allowing a leeway of four months.

The Hon. K.T. Griffin: You could have a longer period but accelerate it earlier.

The Hon. M.J. ELLIOTT: Yes, but I believe that having the workload spread reasonably evenly is not a bad thing. The important thing is that the job is done at the end of the two years, and I do not believe my amendment creates any difficulty. I think it gives the enterprise agreement commis-

sioner more flexibility, and we do not know at this stage what that workload will be like, so I think that flexibility is of use.

Amendment carried.

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

Page 92, lines 16 and 17—Leave out subclause (4)

The Hon. K.T. GRIFFIN: The Government opposes the amendment; 23 March was the date that the Bill was introduced into the Parliament. It is not uncommon to have that sort of provision in a Bill if activities are likely to occur which may be prejudicial to a scheme or process or which relate to processes which are no longer applicable once the legislation is passed.

We have one instance in the superannuation legislation, and stamp duties Bills have been introduced with a similar provision. In this instance we are anxious to guard against a flood of claims up to the date when the Bill might be assented to, recognising that it would have a long period of debate in both Houses before being resolved and brought into operation. Such claims could be for substantial terms and conditions. They could be brought on, part heard, adjourned, part heard again, adjourned, and determined progressively, so they could have a very long application and thwart the intentions of the legislation. Therefore, the Government took the strong view that we ought to ensure that, if an application for an award or variation of an award was made, it ought to be determined in accordance with the principles, objects, and so on, as from the date when the Bill was introduced into the Parliament.

The Hon. R.R. ROBERTS: I did move the amendment, but there was the kerfuffle and I did not read the argument into *Hansard.* The Bill provides that any application for an award or variation made after 23 March 1994 should be determined in accordance with this legislation. This is an absurd situation in that the legislation is being debated in the Legislative Council in the second week of May 1994.

A number of associations, both employer and employee, may already have lodged applications to the commission since 23 March 1994, and have done so under the existing legislation. In addition, even if the Bill is passed by Parliament in its present form, there will be some weeks, if not months, before the legislation is proclaimed. In those circumstances, the parties should be free to have their award applications or variations determined under the existing legislation, or we should at least allow discretion to the Industrial Commission to arbitrate as to which legislation it will conduct the hearing on after hearing argument from all parties and taking into account to what extent proceedings have already commenced under the existing legislation.

The Hon. K.T. GRIFFIN: I oppose the amendment, and I have already spoken to it.

The Hon. M.J. ELLIOTT: The question of using the date on which legislation is introduced should be treated with caution. There have been occasions when we have supported such a move, often relating to tax measures, because of concern that everybody buys up beforehand in view of the implications that can have on the budget. In general terms, we do not back-date before the time of proclamation. I think the Government may be stretching things a bit. I would be willing to offer a compromise. Presuming that the legislation is passed tomorrow, 14 May, I should be quite happy to enter that date into the legislation, but not 23 March. I do not think the Government should work on the assumption that the Bill will be passed. I think the Government would have to create a special circumstance case which I would be willing to accept, but I do not think that has been made for this Bill.

The Hon. K.T. Griffin: Why not move that amendment as a holding operation, and we will give it further consideration?

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

Page 92, line 16—Leave out '23 March 1994' and insert '14 May 1994'.

Amendment carried.

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

Page 92, lines 19 and 20—Leave out subclause (1) of clause 8 and insert—

(1) A certificate under section 144 of the former Act (a "section 144 certificate") continues in force (unless cancelled by the Registrar at the request of the person for whom the certificate was issued) as a certificate of conscientious objection under this Act and a reference to an award or agreement to a section 144 certificate will be construed as a reference to a certificate of conscientious objection under this Act.

This amendment is consequential on earlier provisions which have already been passed.

Amendment carried.

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

Page 92, line 27—Leave out ', unless the Governor otherwise determines,'.

The Hon. M.J. ELLIOTT: This is consequential on previous amendments.

Amendment carried.

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

Page 92, lines 29 and 30—Leave out ', unless the Governor otherwise determines,'.

This, too, is consequential.

The Hon. K.T. GRIFFIN: The Government intends to recommit the Bill tonight to deal with those amendments in relation to the courts process, because they have been on file for some time (earlier this week). They relate to this issue, about which there has been some considerable debate. I do not intend to do anything more than say, in relation to clause 9 and these amendments, that I do not believe it is necessary to remove them, on the basis of the second reading reply and other debate during Committee on the issue of the court and the commission. However, I recognise that the numbers are not with me.

Amendment carried.

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

Page 92, lines 34 to 36—Leave out subclause (4).

This amendment is consequential.

The Hon. K.T. GRIFFIN: I spoke earlier on all of these amendments. I do not support them.

Amendment carried.

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

Page 93, line 7—Leave out ', subject to this Act,'.

The Opposition amendment seeks to delete the words in subclause (1), 'subject to this Act'. It makes clear that any association registered under the existing Industrial Relations Act 1972 continues as a registered association under the new Act without any 'subject to' conditions. The Opposition's amendment provides for greater certainty for registered associations and does not leave them open to attack through no fault of their own when the Government from time to time brings in industrial relations laws that affect their standing as a body corporate.

The Hon. K.T. GRIFFIN: We oppose the amendment. They must surely continue subject to this Act. The Act does

apply to registered associations and, if it was not specifically provided that they should be subject to this Act, it would seem that they could then escape some of the provisions of this legislation. It is an appropriate provision to insert. It is important that in the transitional arrangements those associations are in fact subject to this Act.

The Hon. M.J. ELLIOTT: The legalese has got me. I would have thought, if they were continuing as registered associations under this Act, they would have been subject to the Act, but the way it is currently written it implies without any real reason that they may not be registered under the Act. The transition is subject to this Act. I am not sure what it means. It seems that the words are superfluous. If a registered association under this Act continues as a registered association under this Act, once it comes under this Act it is subject to this Act. I do not see what those words achieve. There may or may not be any harm to them, but I would argue that they are redundant at best.

The Hon. K.T. GRIFFIN: I certainly do not interpret it as conditional, but I interpret that to mean that, if the Act imposes obligations upon a registered association and if, in relation to its incorporation, its duties, its responsibilities and so on, it comes over as a continuing registered association but subject to whatever obligations may be imposed by this Act, I do not see that that is a problem.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: It is under this Act—that is right. It is an incorporated association under this Act but, unless you put in that it is subject to the provisions of the Act, there is a question, in respect of any particular requirements as to the way it should operate, as to the obligations which are imposed on its members, whether they are to be construed in a manner that is consistent with this Act. It may be that a better description is 'an association that was, immediately before the commencement of this Act, a registered association under the former Act, continues as a registered association under this Act' so that it may be construed in a manner consistent with the Act, or something along those lines.

The Hon. M.J. ELLIOTT: I understand what the wording is attempting to achieve, but I do not feel happy about the wording, if I can draw the distinction. As I understand it, what this is meant to achieve is to make plain that, just because an association carries over by way of the transitionary clause, that does not guarantee its existence in perpetuity under the new Act. There are certain clauses which talk about how an association may not continue in the longer term. That is what the wording 'subject to this Act' is meant to achieve. I will agree with the amendment but I note the intent. The intent does not cause me a problem but the wording does.

Amendment carried; schedule as amended passed.

Schedule 2 passed.

Schedule 3—'Minimum standard for remuneration.'

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

Page 102, lines 3 to 6—Leave out the clause and insert—

Minimum rate of remuneration

1.(1) The minimum rate of remuneration for an employee is—

(a) the award rate that applies, or would but for the existence of an enterprise agreement apply, to the employee; or

(b) if there is no applicable award rate—a rate of remuneration fixed by the commission under this section.

(2) The commission may, on its own initiative, or on application by the Minister or the UTLC—

(a) fix a minimum rate of remuneration for a class of employees for whom there is no minimum rate that applies under subsection (1)(a); or

(b) vary a minimum rate previously fixed under this section.

The Opposition's amendment provides that the minimum rate of remuneration for employees is the award rate as it would apply or would be but for the existence of an enterprise agreement to the employee. This provides for the award safety net with respect to enterprise agreements and the scheduled minimum standards that the Government promised. In addition, it allows it in situations where there is no applicable award rate—that is, in an award free area—where some 20 per cent of the South Australian work force is not covered by an award and therefore has no minimum rates of pay or conditions.

It allows for the commission, either on its own initiative or on the application of the Minister or the UTLC, to fix a minimum rate of remuneration for a class of employees for whom there is no minimum rate, or to vary a minimum rate previously fixed under this section. The Opposition's amendment provides an essential safety net for all employees whether they be award covered or not. This ensures in particular that those 20 per cent of employees in South Australia with no award guarantee can be granted the protection on the initiative of the Minister, the UTLC or on the commission's own initiative. Whilst unions are free to seek award coverage for award-free areas of employment, through lack of resources that is often not able to be done and in many instances is more appropriately done at peak council level. The Government of the day may believe as a matter of policy that an area of exploitation amongst a group of employees who have been hitherto award free should be subject to a minimum rate of pay and ask the commission to make such a ruling based on the evidence presented to it. This method is far preferable to the Government of the day having the power to set minimum rates of remuneration for award-free employees.

One only has to look at the United States, for example, where after 12 years of the Reagan-Bush administration the Federal minimum wage standards in that country did not move one cent during that entire period despite very high inflation. The Opposition's amendment allows for an independent body such as the Industrial Commission to do the job without political interference. I commend the amendment to the committee.

The Hon. M.J. ELLIOTT: I support the amendment. When I think of all the difficulties we have in areas such as outworkers and the like there does not seem to be a total answer to the problem, but it is a jolly good start. If we are prepared to look at setting minimum rates of pay outside award areas it gives probably the best guarantee that we can give to outworkers despite all the very real efforts we make by other legislative means. It is not just outworkers, but that is one example of an area where I believe that such a move would be very responsible.

The Hon. K.T. GRIFFIN: The Government vigorously opposes the amendment. The concept of setting an award rate for non-award employees is a major issue which is not one that ought to be taken lightly and certainly needs to be examined carefully. What the Bill seeks to do in schedule 3 is set the minimum rate of remuneration for an employee to whom there is an award. That provides the safety net for persons covered by the enterprise agreement. What the amendment of the Hon. Mr Roberts does is extend the

minimum rate standard quite significantly. It does not satisfactorily address the minimum rate standard and, as I said, would enable a minimum rate to be prescribed for award-free employees. The amendment fails to provide any capacity for employers to seek an order from the full commission for a minimum rate. This is a further problem.

[Midnight]

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: I will not amend it on the run. We oppose the amendment.

The Hon. M.J. ELLIOTT: I support it.

Amendment carried; schedule as amended passed.

The CHAIRMAN: I draw the Attorney's attention to a problem that has developed. He had an amendment on file which was out of sequence on his list. Would everybody agree that we go back to it?

The Hon. K.T. GRIFFIN: I seek leave to deal with schedule 1 again.

Leave granted.

The Hon. K.T. GRIFFIN: This amendment appears on the last page of my amendments. I was looking for it but I could not find it. I move:

Schedule 1, page 93, After line 7—Insert the following subclauses into clause 12—

(2) During the prescribed period[1],no objection of a prescribed nature[2] to the registration of an association under this Act may be taken.

[1.]The prescribed period is the period beginning on the commencement of this Act and ending on 1 January 1997.

[2.]An objection is of a prescribed nature if it is of a kind that was formerly prevented by section 55 of the Industrial Conciliation and Arbitration (Commonwealth Provisions) Amendment Act 1991.

The amendment is necessary to continue existing arrangements for the complementary registration arrangements of State and Federal associations under the existing Act and incorporate those arrangements into the new Act.

The Hon. R.R. ROBERTS: No objection.

The Hon. M.J. ELLIOTT: As it reads to me, it says, 'During the prescribed period, no objection of a prescribed nature to the registration of an association under this Act may be taken.' Does that include not just continuing associations but the registration of new associations?

The Hon. K.T. GRIFFIN: It is not related to that at all. It is related to the Federal Act. It relates to federally registered associations and their registered affiliates or associates at the State level. It really just carries over from the existing legislation.

Amendment carried; schedule 1 as amended passed.

Schedule 4—'Minimum standard for sick leave.'

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

Page 103, line 6—Leave out 'or absence' from the definition of 'continuous service'.

This amendment corrects a drafting error in schedule 4 and a similar error in schedule 5. Under this schedule the definition of 'continuous service' includes a period of paid leave or absence. The Government's intention in this clause is to include paid absences only within the definition of 'continuous service'. Employers have pointed out to the Government during consultation on the Bill that this clause may be interpreted to include sick leave accruals during a period that an employee is on leave without pay for an extensive period. Such a provision would deter employers from granting unpaid leave and would be undesirable on that ground alone. The amendment reflects the Government's initial intention. It does not, however, cut across any existing provisions of awards or industrial agreements which may contain a limited period when absences on unpaid leave are included in accruals as these awards or agreements continue to operate.

Amendment carried.

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

Page 103, line 12—Leave out paragraph (b).

The Opposition's amendment prevents an employee from being paid a loading or an allowance in lieu of sick leave. The amendment allows that a casual employee need not receive a minimum scheduled standard for sick leave, as is currently the case under existing legislation. However, the Government's Bill goes further in that it would allow, for example, a full-time employee, in making an enterprise agreement, to trade away their sick leave standard for a loading or allowance in lieu, which may be of considerably less value than the actual 10 days paid sick leave per year accumulative forever.

As a matter of social policy, Parliament should not encourage employees to buy out their sick leave entitlements; employees should be paid for the days when they are off sick. If employees buy out their entitlement, when they fall ill or injure themselves in a way which cannot be compensated otherwise, they will find themselves in dire straits as a result of their having no sick leave credit.

The Hon. K.T. GRIFFIN: The Government opposes this amendment. The Hon. Mr Roberts is trying to reverse the provisions in the current Act under section 80 (6). Section 80 relates to sick leave, and subsection (6) states:

This section does not apply to employees of a prescribed employer—

and we are not defining that—

or to an employee who in terms of his or her employment receives an allowance or loading in lieu of sick leave.

The Hon. Mr Roberts' amendment would allow double dipping by employees. It would permit an employee who receives an allowance or loading in lieu of sick leave to still get a minimum of 10 days per year sick leave, and that would be grossly unfair to that employer and would not in any sense be consistent with the provision of a minimum standard in the schedule.

The Hon. M.J. ELLIOTT: I wonder whether or not we may have unintentionally created a loophole. The Government has said that there will be a minimum standard as far as enterprise agreements are concerned. It is also supposed to be the case that, under an enterprise agreement, you cannot go below the minimum standards. However, you might find yourself in an agreement where an employer might make an offer to employees that in lieu of the minimum sick leave entitlement they would receive a loading or some other allowance. Although you are supposed to have a minimum standard, in that case the minimum standard is being waived. At this time of the night I am not sure whether my logic circuits are all working but—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: That means that throughout this entire debate I have misunderstood what the Government has meant by 'minimum standard'. I did not understand, and I do not believe the Bill is constructed in such a way, that minimum standard matters are actually negotiable. Whilst you could move up and down in relation to award matters—as one thing goes up another goes down—I did not get the impression that minimum standards were negotiable. That is certainly not the way in which the legislation is constructed. Yet clause 2(b) appears to allow a thing which is supposed

to be a non-negotiable to be turned into one. I do not believe that was the intention.

The Hon. T.G. ROBERTS: It appears that the new huddle has been brought about by a provision that the Government finds necessary. In another contribution, I made reference to the fact that the transfer of family leave for parental reasons should not have been able to be transferred and converted as part of a 10 day entitlement. I did make reference to the problems of people transferring their sick leave to paid provisions. The Attorney-General referred to the previous Act which made reference to payouts in certain circumstances, but they apply only to casuals and not to permanent employees. Some industries have specific problems associated with them that bring on illnesses that other industries do not have. Some people are exposed to all sorts of circumstances that we are lucky enough not to be exposed to. The worst we are exposed to is ultraviolet lighting and dry air.

An honourable member: Hot air.

The Hon. T.G. ROBERTS: Yes, but only coming from the other side. A principle is involved here: it is obvious that the Government believes that sick leave can be tradeable. The Hon. Mr Elliott has put forward the view that the minimum standards that people require in the award systems should not be tradeable and they should remain minimums. If there are other ways that people want to pay bonuses, fine, go ahead and pay people bonuses based on the amount of value of their sick leave, but do not transfer the sick leave into payment for those reasons. People will be coming to work sick after they have traded it. There are circumstances where there is unlimited sick leave. Some industries are now converting and having unlimited sick leave and almost making it like a staff provision, and then requiring certificates when people are ill. There is then a two-tiered system, where some people have unlimited sick leave, some people have sick leave accrual and others have tradeable sick leave. Sick leave is one of those areas that should be made standard and non-tradeable.

The Hon. M.J. ELLIOTT: I will take this a step further and ask the Minister another question. My understanding of the concept of the minimum standard was that theoretically its major application was to relate to awards but, even under the Government's legislation, more particularly to enterprise agreements. What I do not understand is why the schedule itself is simply defining what the minimum standard is, and why within it we say to whom it applies. I thought that the body of the Act should be saying to whom the minimum standards apply. The minimum standards apply in relation to awards and enterprise agreements. If they are not to apply to certain people, then that should be spelt out within the body of the Act. I have drawn attention to clause 2(b), and also I suppose this applies to 2(a), but by including it within the schedule itself creates what I think are contradictions and future problems in relation to legal interpretation. I suggest to the Government that it should give some consideration to that. To whom the schedule applies should not be within the schedule: it should be spelt out within the body of the Act, and then we would not have these contradictions.

The Hon. R.R. ROBERTS: Clause 2(a) provides:

a person who is engaged and paid as a casual employee;

That has always been the case. They are the only ones who ever received an allowance in lieu of sick leave as part of the Act. The point we made in our initial contribution is that putting (b) in there opens up the prospect of a full-time employee or another employee being paid a loading rather than taking sick leave. We believe that is not the intention.

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: Casual employees, which is in paragraph (a).

The Hon. K.T. Griffin: The present Act doesn't apply it only to casuals.

The Hon. R.R. ROBERTS: The Hon. Mr Elliott is quite right: it is nonsense to start putting all this into schedules. We have determined what it is and, obviously, the prescriptions of an award or agreement cover the people who are in the agreement. I agree that it is really not necessary but, as far as casual employees is concerned, it is well known that they get a 15 per cent loading generally in lieu of sick leave, holiday leave and all these other things. There is no need for paragraph (b) if there is no clandestine reason.

The Hon. K.T. GRIFFIN: The Bill determines to whom the minimum standards apply. What the schedule does is merely say that it does not apply in relation to certain people. I suppose you could put that in the Act when you are talking about to whom this applies, but we felt it was clearer drafting to deal with that in each of the particular standards. At the moment a person who is engaged and paid as a casual employee gets 20 per cent loading. That is designed to compensate for the fact that a casual employee does not get sick leave, annual leave and long service leave. One has to ask: if a casual employee has an agreement, why should the casual employee then be entitled to the minimum standard for sick leave, for example, when already that casual employee is getting a 20 per cent loading? In relation to an employee who is paid a loading or allowance in lieu of sick leave, the Act at the moment allows the sick leave to be cashed in, as it were and, instead of being taken as sick leave or accruing as sick leave, there is a loading or allowance paid to the employee in lieu of sick leave.

If that has been negotiated under the enterprise agreement and is built into the allowance, why should the employee under the enterprise agreement, in effect, double dip; that is, the employers and the employee agree 'We won't give you an entitlement to 10 or 15 days sick leave' and they both agree that, instead of that, the employee will get an extra day's pay per month to compensate for the fact that there is no sick leave? Under the enterprise agreement provisions there is a requirement for a minimum standard with respect to sick leave. Why, then, if they have negotiated an allowance in lieu of the sick leave should the minimum standard also apply? It is double dipping. What the Act already allows in relation to sick leave is a cashing in of the sick leave and the taking of it in another form as a loading or allowance. All we are providing in respect of the minimum standard is that you should not double dip. We are recognising the existing law.

The Hon. M.J. Elliott: No.

The Hon. K.T. GRIFFIN: We are recognising the existing law. It allows the sick leave to be commuted.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: I don't have the detail.

The Hon. M.J. ELLIOTT: We are progressing extremely slowly. I believe we will have to delete clause 2(b), and it may be necessary to delete clause 2(a) as well and place it elsewhere. I support the amendment at this stage because we are not gaining a great deal by taking the debate further, as we are not covering new ground.

Amendment carried; schedule as amended passed.

Schedule 5—'Minimum standard for annual leave.'

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

Page 105, line 6—Leave out 'or absence' from the definition of 'continuous service'.

The amendment is consequential.

Amendment carried.

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

Page 105, line 12—Leave out 'sick' from clause 2(b) and insert 'annual'.

This corrects a typographical error. 'Sick leave' should be 'annual leave'.

Amendment carried.

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

Page 105, line 12—Leave out paragraph (b).

We do not need to canvass the same arguments about sick leave and annual leave again.

Amendment carried.

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

Page 105, lines 15 and 16—Leave out paragraph (a) and insert—

(a) an employee is entitled to four weeks annual leave, or if the employee regularly works shift work or on weekends, five weeks annual leave, for each completed year of continuous service; and

The Opposition's amendment maintains the Government's provision with respect to a minimum standard of four weeks annual leave. However, it increases that to five weeks annual leave where an employee regularly works shift work or on weekends. The State standard and also the national standard for shift workers who are required to work regularly on Sundays and public holidays is five weeks annual leave. This minimum standard for a seven day shift worker is not provided as part of the minimum standards for an enterprise agreement, below which no worker can fall. The Opposition believes that this basic provision should be inserted into any new minimum safety net.

The Hon. K.T. GRIFFIN: I oppose the amendment. I am informed that five weeks is certainly in some awards for shift work but not in such broad terms as this. The standard is four weeks annual leave, and that is what we would seek to insist upon.

The Hon. R.R. ROBERTS: As I said, where shift workers regularly work on Saturdays, Sundays and public holidays the standard is five weeks. Where shift work is on a five day cycle, I agree that there are probably grounds for the Minister's assertion.

The Hon. K.T. GRIFFIN: It doesn't happen in the retail industry, of course, where you have weekend work.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: You said 'weekend work' as well. You refer to those who regularly work shift work or on weekends. If there is an established award, which has five weeks in certain circumstances, that will continue anyway. It is not interfering with that.

The Hon. R.R. ROBERTS: Mr Chairman, I seek leave to amend my amendment as follows:

By deleting after 'shift work' the words 'or on weekends'.

Leave granted; amendment amended.

The Hon. K.T. GRIFFIN: The Government opposes the amendment.

The Hon. M.J. ELLIOTT: The whole schedule sets the minimum standard in relation to annual leave, and a number of awards, as already stated, currently have more than that. My only concern in relation to leaving it as four weeks, and not adding the five weeks, is if the long-term effect was to drag all awards back to the minimum standard or less than the minimum standard. However, I think we have successfully amended the legislation so that that does not happen.

In those circumstances, and the fact that five weeks exists in a large number of awards, this will have the effect of the benefit, at least, of the five weeks transferring over to the enterprise agreement. Therefore, even if the first enterprise agreement gets only the minimum standard of four weeks, and they cannot go below that, the benefit of the other week will be translated into some other form of benefit, be it sick leave or whatever. The important point for us is to ensure that the minimum standard does not become the standard for awards, and as long as we have the legislation right in that regard I will not support the amendment.

Amendment negatived.

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

Page 105 line 30—After 'full pay' insert 'plus a loading of 17.5 per cent'.

The Opposition's amendment with respect to this matter is to guarantee as part of the minimum standard for employees the 17.5 per cent annual loading. The 17.5 per cent loading has been a standard since 1974 in awards and agreements with the State commission and also at the national level. It should stand as a minimum standard and part of our social safety net. There are many arguments by employers with respect to the abolition of the 17.5 per cent annual leave loading, but the fact is that there are very much countries, all of which are competitors with Australia in terms of exports and the like, which pay their employees at least the 17.5 per cent loading and in many cases much greater amounts than that. This is a current minimum provision under the existing legislation with respect to annual leave, and the 17.5 per cent annual leave loading should remain.

The Hon. M.J. ELLIOTT: I will not support the amendment, but I wish to make a brief comment. The 17.5 per cent leave loading has been a feature of most awards for quite a few years and, as such, when an award is being varied the commissioners look at the total cost of the package. Some people ask, 'Why do you get an extra 17.5 per cent while you are on leave?' They can have that argument if they like, but the point I would make is that over a year you receive a certain amount in pay and other benefits. People have been receiving that as part of a total package for a long time. Anybody who wants simply to strike that 17.5 per cent off and reduce the salary are in effect reducing the annual salary by about 1.5 per cent. I believe it is inappropriate for the 17.5 per cent leave loading to be mentioned within the schedule which relates to minimum standards for annual leave because that prescribes the length of time for which one is entitled to annual leave in relation to enterprise agreements.

When a person is in an enterprise agreement, not only will they be guaranteed the minimum standard of time, which schedule (5) allows for their annual leave, but also whatever award they are in the 17.5 per cent leave loading still exists. I imagine over the years that it will probably be translated into the more general package, but the value of that remains within the award. So, the benefit of the 17.5 per cent will still go to the people in the enterprise agreements because it will be part of the overall package below which one is not supposed to fall. I am not disagreeing with what the honourable member is trying to achieve, but I am saying that this is not the place to do it, and I believe that we have achieved it elsewhere with other amendments.

The Hon. K.T. GRIFFIN: I agree. The Hon. Mr Elliott has put my arguments very eloquently.

The Hon. R.R. ROBERTS: We are talking in this matter about a transitional arrangement, in which I thought we had agreed the minimum standards would be transferred. I

understand what the Hon. Mr Elliott is saying about the 17.5 per cent, but the present South Australian Act provides that everyone will get 4 weeks annual leave and they will get a 17.5 per cent annual leave loading. We are saying that that should be a minimum standard until someone alters the arrangements. This is consistent with what we have passed in other areas.

The Hon. M.J. Elliott: The 17.5 per cent would apply to the awards now?

The Hon. R.R. ROBERTS: It is the law and the standard: four weeks and 17.5 per cent.

The Hon. M.J. Elliott interjecting:

The Hon. R.R. ROBERTS: Then why don't we put it in the schedule?

The Hon. T.G. ROBERTS: The danger, if we start selecting some minimums and not others, is that some people will wave this Bill, when it is finally enacted, as the minimum norm, clap their hands, and say, 'It was not put in as a minimum standard, so it is non-negotiable.' That is the problem. There are no awards with, for instance, 10 per cent loading. There are very few awards with anything other than 17.5 per cent, although some have 25 per cent. To be fair in establishing the credentials for hours of work, rates of pay and annual leave standards, some reference would have to be made somehow to an annual leave loading with a 17.5 per cent minimum.

The Hon. T. CROTHERS: The way in which this is worded creates a loophole in respect of a number of awards. I speak of awards and/or agreements which contain provisions not only for permanent workers on a 38-hour week or casual workers on a minimum of two hours a week or more but also for a third category of worker, the regular part-timer, who, unlike the casual, is also entitled to annual leave. They may work anything from 15 to 35 hours a week, for which they generally get a 10 per cent loading, but they are also entitled to all the other provisions of a regular employee. In particular, are they entitled to annual leave?

The way in which this is worded—and some awards may not pick this up—it does not pick that up. It could be judged somewhere up the track that the 17.5 per cent applies to those who are employed on a permanent and regular basis. The loophole, which may cost many tens of thousands of dollars, is that nowhere is there any reference to that third category of employee who exists and who may, given the level of unemployment, not only continue to exist but also increase in size as a percentage of the work force. Does the Attorney-General believe that the regular part-time employee will not be entitled to any less than the present prescription, given that this provision is absolutely silent as to what is applicable to the regular part-timer?

The Hon. R.R. ROBERTS: About 20 per cent of workers in South Australia are award free. Under the present Act those workers, whether under an award or not, are entitled to a minimum of four weeks annual leave and a 17.5 per cent loading. In these transitional arrangements we are proposing that they ought to be able to expect that to continue until other arrangements are negotiated during that period. However, in the transitional period every worker in South Australia is entitled to a minimum of four weeks annual leave and the 17.5 per cent loading, and they should continue to get it. I am looking after all the employees in South Australia, whether or not they are subject to an award.

The Hon. K.T. GRIFFIN: The 17.5 per cent loading is not recognised in the Act. It is dealt with on an award by award basis. There is a provision for a general standard to be promulgated but there is no general standard. It is just not correct, I would suggest, that the award free employees are by law entitled to a 17.5 per cent loading. The fact of the matter is that there is an award safety net for permanent part-time employees. What the Hon. Mr Elliott said about the 17.5 per cent loading is correct—that it ought not to be part of the minimum standard but that it ought to be available for trading off in return for other benefits. That is what a lot of people are doing now; a lot of employers and employees are trying to get into agreements on the basis that they can trade off the 17.5 per cent loading. If you do not do it in the way in which we are proposing in the Bill, there is that much less to trade off and that much less attraction for entering into an enterprise agreement. The minimum standard will apply, and in relation to awards those awards which presently have 17.5 per cent loading continue under the transitional arrangements.

The Hon. T.G. ROBERTS: The point I made was that the minimum standard is basically the community standard set now. There is no provision in the enterprise bargaining arrangements I have seen in this Bill that have a community standard as a base. You have an award, but outside that you have some tradeable items. We have said, through the amendment, that sick leave is not tradeable, but you cannot trade something you have not got. The point we are making is that you have to make some reference to annual leave loading before it can be considered for adjusting within some enterprise arrangement. I do not think there is any union which has not said that annual leave loading is sacrosanct. It is not one of those issues that has a priority in terms of its not being written into either an all purpose payment or some other form of payment of equal value. But there is a recognition that the community standard is 17.5 per cent, although it is written into each award separately.

The Hon. T. CROTHERS: Perhaps the Attorney did not comprehend my question, but I do not think he has given me a satisfactory answer. What we are talking about are two separate issues in that sense but in another sense they are both joined. You are talking about a quantum of annual leave and then a quantum of additional loading. Does the Attorney believe, given the way in which he now has the new Act worded and all the subsequent amendments, that regular part-timers employed in industry will be entitled, as they presently are, to both four weeks leave (based on the average hours they have worked over the year) and, in addition, the 17.5 per cent loading? If the Attorney cannot or will not answer that, at least I would understand that. But, if he can answer, I for one would be very pleased to have any doubts I have in my mind in respect of the matter removed once and for all time and removed in such a manner as the Attorney makes a reply, which will then be recorded in *Hansard*. As a consequence, that will give some data point in case there is any doubt in the minds of a court or the magistracy. At least what the Parliament intended will be ensconced in *Hansard*.

The Hon. K.T. GRIFFIN: You have the answer if you have a look at the Bill. The Bill talks about part-time employees: in relation to sick leave, schedule 4, clause 5, subclause (2); in relation to annual leave, schedule 5, clause 5, subclause (2).

The Hon. T. Crothers: What does that say?

The Hon. K.T. GRIFFIN: It is in the Bill. Part-time employees are entitled to pro rata pay for a period of annual leave, and the same for sick leave.

The Hon. M.J. ELLIOTT: I indicated that I would not be supporting this amendment and that is the position I continue to stand by. The Government should understand that

I stand by that position so long as we do not have the ridiculous situation inserted into awards whereby the minimum standard is effectively the maximum. If that line is insisted upon, all bets are off.

Amendment negatived; schedule as amended passed.

Schedule 6—'Minimum standard for parental leave.'

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

Page 107, lines 25 to 27—Leave out clause 9 and insert the following new clauses:

Schedule 6, page 107, lines 25 to 27—Leave out clause 9 and insert the following new clauses—

Interpretation

9. In this Schedule, unless the contrary intention appears—

'former position' means the position held by an employee immediately before commencing leave or part-time employment under this schedule, whichever first occurs, or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly as possible comparable in status and pay to that of the position first-mentioned in this definition;

'part-time work' means work of a lesser number of hours than constitutes full-time work under the relevant award or agreement, but does not include casual or temporary work.

Entitlement

10. An employee may, with the agreement of his or her employer—

(a) in the case of a female employee—

(i) work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable;

(ii) work part-time in one or more periods at any time from the seventh week after she has given birth to a child until the child's second birthday;

(iii) work part-time in one or more periods at any time from the date of the placement of a child with the employee for adoption until the second anniversary of that date;

(b) in the case of a male employee—

(i) work part-time in one or more periods at any time after his spouse has given birth to a child until the child's second birthday;

(ii) work part-time in one or more periods at any time from the date of the placement of a child with the employee for adoption until the second anniversary of that date.

Effect of part-time work on employment

11. Despite any award, industrial agreement or contract to the contrary, part-time work under this Schedule does not break the continuity of service of an employee.

Annual leave—transitional arrangements

12. (1) An employee working part-time under this Schedule is to be paid for and take any annual leave accrued in respect of a period of full-time employment, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time employment under this schedule.

(2) A full-time employee is to be paid for and take any annual leave accrued in respect of a period of part-time employment under this Schedule as if the employee were working part time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.

(3) By agreement between the employer and the employee, the period over which leave is taken under subsection (2) may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate. Sick leave—transitional arrangements

29. (1) An employee working part-time under this Schedule is to have sick leave entitlements which are applicable to the work concerned (including any entitlement accrued in respect of previous full-time employment) converted into hours.

(2) When any such sick leave entitlement is taken, whether as a part-time employee or as a full-time employee, it is to be debited on the basis of the ordinary hours that the employee would have worked during the period of absence.

Schedule-time work agreement

30. (1) Before commencing part-time work under this Schedule the employer and employee must agree—

(a) that the employee may work part-time; and

(b) on the hours to be worked by the employee, the days on which they will be worked and commencing times for the work; and

(c) on the classification applying to the work to be performed.

(2) The agreement may also stipulate the period of part-time employment.

(3) The terms of the agreement may be varied by consent.

(4) The terms of the agreement or any variation must be reduced to writing and retained by the employer.

(5) A copy of the agreement and any variation must be provided to the employee by the employer.

Overtime

31. An employer may request, but not require, an employee working part-time under this Schedule to work overtime.

Nature of part-time work

32. The work to be performed part-time need not be the work performed by the employee in his or her former position but must be work otherwise performed under any relevant award, industrial agreement or contract.

These new clauses basically set out the entitlements of parental leave when an employee returns to work on a part-time basis. This amendment needs to be included within the schedule to clearly spell out entitlements of employees in this situation.

The Hon. K.T. GRIFFIN: I oppose the amendment. The effect of the amendment would be to introduce highly prescriptive requirements in relation to working on a part-time basis. This consequently would have the effect of substantially reducing the flexibility available to employers and employees to negotiate appropriate conditions for part-time employment under enterprise agreements. It is unnecessarily prescriptive and limiting.

The Hon. M.J. ELLIOTT: What we have before us is rather lengthy and complex. There has been a relatively short explanation. Perhaps the Hon. Ron Roberts can tell me from where it has been derived. Is it from Federal legislation or is it in the old Act? From where has it come?

The Hon. R.R. ROBERTS: It has come from the advice of the Minister in the other place.

Amendment negatived; schedule passed.

Remaining schedules (7 to 9) and title passed.

[Sitting suspended from 12.56 a.m. (Saturday) to 10 a.m.]

STATUTES AMENDMENT (CLOSURE OF SUPERANNUATION SCHEMES) BILL

Adjourned debate on second reading.

(Continued from 10 May. Page 883.)

The Hon. T.G. ROBERTS: I rise to oppose the measures taken by the Government in relation to the closure of the superannuation schemes. I would like to point out to the Council that the Opposition is opposing it not just on the basis that it is unfair to those who are already in the scheme and who have expectations of that industry scheme being maintained but also for the way in which it was done. The Government's Bill basically flies in the face of its proposed new industrial arrangements. The proposals in the Industrial and Employee Relations Bill are provisions for enterprise bargaining and collective decision-making at an enterprise level. There were certainly no negotiations around this closure. There were no hints given that any of the arrange-

ments would change in relation to this provision for public servants and, in particular, the police.

It has been a fairly traumatic decision particularly for those people in the Police Force, who thought they had an industry specific superannuation scheme that took into account all the circumstances in relation to their industry. The PSA has contacted me on behalf of its membership. The PSA could not understand the reason nor was it able to give me any indication that there had been negotiations around those measures. The position with regard to those people employed in the Police Force is particularly difficult because they have an industry that you would assume would have had a superannuation scheme industry specific, as were the intentions of the superannuation arrangements that were negotiated during the 1970s and 1980s.

There are a number of aspects of police life that really need a superannuation scheme that is tailored for their particular problems. Public servants also have different working life requirements and it was the intention of the ACTU and industry specific negotiated superannuation schemes, when they were set up, to take into account the nature of the industry and the lifestyle—the specific retirement requirements for those employees when weighted against their working life duties.

Superannuation has changed over the years. In the first instance, superannuation was set up in the main for executives, for white collar male dominated industries generally, and they were the province of the privileged in society. In respect of blue collar workers and others, particularly casual and service industries, there were no provisions for superannuation at all. The prospect that most people had at the end of their working life was to drop onto the pension scheme which has fluctuated between 20 per cent and 25 per cent of average income.

When the decision was made to broaden out superannuation so that it applied to more of the work force, many of the industry requirements were looked at in matching the superannuation scheme, not only against the ability to pay and fund it, but the contributions were matched to a percentage that was capable of being paid and supported by the contributors, the scheme and the fund itself. There was also a component built into the superannuation schemes for participatory management from industry representatives in those areas, and that added to the democratic structure of those organisations. In most cases, the registered organisations themselves had representatives on the board that reported back to their membership just what the nature of the investments were, what returns they were likely to expect—the state of the super fund itself. It was probably as good a system as could be envisaged, on paper.

Unfortunately, what we have now found is that superannuation schemes are being used as a method of driving back benefits or returns in many areas, and people in the public sector and the Police Force in particular now find themselves with two schemes. They will have some members on a scheme with one method of contributions, one amount of contributions, benefits and conditions, and there will be other people on a different scheme, as indicated in the second reading explanation, that will have inferior benefits. In fact, there are a lot of unknowns about what the changeover scheme is. The PSA and the Police Association are asking for an extension of the cut-off date which is indicated in an amendment which has been moved in the Lower House and which I have on file. They are also asking for further negotiations around the scheme itself to get more details so they can pass that information on to their membership.

However, the indications are that they will go over to the State scheme which is proposed to move through the ranges of six to nine per cent contribution but which has no guarantees in relation to that. The proposed scheme has not been given a lot of publicity internally, and many members in both the Public Service and the Police Force are nervous about the matching qualities of the changeover. The Police Association has indicated that it has had a compulsory contributory scheme with which it was quite prepared to live and work. It has also indicated that it has industry specific problems. Police officers, particularly, have a very stressful life, and many of them would like to take early retirement at a particular time in their career. The changing nature of the Police Force has put a lot of pressure back on to the police to become the administrators of law in a society that is rapidly changing.

There are many social pressures which the Police Force has to pick up under changing identification of law and order problems and which are not of its making. I suspect the Government will want to use the Police Force and other arms of the law to enforce its new Industrial and Employee Relations Bill which will add another arm of stress to their duties. However, in relation to the day-to-day duties the nature of police work should be recognised as an industry specific problem and should have a matching superannuation scheme which takes into account the difficulties that police officers face through their working life and which at least allows them to prepare to retire with some dignity and with a reasonable return on superannuation so that they do not have to rely on the pension scheme as a method of charting their retirement course.

As we all know, when the pension scheme was introduced, it was to be an adequate retirement method to keep body and soul together; not to have any quality of life associated with it. There has always been a wish to increase the pension but, for whatever reasons, Federal Governments have tended to put a floor rather than a ceiling on payments. Although it is adequate, it does not provide for the lifestyle that you might expect if you have been on the salary level of some people in the public sector and the Police Force. From day one all the superannuation schemes had different contributions, different levels of benefits, and different criteria for contributions and membership but, in the main, the earlier schemes were non-contributory with quite high benefits. As I said, the rules that were drawn up by the people who had control over the direction of flow of the superannuation schemes were quite generous.

The later schemes that were brought in during the 1970s and 1980s, and particularly those that were brought in after 1984, were industry specific and matched the requirements of the people in those industries. As I said, the scheme that the public sector and the Police Force had was one which took into account all the idiosyncrasies of their work; it took into account that their working life and the securities of their employment were changing. It has been pointed out to me that, in relation to the Police Force, the varying differences that may occur between the schemes will create first and second class citizens in relation to benefits and cover. Because police officers will be thinking more about the provisions for their families and the differences between the schemes, they might be less likely to put their lives on the line in dangerous situations—as happens on a daily basis in

protecting society—than they would be if they felt that their families were going to be adequately covered.

We had the situation just recently where a police officer lost his life in the bombing of the NCA Building. Although it is part of the grieving and solidarity process of fellow police officers to collect money for the families of colleagues who lose their lives in the course of their duties, it should be unnecessary for police officers or anyone in the public sector to have public fund raising programs to make sure that the widows and children of deceased members are adequately catered for. A scheme should be in place that gives people confidence that they will be looked after not only if something untoward happens during their working life but is adequate to take care of the day to day living problems associated with either early retirement or retirement at a fixed date so that they can plan their life around their superannuation without having to rely on the Federal pensions scheme.

With the greying of Australia's work force—and this has been discussed quite widely, because it is one of the problems for Governments in relation to making provision for their citizens at both the Federal and State level concerning the greying and ageing of Australia, as well as the changing nature of the work force in Australia, with more women coming into casualised positions—there needs to be a whole reconsideration of superannuation and how it applies.

That process should consider making more adequate schemes rather than making less adequate schemes. South Australia's population is ageing at the same rate as the rest of Australia, but in terms of numbers we have a far older citizenry than many other States, and there is an argument for South Australia's asking the Federal Government to make special provision for a State allocation in respect of the funding of superannuation schemes.

On behalf of the Opposition I will be opposing the initiatives taken by the Government. The PSA and the Police Association were totally dissatisfied with the negotiations that took place. The Democrats' amendment allows for closure of the scheme but with the proviso that it be reopened in October, to allow for a period of negotiation between now and then to satisfy the requirements of people in the Public Service and the Police Association so that whatever scheme is brought in to replace it is able to match the benefits and contribution levels of the previous scheme, and those negotiations should continue with the Government during the break. The Opposition's amendment allows for the scheme to remain open until 1 July and for the same considerations to be made concerning negotiations in respect of the changeover.

If the Government has any intentions of changing any other existing superannuation schemes, I would hope it would give the people involved in those schemes the time frames so that their registered organisational representatives can negotiate on behalf of their members to ensure that those schemes suit the needs and requirements of those people in the industry. It is particularly harsh of the Government to change the nature and scale of benefits, contributions or eligibility criteria without notification. Superannuation is becoming a key issue for the management of many people's lives, not only in preparation for retirement but also in how they live and structure their lives during the period before retirement.

The changing nature of society generally is putting a lot of pressure on people, not only in the Police Force but also in the public sector and other areas, to consider how they structure their life. We have gone past the period of all-of-life planning, because that is no longer possible. That applies not only to public servants: people in industry, commerce and even primary industries now can no longer rely on having all-of-life work cycles and nice, pleasant, tidy provisions for retirement. That is no longer the case. Superannuation now has to be industry specific. It needs to take into account people's working requirements, and it certainly needs to take into account the retirement benefits that will accrue so that people can plan their financial retirement. Certainly, when changes are to take place they need to be negotiated changes and cross benefits must apply if provisions are to be taken away. The terms of the changes should be discussed and provisions made for input from those organisations to make representations on behalf of their membership.

The Hon. M.J. ELLIOTT: I support the second reading. I note that this legislation was introduced at a time when the legislative load already was very heavy because of a number of significant pieces of legislation, a number of which I was handling personally, including all the workers compensation and industrial relations Bills. Under those circumstances I do not believe that I have had adequate time to form a fixed view as to whether or not the schemes should be closed. I certainly acknowledge that the State finances are in grave difficulty; that is beyond dispute. I must say that the Audit Commission did not really tell us anything we did not already know in one regard: we knew we were in a heck of a mess, and that is why the voting in the last election was so strongly in one direction.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: Torrens was after the Audit Commission. The public already knew that things were very bad. If the Audit Commission achieved anything, it managed to put more accurate numbers upon that position. It is largely the Audit Commission which is being used as a reason to make the first of what I think will be a large number of significant moves by the Government, some of which may justified, some of which will not. At this point I am not forming a view in the long term whether or not this move is justified. I will be moving an amendment in Committee which will bring this legislation into force but which will include a sunset provision so that it lapses on 1 October. That would allow in the interim for not only me but other people to be involved in a full discussion about the merits of the proposal to close these schemes and to look at them in the light of other changes that might occur.

I understand that the potential ramifications of the schemes remaining open is profound but there are also ramifications in terms of individual rights that deserve to be explored. I noted the Hon. Mr Roberts made comments about enterprise bargaining, and the Liberal Party believes in enterprise bargaining. I am sure it will try to enter into it with the Public Service. Yet, what we are doing here is nothing to do with enterprise bargaining: this is simply saying, 'There was something that you were able to have that we are taking away, and we are doing it by legislation.' I believe that one of the other advantages of a sunset provision is that perhaps a degree of enterprise bargaining might commence between the Government and the public sector. What happens to superannuation might be looked at in context and in relation to other changes that may be sought by the Government, but at least the unions will be given a chance to discuss and negotiate directly with the Government. Of course, if the legislation is to come back into this place—and the Government may or may not decide to do that—there is a much

better opportunity for discussions with the Opposition and the Democrats.

I believe that the Government in its haste to act did not get things quite right and I think that the Hon. Terry Roberts has been contacted by the people from the Police Association who contacted me. I put on the record information supplied to me by the Police Association. A facsimile sent to me by Peter Alexander, the President of the Police Association of South Australia, states:

> The decision to close the police superannuation scheme to new entrants is not in the public interest. It puts police officers in the community without any invalidity provisions whatsoever provided by the Government. The decision to close the scheme was made on a false premise. The police scheme is NOT a voluntary scheme and should not therefore be closed without alternative arrangements being in place. This legislation will see a vacuum period during which new entrants will not have proper financial cover on death or injury. There needs to be a review of the police scheme before this legislation is passed. The Audit Commission is factually incorrect where it states at page 111, Footnote 10—
>
> > All public sector employees are able to join some form of voluntary superannuation scheme.
>
> Further, the recommendations of the Audit Commission at page 133—
>
> > Under this proposal ALL existing defined benefit schemes (the membership of which is voluntary) would be closed to new members.
>
> I repeat that the police scheme is NOT a voluntary scheme but a compulsory scheme. There has been no consultation with the Police Association by the Government prior to introduction of the Bill. The decision to close the police superannuation fund is not a matter in which the Brown Government can claim a mandate. They made no mention of their intention to close the fund in the lead-up to the election.

I am aware they promised the exact opposite. It continues:

> The Bill has been introduced on a false premise and the Audit Commission, page 131, under the heading of Police Superannuation Schemes acknowledged that no projections for the police superannuation schemes were obtained. The Kennett Government in Victoria, after making similar moves, did not proceed with the closure of the police scheme in that State and, after consultation with the Victorian Police Association, reached agreement to maintain the fund on a cost effective basis. Notwithstanding the need to address State debt and the issue of unfunded public sector superannuation, the Government has an obligation to ensure that the special risks which police accept as part of their role are matched with special financial protection if police are killed or injured.

I understand that the Police Association met the Government, which admitted that the legislative decision was based on wrong information and a false premise, but the Government had decided not to reject the legislation. As I said, I have not had the time to make an overall decision on the merits of the legislation, but, in relation to the police, the merit might be closer to zero than 100 per cent. Nor have I had time to consider complex amendments to the legislation, in the light of time constraints. It seems that, regardless of Government, we get the same pile-up of important legislation at the end of a session. I will get a chance to make some comments on that at a later time.

In the circumstances, I am willing to give the Government a breather by having the legislation passed. It will lapse on 1 October, but I give no undertakings as to whether I would support the legislation if it came back. In fact, it is almost certain that the legislation would be amended, particularly in the light of the information about the police. I hope and expect that the Government will have the sense to go back to the public sector unions and talk directly with them, involve themselves in enterprise agreements and the sorts of things that they are trying to encourage in industrial relations, and use this as one of the matters that needs to be discussed within that package.

On questions of fairness in terms of allowing this interim application, I note that the legislation allows people who have joined the Public Service from 1 January to continue to come into the scheme. The people who cannot join are those who have already been public servants for more than four months and who so far have not decided to join. Unfortunately, they may have to wait another four months, and what happens after that only negotiations and time will tell. I support the second reading of the Bill.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank honourable members for their contributions to the second reading debate on this Bill. I had a long and passionate exposition of the Commission of Audit report on the unfunded superannuation liabilities of the State, but, given the time and the positions that have been adopted by various members in relation to amendments that they have flagged to be discussed in Committee, I will not unduly delay the second reading with it.

Suffice to say, the Audit Commission has highlighted a significant problem, as the Hon. Mr Elliott has indicated and acknowledged. Put simply, it is talking about our unfunded superannuation liabilities ballooning from $4 billion to $7 billion over the next couple of decades. In terms of our ongoing recurrent, budget the Audit Commission is saying to the Government that over the next four years we have to find $113 million out of our spending programs for 1994-95 to start a 30-year program of repaying the superannuation unfunded liability.

As one of 13 Ministers, I know the effects of that $113 million commitment for 1994-95. Put simply, it means that we will be able to spend less on teachers, special education, schools, hospitals, roads and a variety of other necessary public expenditures. If the taxpayers of South Australia, through the Government, have to find this additional money to pay the superannuation unfunded liability over the coming 30 years, then the money has to come from somewhere. It means increases in taxes and charges or cutting spending on education, health and a variety of other necessary areas. That is on the no policy change option. The Government, on advice, has obviously decided to change the policy to close these schemes in order to try to reduce the extent of exposure for the taxpayers of South Australia to the future commitments. That puts it simply in relation to the problem confronting South Australia.

I acknowledge some of the points made by the Hon. Mr Elliott in relation to what may be the majority position in this Chamber, as I read it. The Government opposes both amendments for the reasons which have been given in the debate in the other place and to which I briefly referred this morning.

After a few months in Government we are realists, and we suspect that the position of the Hon. Mr Elliott and the Australian Democrats may well prevail. I make two points in relation to that: if the position of the Hon. Mr Elliott does prevail, I can assure him that there will be discussions during the coming three or four months—or whatever period that happens to be—with the relevant public sector associations and unions.

On behalf of the Government, I can acknowledge that we will address some of the points that the Hon. Mr Elliott has made in relation to the police superannuation scheme, and at least we can have further discussions with the Police

Association and its representatives as to how the superannuation scheme closure may well affect its members. I acknowledge what the Hon. Mr Elliott has said there. The only plea, I guess—if I can plea bargain in the second reading stage—

Members interjecting:

The Hon. R.I. LUCAS: If I knew it would get me anywhere I would willingly submit. Being a good Catholic boy, I am used to getting on my knees—generally on Sunday mornings, not Saturday mornings. However, I am prepared to be flexible on the last day of the session. As we move into Committee, the only point I make to the Hon. Mr Elliott for consideration is that—as he has indicated—we will need to revisit the grace period that he has put down, namely, 1 October, in the August session of the Parliament and debate fully the arguments for and against the closure of the fund.

As the Hon. Mr Elliott knows, with regard to the period involving August and September (and, as he knows, we have had discussions about the concept of the piling up of legislation at the end of parliamentary sessions), as I indicated to him at the start of this session, I hoped that he would be a little more flexible with the new Government in the parliamentary session because we wanted to introduce in the first session a significant amount of legislation. Of course, it is a considerable weight on and expectation of the Public Service, Parliamentary Counsel and the whole Public Service bureaucracy that supports Government to get all that legislation through in this very short session. As I said to the Hon. Ms Kanck, I asked for some forbearance in this first session in working with the Government, and I am pleased to say that members have been patient with the new Government. They certainly have my undertaking and they can have that of the Government that we take seriously the notion that the new Ministers and the Government will be expected to try to even out the workload during the August to December parliamentary session.

That is our view, and I passionately argued for it in Opposition. I acknowledge the good sense of what members are saying. Certainly, as a new member of the new Government, I give a commitment to working with other members of the Government, and hopefully with the Opposition and Democrats as well, to ensure a smoother flow of legislation through the August to December session.

The only point I make, while metaphorically getting down on my knees to the Australian Democrats, is that during that session, August to December, we have Address in Reply, the budget and the Appropriation Bill debates, which in both Houses take up a significant period, I ask the Australian Democrats to consider, without changing the principle, the date of 1 October. Maybe they would be prepared to consider either 30 November, or if that is stretching the friendship too far—and I am pleading to the Hon. Mr Elliott at the moment; this is my begging motion—

The Hon. M.J. Elliott: You're still standing.

The Hon. R.I. LUCAS: I am wondering whether, instead of 1 October, you might consider either 30 November, and if 30 November is stretching the friendship too far maybe some sort of compromise at 1 November—just to allow sufficient time for both Houses of Parliament to debate fully the issue of superannuation at the same time as we are trying to handle the Address in Reply and the Appropriation Bill debates.

With that, I indicate again that the Government will be formally opposing the amendments from members but do acknowledge the reality of life, that it is likely that the Hon. Mr Elliott's amendment may well get up.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

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

Page 1 line 16—Leave out 'This Act' and insert 'Subject to subsection (2), this Act'.

I note that all my amendments are related to this one, so the debate can all centre on this one clause. The effect of all my amendments is that this legislation will pass but that it effectively contains a sunset clause providing that the legislation will lapse on 1 October 1994. I heard the request of the Hon. Mr Lucas in relation to putting it back further, but I do not accept that. I think the matter must be resolved as quickly as reasonably possible. I put it as late as 1 October only because I recognise the difficulties we had earlier in the session. There is no way known that I want this matter to be caught up with the end of session: which is really the problem we have this time round. It is a matter that should be given some priority in the next session, and I do not believe that 1 October is an unreasonable date.

The Hon. T.G. ROBERTS: We are prepared to support the Democrats' amendment on the basis that it goes one stage further. As the honourable member says, it provides for a closure but then an opening date. Ours provides for a closure for the same reason, so as to allow negotiations to continue but, in view of the Democrats' amendment, we will be supporting that.

The Hon. R.I. LUCAS: Expert advice is available to me that gives me information to provide to members on one or two of the issues raised during the second reading. It is not correct to say that employees not in the contributory schemes will have no invalidity insurance. The Superannuation Guarantee Scheme includes death and invalidity cover for employees who are not members of the contributory schemes. Secondly, in relation to the point—and, we acknowledge, the important point—of the Police Association's concern about police officers injured at work having no entitlements or benefits to cover the injury, we should point out to the Committee that, in cases where police officers are injured in the course of their duty, they are and will continue to be covered also by the various workers compensation schemes.

I will not go back over the detail of the argument of the second reading, which has also been fully canvassed in another place. I have indicated the Government's position; that is, we are clearly strongly opposed to the Hon. Terry Roberts' position in relation to his amendments. We also oppose the position of the Hon. Mr Elliott and the Australian Democrats. However, we acknowledge the numbers in this Chamber, and it is likely—as the Hon. Mr Roberts is now supporting it—that the Australian Democrats' position will prevail. As I indicated, if that is to be the final resolution of this legislation, certainly we will use the time available to have further consultation with the various parties to this particular proposition.

Amendment carried.

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

After line 16—Insert subclause as follows:
(2) Part 4 will come into operation on 1 October 1994.

Amendment carried; clause as amended passed.

Clauses 3 to 7 passed.

New clauses 8 and 9.

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

Page 2, after line 26—Insert heading and clauses as follows—

PART 4
FURTHER AMENDMENT OF SUPERANNUATION ACT 1988 AND POLICE SUPERANNUATION ACT 1990

Amendment of Superannuation Act 1988

8. The Superannuation Act 1988 is amended by striking out subsections (10), (11) and (12) of section 22.

Amendment of Police Superannuation Act 1990

9. The Police Superannuation Act 1990 is amended—
(a) by striking out subsections (1a) and (1b) of section 16;
(b) by striking out from subsection (2) of section 20 'but before 1 June 1994';
(c) by striking out from subsection (3) 'referred to in subsection (2)'.

This is consequential.

New clauses inserted.

Title passed.

Bill read a third time and passed.

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (ADMINISTRATION) AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments Nos 1, 6, 7, 10, 24 and 28 to 31; that it had agreed to amendments Nos 4, 11, 12, 17, 19, 20 and 23 with the amendments indicated by the annexed schedule; disagreed to amendments Nos 2, 3, 5, 8, 9, 13 to 16, 18, 21, 22 and 25 to 27; that it had made alternative amendments in lieu of amendments Nos 2, 3, 5, 8, 9, 13 to 16, 21, 22 and 25 as indicated in the annexed schedule; and that it had made the consequential amendment as indicated in the annexed schedule.

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

The House of Assembly intimated that it had agreed to the recommendations of the conference.

STAMP DUTIES (CONCESSIONS) AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's suggested amendments.

STATUTES AMENDMENT (COURTS) BILL

The House of Assembly intimated that it insisted on its amendments to which the Legislative Council had disagreed.

Consideration in Committee.

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

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

This Bill relates to a variety of amendments dealing with the courts. Members will recall that the Opposition and the Democrats sought to insert a provision, similar to the private member's Bill of the Hon. Mr Blevins in another place, which sought to provide that the Governor may, by notice in the *Gazette*, give directions which the Governor considers necessary and appropriate to ensure that the participating courts are properly accessible to the people of this State.

That arose from the public debate in relation to resident magistrates in the South-East, at Mount Gambier and in the Iron Triangle. There was quite a spirited debate about it in this Chamber as there was in the House of Assembly.

When I last spoke on this issue I indicated that I thought there were some important constitutional issues involved. They are issues related not just to the decisions of the Acting Chief Magistrate involving resident magistrates but also to the way in which the Courts Administration Authority relates to Government and the extent to which the Government may be involved not only in the budget process and in the allocation of the courts but in other areas of the relationships between the executive arm of Government and the courts. I indicated that since I have been Attorney-General I have experienced some difficulties in the relationship, particularly because ultimately the Attorney-General is responsible to the Parliament for the Courts Administration Authority, although he has very limited power to be involved in the administration, primarily being concerned in the area of the approval of the budget.

They are issues that I indicated I am having examined. It may be that, in the light of the first year's experience with the authority, the Government may wish to bring before the Parliament some amendments which endeavour to put on a more appropriate basis the relationship between the executive arm of Government and the courts. Rather than doing it in an *ad hoc* way, which is suggested by this amendment, I have proposed to the Legislative Council that consideration of this issue be deferred until after the Legislative Review Committee has considered it. The matter has, as I understand, now been referred to that committee.

As I indicated in answer to a question yesterday, I will be writing to the Acting Chief Magistrate and the Chief Justice seeking the reinstatement of resident magistrates pending the outcome of the Legislative Review Committee. It is for that reason that I believe the provision in dispute between the Houses ought no longer to be a matter of dispute, and that the Legislative Council should not any longer insist on its amendments.

The Hon. C.J. SUMNER: The Opposition opposes this motion. The Attorney-General has sought to bring together the issue of the resident magistrates with the general issue of the relationship between the Executive arm of Government, Parliament and the Courts Administration Authority. Some issues of a general nature may need to be examined regarding the relationship between the Executive and the Courts Administration Authority, and perhaps between the Parliament and the Courts Administration Authority: those issues were the subject of some discussion when this matter was previously before the Council.

If the Attorney-General wants to look at those issues that is fine: we have no problem with that. However, in our view it should not be used as an excuse for delaying the reinstatement of the resident magistrates system which could happen if this Bill was passed in the form in which it left this Chamber with the amendments moved by the Opposition and supported by the Democrats.

The Opposition believes that the motion should be opposed to enable the resident magistrates system to be reinstituted immediately. I suppose we could have had a little bit more comfort in relation to the matter had the Attorney-General's proposed letter to the Chief Justice gone to the Chief Justice and been responded to affirmatively, namely, that the resident magistrates would be reinstated while this issue was going on. That may happen but, at this stage, we do not have a guarantee from the Chief Justice that it will. Had that happened it might have assisted the Opposition in agreeing with the Attorney-General's proposition.

However, we oppose the Attorney's proposition. I think the matter should be dealt with now, although we would point out—and I think this is fair enough—that from the Govern-

ment's point of view, and to the Government's credit at least, the matter has been referred to the Legislative Review Committee, and there will be another chance to debate the issue when the matter comes before us again after the report of the Legislative Review Committee, presumably in August. I imagine that the Attorney-General would want that committee to examine the matter reasonably expeditiously, and he might be able to indicate that that would be his suggestion to the Legislative Review Committee.

But, if this matter is passed on the voices then the Government does need to be on notice that the matter will be going, as I said, to the Legislative Review Committee, on notice that that committee will report and on notice that this issue will be debated again in the Parliament, we would expect, in August. It is not an issue that will go away; it is an issue that has to be faced up to. If the motion is passed it should not be taken by the Government as an indication that the issue can be successfully buried in the Legislative Review Committee. The Opposition will not permit that to happen; it will come back to us; it will be debated again. So, if it were to pass, I indicate that that is the Opposition's position. However, in summary, we oppose the proposition put forward by the Attorney-General.

The Hon. M.J. ELLIOTT: I oppose the motion before us. The Government's resistance seems to be based on some strange premise that this is an issue that relates to judicial independence. I do not accept that. I do not believe that the Parliament requiring there be resident magistrates in country areas is a question of judicial independence. You are attacking judicial independence when you affect the internal processes of the court, or try to influence those processes of the court in some way. That is not what the amendments the Government is resisting are all about. As with the Attorney-General, I note that it is a matter, which, along with others, will be examined by the Legislative Review Committee. I would hope this whole question of judicial independence might be looked at in some length so that we do not find ourselves in a similar debate again.

Motion carried.

SUPERANNUATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 May. Page 685.)

The Hon. T.G. ROBERTS: I support the measures being taken by the Government in relation to changes to the Superannuation (Miscellaneous) Amendment Bill 1994, and do so on the basis that the Bill's technical amendments will provide clarification of certain provisions and improve the operation of the scheme. Also the Bill seeks to streamline the invalidity provisions by providing benefits for contributors who are not totally and permanently incapacitated for all employment. That is a critical issue for many people. When assessments are made by the medical profession on diagnosis for partial incapacity in relation to lump sum or incapacity payments within the provisions of the Superannuation Act, many assessments are made at less than 60 per cent incapacity or partial incapacity but make workers almost totally incapacitated for their work. You could have somebody with a 10 per cent or 30 per cent assessment made on a particular part of the anatomy, the back for instance, and that partial incapacity might make you 100 per cent unable to work.

It may provide a serious discomfort where people have to get to work each day with a major problem associated with a particular part of their anatomy, and it makes life very difficult. Most people can do that for certain periods of time, but eventually it will wear you down. The Act does make provisions for circumstances like that. If you are able to convert your superannuation payment and get full benefits on the basis you are only partially incapacitated, I think that is a reasonable provision, so there is some flexibility to enable people to avail themselves of the superannuation scheme with some flexibility to allow for that early retirement process with full benefits. I guess the key is full benefits; it is not partial benefits in relation to being forced out of the superannuation scheme on the basis that you are tired of the daily grind of going to work with that incapacity. You are able to take your retirement and take your full benefits.

The other provision is that it allows for the dismissal or sacking of people for incompetence which has been very to prove and for which it has been very difficult to get a matching benefit. In the past the dismissal through incompetency has generally been masked with some other form of dismissal process. In some cases the incompetent tend to resign when pressures are applied to them at a work level by either peer group pressure or assessment by senior members of their work teams.

It provides that people who are dismissed for incompetency are deemed to have resigned and that the benefits payable are matched by the criteria for resignation. It is not something that employees who are covered by a superannuation scheme look forward to, but public servants and others need to have provisions made to match the criteria by which they leave their employ. A provision which is not included in superannuation legislation and which cannot be is that, before people are sacked for incompetency at any level in any employ, consideration ought to be given to retraining so that people who may be deemed as incompetent in one field may be redirected or re-trained into another area of activity.

If we use the Education Department as an example, we may find incompetent teachers in the classroom who may not have been incompetent at other times in their lives but through age, stress or just sheer wearing down within their own life circumstances their ability to teach, to communicate with children and to get on with their peers changes, and that needs to be recognised by management. Opportunities must be given to employees to look at areas within their employ which are more suitable to the skills, or the lack of skills in some cases, that they have developed so that dismissal for incompetency is not used as a wholesale excuse to remove from the public arena many people who would have survived under normal circumstances.

Having come out of industry myself, I know that good employers tend to try to give the best opportunities to their employees if they have given good service or if they feel that there is another niche that they may be able to train into. It is generally those incompetent employers or those who are not monitoring their work force or taking stock of the individuals within it who use dismissal as the first refuge. I agree with the statements of the Hon. Mr Lucas and other members that, if incompetency can be shown, and if attempts have been made at rehabilitation or chances have been given to people who are working incompetently in the Education Department or anywhere else and those efforts have failed, there is no real place for those people. If you have an incompetent teacher, it makes it very difficult for teachers around them who are taking over classes and who are teaching in the near vicinity,

and some provision needs to be made for the situation where rehabilitation has been tried and has failed.

So the Bill itself provides for superannuation changes of a technical nature. Its provisions allow for a better running of the scheme, and the amendments in the area of investment activities also complement the changes that are made. Nobody minds supporting superannuation changes that streamline and add benefits to, or allow for, better administration. An amendment which is proposed for the Council and which was not introduced in the lower House allows for mopping up, and that amendment is to enable an easier and more streamlined administration, and I would indicate support for that as well.

Bill read a second time.

In Committee.

Clauses 1 to 20 passed.

New clause 20a—'Provisions relating to other public sector superannuation schemes.'

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

Page 16, after line 20—Insert new clause as follows:

20a. Schedule 1a of the principal Act is amended—

(a) by inserting before paragraph (a) of clause 1(1) the following paragraph:

(aaa) declaring a group of employees who are members of a public sector superannuation scheme to be contributors for the purpose of this Act;

(b) by striking out paragraphs (b) and (c) of clause 1(1) and substituting the following paragraphs:

(b) modifying the provisions of this Act in their application to the group of employees referred to in paragraph (aaa);

(c) providing for transitional matters upon the making of a declaration under paragraph (aaa).

These amendments amend clause 1 of schedule 1a of the Superannuation Act 1988. This schedule allows regulations to be made bringing members of small superannuation schemes established for employees of agencies or instrumentalities of the Crown into the main State scheme. This increases the efficiency with which superannuation is administered in the public sector and solves the problem of excessive funds building up in these small schemes for the benefit of a diminishing number of employees.

Clause 1 of the schedule is based on the premise that the employees will be accepted as contributors to the State scheme under section 22. However, none of the employees who have entered the State scheme under schedule 1a in the past has formally applied for acceptance under section 22, and it is clear that such a procedure is inappropriate in this situation. These employees are already members of a scheme and are being brought into the State scheme for the reasons mentioned above. It is not appropriate for the board to assess their eligibility for acceptance with the option of rejecting them or granting a conditional acceptance for health or other reasons. The purpose of the amendment is to rectify this anomaly by providing that the Governor can, by regulation under clause 1 of the schedule, declare that a group of employees are contributors to the State scheme.

New clause inserted.

Clause 21 and title passed.

Bill read a third time and passed.

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

At 11.22 a.m. the following recommendations of the conference were reported to the Council:

As to amendment Nos 1 and 2:

That the Legislative Council do not further insist on its disagreement to these amendments.

Consideration in Committee of the recommendations of the conference.

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

That the recommendation of the conference be agreed to.

The relatively black and white issue of whether or not the limitation period ought to be 12 months or six months needed to be resolved, and I am pleased to see that an agreement arrived at by the conference of managers in relation to this issue has prevented the legislation being lost. I do not intend to go back over all the detail of the arguments for and against the two positions that were adopted within and between the Houses on this issue. Suffice to say an agreement of the conference of managers was arrived at yesterday and that has now prevented the legislation from being lost. I am therefore pleased to propose that the recommendations be agreed to.

The Hon. C.J. SUMNER: The Opposition opposes the motion to accept this recommendation of the conference. I have heard of back flips, but this one would take all prizes in that respect. The gymnastics displayed by the Liberal Party and the Attorney-General on this issue would have to win a gold medal at any Olympic Games in either this century or the next. The reality is that when, on 20 April 1993—just over 12 months ago—the Labor Government introduced legislation to introduce a limitation of action period for invalid taxes, that is, to stop citizens claiming back invalid taxes beyond 12 months, the Liberal Party and its spokesperson at the time, the Hon. Trevor Griffin, went apoplectic about it. On 20 April the Hon. Mr Griffin said:

One must ask seriously in the circumstances of this legislation why, if the period is three years or six years, citizens should not be able to recover amounts which have been paid even voluntarily but under a law which subsequently is determined to have been invalid or where the payment has been required to be made on the basis of an *ultra vires* claim.

He went on to state:

. . . whilst we will not oppose the second reading of the Bill, there are some issues to be explored both in the reply and the Committee stage. If I could identify those by way of summary: we have no difficulty with the six year period; we have no difficulty with the elimination of the distinction between mistake of fact and mistake of law; and—

and this is the important point which I think gives complete support to my proposition about the energetic back flip that the Attorney-General has done—

we believe that Governments should be put in no better or worse position than organisations and individuals which operate in the private sector. It may be of course that, in consequence of that position, the best thing is to defeat the Bill. However. . . we are happy to have it explored in Committee.

As a consequence of those remarks, the proposition of the Attorney-General while in Opposition was that the limitation period, on the basis of the principles he outlined, to claim back invalid taxes should be the same as the general law relating to contracts, for instance, where the limitation period is six years.

There was some suggestion in the conference that the Labor Party had changed its view on this and that originally the Bill we had introduced last year in April argued for a six month limitation period on invalid taxes. That is not true. The 12 months is the period that we introduced last year and it is the 12 months that we argued for in this Bill before us. The Government's Bill, however, was for a six month limitation period. The Labor Party's position has been constant. The

Liberal Party, as I said in terms of back flips, has gone from six years to six months—six years to six months in just 12 months. I am not quite sure—

The CHAIRMAN: The six is constant.

The Hon. C.J. SUMNER: The six is constant, as the Chairman says, and I suppose that is something to note, but it hardly justifies the position taken by the Attorney-General. The Attorney-General and the Liberal Party, after a lot of high sounding principles about citizens not being put in any worse position than Governments in relation to these matters and advocating a six year limitation period for claiming back invalid taxes, has now reduced that six year period, which it originally advocated 12 months ago, to six months after having agreed in the Committee stage last year to a 12 month period.

The Opposition believes that 12 months is reasonable. It is the period adopted by the majority of States, certainly the major States. I think only the Australian Capital Territory, the Northern Territory and Tasmania have a six month period. The argument that this is necessary to deal with a potential challenge in the High Court to the petrol franchise fee is, in my view, not sustainable. In the Bill introduced by the Government there is also a clause to enable windfall gains to be barred from being claimed back. An oil company that had paid the fuel franchise fee in the past could not, if that tax was held to be invalid by the High Court, now come along and claim refunding of that fee from the Government because that has been specifically prohibited by the legislation introduced by the Government. The 12 month period effectively applies only to other forms of invalid taxes.

As the Law Society points out, there may be some circumstances where injustice could occur if the limitation period is reduced to six months rather than 12 months. There could be an iniquitous tax imposed by Government, a tax which is controversial in the community, which is challenged in the courts but which, if declared to be invalid under the Government's proposition, means that action to reclaim the tax could go back only six months. In the Opposition's view, that is not a satisfactory situation. I have outlined the situation previously. We think that, because the fuel franchise situation is covered in any event, there are therefore other practical reasons why oil companies would not be able to claim that back in any event. We are dealing with the general principle possibly relating to other taxes. It seems surprising, given the Liberal Party's general attitude to taxation, that it should be adopting a position which puts the private citizen at a disadvantage *vis-a-vis* the Government in this area. That is particularly so given the Attorney-General's position on it when he was in Opposition.

The Democrats forced a conference on this matter. I do not know why they bothered. They could have fixed it up with the Liberal Party beforehand, because there was no stomach in the Democrats to maintain the position. There is no doubt that the Government would not have lost the Bill because of this issue, but the Democrats went to water fairly comprehensively and quickly on the matter and have now agreed with the Government. That is disappointing, because when this matter was being debated last year the Democrats also, along with the then Liberal Opposition, agreed to the 12-month period as being appropriate. I oppose the motion to accept the recommendations of the conference. In my view, it would be better to lose the Bill than to agree to this proposition.

The Committee divided on the motion:

AYES (11)

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

NOES (8)

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

PAIRS

Lawson, R. D.	Pickles, C. A.

Majority of 3 for the Ayes.

Motion thus carried.

STATUTES AMENDMENT (TRUTH IN SENTENCING) BILL

Adjourned debate on second reading.

(Continued from 4 May. Page 746.)

The Hon. C.J. SUMNER (Leader of the Opposition): This is not a truth in sentencing Bill, but the reverse. The reintroduction of discretionary parole detracts from truth in sentencing and creates uncertainty in release dates. The reality is that, for a sentence of over five years between the head sentence which is imposed and between the non-parole period which is set there is a period of discretionary release; that is, release depends on the Parole Board. If that is the case, one cannot have truth in sentencing. What you have is a provision for administrative discretionary release, which is uncertain because it could occur at any time between the non-parole period and the head sentence.

However, one thing that I will have to concede about the Labor proposals, which were introduced in 1983 and which have worked very well since then, is that they are somewhat complex to explain. That is why the Liberal Party has been able to distort the effects of the Labor Party's sentencing laws which were introduced in 1983 and which, as I said, have operated in this State for the past decade and, in my view, have operated very well.

However, the sort of misconceptions that arise not because of what the law does but because of its complexities can be seen in the fact that even our daily newspapers seem not to be able to understand the situation. The *Sunday Mail* of 1 May 1994, in supporting the Liberal Party's so-called truth in sentencing legislation, states:

> Violent criminals—even murderers—are allowed to walk free far earlier than the courts intended.

That is just wrong: untrue, incorrect, wrong; and it is quite incredible that a newspaper editorialist could come to that conclusion, because, under the current system, the prisoner spends in gaol exactly how long the court intended that prisoner to spend in gaol, provided the prisoner is of good behaviour. In imposing the sentence in court, the judge is obliged under the Sentencing Act to tell the prisoner in open court—the prisoner, the press, victims and the public—exactly how long that prisoner will spend in gaol. Provided that prisoner is of good behaviour, that is how long that prisoner spends in gaol. It is definite; it is certain; and it is definitely what the courts intended. So, under Labor's

proposal, under the current legislation, it is just not true to say that murderers are allowed to walk free far earlier than the courts intended.

However, the fact that a newspaper such as the *Sunday Mail* can make that statement may be because, as I said, one of the problems with this legislation has been that it is somewhat complex to explain unless you understand all the ramifications of it, and that has given the opportunity to the Liberal Party to criticise it; in fact, to mislead people about the effect of it. The real debate in this area, and the philosophical debate, is between whether you have a court imposed system of sentencing (where the court effectively determines the sentence for all purposes) or whether you have a system where the courts determine the basic sentence but where there is administrative discretion for prisoners to be released on parole.

Labor's scheme was a court imposed system; the Liberals' scheme is one that involves administrative discretion. Under the current law (the Labor proposals), to illustrate what I said about the court's knowing how long the prisoner will spend in gaol, if the court takes the view, taking into account all the circumstances of the offence, that the prisoner should spend six years in gaol, it will set a non-parole period of nine years, knowing that one third will come off the nine years for remissions for good behaviour—provided that the prisoner is of good behaviour—and may set, for instance, a head sentence beyond that. In a hypothetical example, if the judge wants the prisoner to spend six years in gaol he could construct a sentence in this way: a head sentence of 11 years, a non-parole period of nine years, knowing that one third would be taken off the non-parole period, provided that the prisoner was of good behaviour, thus giving the actual time the prisoner spends in gaol of six years.

That is the way it worked, in simple terms and, when imposing that sentence in court, the judge had to say to the convicted person, 'You will spend six years actually in gaol, provided you are of good behaviour.' If the prisoner is not of good behaviour, the prisoner loses some of those automatic remissions. The other aspect of it is that the court, in imposing the sentence—and this is provided for in the Sentencing Act—must take into account the fact that there is one third off the non-parole period for remissions, provided the prisoner is of good behaviour. So, it is a certain system: there is not any discretionary release involved in it. The only discretion is in the prison administration to take away remissions if the prisoner is not behaving well.

Apart from that, from beginning to end, the sentence is calculated and imposed by the judge; the prisoner knows exactly how long they will spend in gaol; the prison officers know that, the public know it, the media knows it and so on. As I said, while there is certainty in that scheme, it has been presented to the public as a system where prisoners get out earlier than the court intended. I think that I have explained quite clearly that that is not the case. It is a court-imposed system of sentencing with a limited amount of administrative discretion relating to remissions, but no administrative discretion with respect to release after the non-parole period.

The Liberal Party is now proposing to introduce through this Bill a system similar to that which existed prior to 1983 and, in particular, which existed when it was last in Government between 1979 and 1983. There was a system of head sentences and a non-parole period was imposed. If the prisoner wanted to be released after the non-parole period expired and before the head sentence had expired then the prisoner had to apply to the Parole Board for release—that is, by the Parole Board for release which was decided in the discretion of the Parole Board. In other words, there was in fact uncertainty in that system.

We know what happened in the prison system between 1979 and 1982: there was a considerable amount of unrest, there were riots, and buildings at Yatala where burnt down. The situation was most unsatisfactory. There might be some argument about the causes of that unrest, but it has been argued that the uncertainty of the parole system was one of the factors in contributing to that unrest. The uncertainty was that a prisoner would go to the Parole Board, apply for parole and be rejected. They would then, three months later, go back to the Parole Board and be rejected again and that process went on. One prisoner would go to the Parole Board and have his application rejected; another would go to the board and have his application approved. That obviously created uncertainly and also the scope for there to be feelings of injustice within the prison system as some people were being released by the Parole Board using its discretion and other people were being confined in custody.

When this legislation was introduced I pointed out the possibility that this could cause unrest in the prisons. The Minister, Mr Matthew, criticised me and the Labor Party for doing that. However, I make no apologies for it. There was that unrest in the prison system prior to 1983; there were concerns; and we did have discretionary parole. I think it would be irresponsible of me not to point out those facts and not to indicate that this system could contribute to unrest in our prisons. It is not fanciful to say that that could occur. I point it out; I point out the danger; and I put it on the record. Of course, it will be the responsibility of the Government in the future if this uncertainty leads to prison disturbances and disquiet. Of course, it is not just a problem for prisoners, it is also a problem for prison officers, because they have to manage the consequences of discretionary release; that is, the consequences of some prisoners being released on the parole and some not.

In addition to this sentencing regime—which I think was good, if somewhat complex—the approach of the Labor Government to the prison system in its 11 years in Government was commendable. The prison system was significantly upgraded: Adelaide Gaol was closed down after many attempts to do it earlier, Yatala Prison was revamped, Mobilong was built, a new gaol at Port Augusta was built and there was generally a very humane administration of the prison system in accordance with the best standards established by the United Nations and other agencies. One of the major and legitimate criticisms was that the recurrent costs of the prison system in South Australia were too high—higher than other States, and that is acknowledged.

I became Minister of Correctional Services only three months before the election and it was certainly one of the issues that were going to be examined post-election, had we remained in Government. Acknowledging the recurrent running costs of prisons (for reasons I will not go into) as a problem, apart from that people are entitled to look back on the correctional services administration in this State in the decade of the 1980s as being a very good system that was upgraded and administered in a humane way.

There seems to be a naive belief in some sections of the community that this truth in sentencing legislation will resolve the problems of crime and criminality in our community. We know that law and order is a potent weapon, particularly in the hands of conservative Parties, and can be used to get support for tougher sentences and the like. There

is no doubt (and the Labor Party acknowledges this, and acknowledged it during the 1980s) that there is public concern about increasing crime rates and law and order generally, although it is fair to comment that the recent survey by the Australian Bureau of Statistics indicated that perhaps the increase in crime during the 1980s around Australia, and not just in South Australia, was not as great as the recorded police statistics indicate. I will not go into that, but I commend to members for their consideration the recent crime survey conducted by the Australian Bureau of Statistics.

That was a survey carried out and based on asking people whether they had been victims of crime rather than simply relying on police statistics. The survey showed some increases certainly from 1983 to the present time, but nothing like the increases revealed in police statistics. There have been increases certainly in some areas and there is undoubted public concern about crime and law and order. However, many people in the Liberal Party, whether genuinely or just for political reasons (I do not know), have advocated that the matter can be resolved by this truth in sentencing legislation. I have to tell them that nothing could be further from the truth. I will refer to one or two comments in the debate in the House of Assembly. For example, Mr Brokenshire, the member for Mawson, said that the biggest issue in the recent Torrens by-election was law and order and asserted that people wanted truth in sentencing. He stated:

> We have been door-knocking in Torrens. The biggest issue has been law and order.

He further states:

> We all know what happened under Labor: crime went through the roof, along with everything else.

Further, he states:

> The fact of the matter is that truth in sentencing is the deterrent we need.

I will leave aside the implication for the debate of the question, 'If the biggest issue in Torrens was law and order, how was is that we got a 9 per cent swing?' Mr Brokenshire put forward the notion that truth in sentencing is the deterrent we need. I indicate to the honourable member that, if he thinks that sentencing policy or truth in sentencing legislation will deal with the crime problem, he is deluding himself and, more importantly, deluding the public of South Australia. In his contribution the member for Colton said:

> The Liberal Government will be demanding greater discipline from everybody within our community.

They are sentiments often expressed, again on the conservative side of politics, but it is rhetoric. We do not actually see any evidence or any concrete proposals whereby greater discipline can be demanded from the community. Mr Condous, the former distinguished Lord Mayor, makes a somewhat curious statement when he says he believes that the Liberal Government can demand greater discipline from everybody within the community, without saying how that will occur. Mr Brindal, the member for Unley, in the same vein, said:

> The breakdown in law and order is related directly to what the Labor Government did in terms of the lack of employment, community expectations and the breakdown of the social fabric of our society.

I do not want to downgrade the importance of this issue in the community, but I suggest to those members that it is a somewhat more complex issue than that which they indicated in the quotes that I have read to the Council. What they indicate is an extreme naivety in relation to this issue. Alternatively, if they are just statements that are being made for political purposes, and if they are just political statements designed to garner votes and not deal with the real issues, I suppose that is an approach that politicians often take. However, if they think that the resort to those law and order slogans and statements will deal with the crime problem then, as I said, they are deluding themselves and the public. To say that truth in sentencing legislation will reduce the crime rate is in fact a fraud on the public of South Australia.

The reality is that the causes of crime are much more complex than is often portrayed in the media or by some politicians. The problem of the crime rate will not be resolved by simple appeals to discipline the fabric of society or to increase sentences. We have seen that quite clearly in the international experience. In the 1980s, Margaret Thatcher was the Prime Minister of the United Kingdom and she was unashamedly a conservative politician. She got into Government, one of her programs being a strong law and order approach to crime issues. She talked about values, the fabric of society, etc., and yet we know that during the 1980s crime rates in Britain increased as much as, if not more than, they increased in South Australia.

We saw John Major, her successor, develop a 'back to basics' program—one plank of which was a law and order plank—yet crime rates have still increased in Britain. We saw the same phenomenon in the United States with President Reagan, again from the same ideological stable, the same sorts of rhetoric, but crime rates in the United States increased significantly in the 1980s, more than in many countries and higher rates than occurred here. A simple recourse to those sorts of slogans has not worked. They have been made to appease the electorate but they have not actually worked in reducing crime, which is why Labor has adopted a two-pronged attack to dealing with criminal issues.

I would like to put on the record the approach which the Labor Party took to crime and law and order issues during the decade of the 1980s. The Labor Government gave a high priority to dealing with crime rates, vandalism and violence in our community. This was done by:

(i) a crime prevention program involving the whole community;

(ii) improving the criminal justice system with increased police resources and powers and increased sentences and reform of the criminal law;

(iii) supporting victims of crime.

CRIME PREVENTION

South Australia, like other States and Western nations has been experiencing increases in reported crimes in the past few decades. Increasing penalties on its own is not enough to deter or prevent crime. In the United States, for example, more than one million people are in gaol, which is six times higher *per capita* than in South Australia, yet their crime rate, particularly violent crime, is generally higher than ours. In addition, many States in the United States have the death penalty which has not significantly reduced the incidence of crime. Although the police and criminal justice system (the courts and corrective services) are essential to the fight against crime, it is necessary to involve the community to effectively beat crime.

It is now well-acknowledged throughout the world that growing crime rates cannot be dealt with by police, courts and corrections alone. While these traditional means of dealing with crime remain the cornerstone of the criminal justice system, if we are to rely solely on them to reduce crime we would certainly fail. Instead, it must be a problem that is addressed by the community as a whole. To prevent crime, we must first understand its causes and effects and

then enlist the help of the community. That was the basis of the Government's five-year $10 million Crime Prevention Strategy, launched in August 1989.

Since that time, much has been achieved, with encouraging results. This includes:

· the creation of 22 community crime prevention committees throughout the State. Each of these has looked closely at crime problems specific to their district and developed (or are in the process of developing) strategies to prevent the problems that give rise to crime.

· the development of specific crime prevention initiatives such as:

· the development of a program for police to print crime maps of a range of crimes anywhere in the State;

· a project to assist the elderly with security in their homes;

· a study to assist urban designers in 'designing out' opportunities for crime to occur in urban areas;

· a number of anti-graffiti projects;

· alternative youth programs, such as 'Street Legal', which allow young car theft offenders to channel their energies into legal car racing activities;

· extending the Neighbourhood Watch Scheme (of which there are now 367 areas) into a number of other schemes such as Rural Watch, School Watch, Business Watch, Taxi Watch, Hospital Watch etc. The South Australian Crime Prevention Strategy (Together Against Crime) is being used as a model in other Australian States.

THE CRIMINAL JUSTICE SYSTEM

Police Resources

· South Australia has the highest number of police per capita than any other State in Australia (1 per 399 people) as at August 1993.

· In June 1986 active police strength was 3 185; in June 1990 it was 3 404 and in May 1993 it was 3 640. This figure does not include the marked increase in non-police personnel working in the police force (136), non-active police officers (22), Aboriginal police aides (28) or police cadets (88) at the time of the last budget;

· More than 200 police have been added to the SA Police force since June 1989;

· The 1990-91 budget allowed for an extra seven Aboriginal police officers to work out of Port Augusta and in the northern suburbs. A further 14 have been placed throughout the State;

· New police stations have been or are being built at Elizabeth, Port Augusta, Goolwa, and Salisbury and extensions are being carried out to the Murray Bridge office and weapons training facility at Fort Largs;

· Police powers have recently been increased. Police can now:

· tap telephones with a warrant when investigating serious crimes;

· stop, search, detain and interview people for four hours without charging and for a further four hours with a Magistrate's order;

· erect roadblocks and cordon off areas when a serious crime has been or is suspected of being committed;

· Penalties for assault police have been increased from a $200 fine and 12 months gaol to $8 000 and two years gaol;

· Police have access to and have used monies from the Crime Prevention Program to fund alternative youth programs, such as the Blue Light Movement, as well as trial the Problem Oriented Policing Strategy.

SENTENCING AND PENALTIES

· In 1986, penalties provided in the Summary Offences Act were increased. For example, fraud and unlawful possession of property had their penalties increased by between 100 and 400 per cent.

· Levels of sentences for armed robbery have increased, and homicide sentences have increased by 50 per cent in the last 10 years. The actual time spent in prison has also increased and offenders are now spending more time in gaol than before due to a general increase in penalties.

· If sentences are too light, the Attorney-General can and has appealed on more than 140 occasions, 50 per cent of which have been upheld. As from July 1 1992, the Director of Public Prosecutions (DPP) has been responsible for Crown Appeals.

· Increased penalties provided for drug trafficking and cause death by dangerous driving.

· Penalties for car theft and illegal use were recently doubled to a maximum of two years imprisonment for a first offence and for subsequent offences, not less than three months or more than four years. Offenders now also have their driving licence suspended for 12 months.

· Penalties for graffiti offences were also increased as part of the Government's tough new anti-graffiti strategy. Vandals now face maximum penalties of $2 000 or six months gaol for illegal 'tags' and for carrying a graffiti implement with the intention of using it for illegal graffiti.

JUVENILE JUSTICE

Youth crime has received great attention in South Australia in recent years but according to the latest statistics available from the Children's Court Advisory Committee, youth crime is actually dropping. Its 1991-92 report shows the total number of offences and offenders decreased by about seven per cent from the previous year and that the number of first time offenders decreased by 27 per cent from the previous year. Also, children charged with violent offences decreased by 16 per cent from the previous year. Nonetheless, as part of the Labor Government's commitment to reducing youth crime, three new Acts were passed.

· The Acts have recently been proclaimed (at the beginning of this year) which increase maximum penalties for youth offenders from two years detention to three years, and give families a greater involvement in the settling of punishments for their children. The Acts also return police to the central role in the juvenile justice system. The Acts are the result of recommendations of the Juvenile Justice Select Committee which sat in open and travelled all over the State for more than 12 months before making its final report. The Acts were:

· The Young Offenders Act, which ensures that a youth's prime responsibility is to be made aware of obligations under the law and of the consequences of breaking the law. Sanctions imposed must now be sufficiently severe to provide an appropriate level of deterrence. It also ensures the community and individuals must be adequately protected against their violent and wrongful acts.

· the Act also renames the Children's Court to the Youth Court of South Australia

· it gives stronger protection to the rights of victims

· it abolishes Screening Panels and Children's Aid Panels

· it allows police to administer cautions to youths, which can require compensation to a victim, community service up to 75 hours and for apologies to be made to the victims, or anything else appropriate

· it allows for Family Group Conferences which can impose community service orders of up to 300 hours and give

wider involvement of voluntary organisations such as churches, youth groups etc.

· it gives courts wider powers to sentence and deal with youths as adults.

· The Youth Court Act establishes the Youth Court with the Senior Judge as the principal judicial officer of the Court. It gives police the power to appeal inadequate sentences, as well as streamlining the appeal process generally.

· The Education (Truancy) Amendment Act ensures that truancy remains a care and protection matter but where truancy is coupled with an offence, the youth will be dealt with in conjunction with the provisions of the Young Offenders Act. It also means all teachers will be required to take all practicable action to ensure students attend school. It gives authorised officers, such as police, teachers and education officers the power to take a child absent from school without adequate reason to the school or to the child's parent or guardian.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Teachers are out—we have the wrong information.

PARENTAL RESPONSIBILITY

On three occasions, as Attorney-General I introduced amendments to the Wrongs Act which would have had the effect of increasing parental responsibility for criminal behaviour of their children. This was attempted again as part of the recent Young Offenders Act passed in Parliament last year—part of the juvenile justice package. Unfortunately, the Liberals and the Democrats have been successful in rejecting all attempts to make those parents who have taken little or no responsibility over their children's behaviour liable, and to allow the Youth Court to order them to pay for the damage or loss caused by their children's criminal activity.

CRIMINAL LAW REFORM

The following changes were made by the former Labor Government to the criminal law to complement a strong enforcement policy:

- abolition of unsworn statements
- law on self defence changed to allow greater rights for those defending themselves against intruders in their own homes
- provision that illegally-obtained assets and cash of convicted persons can be confiscated and paid into the Criminal Injuries Compensation Fund
- provision to require courts to specify the actual time a convicted person will spend in gaol, irrespective of what the head sentence or non-parole period is. At the time a court sentences a prisoner, the judge or magistrate is aware of exactly how long the prisoner will spend in gaol provided that the prisoner is of good behaviour
- the Bail Act was changed to allow the Crown the right to appeal against the granting of bail, especially for particularly violent offences like rape and attempted rape
- child sexual abuse victims and vulnerable witnesses generally have been offered greater protection in courts when giving evidence. Under new legislation, courts will be able to provide a series of options in which evidence can be taken from vulnerable witnesses including screens, one-way mirrors and closed-circuit television
- the obligation of a judge to warn the jury that it is unsafe to convict on the uncorroborated evidence of a child or on the uncorroborated evidence of a complainant in a sexual case has been removed. This ensures that women and children are no longer second class witnesses.
- help for victims of domestic violence has been enhanced by amending legislation to ensure courts can issue restraint orders to police by telephone outside of normal court hours. Amendments also mean restraint orders made interstate are recognised and enforced in South Australia and vice versa and that courts can confiscate firearms and cancel firearms licences in certain domestic violence situations.

VICTIMS OF CRIME

The Labor Government led the way in Australia in assisting victims of crime. It was the first State Government to recognise the trauma, humiliation, and agony suffered by victims, and South Australia's record in providing support and compensation to victims of criminal assault is now widely recognised.

Some of the features of the State's victims policy are:

- $50 000 maximum payment for financial losses, pain and suffering
- $3 000 maximum for funeral expenses
- preparation of victim impact statements for courts for consideration when sentencing the offender
- support for Victims Compensation Fund
- courts are to give priority to the payment of compensation by the offender directly to the victim.

CAPITAL PUNISHMENT

The issue of capital punishment is often raised in this context, and I would like to put on record the Labor Party's policy. The Labor Party has a policy not to re-introduce the death penalty in this State as it has the view that capital punishment is premeditated intentional killing sanctioned by the State. To consider such a penalty in a civilised society would require further evidence that capital punishment had a deterrent effect. In fact, most research shows that the death penalty has no effect on the homicide rate. In 1981 the Office of Crime Statistics produced a detailed report on homicide. It showed that the abolition of the death penalty in 1976 in South Australia had no effect on homicide trends. Further, statistical figures from 1978 to 1980 show that 53 per cent of homicides during that period were committed by close relatives or friends, with a further 28 per cent being committed by acquaintances. The figures show that many deaths therefore occur in heated emotional circumstances where the threat of the death penalty is no deterrent.

Further, the justice system is not completely infallible. It would be a tragedy if a wrongful conviction led to an innocent person's death because of a death penalty sentence. There have been examples of this in other countries.

That is a summary of initiatives taken over the past decade by the Labor Government dealing with crime, law and order and sentencing. What I wanted to emphasise and what that clearly shows is that you have to complement enforcement through the police, the courts and corrections with broad-based crime prevention programs. The Labor Government's program introduced in 1989 is something that has been examined around Australia. It is now the subject of a review which will report shortly, and I hope that the new Liberal Government sets aside its rhetoric in this area which is all very well in some quarters but which, if it is believed, will probably not lead to a reduction in crime unless it is complemented with broad-based crime prevention.

When the crime prevention strategy was introduced, a conference was organised by the Crime Prevention Policy

Unit within the Attorney-General's Department, and I would commend the record of that conference, which included an international expert and a number of South Australians talking about the principles of crime prevention. In a speech I gave at that time I had this to say about the issue—which I think is also worth putting on the record in the context of this debate, and in the context of the argument that I am making about looking at increased sentences as being a simplistic panacea to a reduction in crime rates. I stated:

Broadly crime prevention should be pursued in three ways:

1. Through the criminal justice system, that is, through the traditional method of the enforcement of the criminal law and the deterrent effect that has.

2. By reducing opportunity, designing out crime and eliminating precipitating factors such as drugs and alcohol, that is, by analysing the circumstances in which crimes are committed and changing them to reduce the opportunity for crime.

3. By establishing means to reinforce the core values of our society so that we take greater personal and community responsibility for our actions.

That picks up the whole spectrum of issues that are necessary in this area. There is little point in simple populist sloganising in this area if you want to achieve results. It may achieve the result of getting a Government elected, but I would hope that the Government at least, if not its backbenchers, could be more sophisticated in dealing with this issue. I look forward to their approach to a review of the crime prevention strategy.

In summary, first, the Bill will not be a panacea for increasing crime rates. Secondly, it is not a truth in sentencing Bill, as it has been touted. In fact, it introduces uncertainty in sentencing. It does have the potential to increase unrest in prisons. It has been admitted that there will be more prisoners in gaol as a result of this proposal, even though judges will have to take into account that there is no automatic one third remission off the non-parole period; and the Minister has admitted that there will be more prisoners in gaol.

In the argument about how many, the Minister said there could be about 300, but my guess is that that will probably prove to be a conservative estimate. In the context of the Bill, while there is an admission of more prisoners, there is no commitment to increased funding to house those prisoners, and that in itself may cause overcrowding and exacerbate problems of unrest. The proposals seem to reduce country services again. The proposals floated see Cadell and Port Lincoln prison done away with. They are matters the Government will have to deal with, but it is disappointing that there are no commitments to funding or a firm proposal to deal with the problems that will undoubtedly arise from this legislation.

Finally, I give a caution about the administrative means introduced for dealing with discipline, that is, doing away with the disciplinary effect of taking remissions away from prisoners and imposing monetary penalties by the prison management. That also has the potential to cause disturbance and unrest in the system. The Labor Party indicated in the House of Assembly that it will not vote against this legislation. We oppose it but we will not vote against it because it is an issue that the Liberal Party has put forward on many occasions in the past decade. It was clearly put forward as part of its election campaign policies prior to December. As I said, although we will not vote against it, we oppose it.

Apart from trying to get a bit more sophistication into the debate about this issue, I have tried to point out the dangers in the legislation, and I hope that those dangers do not come to pass, but the potential is there for it. I urge the Government not to believe its own rhetoric, if that is what it does, that this legislation in itself will somehow or other resolve the problems of criminality in our community.

The Hon. SANDRA KANCK: If it ain't broke, don't fix it. That is a saying that this Government has obviously never heard of, because we currently have a system which works and which is maintaining peace in our gaols, and this Government will throw it all away. The Democrats are appalled by this Bill, first, because it has a primary purpose of removing remissions and, secondly, because it is making it a little harder to get home detention for prisoners who would be able to cope with it. It is a populist approach; it is very much media led. We see so often that when a judge hands down a sentence he will say, 'You have X period for your sentence and Y for parole', and very shortly the media are out running stories saying how dreadful this is. It is a very distorted view of reality, because the judges know that the remissions are built into the system and they bring down sentences accordingly. That is shown in the Bill where there is now an instruction to the judges to take account of the fact that there are not remissions.

If the Government truly believes that the sentences for certain crimes are not tough enough, it should be amending appropriate legislation or introducing regulations to ensure they are tougher. The real problem is the language that is used. A particular example is what people hear when a judge gives a sentence; a judge might say, 'Okay, you have eight years imprisonment for this.' That is what the public hears. I am using 'he' deliberately, because we lack women on the bench of the Supreme Court. We will say 'she or he' in the hope that at some time in the future we have some women in the Supreme Court.

The Hon. Diana Laidlaw: There are, and they should be acknowledged.

The Hon. SANDRA KANCK: That is right; I had forgotten that. We will say 'she or he'. She or he says that the prisoner is sentenced to eight years with a non-parole period of five years. What the public hears is the eight years; then, when the parole comes up with remissions, people feel that the person has not served an adequate part of their term. It is really a question of how one uses the language. If for instance judges were able to determine that a person will serve a minimum term (whatever it might be) which takes into account parole and/or remissions and a maximum term (whatever that is), there would not be that confusion.

I am sure members will recall an ABC TV documentary on prisons a few years ago. It was a very major documentary which ran over two or three nights. I remember one of the officers from Bathurst gaol being interviewed about what had happened in the riots in the early 1970s, and he said that prison officers have control of our prisons only because the prisoners agree to let them. The prisoners have the numbers and the power, and the prison officers have that control only because the prisoners let them. We are very much aware of the riots at Yatala and the burning down of a division in 1983 before remissions were reduced, and it is quite clear that the remission system has kept our prisons at least minimally civilised.

At one stage in my past I was a teacher. When doing their training, most teachers learn something about basic stimulus response theory, which says that, if a child cannot get acknowledgment for good behaviour (called positive reinforcement), she or he will go for bad behaviour (called negative reinforcement) rather than be ignored. At teachers college we were taught that about children, but it applies

equally well for adults. The removal of remissions will re-establish and acknowledge the negative behaviour—the non-compliance and provocations which were part of the day-to-day existence of prisoners prior to the introduction of remissions. We need to look at the role of imprisonment. There is the aspect of vengeance versus rehabilitation, and perhaps prisons can do both these things. As we have had them, remissions have been a carrot for prisoners' good behaviour. I know that many members in this place are avid readers of the *Adelaide Review* and Lorenzo Lasch in the latest edition says:

> Someone should explain to the Minister—

that is the Minister for Correctional Services—

> that inmates are imprisoned as punishment, not for punishment.

The Democrat philosophy on policy and penal form emphasises this. I was interested to read in the *Hansard* report of a debate in the other place the very uninformed view that the Democrats are soft on criminals. Let me assure you that is not the case. Vengeance is something that I think we all feel a desire for. On Thursday when I heard about the 12-year old girl who had been raped on her way to school, the thoughts that came into my mind—if I was actually to speak them aloud—would cause most of the men in this Council at least to wince if not to close their eyes. The Government does not have some sort of franchise on vengeance.

I hold a view that brutality simply leads to brutality. I am not saying that prisoners should be given a soft ride, but we must recognise that the essence of imprisonment is the loss of freedom, not the harshness of the facilities or the treatment. Prisoners are punished every minute of every day by their exclusion from normal society. They cannot go and have a beer when they feel like it. They cannot make themselves a cup of coffee when they want, and they cannot go shopping. Someone else determines what time the lights go out, what time they wake up in the morning and so on. Prisons must be for rehabilitation as well as for punishment, because eventually most prisoners will leave prison and they are supposed to come out into our society better able to fit back and mix with the rest of us. If the message they get is that good behaviour is not rewarded, what expectations can we have of these people when they are discharged from prison back into society? They are more likely to return to anti-social behaviour.

At the time remissions were introduced some years ago, I was working as an assistant to the Hon. Ian Gilfillan, and I recall a letter from a prisoner which said:

> If you treat prisoners like animals they will behave like animals.

The prisoner went on in that letter actually to document some of the animal behaviour that was occurring because of the treatment they were receiving. I refer again to this month's edition of the *Adelaide Review* in which Lorenzo Lasch says:

> You treat all crims like murdering mongrels and most of them will start living up to the reputation. . . Treating serial murderers like they're car thieves is bloody stupid—but only slightly more stupid than treating car thieves like serial killers.

This Bill makes that mistake by removing incentives for good behaviour.

I turn now to the issue of home detention. Currently one-third of the sentence has to be served before a prisoner can be considered for home detention, and this Bill increases that to one-half, making it more difficult. Home detention is one way of gradually reintroducing a prisoner into normal society. It is not available to all prisoners. At the moment, it is used selectively after very careful screening and assessment to determine whether prisoners are suitable. As I read the media coverage of this, I note that the Minister says that it will not be available for violent prisoners: that will be coming out later in regulations. There is an assumption that, once having committed a violent crime, one will remain violent, yet that is not the case. There are so-called crimes of passion in relation to which people who are not inherently violent will murder someone but there is no evidence that they will continue to be a murderer or be violent when they get out of prison. We have had a number of examples in recent years where women who have been victims of domestic violence—years of continual battering and psychological violence—have eventually murdered their husbands. Those women are not murderers, and I would say that such people would be very suitable for home detention having served their minimum time in prison.

The other positive aspect of home detention is that it relieves some of the pressures for accommodation in our prisons. The assumption seems to be that those who have been given home detention are abusing it, but the Government has not produced any evidence to show that is the case.

I am bitterly disappointed by the Opposition's stand on this matter. The Hon. Mr Sumner spoke eloquently and gave all the reasons why the Bill should not be supported. The Opposition grandstands, on the one hand, but it is not prepared to stand up for humane treatment. The eloquence with which the Hon. Mr Sumner spoke in this Chamber was exceeded only by comments that he has made outside this place. He was quoted in the *Advertiser* as saying:

> It is a recipe for chaos, a recipe for unrest, a recipe for disaster.

The Democrats totally agree with that and find it incomprehensible that the Opposition will let this Bill go through. The reason given is that the Government had campaigned strongly on the issue during the election. I will give the reasons why I think the Opposition will let the Bill go through, and they are very pragmatic reasons. The Hon. Mr Sumner is right: it will be a recipe for chaos, unrest and disaster. It will lead to definite unrest in our prisons, instability in the prison system and it will create a view among the public that the Government is not in control of its prison system. It will probably lead to the removal of the present Minister and create some instability within the Liberal Party with the jockeying that will go on for positions and the resultant alteration of portfolios amongst Ministers. Those are the reasons why the Opposition will let this Bill go through.

As a result of that, originally I intended to divide on second reading. In view of the very important negotiations going on outside this Chamber on the industrial relations legislation, I will not seek to divide. However, as I believe this to be a backward step, the Democrats will oppose the second reading.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank honourable members for their contributions to the second reading debate on this Bill. I do not want to be unduly provocative, particularly as we want to complete the remaining items on the Notice Paper—

The Hon. C.J. Sumner: I was not provocative.

The Hon. R.I. LUCAS: Earlier you were just marginally in relation to gold medals for back flips by the Attorney-General in relation to—

The Hon. C.J. Sumner: It was a different Bill.

The Hon. R.I. LUCAS: Exactly. Earlier today the Leader of the Opposition was somewhat critical and said that the Attorney-General and the Government could win a gold medal for back flips in relation to their attitude on a previous piece of legislation.

The Hon. Sandra Kanck: Are you going to award it to the Opposition?

The Hon. R.I. LUCAS: I was going to say that, if gold medals are to be awarded, indeed a gold medal would need to be awarded to the Leader of the Opposition, given his attitude to this legislation. Whilst the Leader of the Opposition was critical of the Attorney-General for doing a back flip in the space of 12 months, he has managed to do a back flip in the space of three weeks.

The Hon. C.J. Sumner: We could also talk about mandates.

The Hon. R.I. LUCAS: Well, we could talk about mandates, and we would have spoken longer, harder and louder about the industrial relations legislation than truth in sentencing. It is an interesting interpretation of 'mandate' if the Leader of the Opposition is suggesting that the Labor Party's attitude to truth in sentencing is governed by its interpretation of the Government's mandate. If that were the real reason, clearly the Leader of the Opposition would be supporting the Government on industrial relations, WorkCover and, indeed, the abolition of compulsory voting legislation. If gold medals are to be awarded to anybody, I would award a gold medal to the Leader of the Opposition for having managed his back flip within the space of three weeks.

The Hon. C.J. Sumner: I have never said that we would oppose.

The Hon. R.I. LUCAS: I am sure the 200 000 *Advertiser* readers and listeners to radio interviews during that first 24-hour flush when the Leader of the Opposition said that this was going to be a disaster—

The Hon. C.J. Sumner: That's right; that is just what I have said. I have repeated it all along.

The Hon. R.I. LUCAS: The Leader of the Opposition's position, as I understand it, is that he opposes the Bill but will vote for it. That is a fair description of the Leader of the Opposition's position.

The Hon. L.H. Davis: Sounds a bit like Lance Milne.

The Hon. R.I. LUCAS: The Hon. Legh Davis has made a pertinent interjection. The position of the Leader of the Opposition is interesting: he has put to this Chamber that he opposes the measure, and he has said that it will be a disaster in South Australia but, nevertheless, he will support the legislation in the Parliament. As I said, at this stage of the proceedings, I do not want to be unduly provocative. Therefore, I do not intend to be, but I am sure that the Leader of the Opposition would have thought less of me had I not taken the opportunity at least to place on the record the Government's view of the predicament in which the Leader of the Opposition finds himself in relation to his attitude to the legislation.

The Hon. Sandra Kanck was kind enough to indicate at the second reading stage that she had a number of questions that she was going to pursue. Some of those she touched on, and others she was going to touch on in Committee. Just to assist the process, I thought I might address some of those questions in my reply to the second reading and provide some information to the honourable member. If, indeed, when we get into Committee she requires further information, if she would like to put that request on the record I will endeavour to get the information from the Minister's office back to her as expeditiously as possible. In relation to clause 5, the Hon. Ms Kanck asked:

> If the rehabilitation programs which the Government has promised are successful and prisoners convicted of violent offences are demonstrating they have reformed, will the Government consider relaxing some of the restrictions now being placed on home detention?

At this stage, the reply that I have on behalf of the Government is that obviously home detention will be kept under review, and rehabilitation of prisoners taken into account in assessing prisoners' eligibility for home detention. In relation to clause 6, the honourable member asked:

> Prison managers have to give notice in writing; prisoners have to respond in writing. How will those prisoners who are illiterate or not fluent in the English language be catered for?

The response is that prisoners who are illiterate or not fluent will be helped by staff. Current management principles provide that staff must assist and support prisoners in relation to these matters. The question in relation to clause 7 is:

> How much money are we talking about?

The answer is that the amount prescribed will be $25. This equates to the weekly salary of a prisoner in a working division in the prison. With regard to clause 8, her question is:

> How often does the visiting tribunal visit in each of the State prisons?

Our answer is that visiting inspectors are at the call of prisoners, some of whom are also members of the visiting tribunal. The tribunal attends as needs be. Through the Minister's office, we will provide the honourable member with actual figures in writing, if that is what she wishes. I take it that is the honourable member's wish, and on behalf of the Minister I undertake to provide that information to the honourable member. That is all I need to say in relation to the reply to the second read reading.

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

JOINT COMMITTEE ON THE FUTURE DEVELOPMENT AND CONSERVATION OF SOUTH AUSTRALIA'S LIVING RESOURCES

The House of Assembly transmitted the following resolution in which it requested the concurrence of the Legislative Council:

That a joint committee be appointed—

(a) to inquire into the future development and conservation of South Australia's living resources;

(b) to recommend broad strategic directions and policies for the conservation and development of South Australia's living resources from now and into the twenty-first century;

(c) to recommend how its report could be incorporated into a State conservation strategy;

(d) to give opportunity for the taking of evidence from a wide range of interest including industry, commerce and conservation representatives as well as Government departments and statutory authorities in the formulation of its report; and

(e) to report to Parliament with its findings and recommendations by December 1994, and, in the event of the joint committee being appointed, the House of Assembly be represented thereon by three members, of whom two shall form a quorum of the Assembly members necessary to be present at all sittings of the committee.

The Hon. DIANA LAIDLAW (Minister for Transport): I move:

That the Legislative Council concur in the resolution of the House of Assembly for the appointment of a joint committee on the future development and conservation of South Australia's living resources; that the Council be represented on the committee by three members, of whom two shall form a quorum necessary to be present at all sittings of the committee; and that the members of the joint committee to represent the Legislative Council be the Hon. Michael Elliott, the Hon. Carolyn Pickles and the Hon. Caroline Schaefer.

The Hon. CAROLYN PICKLES: The Opposition supports this motion. We hope that the Government will take

this issue seriously and provide adequate research facilities to deal with the question. I am somewhat concerned at the number of select committees that have been set up in the past few weeks by the Government (with the concurrence of the Australian Democrats and the Opposition), and I really do not believe that the Parliament has the proper research facilities to deal with all these issues. A committee was set up the other day to look at women in Parliament, which is another very important committee, and I am sure we will need to be looking to the Government to provide extra research facilities for that one.

The Hon. Diana Laidlaw interjecting:

The Hon. CAROLYN PICKLES: The Minister is indicating that extra research facilities will be provided. The date for the reporting back of this committee has been put at December 1994, which might be somewhat early. It probably will take longer to get all committee members together over the long break and hear the number of people whom I know will be interested giving evidence to this committee. Although the Opposition supports this committee, it is somewhat unusual to develop a conservation strategy by committee. Nevertheless, if this is a new procedure we support it in essence, and I must say that two former Ministers for the Environment for whom I worked probably did not need to have conservation strategies developed by committee process. But I am not opposed to the public having an input into this issue.

The Hon. Diana Laidlaw interjecting:

The Hon. CAROLYN PICKLES: I was going on to say that I hope the committee can have a tripartisan approach. I note that the environment is probably the most important issue facing Australia or the world today. Only a couple of weeks ago, I was listening to a visiting lecturer on the environment who indicated that at the present rate of growth the world population in 25 years will almost treble. That is a frightening thought indeed, because already the world cannot support the population it has. Although Australia has a very small population, we can no longer consider ourselves to be isolationists. We have a very fragile environment that must be protected at all times.

I have already discussed the setting up of this committee with a number of conservation groups, who indicated a strong interest in giving evidence to the committee. I hope that, as the Minister has indicated, there will be adequate research facilities—

The Hon. Diana Laidlaw interjecting:

The Hon. CAROLYN PICKLES: Maybe I should seek an undertaking from the Minister for the Environment and Natural Resources that he will also provide adequate research facilities to this committee to ensure that its workings will be facilitated and that we have before us a wide range of research papers from not just Australia but also throughout the world so that the committee can look at this issue in a serious manner and not just as piece of window dressing. The Opposition is pleased to support the motion.

The Hon. SANDRA KANCK: At the time the Governor addressed this Parliament I was delighted to see in her speech the commitment:

> My Government will move for a joint committee of both Houses of Parliament to develop a State conservation strategy. This strategy, to be based on principles of ecologically sustainable development, will focus on the future development and conservation of South Australia's living resources.

In my address in reply contribution I particularly drew attention to that. I share the concerns that the Hon. Carolyn Pickles has mentioned in that there seems to be a tendency to try to do everything through committees at present, when there are other procedures. However, given all the sorts of things that are being referred to different committees, this one has to be the most vital.

Not everyone will be familiar with the principles of ecologically sustainable development. I intend to read those principles into *Hansard* because they are so important. Although this issue is normally handled by my colleague the Hon. Mike Elliott, when he asked me to do this I was able to go straight to my office and take off my notice board a document entitled 'Australia's goal, objectives and guiding principles for the ESD strategy'. This strategy was agreed at the Council of Australian Governments' meeting of 7 December 1992. So, is it something that South Australia has already agreed to. The document states:

> Australia's goal, objectives and guiding principles for the ESD strategy:
>
> The goal is:
>
> Development that improves the total quality of life both now and in the future in a way that maintains the ecological processes on which life depends.

That is exciting if this is what the strategy will be built on. The document continues:

> The core objectives are:
>
> . To enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations.
> . To provide for equity within and between generations. To protect biological diversity and maintain essential ecological processes and life-support systems.

Perhaps members now understand why I am so excited about this. The document further states:

> The guiding principles are:
>
> . Decision making processes should effectively integrate both long and short-term economic, environmental, social and equity considerations;
> . Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the past there have been parliamentarians around this country who have argued that we should not take action on the greenhouse effect because they have not got that incontrovertible proof. One of the principles of ESD is that we should not stop taking action just because the proof is not incontrovertible. The guiding principles continue:

> · The global dimension of environmental impacts of actions and policies should be recognised and considered.

So, the decisions we make here in South Australia should be looked at in terms of their global impact. It continues:

> · The need to develop a strong, growing and diversified economy which can enhance the capacity for environmental protection should be recognised.
>
> · The need to maintain and enhance international competitiveness in an environmentally sound manner should be recognised.
>
> · Cost-effective and flexible policy instruments should be adopted, such an improved valuation, pricing and incentive mechanisms.

I remember when the Liberals, as part of their GST package, promised a drop in petrol prices. I strongly criticised that because it is giving bad messages to the public about the use of fuel. Here is an ESD principle that says that we need to take that into account. The final principle states:

> · Decisions and actions should provide for broad community involvement on issues which affect them.

We had 2020 Vision, a process of public consultation put in place by the former Government: everyone in the environment movement got very excited at the time, but in the end the input was not considered in the final Bill that came

through this Parliament. The document I am quoting is saying that the community's views should be heard and, although it does not say 'acted on', I believe that is implicit in it, in the light of the other principles. The statement concludes:

These guiding principles and core objectives need to be considered as a package. No objective or principle should predominate over the others. A balanced approach is required that takes into account all these objectives and principles to pursue the goal of ESD.

Hence my excitement at the reference here, even though I am not certain that the committee is quite the way to go. Of course, it will be a strategy and, obviously, will not be binding on the Government. However, the process of getting views together and of people on the committee actually hearing all the views and coming up with that strategy will, at the very least, educate the members of the committee and probably put pressure on the Government to uphold the principles of ecologically sustainable development. The Democrats have pleasure in supporting the motion.

The Hon. DIANA LAIDLAW (Minister for Transport): I thank all who have participated in discussing this message from the House of Assembly. The resources will be provided through the Minister's office so that the committee is well served at least with research assistants, secretarial and administrative assistance generally provided from this place.

It is important to reflect generally on the reasons why the Government has resolved to work this way in the development of the strategy. It was considered that, instead of developing it in isolation of a department with faceless people (credible but faceless to the public), it would be much better if the Parliament was involved in this issue and many people in the community could then see that Parliament was taking this issue most seriously and that we were aiming not only to address the issue at the highest level but also to do so on not just a bipartisan but a tripartite basis. That has been the approach to this important issue of conservation of our living resources. The Government is pleased to learn of the support from all members.

Motion carried.

FORESTRY (ABOLITION OF BOARD) AMENDMENT BILL

Adjourned debate on second reading

(Continued from 4 May. Page 741.)

The Hon. CAROLYN PICKLES: The Opposition supports this Bill, which was introduced in another place. It has been debated in the other place and, due to the lateness of the session, I do not intend to speak any further on it.

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

STATUTES REPEAL (OBSOLETE AGRICULTURAL ACTS) BILL

Adjourned debate on second reading.

(Continued from 11 May. Page 942.)

The Hon. CAROLYN PICKLES: The Opposition supports this Bill, which provides for the abolition of four Acts and tidies up primary industries legislation. The Bill has been introduced in another place and has been debated in that place, therefore I do not wish to add anything further to the debate. While I am on my feet I wish to make a comment about the sittings of Parliament. We need to take some account in the future sessions about the long sittings of Parliament. It is quite ridiculous for anyone to expect members of Parliament, staff, and particularly the table staff, to work these extraordinarily long hours. We have had some warnings about the health of people working in this place. We have already had the unfortunate death of one honourable member in this place, and, in recent times, we have seen that in the United Kingdom the Leader of the Opposition has died of a heart attack.

This should be a timely warning to all of us that we have a responsible job. Not very often do members of the public take account of the kind of work we do in this Chamber. I do believe that these long sittings late into the night, night after night, are detrimental to the health of the people working in this building. We need to have exercise; we need to have fresh air; and we need to have sleep in order to remain fresh and intelligent. I do not think that very intelligent decisions take place at 1 o'clock in the morning when people have not had very much sleep. I would ask the Government to pace itself in the next session of Parliament so that we are not sitting here and doing legislation by exhaustion.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank the honourable member for her support to the legislation. I note her comments in relation to the programming of the Parliament, and, as I indicated earlier today on another measure, I will refer a copy of that to her later on; I will not repeat it again. I concur with her comments and we will certainly do all we can in relation to the August to December session. I thank the honourable member for her support for the legislation.

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

SITTINGS AND BUSINESS

The PRESIDENT: Before the sittings are suspended, I would like to make one comment. The Hon. Carolyn Pickles raised the fact that we have been here long hours. One of the reasons for that is the alterations that are being made to the Parliament building. As from about 9 a.m. tomorrow, which was supposed to be 9 a.m. today, there will be no air-conditioning or lighting in this Chamber, and that will continue for about two weeks. As it comes under my purview, I apologise for that, but that is one of the reasons for the later than usual times.

[Sitting suspended from 1.6 to 5 p.m.]

LIQUOR LICENSING (GAMING MACHINES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 April. Page 551.)

The Hon. T. CROTHERS: I indicate that, in addition to speaking in this second reading debate on the Bill, I will also move an amendment in Committee. At, that time I will speak as briefly as I possibly can to the amendment, given the time constraints involved.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Club licence.'

The Hon. T. CROTHERS: On behalf of the Hon. Mr Sumner, I move:

Page 2, line 1—Leave out 'subsection' and insert—'subsections:

(5A) Where a licensing authority endorses a licence under subsection (5)(d) to authorise the sale of liquor to any person, it must include as a condition on the licence that every person employed or engaged on the premises to which the licence relates is covered by an appropriate industrial award or agreement.'

Given that I formerly belonged to the union which has the major concerns in relation to this matter, I would like to address the Government and Democrat spokespersons on the Bill by giving a potted history of what has happened over the past 20 years and what has led the Opposition to move such an amendment.

The club industry in this State is more than 100 years old. In fact, the Eudunda Club is more than 100 years old. There always has been a club industry of a sort in South Australia. I refer to the Naval and Military Club, the Adelaide Club and the Queen Adelaide Club, all of which have existed for a long time and have always been to the forefront in the employment of labour. However, about 20 years ago or more we saw an outward explosion and proliferation of club licences. We had more than 600 hotel licences in South Australia when I last checked several years ago, and at that time we had more than 1200 club licences, a ratio of two to one in favour of the clubs.

The union of which I was a member became concerned that the activities of clubs 20 years ago was militating against the employment of people within the industry, not only the hotel industry but also the old type club industry that existed in this State, for example, the Athletic Club on North Terrace, the RSL Club at the Angas Street headquarters closed down, the CTA Club, opposite this place on North Terrace, all closed down. Whilst those closures were not solely due to the fact that clubs could not compete with the clubs that had recently opened in the outer suburbs and closer to the homes of members of the clubs that closed, that was the case in part and the rationale that underpinned the closure of those three old clubs. Other matters were involved at the time, and I accept that. I stress that the union's concern then was not about membership.

I hope that after I have explained the amendment we can reach across the ideological divide between the Opposition and the Government to see the common sense that I hope my contribution will bring to bear in the debate. The union approached the Licensed Clubs Association and said, 'The activities of some of these clubs are causing us no end of strife. Kitchens are being closed.' That was the case with the Foreshore Motel at Whyalla, because some of the clubs then were acting on a commercial basis and were using so-called 'voluntary' labour, which was a euphemism for not paying the correct award rate. When the award rate was $8 an hour they were paying $2.50 an hour and no tax. They were rewarding volunteer labour by saying, 'You can have as many drinks as you like after the close of trading hours.'

There is no doubt that some volunteer clubs were performing a notable function and, from the union's point of view, a noble function in relation to some of the communities that they set out to service, for example, some small and junior athletic, football, cricket and soccer clubs. We said to the Licensed Clubs Association at that time, 'There is a problem, but we are not seven-headed ogres and we understand that there is a place within the totality of the South Australian industry for the type of activity in which the small volunteer labour clubs are engaged in respect of helping out the local communities.'

I might add that the Licensed Clubs Association at that stage was under fairly significant pressure from the clubs that were members of that association, because the activity of the so-called volunteer clubs was militating against the capacity of a number of those clubs to continue on in an economically viable way. I have already cited several and there may be more which closed their doors in part consequence of those activities. So, we went to the Licensed Clubs Association and said, 'At what stage do you think these so-called volunteer clubs become commercially viable and are still able to discharge the function of serving the little communities they were all set up to serve?' We said, 'We have done an exercise on them; we think that when their business reaches the level of three 18 gallon kegs a week or more they can then employ paid part-time or paid casual labour and still make a notable contribution to the community relative to funding all sorts of community activities.'

They said, 'Right, we will go and check that.' They came back to us and said, 'No, it is not three 18s per week; it is four per week. If four 18s per week are pulled, or in excess of that, we agree with you that at that stage the club is commercially viable and it will be our recommendation to the clubs association that those clubs then commence to pay labour at the appropriate rate of the applicable award.' That was done, but many of the clubs could not see that. Some of the clubs were pulling up to 15 and 20 18-gallon kegs per week. If I had walked into a hotel—or at that time a kitchen—that was pulling that number of 18-gallon kegs per week I would reasonably have expected to find not fewer than 18 to 20 people gainfully employed in that hotel or club. That was not the case, and as a consequence there was enormous disputation and at that time the unions' position was endorsed by the peak bodies of the hotels and of the licensed clubs. I can assure the Minister that, in spite of the fact that they have a slightly different public face at the moment, I know as a result of recent conversations that their private face has not changed one jot in respect of the principles of that matter from where it was back in the time I am currently addressing.

A consequence of that dispute (and I direct this to the Minister so that he can see the impact on the hotel industry of the non-level playing field that clubs will produce if they are allowed to go with their so-called voluntary labour) is that not so long ago this Parliament gave recognition to the fact that the industry was in dire straits, to the extent that we passed legislation here that said to the industry, 'Look, you can have poker machines and let's hope that injection of new business will be sufficient to keep you viable and economic.' The manner in which hotel licences change hands has to be seen to be believed today. One has only to look at the *AHA Gazette* that is put out each month and look at the three or four pages that deal with licence transfers, by either leasehold or freehold sale, just to see how horrendous is the level the change that is taking place in that area.

Some of the soccer clubs in Whyalla were pulling 15 to 20 18-gallon kegs per week, and the Australian Rules clubs at that time were all doing the right thing. They were complaining as much to us about the unfairness that was occurring as some of the hotels and motels. From memory, there were eight hotels in Whyalla. They were pulling 200 18-gallon kegs per week and employing more than 220 people. At that stage there were 32 clubs of varying sizes from very large, like the Workers Club, down to the Left Hand Club, which was for the *hoi polloi* of Whyalla, and

though they employed only two people they put in 200 18s per week.

However, quite a number of those clubs were using the euphemism 'voluntary labour' to undercut the rates of pay that were being paid by the *bona fide* clubs and hotels in Whyalla. It bears repeating that the hotels were pulling 208 18-gallon kegs per week and employing more than 220 people, whereas the clubs were pulling 200 18-gallon kegs per week and employing 32 people, of whom 19 were employed in the Whyalla Workers Club, which was engaged in level playing field activities with the hotels and was paying the correct award rates for the people who were employed by them. That was a statistic that we were able to garner from that exercise which occurred Statewide. In fact, we were able to centre on Whyalla and get a reading of statistics there, which were the statistics that I have just given. The dispute that the union had was not over union membership.

The CHAIRMAN: Order! The honourable member has an amendment before the Committee—

The Hon. T. CROTHERS: I am speaking to it, Mr Chairman.

The CHAIRMAN: I do not want you to get too far away from it. I have allowed a fair bit of elasticity, but the speech that you are making should have been—

The Hon. T. Crothers interjecting:

The CHAIRMAN: Order! I think the honourable member should have made it on second reading.

The Hon. T. CROTHERS: I believe I am speaking to the amendment, Mr Chairman.

The CHAIRMAN: I hope you are, but I am giving you a warning now that I want you to keep to the amendment.

The Hon. T. CROTHERS: I do not believe I have deviated from the amendment, Mr Chairman.

The Hon. R.I. Lucas interjecting:

The Hon. T. CROTHERS: Well, I thought we were pressed for time and I am trying to precis what I am saying. I thank you for your counsel, Mr Chairman, although I do not believe that I have deviated from the amendment. I have explained to the Committee the position that the union found in respect of incorrectly paid labour in Whyalla and the damage that was doing to paid employment there. For example, the Foreshore Motel closed its kitchen, because it was performing functions in the kitchen. Some of these clubs went to functions that they were not supposed to do under the terms of the licence and 12 people lost their jobs when that motel closed. Many other people also lost their jobs. The Hotel McCauley in Whyalla, because of problems, closed its service staff, so if you went into the very large dining room or function hall, where people like the Shadows and Cliff Richard had appeared, there was no more waitress or waiter service. Seventy people lost their jobs there due to the function that I have described.

The union is not unmindful that clubs have a niche. However, we say that if clubs are to function in future, in the main they should have the same hours of trading and the same capacity with respect to access to gaming machines. We have no axe to grind with that, provided that they operate on the same level playing field as the *bona fide* clubs, hotels and motels. South Australia has a horrendous unemployment problem and I recognise that the Government is using its best endeavours to grapple with that problem.

The last thing this Parliament needs is to pass a Bill, which, I believe, if it goes ahead in its present form, will have the consequence of displacing and dislocating a number of people who are gainfully employed, not only in the hotel industry, but also in the *bona fide* club industry. That is the very last thing we want, given that it was about 12 months ago that we said to the industry, 'Look, we know you need help.' So we passed here, on a conscience vote, a Bill which enabled them to apply and have installed in their premises poker machines, gaming machines—call them what you will. We do not want to bring that undone.

I believe the effect of this Bill could be catastrophic, if it goes in the manner in which I believe it will go, without some relief being given to those people who are employing correctly paid labour. We will almost certainly be back to the stage we were when we decided that we had to support some additional way of a relief for the industry, and we did that by way of the majority support for gaming machines in this House. I could probably say quite a bit more relative to the amendment that we have moved and put in front of the Government. I want to stress that this is not the industry's main union, seeking to bolster its membership relative to having this amendment supported.

This is the main union in the industry endeavouring to protect the capacity of those employers in the industry who currently employ paid labour, whether they be in hotels, or clubs, or motels, or wherever they are. For the Opposition to support the Bill in its present would run contrary to that. As I have said, the position of the union at this point in time is that any club pulling four or more eighteens a week ought to be paying appropriate award paid labour. Less than that and they can forget the union.

The access to poker machines has added a new dimension to that position. I do not know whether or not there was a deal done between the Government and the clubs but I know for a fact that Max Beck, President of the Clubs Association—a man who has had a long, long association with the Clubs Association and who is originally from the South Adelaide Football Club—is of the same view as me. I know that Fred Basheer, who is ever cautious in these matters, would have the same point of view as me, though he may not say so. His public face might be that he does not comment much, but in his private face he would agree with me, and that can be checked. I also know that Peter Whalen, the illustrious past-president of the HIA would agree with me. Failure on the Government's part to understand my plea for some relief to be given in the present Bill, through the early adoption of our amendment, or the promulgation by the Government and/or the Democrats of an amendment that has the same effect will do considerable damage to the industry and its capacity to employ.

I place on record that the union is not after membership. It is after protecting the jobs of those, whether or not members of our union, who are currently gainfully employed in the industry. It is after protecting the capacity of those employers who currently employ them by ensuring that the industries for which they are responsible are economically viable. That is a plea from the heart. It is also a plea from a practitioner who knows this industry inside out and upside down. I hope you will forgive my immodesty in expressing that point of view.

I believe that we are at the crossroads here. All the relief and good that we have given the industry will be absolutely undone, not perhaps by intention or design, but undone in the same way as the decision of the Dunstan Government undid the industry, by opening up the Licensing Act so that every man, woman and their dogs could apply for a licence. That had a catastrophic effect on the hotel industry. It has led to the loss of many, many thousands of jobs in the industry.

They now have some relief because of the actions of the Parliament, particularly this Council.

I would ask that nothing be done that would run contrary to the relief that you gave to them with respect to supporting this Bill in its present form. I believe that it will be a disaster of no less a magnitude than what was the Dunstan Labor Government's decision to open up the Licensing Act to clubs. I am sorry that I had to take up the time of the Council, realising that it is pressing, to give a brief synoptic history of where it was at. Unfortunately, the Hon. Mr Gilfillan and the Hon. John Burdett with whom we previously dealt in relation to matters of this nature are no longer with us, so I felt it was incumbent on me to say what I have said.

I would appeal to the Government. I am not appealing to the Democrats; I know that they try to take everything on board in as objective a way as they can. There always seems to be this ideological divide between the Opposition and the Liberals. If that exists, I do not think this is the time and place for any continuance of that. Let us reach across the ideologies, in a commonality of interest, and say, 'We accept what you are saying—we will check it out further if we have to—that your amendment is seeking to protect continuing employment for those people in this State, a State which already has a very high level of unemployment on the Australian mainland, and we will of course make redress for that, because we recognise what you are saying is truthful and statistically accurate.' We will support some form of amendment to the Bill currently before the Chamber.

The Hon. K.T. GRIFFIN: It was an interesting speech by the Hon. Mr Crothers which I enjoyed. I appreciated the information which he presented in relation to the industry that has been very dear to his heart for a number of years.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: Very kind, and I understand that he knows the industry very well and has had a lot of experience in it. So, I welcome the response which he has given. Notwithstanding that, though, I have to inform the Committee that the Government will not accept the amendment. When we came to office, there was a proposition which had been approved by the previous Government to introduce a Bill to do what this Bill seeks to do but with a clause which is now the subject of an amendment included in it.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: Let me just talk about the history of that. My information is that the original agreement between the Hotels and Hospitality Industry Association and the Licensed Clubs Association was for a proposition which did not include the clause which is now the subject of the amendment. That was the original agreement between the two peak bodies. The Australian Liquor, Hospitality and Miscellaneous Workers Union made representations to insert a clause which was, if not identical, certainly similar to that which is now in the amendment. With the agreement of the Hotel and Hospitality Industry Association and the Licensed Clubs Association, the previous Government included it.

I looked at the Bill and I must confess that I prevaricated on it, because I have a very strong view, as a matter of conscience, against poker machines, and I was concerned that any decision I took might well compromise that point of view. Having examined the representations that were made and accepting my responsibility as Minister of Consumer Affairs and that I had to endeavour to put at least to some extent my personal views to one side, I believed that, if there had been an agreement between bodies such as the HHIA and the Licensed Clubs Association in relation to gaming machines in an area where the majority in the Parliament had accepted gaming machines, I should recommend to the Government that the Bill be introduced.

I had some consultations with a variety of organisations in respect of the Bill and, although in the first instance there was a suggestion that reference to 'an award or agreement' should be removed and that 'a paid employee' should be substituted, finally the proposition was that the clause which is now the subject of the amendment should be deleted. When it was put to the Hotel and Hospitality Industry Association that the clause should not be included it did not oppose that course of action. In fact, as a result of the consultation, the Licensed Clubs Association asked the Government to delete the paid employee reference altogether and, after consultation with a variety of clubs around South Australia, Cabinet subsequently decided to delete that reference completely. So that is the form in which the Bill came to the Council.

The Australian Liquor Hospitality and Miscellaneous Workers Union made a submission in relation to this matter, urging that the previous Government's clause should be reinserted on the basis that the exclusion of the clause would mean that there was not a level playing field between the hotel industry and the club industry. That union put to me that, in many cases, clubs use a string of volunteers to do work which, in a hotel situation, would be done by employees. That union stated:

> These volunteers do not have the status of employees; there is no contract of employment. They receive a variety of remuneration from cash in hand, drinks on the house to the feeling of satisfaction that they contribute to the viability of the club.

I only say in answer to that that the last reference to a feeling of satisfaction that they contribute to the viability of the club is not a basis which I would accept as being an appropriate basis for suggesting that volunteers should be excluded from the club area when a club takes advantage of the provisions of the Bill. However, I note what the Hon. Mr Crothers has said about underpayment of wages and other issues. Of course one can say that in some of the smaller hotels—

The Hon. T. Crothers: I don't think I said that.

The Hon. K.T. GRIFFIN: I think it was implicit in what—

The Hon. T. Crothers: I said euphemisms such as voluntary labour were used—

The Hon. K.T. GRIFFIN: Okay, it was implicit in what you had to say. Of course, there are smaller hotels run by families which, although they benefit from the value of the enterprise, frequently use members of the family without remuneration for the purpose of running such a hotel. The Government does not accept that exclusion of the clause in the amendment would have a catastrophic affect on labour.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: We do not accept that. So far, 25 out of 600 clubs that might ordinarily be expected to have an interest in this area have made applications for extended hours, and there are an additional 1 100 clubs which have restricted licences and just would not come within the area of interest in gaming machines. Two hundred out of 600 hotels have made applications for gaming machine licences.

I reassert to the Committee that the Government recognises that omission of the clause may exacerbate the distinction between clubs and hotels in terms of the level playing field, but we believes that it will not be a significant problem and that the essential character of the clubs ought to be maintained. For that reason we are not willing to support the amendment.

The Hon. T. CROTHERS: Methinks that some of the spokespersons in the industry are hydra-headed. I have a handwritten note in the former Minister's handwriting from when she contacted the industry on 13 May this year—as late as that—and the note says:

> Both groups in the industry [the Hotels Association and the Licensed Clubs Association] indicated through certain spokespersons—

I will not name them—

> that they would be quite happy to have the former Government's amendment in the Bill—

However, when they saw you, you objected to that clause about paid labour and they attributed to you that you said it was compulsory unionism. I do not know whether there is any credibility to that. The Minister may think that the industry, now that there has been a change of Government, may be hydra-headed. I place the note on record, although I cannot show it to you. It is not in my handwriting, and the contact to which I referred was made on 13 May, yesterday.

The Hon. K.T. Griffin interjecting:

The Hon. T. CROTHERS: Black Friday for some; God help the employees. The note is not in my handwriting but that of our former Minister.

The Hon. K.T. Griffin: We won't run any tests on it.

The Hon. T. CROTHERS: Unfortunately, we don't have to have a blood test at times to get in here, but we are here. I provide that note for the information of the Committee and the Minister.

The Hon. SANDRA KANCK: The Democrats will not support the amendment. Our position is not based on any ideology. On the face of it, the amendment appears to be simple, but on examination there is a great deal of complexity in it. At the moment my sympathies tend to go with those little clubs, the local tennis or cricket club, that survive on voluntary labour. With this issue, if you go one way you may cause damage and if you go the other way you may cause damage. Eventually one has to make a decision and work out which will cause the least damage, and that is why we will not be supporting the amendment.

The Hon. T. Crothers interjecting:

The Hon. SANDRA KANCK: I listened carefully to the Hon. Mr Crothers, and the examples he gave about Whyalla were very interesting. What it comes down to in the end is his belief that this will create unemployment. That is the one thing that is questionable. We do not know for sure and we will not know until some time down the track. I would be interested in hearing from the Attorney-General whether there will be any monitoring in this regard and, if it was shown further down the track that there is a substantial loss of employment resulting from this (and I would need to see figures before and after), the Democrats might consider it at a later stage if there was proof of increasing unemployment.

The Hon. K.T. GRIFFIN: I thank the Hon. Sandra Kanck for her indication of her attitude to the amendment. The only comment I wish to make in response to the Hon. Mr Crothers is that, whilst there were consultations with various groups, the Licensed Clubs Association did ask the Government to delete altogether the provision in the—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: I think we all get conflicting messages sometimes. Certainly, the Licensed Clubs Association did ask the Government to delete the paid employee and award reference altogether. When that was put to the Hotel and Hospitality Industry Association it indicated that it did not oppose that proposition.

The Committee divided on the amendment:

AYES (7)

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

NOES (9)

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

PAIRS

Levy, J. A. W.	Laidlaw, D. V.
Roberts, R. R.	Lawson, R. D.

Majority of 2 for the Noes.

Amendment thus negatived; clause passed.

Remaining clauses (4 to 8) and title passed.

Bill read a third time and passed.

ELECTORAL (ABOLITION OF COMPULSORY VOTING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 March. Page 334.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank honourable members for their contributions over some weeks in relation to this most important matter. Whilst it might be tempting for some, late on a Saturday afternoon, to respond at length and in detail to all the issues that were raised, I do not propose to do that. However, there are one or two matters that the Attorney-General would like me to mention and put on the public record, in particular, one or two of the issues raised by the Leader of the Opposition, and then we can vote on this Bill.

Earlier today, when discussing the truth in sentencing legislation, the Leader of the Opposition indicated that perhaps the reason why the Labor Party was voting for that legislation, even though he said they did not want to or they were not supporting it, was that the Government had a mandate for it. I commented then, and I comment now, that if that is the case in relation to the truth in sentencing legislation then certainly the Government has a mandate in relation to the industrial relations, WorkCover and abolition of compulsory voting legislation because those issues were of great prominence in the lead-up to and during the election period and were the subject of debate between the major Parties in South Australia. People have different perspectives on mandates, depending on which side of the political fence they are and whether or not they are in government. I do not intend to add any more comment to that aspect than that.

The Leader of the Opposition noted that the question of voluntary voting had been debated on a number of occasions, and certainly the positions of the major Parties has been well known. He also noted that it was part of our election policy documents in 1989 and 1993. The Leader quoted some figures, which purported to show that, certainly in the South Australian and the Australian experience, perhaps the turnout under a voluntary voting arrangement might be significantly lower than it is at the moment. The Attorney quoted some figures—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Sorry, the Leader of the Opposition quoted some figures from the 1920s and the 1930s,

which indicated that the percentage of electors voting in particular elections was as low as 59, 59, 63 and 50 per cent. The only point I make in response to that is that since the 1920s and the 1930s we have had almost 40 or 50 years of, in effect, a tradition of compulsory voting in South Australia and in Australia. It is certainly the view of many political commentators that, with that tradition and with that background of compulsory voting, it would be highly unlikely that the figures would drop down to only 50 or 55 per cent here in South Australia under a voluntary voting arrangement.

It is a question of what people have been used to; it is a question of how they have been raised in relation to their prior political experience. There has been this very long tradition of 40 or 50 years of compulsory voting, and certainly many political commentators would not accept the notion that we would lapse back into a situation where only 50 per cent of people turned up to vote. The Leader of the Opposition commented that John Major in the United Kingdom, for example, was elected by 32 per cent of electors eligible to vote.

Again, if one wants to look at the number of people who, for example, elected John Bannon in 1989 in South Australia, one can see that it was only 49 per cent of electors. If we conducted an even more detailed analysis of the figures and looked at the number of people in each of the electorates and the number of seats that John Bannon won in 1989, I suspect that we would find that the percentage was even smaller than that. That is, if you take the number of people in the 22 seats or 23 seats that John Bannon won in 1989, or members of his Party won—and in many cases it would have been just over 50 per cent of the vote in those 22 or 23 seats—and if you take that as a percentage of the total electorate, you then come up with figures, whilst not perhaps as low as 32 per cent, certainly significantly lower than 50 per cent.

Therefore, the figures quoted in relation to John Major really do not add much by way of substance to the debate in relation to the abolition of compulsory voting. The Leader of the Opposition made a number of contentions with really no evidence to back them up. He made huge leaps in logic—huge leaps in faith, I suppose, rather than logic. There is no evidence to substantiate the assertion made by the Leader that compulsory voting is a safeguard against bribery and coercion. Compulsory voting means more concentration on the issues and, again, any independent political commentator commenting on the political process here would be hard pressed to make much of a judgment between compulsory and voluntary voting and whether or not there is more concentration on the issues under compulsory voting.

In essence, all compulsory voting does is drag out large numbers of people who do not think about the way they intend to vote and have no interest in the way they vote. They are required to turn up to the polling booth and place a number one, two, three or four in a number of boxes. Recent research shows nationally that up to 20 per cent of people make up their mind as to how they will vote on election day. These days political Parties spend increasing sums of money dressing up their polling booths, dressing up their how-to-vote cards and making their people appear to be friendlier than they might otherwise be when handing out how-to-vote cards. That is all being done on the basis that literally thousands and thousands of South Australians and Australians have no idea how they will vote when they turn up to the polling booth on election day.

The political Parties have the view that, whilst electors are not deciding on the issues, they may well decide on a friendly face and people saying, 'Good morning, it's a lovely day today, isn't it? Would you mind voting for the Liberal candidate?'

A lot of research indicates that under our current arrangements literally thousands and thousands of people are making up their judgments on the basis of those sorts of political operations on election day. As I said, some of the figures are indeed somewhat frightening, with some 10 or 15 per cent of people making up their minds as to how they vote literally as they walk through the polling booth door.

Finally, the only other issue to which I will respond again is the notion that the only reason for this Bill is that the Liberal Government thinks it will advantage them at future elections. That issue was touched on by a number of other speakers from the Labor Party side as well. Mr President, as you would expect, I naturally reject that notion. This has been a longstanding position of the Liberal Party, for some decades. There was some suggestion by one of the speakers that, now that we are in Government, we would not be interested in moving this proposition and, therefore, the reason for wanting to support the change in legislation had gone. The proof of the pudding is that, yes, we have won Government—and quite comfortably—and we have now introduced the legislation because we believe in it. It is as simple as that. It is a position in which the Party believes.

We accept the view that the majority of members in this Chamber do not share that view and, therefore, it is likely to go down in a screaming heap at the second reading vote. But the Liberal Party and the Liberal Government will push on with this idea of abolition of compulsory voting. Whilst the time has not come—at this stage anyway—for the significant reform, we believe that, in the end, time will tell and that this sensible reform will be introduced in South Australia so that we do not have to force our citizenry along to elections on election day to vote against their will.

The Council divided on the second reading:

AYES (8)

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

NOES (9)

Crothers, T.	Elliott, M. J.
Feleppa, M. S.	Kanck, S. M.
Pickles, C. A.	Roberts, T. G.
Sumner, C. J. (teller)	Weatherill, G.
Wiese, B. J.	

PAIRS

Lawson, R. D.	Levy, J. A. W.
Laidlaw, D. V.	Roberts, R. R.

Majority of 1 for the Noes.

Second reading thus negatived.

[Sitting suspended from 6.8 p.m. to 3.25 a.m.]

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

In Committee (resumed on motion).

(Continued from Page 1080.)

Bill recommitted.

Clause 1 passed.

Clause 2—'Commencement.'

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

Page 1, line 13—Leave out the clause and substitute new clause as follows:

2. This Act will come into operation on a day to be fixed by proclamation.

I indicated during the course of the earlier Committee that there may be a good reason why we would need to bring into operation only part of the Bill initially, for example the constitution of the commission or some other part to enable some preliminary work to be undertaken either on rules or regulations, and for that reason I indicated that I thought it may be a problem if the Act specifically provided that all the provisions of the Act are brought into operation simultaneously. In moving the amendment I seek to give the Government flexibility, but I can give an undertaking that the Government will bring in all the provisions of the Bill and not seek to suspend any part except for the purpose of progressive implementation. It is certainly not the Government's intention to suspend the operation of provisions that we may not like. That is the reason why I give that commitment.

The Hon. M.J. ELLIOTT: Before we proceed further: first, I acknowledge the comments of the Hon. Attorney-General in terms of this legislation and proclamation and take his assurance that all parts of this Bill will be proclaimed and that if there are any delays it will be purely for administrative reasons and no others. Before we proceed further with this legislation I put on record my concern that we are still debating this at 3.30 a.m. As I see it, with all the best will in the world, we are going to be here for some hours to come. We have potentially one of the most important pieces of legislation in this State and certainly the most important piece in this session—which is going to go through. On a very recent check in the last half hour, two important drafting errors have been found for which I do not criticise any individual because of the time at which we are doing it. At least two errors have been found, and certainly after discussing the matter I am aware that much concern has been raised about the structure that has evolved because of time.

There will be criticism of this Parliament by people in the legal fraternity and legal practice generally because they are going to find it very hard to comprehend parts of this legislation because they will be less tired than us when they try to read it. To us it might almost make sense at this time of the night—at least, it looks like it might make sense. Many people have been working very hard for a long time and there has been a great deal of goodwill but the goodwill might be undone because of the fact that we are trying to do this at this time and because people have been working so long. I want to put on record now that, if there are mistakes and fundamental errors in this legislation, the Government's decision to continue sitting at this time of the night will be responsible for them. That has to be on the record and has to be on the record very clearly now.

There is no good reason why we are continuing, other than that the Parliament has been willing to allow the Government, with its so-called mandate, to get its legislation through. It is absolutely absurd; it has been absurd under previous Governments and in previous Parliaments, and it does not in any way justify—

Members interjecting:

The CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: There was an interjection about poker machines. At least, although it went all night, it was about one clause. I would not say the Bill was unimportant, but the legislation did not carry the weight and importance this piece of legislation carries. Again, I want it put on the record that I am here under protest and sufferance and, if there are mistakes, the Government wears it.

The Hon. C.J. SUMNER: As the Australian Democrats have decided to enter at this stage onto this aspect of the debate, I believe that on behalf of the Opposition I should also say something. I was going to in any event, suggesting to people in the corridors that we should try to deal with this matter sensibly. The reality is that dealing with these Bills—and it is not just one Bill but four—at this time of the night, this time of the weekend, is an absolute disgrace. It is a scandal. I have been in this place nearly 20 years and this has never, ever happened before to this extent. We have never sat on Saturdays; we have never sat into Sunday morning and, if this had been done in a half sensible way, the Parliament would have adjourned until next week and done it on Tuesday, Wednesday and Thursday of next week.

Members interjecting:

The Hon. C.J. SUMNER: That could have been overcome in some way or other.

Members interjecting:

The Hon. C.J. SUMNER: This is a scandal and should be seen by the public of South Australia to be a scandal. Certainly, there have been occasions on which we have had to sit late in the past, but we have finished either early Saturday morning, at the worst or, on occasions, early on Friday morning. With the poker machine Bill we were dealing with one or two clauses in a Bill; there was an issue that had to be resolved. It did not involve a total redraft of the Bills.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I will make it again if you want. I put to the Government that this matter should be adjourned. The House should adjourn and we should come back on Tuesday. It would give the parties, Parliamentary Counsel and everyone in the Parliament the opportunity to look at the amendments to make sure that they are consistent and that they have been done properly, and the matter could be resolved on Tuesday in a sensible manner. I have never, ever been involved in something like this in 19 years in this place. As far as the Opposition is concerned, it is a scandal. This Bill will almost inevitably be a stuff-up, because you cannot just go ahead and deal with a Bill of this length and complexity in this way.

This Bill will be a stuff-up; it has to be, unless the Government now bites the bullet and, as the Hon. Mr Elliott has suggested, adjourns the Council to a sensible time on Tuesday, to enable people to consider the amendments, and I am sure we can resolve the matter on Tuesday. Give up Question Time, if you like.

Members interjecting:

The Hon. C.J. SUMNER: That will not bother us.

An honourable member interjecting:

The Hon. C.J. SUMNER: Because it was a day of sitting, on Friday.

Members interjecting:

The Hon. C.J. SUMNER: That is a gratuitously insulting remark. The Government has kept the Parliament sitting here. Probably, if we had any brains, we would have put the matter off with the Democrats, in any event, but it has to be done now. It cannot go ahead. My guess is that, at a conservative estimate, starting at 3.30 in the morning, we probably have four or five hours debate on this Bill. There are major issues of principle. I have just picked through the amendments. I have not had anything to do with it all day, and I find that all the issues relating to judicial independence have been

ditched. All the principles that have been debated in this place have been ditched. I have just read it. They have been ditched.

The Hon. K.T. Griffin: Nonsense.

The Hon. C.J. SUMNER: They have. All the objections raised by the Supreme Court and the judges are still valid.

The Hon. K.T. Griffin: They are all addressed.

The Hon. C.J. SUMNER: Mr Chairman, that is just one example.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I am just telling you. I read them quickly. I know what principles were involved. That is just one issue. I picked up these amendments, at 3.30 Sunday morning—or Saturday morning; I do not even know what day it is any more and I doubt whether anyone else does. I see one issue where a major principle that was canvassed during debate on this Bill over a long time has just not been dealt with in terms of the principles. I do not want to debate the substance now because, if this keeps going, we will be doing it at 6.30, 7 a.m. Sunday morning.

It is an absolute joke. It is probably one of the most disgraceful performances that I have seen by a Government in this Parliament in 19 years in terms of the legislative program. It should be put on the record that it is a disgrace; it should be put on the record that we should now get up until Tuesday to enable this Bill to be dealt with. I am certainly here absolutely under protest for the next four or five hours—absolutely under protest—and I am sure that every member in the Opposition and every member in the Democrats is here under protest. The Government should do the sensible thing—what any normal intelligent person in the community would do—and that is adjourn the Council until Tuesday and come back. I ask the Government to do it.

The Hon. M.J. ELLIOTT: I said earlier there were at least two drafting errors. I say there are in fact three that have been found. I don't know how many more we will not find as we drift through this legislation.

The Hon. C.J. SUMNER: I make a formal request to the Minister in charge of this Bill, and all these other Bills, to stop this absolute madness and adjourn the Council until Tuesday so that we can deal with it properly.

The Hon. K.T. GRIFFIN: The request is declined. The Government wishes to proceed with consideration of the Bill. Can I point out that the industrial relations legislation was received in this Council on 21 April. It was first made available publicly on 9 March and was introduced into the House of Assembly two weeks after that, as I recollect, on 23 March. So, it has been around for a long time. As I say, it was introduced into this Chamber on 21 April.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: We certainly moved amendments. No-one can resile from the fact that the amendments were moved. The Hon. Mr Roberts on the Opposition side moved amendments. The Hon. Mr Elliott moved a significant number of amendments. It certainly was a very long process. I certainly appreciated the way in which the members of the Council approached the task of considering this very important piece of legislation. The other point that has to be made is that the reform of the industrial relations system and the WorkCover system was—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: We cannot come back on Tuesday.

The Hon. C.J. Sumner: Of course you can come back on Tuesday.

The Hon. K.T. GRIFFIN: Well, there is a crane outside for a start. The WorkCover legislation—

Members interjecting:

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: —was received in this Council—

The Hon. C.J. Sumner interjecting:

The CHAIRMAN: Order! The Leader of the Opposition will desist from—

The Hon. C.J. Sumner interjecting:

The CHAIRMAN: Well, I do not care.

The Hon. C.J. Sumner: It is a scandal, Mr Chairman, an absolute scandal that we are here!

The CHAIRMAN: I warn the Leader of the Opposition. There is no necessity to lose your temper here.

The Hon. C.J. Sumner interjecting:

The CHAIRMAN: I warn you. There is no necessity for anyone to lose their temper at this stage. We have work to do. The Leader was were heard in silence, and I suggest that he listen to the Attorney-General in silence.

The Hon. K.T. GRIFFIN: The other point I was going to make is that the WorkCover Bills were received in this Council at the end of March. I appreciate that there has been a heavy workload, certainly in the past couple of weeks. Probably I have carried it as much as anyone in relation to these industrial relations Bills. I certainly do not particularly fancy debating these Bills at this time in the morning, but the Government has made a decision that it wishes to get this legislation through. There has been a significant amount of discussion behind the scenes by all parties involved with these Bills. We take the view that the issues should be debated now and the Committee stages resolved.

The Hon. R.R. ROBERTS: I have just listened to the Attorney-General. He talks about the workload. He prefaced his remarks with comments about the importance of this legislation. I point out to the Attorney-General that he is not the only one sitting here. He has had hot and cold assistants running out of his ears for the past fortnight. We are over here trying to deal with the Bills with one-third of a secretary and I do not want to hear all the crap about what you used to have when you were in Opposition—

The CHAIRMAN: Order! That language!

The Hon. R.R. ROBERTS: —because you will start that, as sure as God made little apples. The fact of life is that the Attorney-General just made the very pertinent point on this matter: this is a very important piece of legislation, as are the other three pieces of legislation that we are now going to debate at this hour of the morning. This Council got up at 5 p.m. yesterday. There are three Bills, and we will go through the most important legislation that we will strike in this place for next six months.

About twenty minutes ago I got the copy of latest machinations that have been taking place in that five hours. We have had about 20 minutes to try to get that together and come in here to deal with a piece of legislation with 230 clauses, plus all the other bits and pieces. We will then have to do the other three pieces, while we are still bright and shiny.

I am not shirking the job; I will sit here until Christmas if I have to. However, the points that have been made by the shadow Attorney-General are absolutely correct: it is a scandal, and there is no sensible reason why we are sitting here at this time of the morning when all of next week has not even been touched yet. I agree with the shadow Attorney-General that it is a scandal and we will not forget.

Existing clause negatived; new clause inserted.

Clause 3—'Objects of Act.'

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

Page 2, after line 14—Leave out paragraph (m) and insert:

'(m) to help prevent and eliminate discrimination in employment in accordance with State and Commonwealth law; and'.

The point I made in the first Committee was that I had a concern about the way in which the principle of helping to prevent and eliminate discrimination was expressed, that it was not expressed to be in accordance with State and Commonwealth law and that it might therefore actually widen the area of anti-discrimination, which would then be inconsistent with State and Commonwealth laws. The provision which I have just moved does in fact overcome that problem. It recognises the focus on the elimination of discrimination and its prevention. It does so in accordance with the State and Commonwealth laws and puts it in a proper context.

Amendment carried; clause as amended passed.

Clause 4—'Interpretation.'

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

Page 3, line 1—Leave out definition of 'contract of employment' and insert:

'contract of employment' means—

(a) a contract recognised at common law as a contract of employment under which a person is employed for remuneration in an industry; or

(b) a contract under which a person (the 'employer') engages another (the 'employee') to drive a vehicle that is not registered in the employee's name to provide a public passenger service (even though the contract would not be recognised at common law as a contract of employment; or

(c) a contract under which a person engages another to carry out personally the work of cleaning premises (even though the contract would not be recognised at common law as a contract of employment); or

(d) a contract under which a person (the 'employer') engages another (the 'employee') to carry out as an outworker (even though the contract would not be recognised at common law as a contract of employment;

This amendment relates to the contract of employment. The only significant difference with this amendment is that it clarifies in paragraph (a) that a contract is a contract recognised at law as a contract of employment under which a person is employed for remuneration in an industry, and it tidies up the drafting in respect of paragraphs (b), (c) and (d), all of which refer to that contract of employment recognised at common law.

The Hon. R.R. ROBERTS: It is opposed. The new definition is much narrower and litigious.

Amendment carried.

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

Page 3, after line 3—Leave out definition of 'demarcation dispute' and insert:

'demarcation dispute' includes—

(a) a dispute within an association or between associations about the rights, status or functions of members of the association or associations in relation to the employment of those members; or

(b) a dispute between employers and employees, or between members of different associations, about the demarcation of functions of employees or classes of employees; or

(c) a dispute about the representation under this Act of the industrial interests of employees by an association of employees;

This amendment relates to the definition of 'demarcation dispute'. This amendment has been approached by Parliamentary Counsel to make it easier for the table staff and members so that, where possible, a whole clause or subclause is deleted, even if it is just a matter of drafting. In this instance the change relates to the deletion of the word 'registered' so that it refers to all associations and not just registered associations. That is consistent with the general drafting approach throughout the legislation where we do recognise that associations other than registered associations, and in addition to those, will have some responsibility in the course of industrial relationships.

Amendment carried.

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

Page 3, lines 4 and 5—Leave out the definition of 'Deputy President' and insert:

'Deputy President' means a Deputy President of the Commission;

The definition of 'Deputy President' relates to a later amendment. It is appropriate, therefore, if I explain what is proposed in relation to the commission because, without that explanation, it may not be easy to discern the reason for making the changes in the definition. The structure of what is proposed in the amendments is that there will continue to be the court, which is renamed the Industrial Relations Court, but the court largely remains as it is with its current membership. The transitional provisions do address that issue. We have taken the view that for the future the Presiding Member should be referred to as the Senior Judge and, whilst the incumbent President remains as President, and of course has security of tenure under the provisions which are now included in these amendments and in the Bill, that incumbent member will remain the President and continue with the status of a Supreme Court judge.

The other judges of the present Industrial Court will remain as judges of the Industrial Court. They will be the principal judiciary but there will be more flexibility to enable ancillary judges to be identified by the Governor to assist in any work of the Industrial Court. It is important to recognise that the present court remains. Its name is changed to the Industrial Relations Court. The present members of the court remain and, as I said, the President remains as President but, when the present President retires—he has tenure until age 70—it is proposed that that description will change to Senior Judge and that the status of the judges will be equivalent to that of District Court judges.

The Industrial Court magistrates remain and will continue to hold their position in accordance with the present Act. All of those principles relating to judicial independence which relate to the court are now maintained and the judges are not translated to any other court. That was certainly one of the proposals that we had in mind when the Committee was first considering this, but we did not finally get to those amendments because we had not recommitted at that time.

In relation to the commission, there is a different approach. The amendments seek to split the position of President of the court from the President of the commission. The one person may hold both offices but not necessarily so. There is, as there was in the original Bill that came before us, a capacity to have a separately appointed President of the Industrial Relations Commission.

The Hon. C.J. Sumner: Is that what you're going to do?

The Hon. K.T. GRIFFIN: We have not made a decision about that.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: No, the original legislation provided for that concept. It was amended by the Opposition in conjunction with the Australian Democrats, and the proposal now is to have at least the potential for a President to be a person other than a President of the court. There will be commissioners and the commissioners will be appointed, both the President and the commissioners, if the President is

not the same person as the President of the court, after consultation by the Minister consulting confidentially about the proposed appointment with a panel consisting of a nominee of the United Trades and Labor Council, a nominee of the South Australian Employers Chamber of Commerce and Industry, a nominee of the House of Assembly appointed by resolution of that House, a nominee of the Legislative Council appointed by resolution of the Council, and the Commissioner of Public Employment; and, for the purposes of the consultation, members of the panel must be informed of all persons shortlisted for appointment.

The same approach will apply to Deputy Presidents who may or may not be the judges of the Industrial Court. So there is the capacity, as there is in the Bill, to have Deputy Presidents who are not necessarily judges of the court, but judges of the court may be those Deputy Presidents. Also, the Deputy President of the commission will be appointed by the same consultative mechanism as will ordinary commissioners. In respect of commissioners, there will continue to be the balance that is reflected in clause 35(4) that an industrial relations commissioner must be a person of standing in the community with experience in industrial affairs either through association with the interests of employees or through association with the interests of employers; and the number of industrial relations commissioners of the former class must be equal to or differ by no more than one from the number of industrial relations commissioners of the latter class, part-time commissioners being counted for the purposes of this subsection by reference to the proportion of full-time work undertaken.

The Hon. C.J. Sumner: What happens to the current commissioners?

The Hon. K.T. GRIFFIN: The current commissioners are not protected fully under this Act. Some may well be appointed, but it is recognised that if they are not appointed it would be unjust not to properly recognise that they are not continuing in their employment.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: It means that there will be appropriately negotiated compensation.

The Hon. C.J. Sumner: Separation packages?

The Hon. K.T. GRIFFIN: Separation packages—compensation. As we discussed in Committee on a previous occasion, members of the commission are not in the same category as the court, so what we have sought to do is provide a mechanism for a commission which may include some, if not all, of the existing commissioners; provide for a consultative process for appointment, rather than just appointment by the Governor; and ensure that they are appointed for a term of six years which may be renewed for one further term of six years. That is the term for the President and the Deputy President, and also for a Commissioner.

We have taken the view that a fixed term appointment is more appropriate than appointment to the age of 65. We take that view because, in the industrial relations area, there are significant changes occurring both at State and Federal levels. What we want to ensure is that the commissioners remain in tune with the very rapid change that is occurring in that area. It is an important area. The difficulty is that if you appoint someone who might be in their 40s they may have 20 years on the commission, and that may well be the subject of criticism as part of what some have described as the 'industrial relations club'. More importantly, what we are seeking to do is keep a fresh approach to industrial relations in the commission.

The allegation may well be made that the appointments will be politicised appointments, and that was certainly one of the observations of the Hon. Mr Elliott in the earlier part of the debate. But in the real world the commission will work only if the membership has the confidence of employers and employees. That is the reason why we are seeking to put into place a consultative mechanism formally and not just 'the Minister must consult with', which will hopefully demonstrate good faith on the part of this Government about the way in which we will go about making appropriate appointments.

The Hon. T.G. Roberts: That will be the first test.

The Hon. K.T. GRIFFIN: It will be the first test; I agree with that. So I thought it was appropriate to outline the structure which these amendments reflect in the hope that it will make it easier for members to appreciate the significance of some of these earlier amendments.

The Hon. R.R. ROBERTS: I give notice that we will oppose this raft of amendments that has been alluded to; although we are not fundamentally opposed to some things we are fundamentally opposed to the interference with the commission. I will oppose all of these amendments as listed. Due to the interrelationship of various amendments I will make my comments about all of them as a block. The important issue is that, rather than address the concerns already raised about interference with judicial independence, the amendments seem not to correct the problem; indeed, they suggest that some paranoia exists about the court and commission amongst Government members. The emphasis of the amendments remains on creating contrivance to enable individual members of the current court or commission to be pushed out or sideways. Judges remain subject to term appointments and commissioners appear to be subject to the same rigour previously proposed.

If my memory serves me we have been told by members opposite that the current commission has become politically tainted in its decision making. Such an unjustified and unsubstantiated slur is outrageous. What I believe is at issue here is not the political taint of the current court and commission but rather its absence. It is clear that the Government believes the role of the industrial relations jurisdiction is to provide legitimacy to the stamping of a preferred political nature on industrial relations in this State. Any independence of operation which may hinder the process is to be dealt with by replacing current personnel with those deemed more acceptable by the Government. What more absolute example of interference with judicial independence could there be?

The Australian Bar Association produced a useful document on the question of independence of the judiciary in March 1991. I invite members opposite to read all the document, but I draw from it briefly for the purposes of this debate. The preface states:

> This statement is concerned primarily with the independence of the judiciary. The statement is also concerned with the independence of members of tribunals and other judicial or *quasi* bodies.

Its conclusions are:

> Civilised society may be judged in part by the restraints which it imposes upon the use of power. Human nature being what it is, unchecked power will inevitably be used in ways which are unjust. The misuse of power, and mankind's attempts to combat the tyranny which results, are central themes of the history of civilisation.
>
> Human ingenuity has been able to devise only one effective mechanism for restraining the misuse of power. That mechanism is the rule of law, which may be roughly defined as the governance of society by laws, to which all citizens, bodies corporate and governments are subject, made with the general concurrence of society and enforced impartially. The rule of law therefore has as one of its

opposites the imposition of order by the use of arbitrary might. Another opposite is the absence of order. At its apex is an independent judiciary.

An independent judiciary is an indispensable requirement of the rule of law. Only an independent judiciary can enforce impartially the exercise of powers which were enacted to control that power. And it is the universal and impartial application of the law, so that the actions of every man, woman and child are ultimately controlled and limited by laws enforced by someone else, that is the essence of a society in which freedom and order and justice each receive their due.

The legal profession has not in the past done enough to secure the independence of the judiciary, or to guard against the at times grossly improper interference with that independence. The Australian Bar Association will in the future do everything in its power to ensure that these mistakes are not repeated.

For the interest of those opposite who seem to have some—

The Hon. C.J. Sumner: Lawson was President of the Bar Association.

The Hon. R.R. ROBERTS: For the interest of those opposite who seem to have a somewhat different concept of independence, I point out with the help of the Leader of the Opposition that the signatories of that document—

Members interjecting:

The CHAIRMAN: Order!

An honourable member interjecting:

The CHAIRMAN: Order!

The Hon. L.H. Davis: Why didn't they send you?

The CHAIRMAN: Order!

The Hon. C.J. Sumner: I want to know. I would have gone.

The CHAIRMAN: Order!

The Hon. R.R. ROBERTS: I point out that one of the signatories on that document is a certain R.D. Lawson QC, whose presence opposite may have avoided this outrage. For those of his fellow members who suggest that his view is but one, I suggest they read a range of other material on this subject, some of which I referred to in relation to clause 36 in an earlier debate, but all of which has ranged against the Government's proposals. There appears to be rumours afoot that the Chief Justice and Supreme Court Justices remain unimpressed with the Government's latest proposals, but in fairness I invite the Attorney-General to indicate if he sought or has been given an indication of the reaction from the judges and, if he has any written indications, for him to read them into the record.

I wrote that speech in respect of the first draft of amendments circulated by the Attorney-General on the 11th. They are just as cogent today. However, it would be ludicrous to think that the judges may have given a comment on this latest package since most of them were probably in bed at 10 o'clock last night.

The Hon. K.T. GRIFFIN: I make one correction to what the Hon. Mr Roberts said. There are no term appointments for judges and magistrates under the proposals before us. It is correct that they were proposed to be appointed for terms under the first draft of amendments but the incumbent judges remain. In respect of correspondence, there was correspondence from the Chief Justice in relation to the transitional provisions in the Bill. The Leader of the Opposition made reference to that in a number of questions earlier in the session, but there was correspondence in relation to the earlier draft of amendments to which the Hon. Mr Roberts referred. Notwithstanding the fact that the proposal for fixed term appointments for judges coincided with the proposition of the Leader of the Opposition, the judges did not agree with that; they felt that that was still an infringement of the principle of judicial independence. The judges certainly have not given any comment on the amendments which are presently before us. They satisfy all the principles that judges and everyone else seem to be espousing about judicial independence.

The Hon. C.J. SUMNER: Will the Attorney-General table the most recent correspondence from the judges?

The Hon. K.T. GRIFFIN: I have not got the correspondence here. I am sorry about that but as everyone knows it has been a long few days.

The Hon. C.J. SUMNER: That is hardly an excuse. I have asked him if he will table the correspondence and he says he has not got it here.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: Who is this clown and where did he come from?

The CHAIRMAN: Order!

The Hon. C.J. SUMNER: Where did the Liberal Party pick him up?

The CHAIRMAN: Order!

The Hon. C.J. SUMNER: If the case is that he cannot table it, then it seems strange to me that he does not have it, even if it is 4 o'clock on Sunday morning. It could apparently be in his office.

Members interjecting:

The CHAIRMAN: Order!

The Hon. C.J. SUMNER: It seems strange that he would not have the correspondence from the judges. If he cannot table it for that reason will he make it available to me as soon as he is in a position to do so?

The Hon. K.T. GRIFFIN: I will seek the approval of the judges for that purpose.

The Hon. M.J. ELLIOTT: The question of independence has concerned me greatly, and the interlinked issue of neutrality has also worried me. I have previously observed that there is probably no area which is more politicised than industrial relations. It certainly illustrates the biggest divide that we have in the parliamentary system itself, and in society it is one of the major divisions. I am concerned not only about the independence of the judiciary and the commission but its relative neutrality. The role of Parliament is to pass laws; and the role of the commission and the judiciary is to uphold the laws. There are elements of interpretation—that is inevitable—and sometimes interpretations can go to extremes. Unfortunately, to some extent that seems to be inevitable in the process, and that is something that I would rather not see.

At present, we appoint members of the judiciary or the commission for life, and they are independent because no further influence can be brought to bear on them. Often they are not necessarily neutral beings when they are appointed and sometimes they do not always stay neutral. If a political appointment is made, depending on the Government at that time, the judiciary or the commission can lean towards that Government, but that Government can be long gone and the next Government will fret that it does not have its people on the commission or the court. I am sure that there have been elements of that kind in terms of what the legislation first looked like. There were possibly too many Labor appointments and the Liberal Government said, 'We want our people in.' I understand that, because that is the way the game has been played for a long time. My own view is that that game does not help. In those circumstances, I see some merit in the amendments as the court will remain largely untouched. Despite the assurance of the Attorney-General, he probably does not realise that one of the drafting errors that I talked

about still has the judiciary put in for six years, but I am sure that is about to be rectified.

The Hon. C.J. Sumner interjecting:

The Hon. M.J. ELLIOTT: It is an obvious one that stands out a bit. How many non-obvious ones we miss we will find out as cases go to the commission and the court on later occasions. That aside, the court has largely been left intact, except for drafting errors, but the commission will undergo some change. The method by which people will be appointed to the commission gives me a great deal of confidence that we will at least see a real chance of neutrality in terms of those appointments. Any Government which tries to put up anybody who is politically extreme, left or right, will not—

The Hon. C.J. Sumner interjecting:

The Hon. M.J. ELLIOTT: It's all relative.

The Hon. C.J. Sumner: You talk about neutrality. The only people with expertise are those who have acted for either the employers or the employees; that's life.

The Hon. M.J. ELLIOTT: I do not think it is so simple. Among those who act for both employers and employees you will find people on both sides who are seen to have high levels of integrity, and that is an important part of the neutrality about which I am talking.

The Hon. C.J. Sumner: The appointments before haven't had that; is that right?

The Hon. M.J. ELLIOTT: In some instances, yes.

The Hon. C.J. Sumner: Who? Which ones?

The Hon. M.J. ELLIOTT: Come on.

The Hon. C.J. Sumner: You're talking out of your hat.

The CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: If you want to join the debate, get in the Upper House. I was gravely concerned that at one stage we were looking at a commission where there were going to be changes, such as an enterprise agreement commissioner, who was not going to come from the even split where the other four commissioners came from. Previously, two were expected to come from the UTLC and two from the employers. The Government originally proposed a new president and at least one extra enterprise commissioner, and perhaps more, who were not going to be split in that 50/50 way; certainly there is no legislative power to take a commission that was relatively non-political and nudge it off in one direction. I did not see that as being particularly helpful, and I think the amendments now before us give me a reasonably good degree of confidence, or as much as one can have.

The Hon. C.J. SUMNER: It is all very well to raise your eyebrows, but it is the first time we have seen these amendments. The first set of amendments—which the judges commented on—were opposed. That correspondence was made available to the Chief Justice after the Attorney-General refused to table it. The second set of amendments were proposed and were made available to the judges. As I understand it, they were totally unsatisfactory to the Supreme Court as well, and correspondence has emanated from the Supreme Court to the Attorney-General about that.

The Attorney said that he cannot table that correspondence because he does not have it, but he might make it available later. That is a fairly unsatisfactory state of affairs. Here we are, debating one of the issues about which there was considerable public controversy and which involves the question of some important principles about the nature of the independence of the judiciary, and we do not have the information before us upon which to debate the matters properly. Now we have a situation where there is a third set of amendments.

Not only do we not have any views from the judges on the issue of whether it meets the criteria of judicial independence but we cannot get it because we are debating these matters at 4.30 on Sunday morning. So, the Attorney-General has said, 'No', he does not have the views of the Supreme Court on the third lot of amendments, and we are not going to get it. This really is absurd—it is absolutely absurd. I can only protest again about the process that we are going through. A key issue in the Bill was debated about which the judiciary had a view. We now have a third set of proposals with no view from the judiciary.

We do not even have the benefit of the Hon. Mr Lawson, who was the president of the Bar Association in South Australia, because he was sent off to London. I have no doubt that he would not have supported these propositions, coming from where he does in terms of the independence of the judiciary. It is not possible to debate this issue fully tonight. In my view there are some woolly notions about the independence of the judiciary that need to be concentrated on, highlighted and analysed so that we get to some resolution of that issue. It involves shades of grey and, obviously, we need more time than we have this morning to go through it. It seems to me, taking the Supreme Court's position, that what has been done here does not meet the requirements, and I think that is fairly clear.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: From the statement of judicial independence from the Bar Association that my colleague has read out, for instance, the principles apply to tribunals and commissions.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I am talking about both. First, I will deal with the court. What you have effectively done—because previously the court and the commission were the same; the judicial officers in the court were also the President and the Deputy President of the commission—is split them. You have hived off the court and said, 'You will now only be the Industrial Court,' which basically means you have left them with perhaps a quarter of their workload. So, effectively, you have pushed them to one side, except they will not do the work of President or Deputy President of the commission which they currently do. So, they have basically been sidelined—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, it is in my view. What you have done is split it and put the judges to one side. All those judges of the Industrial Court will now not have a sufficient workload to fully occupy themselves; so you will bring in a new President, Deputy President and commissioners to do the commission work and effectively achieve the objective that you wanted, which was to get your appointments into the positions.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, I'm sorry; that is exactly what has happened. If you want to adjourn the matter to Tuesday to give us time to consider the amendments properly, then I will give you a more considered reply, and we can have the benefit of the views of the judges who are affected by this and the Supreme Court, as well. That is fine, if you are prepared do it. On my reading of it, you have sidelined the judges and the Deputy President into the court, you have left the commission, in effect, open so you will then be able to appoint a new set of people to the commission, namely, the

President, Deputy President and commissioners. That can all happen under what you have done, which will leave the judges, with dual commissions, able to do other work as well but certainly without enough work to keep themselves occupied in the industrial arena.

If you structured something like that from the word go it might be all right but to do it in this way with people who are already in the position seems to me to be offensive to the principles that the court was talking about—and no doubt we can find out next week when we send them a copy of the legislation. That is assuming that you can draw a distinction between the court and the commission in this area. I am not too sure that you can, because the Australian Bar Association has referred to tribunals, and the point is that presidents, deputy presidents and commissioners—industrial commissions—do make decisions involving citizens, involving the Government and citizens. They do exercise judicial functions. They make judicial decisions. They do other things as well. They arbitrate, conciliate, etc., but they certainly do sit and determine issues where the Government is a party.

That being the case, if you have a situation where these people have a term appointment of six years, with a right of renewal of six years, then it seems to me that you have the evils and the mischief which, in relation to judicial independence the judges have been concerned to point out and which is not overcome by having just the total of 12 years with a right of renewal. Once you have a right of renewal in it, then you do have the capacity for a Government to influence the reappointment and, if the Government is not happy with the decisions it gets out of the commission, then it can refuse to appoint.

So, I do not think that these provisions accord with the principles of judicial independence. I acknowledge that there is some fuzzy thinking about it from the courts as well as from others. I acknowledge that there are some shades of grey in this area that need to be worked through. We obviously do not have time to work through them tonight. We do not know the views of the judges. I think that is highly regrettable and on that basis I can only indicate my view that, on what I have read, these provisions do not overcome the problems that were identified earlier and we should make that quite clear to the House.

I would like to refer to something the Hon. Mr Elliott said, and he seemed to have some view that past appointments somehow or other were not qualified for the job or that they were appointed for political reasons. The reality is that, in this area of industrial relations where basically you have employers and unions or workers and employers arguing over issues, you have lawyers who have expertise in this area; you have lawyers who sometimes do work for both employers and employees; you have some who work more for employees than employers and vice versa, but that is the pool of people from which you are likely to appoint to the commission and the court, and inevitably they are going to have values and views about life. To think you can neuter that process, in my view, is really unrealistic and I am not sure that it is desirable, anyhow, because one of the things I believe is that the democratically elected Government has the right to make appointments to the Judiciary. It is the one area where the Government has a legitimate right to say who is on the Judiciary.

Once they are appointed the principles of independence operate. However, I think Governments have a right to make those appointments and this notion of some sort of perfect neutral being in this or in other areas really is quite strange. The process that the Hon. Mr Elliott seemed to understand from an interjection I made was that it was his bright idea to set up this structure which I do not think is really necessary or will achieve anything. I want to refute the fact on both sides that people are appointed to the court who were not competent or who were not up to the job. Whatever your view is on their politics, their view about industrial relations or whether they acted for employers or employees, I believe that, going back over 30 years, the people who were appointed as President of the Industrial Court and Commission, by both Liberal Governments and Labor Governments, were all lawyers of high standing and competence. I cannot recall any of them whom you would not have put into that category of competence, whatever view you took about where they came from. So, I still object to these clauses. If we had a chance we could take them up with the judges and look through them, but we do not have that opportunity. We can take no other course but object to them and object to the process in which we are involved.

The Hon. T.G. ROBERTS: As this is a critical part of the differences that have been inherent in the whole of the Bill for the time that it has been debated, I think it is one of those issues that needs to be discussed broadly. The Bill proposes to set up a structure that allows for individual bargaining, collective bargaining or enterprise bargaining without the interference of outside bodies. Basically, the philosophical position has been to allow both employers and employees to strike bargains with little or no outside interference, and that includes the courts and the commission. The compromised position as put tonight and in other compromise amendments is to allow the commission and the courts to become part arbiters of these collective enterprise bargaining arrangements.

What we have before us now is a proposal to put together a body that will stand as the arbiter of justice in relation to the negotiations between the two parties. On this side of the House we understand that the power relationship between labour and capital is not an even one, so you do need an independent body to be able to arbitrate in relation to the fairness and equity of those arrangements and individual bargaining programs being put together. It is important to get the independence of the umpire right so it does not have an in-built bias. The Government tells us that, with the best intentions, it hopes to set up a fair system by putting in place a proposal as outlined which has an independence built into it that allows for the appointments to be made in a fair and equitable way with a balance between employee and employer rights, allowing for the independent arbiter to make decisions of an economic nature in relation to wages, salaries and conditions that suit the economic climate of the day.

Basically, those are the principles that the Government is saying it is outlining. The only problem is that we have what I would regard as a political hiccough in relation to the power relationship in the community between political power, the judiciary and what we are trying to set up. We have a Government that has a large majority in one House that, it would argue, gives it a mandate to put in place an industrial relations system that suits the economic climate plus the political balance of the day. I would argue that there is a political hiccough in relation to the power that would be vested in a Government and the power that a community would like to see being used.

We have a major Bill before us that changes the relationships between labour and capital so that the importance of an independent judiciary is vital in being able to be the arbiter

of fairness and equity. If we do not get it right, it will not be decided in Parliament: the outcomes will be decided in the community. This issue is vital, and I was one of those who argued by interjection that it should not be done on the run at 4.30 of a Sunday morning, although we are continuing. If those balances are not correct and the Government uses its power to sway the balance of the courts by the appointments it makes, and if the outcomes of those determinations made by those courts and the commission are not fair and equitable, it will be determined not in this place but out in the community. People will make the decision as to whether they want to live with—

The Hon. K.T. Griffin interjecting:

The Hon. T.G. ROBERTS: They will make the decision when the Bill is enacted. They will be arguing what amendments need to take place to make it a fair and equitable system. The power and influence that I have as an individual member in determining how the fairness and equity is distributed in the community in industrial relations will not be what I say here in terms of what is recorded in *Hansard*: it will be the energy and effort I put out there in the community to persuade people that changes need to be made to a Bill that does not have fairness and equity built into it.

If the judiciary and the courts are compromised by the appointments made by the Government being not fair and if there is no balance, that is where I will be putting my time, energy and effort—in talking to people to make sure those amendments are put in place to ensure that that does happen.

That needs to be recognised. I acknowledge from what the Attorney-General was saying that that is what he is trying to achieve. If there is a different agenda, it will be easily recognised not only in the appointments (because he has indicated that a lot of people may not survive in relation to the incoming regime) but also by the decisions handed down in relation to the first round of negotiations within the collective enterprise bargaining arrangements.

The process which we are going through now is a laborious one, and I am making it a bit more laborious by my contribution, but we are setting ourselves time frames for such an important change, including the relationship between the judiciary, the industrial courts, the employers and employees. This matter is far too important to be discussing in those time frames but, as we have set them, it is important that we get it right. The final arbiters will be those people who have to work in the system to make sure it works.

That is the only plea I will make tonight in relation to any further contributions. This is the key to the whole of the Bill and to the success of enterprise bargaining. If any of those positions are jeopardised by any attempts to put into place political appointments that compromise the independence of the courts, they will clearly show up in the first round of negotiations once the Industrial Relations Bill is passed.

The Hon. K.T. GRIFFIN: I do not disagree with what the Hon. Mr Terry Roberts says. It is quite a reasonable observation. In relation to what the Leader of the Opposition said, I am as conscious as anybody of the need to ensure that the courts are not only independent but seen to be independent. I repeat: in the context of these amendments, we have sought to reflect that fact by maintaining the existing court and the existing judges, and that is covered in the schedule to ensure that it is independent. I do not accept that splitting the commission from the court is prejudicial to the independence of the court. In fact, I think there is a separate commission from the court at the Federal level, but there is a specific constitutional reason for that. Nevertheless, it occurs, and there is no reason at all why it should not occur in a State jurisdiction either.

Amendment carried.

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

Page 6, lines 5 to 8—Leave out the definitions of 'President' and 'Presidential Member' and insert:

'President' means the President of the Commission;

'Presidential Member' means the President or a Deputy President of the Commission;'

The same arguments apply.

Amendment carried; clause as amended passed.

Clause 4A—'Outworkers.'

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

Page 7, after subclause (2) insert:

(3) This Act applies to the employment of outworkers only to the extent it is extended to such employment under the terms of an award or enterprise agreement.'

This amendment merely reinstates a provision in the current Act in respect of outworkers.

The Hon. R.R. ROBERTS: This clause is opposed. I point out to the Committee that outworkers are generally not accepted as being employees and are not subject to an award. They are covered only to the extent of such employment under the terms of an award or enterprise agreement. This matter has been debated in terms of outworkers and their status. I will not go chapter and verse into this. The Opposition is opposed to it.

The Hon. K.T. GRIFFIN: It is in section 7(4) of the present Act.

The Hon. M.J. ELLIOTT: As the Attorney-General has pointed out, this subclause seems to reflect what is in the existing Act. What is not clear to me at this stage is whether or not the context in which it is used means that its interpretation will end up being different. I invite either the Hon. Ron Roberts or the Attorney-General to respond to that question.

The Hon. K.T. GRIFFIN: My reading of section 7(4) is that it is used in the same context as it is proposed to be used in the amendment which is being moved. It refers to Part 6 of this Act, and that relates to conditions of employment. It provides:

Any award or industrial agreement made before the commencement of this section will only apply to outworkers who are engaged but not employed under a contract of employment to perform work in an industry to such extent as may be determined by award or industrial agreement made after the commencement of this section.

We are seeking to put it into the clause in a context similar to that in which it appears in section 7.

Amendment carried; clause as amended passed.

Clauses 5 to 13 passed.

Clauses 14 and 15.

The Hon. K.T. GRIFFIN: I move to strike out clauses 14 and 15 and insert the following new clauses:

Composition of the court

14. The court's judiciary consists of—

(a) the Senior Judge[1] of the court; and

(b) the other judges of the court; and

(c) the industrial magistrates

[1] Note, however, that a person who becomes the principal judicial officer of the court under the transitional provisions, retains the title 'President' (see schedule 1, section 9).

The Senior Judge.

15. (1) The Senior Judge is the principal judicial officer of the Court.

(2) The Senior Judge is responsible for the administration of the Court.

(3) If the Senior Judge is absent from official duties, responsibility for administration of the Court devolves on a Judge of the Court appointed by the Governor to act in the Senior Judge's absence

or, if no such appointment has been made, on the most senior of the Judges who is available to undertake the responsibility.

I have already given an overall explanation of the approach which the Government is taking in relation to the court, and this is the first of those clauses which relate to that court.

The Hon. C.J. SUMNER: We have debated this matter, so I will not revisit the substance of the debate, except to say that this clause deals with the composition of the court and therefore raises issues relating to the independence of the judiciary, the commission, and so on, that we have canvassed over the past few days. The Opposition believes that this issue should be put to the test on the floor and intends to divide on this and possibly some of the other matters relating to the appointment of commissioners for the reasons we have outlined. We believe that the Australian Democrats and members of the Liberal Party need to be put on record in relation to this matter, including people like Mr Redford and, of course, Mr Lawson Q.C. who, although not here, is paired, apparently. I do not know whether there was any Machiavellian plot involved in sending Mr Lawson overseas at this stage so that, as a former President of the Bar Association, he could not participate in these issues.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Well, he has a pair. It is not juvenile-he's got a pair. He is on the record as President of the Bar Association on issues relating to judicial independence. He can now put himself on the record in this Parliament. We believe that the issue is of that importance. We have not had time to resolve the issue, talk to the judges or get the views of the Bar Association, the Law Society or anyone else. We at least will put our position on the matter on record. That is why I indicate, without recanvassing the substance of the matters, that we intend to divide on at least this clause and perhaps one or two others.

The Committee divided on the new clauses:

AYES (10)

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

NOES (7)

Crothers, T.	Pickles, C. A.
Roberts, R. R. (teller)	Roberts, T. G.
Sumner, C. J.	Weatherill, G.
Wiese, B. J.	

PAIRS

Lawson, R. D.	Feleppa, M. S.
Laidlaw, D. V.	Levy, J. A. W.

Majority of 3 for the Ayes.

New clauses thus inserted.

New clauses 16, 17 and 18.

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

Insert new clauses 16, 17 and 18 as follows:

DIVISION 4—CONDITIONS OF JUDICIAL OFFICE

The Senior Judge

16. (1) The Senior Judge of the Court is a District Court Judge assigned by the Governor, by proclamation, to be the Senior Judge of the Court.

(2) Before the Governor makes an assignment under this section, the Attorney-General must consult with the Chief Judge of the District Court on the proposed action.

(3) A person ceases to hold office as the Senior Judge of the Court if—

(a) the person ceases to be a judge of the District Court; or

(b) the person comes to the end of a term of assignment as a member of the Court's principal judiciary.

Other Judges of the Court

17. (1) A Judge of the Court is a District Court Judge assigned by the Governor, by proclamation, to be a Judge of the Court.

(2) There will be as many Judges of the Court as the Governor considers necessary.

(3) Before the Governor makes an assignment under this section, the Attorney-General must consult with the Chief Judge of the District Court on the proposed action.

(4) A person ceases to hold office as a Judge of the Court if—

(a) the person ceases to be a judge of the District Court; or

(b) the person comes to the end of a term of assignment as a member of the Court's ancillary judiciary and the assignment is not renewed.

General provisions about assignment to the Court's judiciary

18. (1) The Court's judiciary is made up of the members of its principal judiciary (i.e. those members of its judiciary who are occupied predominantly in the Court) and its ancillary judiciary (i.e. those members of its judiciary who are not occupied predominantly in the Court).

(2) The principal judiciary consists of—

(a) the Senior Judge of the Court; and

(b) the Judges and industrial magistrates who are classified by the proclamations of assignment as members of the Court's principal judiciary.

(3) An assignment to be a member of the Court's principal judiciary will be for a term of six years.

(4) However, if a term of assignment for six years would extend beyond the time when the person to whom the assignment relates reaches—

(a) in the case of a Judge—70 years of age; or

(b) in the case of an industrial magistrate—65 years of age,

the assignment will be for a term ending when the person reaches the relevant age.

(5) An assignment as a member of the Court's ancillary judiciary will be for a term specified in the proclamation of assignment (which may be renewed or extended, by proclamation, from time to time) but no such term of assignment may extend beyond the time when the person reaches—

(a) in the case of a Judge—70 years of age; or

(b) in the case of an industrial magistrate—65 years of age.

The original clauses are opposed. The Hon. Mr Elliott raised with me privately an issue in relation to clause 18 (3) and (4), relating to the court's principal judiciary for a term of six years. I said at an earlier stage that there were no term appointments. It is correct in relation to the appointment of the judge, because the judge becomes a judge of the District Court but under this provision is assigned by proclamation for the fixed term by the Governor. It is correct that there are no term appointments of judges, but it is incorrect if that is to be construed in the context of an appointment to this court. Of course, it does not mean that the present judges of the court are limited in their term of service on this court but only for future appointments. I thought it reasonable and fair that I should correct that in the light of my earlier statement.

The Hon. M.J. ELLIOTT: I am having some amendments drafted up for this clause. I was not joking earlier when talking about recommitting and, when we get to the end of the proceedings, I will be coming back to this clause. At this stage the principle of the judges being there for life is one that I shall be supporting. I had no anticipation that this series of subclauses was remaining. At the end of the Committee stage I will have an amendment to this clause.

Clauses 16 to 18 negatived; new clauses 16 to 18 inserted.

Clauses 19 to 21 negatived.

Clause 22—'Constitution of the court.'

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

Page 12, line 18—Leave out 'the President' and insert 'the Senior Judge'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clauses 23 to 26 passed.

Clause 27—'Jurisdiction of the Commission'—reconsidered.

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

Page 13, after line 22—Insert—

(ca) jurisdiction to hear and determine any matter or thing arising from or relating to an industrial matter; and

Amendment carried; clause as amended passed.

Clauses 28 and 29 passed.

Clauses 30 to 33.

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

Strike out these clauses and insert the following new clauses:

The President

30. (1) The President of the Commission is a person appointed by the Governor to be the President of the Commission.

(2) Before a person is appointed (or reappointed) as the President of the Commission, the Minister must consult confidentially about the proposed appointment with a panel consisting of—

(a) a nominee of the United Trades and Labor Council; and

(b) a nominee of the South Australian Employers' Chamber of Commerce and Industry; and

(c) a nominee of the House of Assembly appointed by resolution of that House; and

(d) a nominee of the Legislative Council appointed by resolution of the Council; and

(e) the Commissioner of Public Employment,

(and for the purposes of the consultation must inform the members of the panel all persons short-listed for appointment).

(3) The Senior Judge of the Court may (but need not) be appointed as the President of the Commission.

(4) The president is responsible for the administration of the Commission.

(5) If the President is absent from official duties, responsibility for administration of the Commission devolves on a Deputy President appointed by the Governor to act in the President's absence or, if no such appointment has been made, on the most senior of the Deputy Presidents who is available to undertake the responsibility.

The Deputy Presidents

31. (1) A Deputy President of the Commission is a person appointed by the Governor to be a Deputy President of the Commission.

(2) Before a person is appointed (or reappointed) as the Deputy President of the Commission, the Minister must consult confidentially about the proposed appointment with a panel consisting of—

(a) a nominee of the United Trades and Labor Council; and

(b) a nominee of the South Australian Employers' Chamber of Commerce and Industry; and

(c) a nominee of the House of Assembly appointed by resolution of the House; and

(d) a nominee of the Legislative Council appointed by resolution of the Council; and

(e) the Commissioner of Public Employment,

(and for the purposes of the consultation must inform the members of the panel all persons short-listed for appointment).

(3) A Judge of the Court may (but need not) be appointed as a Deputy President of the Commission.

Eligibility for appointment

32. A person is eligible for appointment as the President or a Deputy President of the Commission if—

(a) the person is the Senior Judge or another Judge of the Court; or

(b) the person's qualifications, experience and standing in the community are of a high order and appropriate to the office to which the appointment is to be made.

Term of appointment

33. (1) An appointment as the President or a Deputy President of the Commission will be for a term of 6 years which may be renewed for one further term of 6 years.

(2) However, a term of appointment cannot extend beyond the time when the appointee reaches 65 years of age and, if that time is less than 6 years from the date the appointment is made or renewed, the appointment will be made or renewed for a term ending when the person reaches 65 years of age.

This provision relates to the commission. In my overview at the commencement of this stage of the Committee, I indicated what the Government had in mind in respect of the structure of the commission. These amendments relate to that.

The Hon. R.R. ROBERTS: We oppose clause 30 in particular, which makes provision for a nominee of the Trades and Labor Council. There has been no consultation with the Trades and Labor Council to see whether it would want to be involved. My advice is that it may not wish to express a view on its independence and may have grave concern about its involvement in this matter. My advice is that we should oppose it on those grounds.

Clause negatived.

The Committee divided on new clause 30:

AYES (10)

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

NOES (7)

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

PAIRS

Laidlaw, D. V.	Levy, J. A. W.
Lawson, R. D.	Sumner, C. J.

Majority of 3 for the Ayes.

New clause thus inserted.

Clauses 31 to 33 negatived; new clauses 31 to 33 inserted.

Clause 34—Remuneration and conditions of office.'

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

Page 15, line 8—Leave out paragraph (b) and insert:

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

This is consequential on the earlier amendments and relates to term of appointment of the President and Deputy Presidents of the commission and takes into account the fact that there is a term for the President and Deputy President of the commission.

Amendment carried; clause as amended passed.

Clause 35—'The Commissioners.'

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

Page 15, after line 13—Insert subclause as follows:

(1A) Before a person is appointed (or reappointed) as a Commissioner, the Minister must consult confidentially about the proposed appointment with a panel consisting of—

(a) a nominee of the United Trades and Labor Council; and

(b) a nominee of the South Australian Employer's Chamber of Commerce and Industry; and

(c) a nominee of the House of Assembly appointed by resolution of that House; and

(d) a nominee of the Legislative Council appointed by resolution of the Council; and

(e) the Commissioner of Public Employment,

(and for the purposes of the consultation must inform the members of the panel all persons short-listed for appointment).

This is the consultation process in relation to the appointment of a commissioner.

Amendment carried; clause as amended passed.

Clause 36—'Term of appointment.'

The Hon. K.T. GRIFFIN: I oppose the clause and move to insert:

36. (1) An appointment as an Industrial Relations Commissioner will be for a term (which may be renewed from time to time) specified in the instrument of appointment.

(2) An appointment as a commissioner will be for a term of 6 years which may be renewed for one further term of 6 years.

(3) However—

(a) a Commissioner may be appointed on an acting basis and, in that case, the term of appointment will be for a term of not more than six months; and

(b) a term of appointment cannot extend beyond time when the appointee reaches 65 years of age and, if that time is less than 6 years from the date the appointment is made or renewed, the appointment will be made or renewed for a term ending when the person reaches 65 years of age.

This relates to the terms of office of an industrial relations commissioner or an enterprise agreement commissioner and is part of the scheme to which I have already referred.

Clause negatived; new clause 36 inserted.

Clauses 37 to 43 passed.

Clause 44—'Disclosure of interest by members of the court or commission.'

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

Page 19, line 29—Leave out subparagraph (i) and insert:

(i) if the Senior Judge of the Court or the President of the Commission (as the case requires) directs the member to withdraw from the proceedings; or

This relates to the disclosure of interests by members of the court and commission and is a drafting matter and partly consequential but also to insert now the presidency of the commission. In fact, it is all consequential on the earlier decisions that have been taken.

Amendment carried; clause as amended passed.

Clause 45—'Protection for officers.'

The Hon. K.T. GRIFFIN: I oppose the clause and move:

Insert new clause as follows:

Protection for officers

45. The members of the court's judiciary, the members of the commission, and a registrar or other person who exercises the jurisdiction of the court or the commission, has the same privileges and immunities as a judge of the Supreme Court.

Again, this is consequential on earlier amendments relating to protection for officers.

Existing clause negatived; new clause inserted.

Clause 46—'Annual report.'

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

Page 20, line 9—Leave out 'President' and insert 'senior judge'.

This is consequential.

Amendment carried; clause as amended passed.

Clauses 47 to 57 passed.

Clause 58—'Constitution of the office.'

The Hon. K.T. GRIFFIN: I oppose the clause and move to insert new clauses as follows:

Appointment and conditions of office of Employee Ombudsman

58A (1) The Employee Ombudsman is appointed by the Governor for a term of six years which may be renewed for one further term of six years.

(2) Before a person is appointed (or reappointed) as the Employee Ombudsman, the Minister must consult confidentially about the proposed appointment with a panel consisting of—

(a) a nominee of the United Trades and Labor Council; and

(b) a nominee of the South Australian Employers' Chamber of Commerce and Industry; and

(c) a nominee of the House of Assembly appointed by resolution of that House; and

(d) a nominee of the Legislative Council appointed by resolution of the Council; and

(e) the Commissioner of Public Employment,

(and for the purposes of the consultation must inform the members of the panel all persons short-listed for appointment).

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

(a) dies ; or

(b) reaches 65 years of age; or

(c) completes a term of appointment and is not reappointed; or

(d) resigns by written notice given to them; or

(e) becomes mentally or physically incapable of carrying out official duties and is removed from office by the Governor on that ground; or

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

(4) Except as provided by this section, the Employee Ombudsman cannot be removed from office.

Remuneration and conditions of office

58B(1) The Employee Ombudsman is entitled to the remuneration determined by the Remuneration Tribunal.

(2) The other conditions of office are to be as determined by the Governor.

Independence of the office

58C The Employee Ombudsman is not subject to control or direction by the Minister.

Employee Ombudsman's access to Legislative Review Committee

58D The Employee Ombudsman may consult with the Legislative Review Committee of the Parliament on questions affecting the administration of the Employee Ombudsman's office.

This relates to the employee ombudsman. Some amendments were made to the Bill when the Committee was first considering it. There have been some discussions about the way in which the employee ombudsman should be appointed and the protection of the independence of that officer. As a result of the discussions, what is now proposed is that the employee ombudsman will be appointed by the Governor for a term of six years, which may be renewed for one further term of six years, and that before the appointment is made there is to be consultation in much the same way as there is now in relation to the appointment of the President, Deputy President and commissioners of the commission.

The Hon. Ron Roberts may raise the point that the United Trades and Labor Council has not been consulted. That is correct, but I make the point that it is a gesture of goodwill. If the United Trades and Labor Council does not wish to be involved, at least it has been offered the opportunity to do so. As the Hon. Mr Elliott expressed concern that we should make the office of employee ombudsman as independent as possible, we are also proposing additional new clause 58B, which fixes the remuneration of the employee ombudsman so that it takes it out of the GME Act and out of the realm of the Government; new clause 58C which refers to the fact that the employee ombudsman is not to be subject to the control and direction of the Minister; and new clause 58D which provides that the employee ombudsman may consult the Legislative Review Committee on questions affecting the administration of the employee ombudsman's office. We felt that was important to ensure a proper relationship with the Parliament and a significant measure of independence in undertaking his or her functions.

The Hon. R.R. ROBERTS: The Opposition is opposed to this amendment. The Attorney-General is right about one thing: one of the arguments for our opposition is the non-consultation with the United Trades and Labor Council. We also have interests in two other areas. We believe that a six year term has problems with independence. Those arguments have been well canvassed in other areas, and I do not intend to go over them again. I point out that clause 58A(2) provides that the Minister must consult confidentially with the panel about the proposed appointment. It does not say he must accept the panel's appointment; it says merely that he must consult. Again, it is a question of the danger of political interference in the appointment of this person. The clause provides only that he must consult; it does not provide that he must accept the decision or the recommendation.

The Hon. M.J. ELLIOTT: I rise to support this amendment and consequential amendments. The position of the employee ombudsman now is as close to independent as any position probably exists in this State. I suppose the only

possible criticism relates to the question of term renewal. In any event, certainly the appointment process itself is far less political than the appointment process for the current State Ombudsman, for the judiciary and, as I said, any other position we care to consider in this State. Compared with before, not only is the appointment being scrutinised by what I consider to be a very balanced group—I think any fair-minded person would have to agree that it is a balanced group—but the remuneration is not fixed by the Government.

The ombudsman is not subject to the control or direction of the Minister. The employee ombudsman will report to Parliament—unlike the original proposition when he or she had to report to the Minister and the Minister then had to pass on the reports to Parliament. The employee ombudsman will communicate directly with the Legislative Review Committee. The functions of the employee ombudsman have been broadened out very significantly. I would have hoped that most people would see that this is a highly significant part of the legislation. The only potential weakness is a question of resourcing. That is always a potential problem, but I would suggest that, with a person who has this level of independence, and particularly since this person can communicate with a parliamentary committee directly, as well as by way of reports to the Parliament, if there is not adequate resourcing the potential exists to create a great deal of pressure to try to ensure that that resourcing is improved.

Existing clause 58A negatived.

The Hon. R.R. ROBERTS: The Opposition is opposed to proposed new clause 58A but will support new clauses 58B, 58C and 58D.

The Committee divided on proposed new clause 58A:

AYES (10)

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

NOES (7)

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

PAIRS

Lawson, R. D.	Levy, J. A. W.
Laidlaw, D. V.	Weatherill, G.

Majority of 3 for the Ayes.

New clause 58A thus inserted.

New clauses 58B, 58C and 58D inserted.

Clause 60—'General functions of employee ombudsman.'

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

Page 24, lines 15 to 27—Leave out subclause (1) and insert—

(1) The Employee Ombudsman's functions are—

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

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

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

(d) to scrutinise enterprise agreements lodged for approval under this Act and to intervene in the proceedings for approval if the Employee Ombudsman considers there is sufficient reason to do so; and

(e) to represent employees in proceedings (other than proceedings for unfair dismissal) if—

(ii) the employee is not otherwise represented; and

(ii) it is in the interests of justice that such representation be provided; and

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

(g) to investigate the conditions under which work is carried out in the community under contractual arrangements with outworkers and other examinable arrangements; and

(h) to provide an advisory service on the rights of employees in the workplace on occupational health and safety issues.

This amendment relates to the function of the ombudsman. There are two changes: one is to insert paragraph (d) which enables the ombudsman to scrutinise enterprise agreements lodged for approval under the Act and to intervene in proceedings for approval if the ombudsman considers there is sufficient reason to do so. So, that is a new paragraph. The second is paragraph (e) where we have excluded from the representation provisions proceedings for unfair dismissal and we have added paragraphs (i) and (ii) to ensure that there is no overlap of representation.

Amendment carried; clause as amended passed.

Clauses 61 to 65 passed.

Clause 66—'Form of payment to employee.'

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

Page 27, line 1—Leave out subclauses (3), (4) and (5) and insert—

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

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

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

(c) an amount the employer is authorised or required to deduct by order of a court, or under a law of the State or the Commonwealth.

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

This clause relates to the form of payment to an employee. The Government has sought to limit the capacity of the employer to make deductions and I think that that now coincides with views expressed in Committee about some aspects of it which were unsatisfactory.

Amendment carried; clause as amended passed.

Clauses 67 to 71 passed.

Clause 72—'Persons bound by enterprise agreements.'

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

Page 29, line 8—Leave out paragraph (b) and insert:

(b) a group of employees or their representative association or associations.

This amendment seeks to provide flexibility to parties to an enterprise agreement as opposed to the Government's position that either an association is a party representing all employees or is not a party at all. The Opposition proposes a sensible compromise. A group of members within the wider group of employees can elect to have their association represent them as a party to the agreement. The association will coexist with any other association which is so bound and the remaining employees will be parties in their own right.

The Hon. K.T. GRIFFIN: The amendment is opposed. The clause presently indicates that an enterprise agreement may be made between an employer or two or more employers who together carry on a single business, and a group of employees. What this amendment does is to allow their representative association or associations to become parties to the enterprise agreement. That means not just an

association as represented under subclause (2) but without the constraints that our provisions seek to impose. What the Bill provides already is that an association may enter into an enterprise agreement on behalf of a group of employees if and only if the notice has been given to the employees as required by regulation and the associations authorised in writing by a majority of the employees currently constituting the group to act on behalf of the group. We would have thought that an adequate basis for both representation and the entry into the enterprise agreement.

The Hon. M.J. ELLIOTT: I opposed the same amendment first time around and have not changed my mind in relation to it. Elsewhere in this legislation it is plain that an association can be a party to the agreement. I understand what the Hon. Mr Roberts is seeking to do, but it is something that I did not support the previous time around and on which I have not changed my mind.

The Hon. R.R. ROBERTS: I do not want to canvass all the arguments again. It seems to me ludicrous that an organisation or association can represent its members in negotiations: to me, the requirement to have every employee sign has a sinister aspect, that is, the employer can find out exactly who is doing what. The voting intentions are clear.

Amendment negatived.

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

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

(1A) An association may enter into an enterprise agreement as the representative of the group of employees as a whole if notice has been given to the employees as required by regulation and the association is authorised, in writing, by a majority of the employees currently constituting the group to act on behalf of the group.

(1B) An association may enter into an enterprise agreement as the representative of its members who are bound by the agreement (either at the date of the agreement or subsequently) if those members as at the date of the agreement authorise the association, in writing, to act on their behalf.

This is consequential, but what we sought to do was delete subclause (2). Subclause (2) provides that an association may enter into an enterprise agreement if and only if (a) the association is authorised by a majority of the employees currently constituting the group to act on behalf of the group or (b) within the group of employees the association has members (or a member) who authorise it to act on their behalf. A group of employees may enter into an agreement if and only if a majority of the employees currently constituting the group approve the terms of the agreement, proof whereof shall lie with the employer. Subclause (3) introduces a mechanism for the commission being certain that the agreement has the approval of the majority of employees covered. It replaces the idea of some other person simply signing the agreement on behalf of the group. It is a provision that reflects the Federal non-union bargaining stream and we suggest it ought to be supported.

The Hon. K.T. GRIFFIN: Opposed.

Amendment negatived.

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

1. Page 29—Leave out subclauses (2)(a) and (2)(b).

2. Insert the following new clause:

Negotiation of enterprise agreement

72A(1) An employer must, before beginning negotiations on the terms of an enterprise agreement, give the employees who may be bound by the agreement at least 14 days' notice, in accordance with procedures prescribed by regulation, that negotiations are about to begin (but notice is not required if the agreement is negotiated to settle an industrial dispute, or the commission determines that there is good reason in the circumstances of the case to exempt the employer from this requirement).

(2) The employer must, before beginning negotiations on the terms of an enterprise agreement, inform the employees of their right to representation in the negotiation, and proceedings for approval, of the agreement and, in particular, that an employee may be represented by the Employee Ombudsman, an agent of an employee's choice, or an association of employees.

(3) If an employer is aware that an employee is a member of an association, the employer must, before beginning negotiations on the terms of an enterprise agreement, take reasonable steps to inform the association that the negotiations are about to begin.

(4) An employer who negotiates an enterprise agreement with employees who are subject to an award must ensure that the employees have reasonable access to the award.

(5) A person involved in negotiations for an enterprise agreement must comply with procedures and formalities applicable to that person that are required by regulation.

I point out to members that the spirit of the subclause (2)(b), which we seek to leave out, is in new clause 75(1)(c) on page 15 of the amendments. Between new clause 72A and new paragraph (c) of clause 75(1), notice provisions are appropriately covered. In new clause 72A, we have accommodated a concern which we expressed in new clause 72A(1) so that, although at least 14 days notice is to be given to employees, the notice is not required if the agreement is negotiated to settle an industrial dispute or the commission determines that there is good reason in the circumstances of the case to exempt the employer from this requirement. That is there because we were of the view that in practice the 14 days minimum without any qualifying provision was too inflexible.

The Hon. M.J. ELLIOTT: I support new clause 72A. This new clause is a very important provision if one is serious about enterprise agreements truly working and about trying to facilitate the role that employees will play. New clause 72A makes it plain that, before the employer embarks on the negotiations, there has to be 14 days notice given to employees; that there will be negotiation for an enterprise agreement; and that the employer must inform the employees that they have a right of representation and as to the people who can represent them.

If the employer is aware that any employees are members of an association, they will notify that association that negotiations are about to commence. Where there is a relevant award, the employees will have to be given access to it so they know the conditions that are the subject of negotiation. Finally, the way in which negotiations are carried out will be prescribed by regulation. With all those things in place, there is certainly a great deal of empowerment of individuals. A criticism I had earlier was that, to go into an enterprise agreement, you have to know what your rights are, and you have to know what the safety net looks like so you know what you are negotiating up against. With these things in place, this clause is one of the most significant improvements in the Bill to date.

Amendment carried; new clause inserted; clause as amended passed.

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

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

Page 29—Insert new clause as follows:

Form and content of enterprise agreement

73(1) An enterprise agreement—

(a) must be in writing; and

(b) must—

(i) specify the employer to be bound by the agreement; and

(ii) define the group of employees to be found by the agreement; and

(c) must include procedures for preventing and settling industrial disputes between the employer and employees bound by the agreement; and

(d) if a majority of at least two-thirds of the total number of employees to be 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 rights to represent the industrial interests of those employees to the exclusion of another association of employees[1.]; and

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

(e) must provide that sick leave is available,subject to limitations and conditions prescribed in the agreement, to an employee if the leave becomes necessary because of the sickness of a child, spouse, parent or grandparent (unless the agreement specifically excludes the extension of sick leave to such circumstances); and

(f) must make provision for the renegotiation of the agreement at the end of its term; and

(g) must be signed as required by regulation by or on behalf of the employer, and on behalf of the group of employees, to be bound by the agreement.

(2) An enterprise agreement should be submitted to the Commission for approval within 21 days after the agreement is signed by or on behalf of the persons who are to be bound by it.

The significant amendment is to insert paragraph (d) and to increase the percentage from a majority to two-thirds of the total number of employees to be covered by the agreement. That in fact provides additional protection.

The Hon. R.R. ROBERTS: The Opposition gives this amendment qualified support. However, we have some concerns in relation to paragraph (d), which provides that one must provide that sick leave is available subject to limitations and conditions prescribed in the agreement. We believe it is a contradiction to say that indeed one 'must' provide sick leave. Then, further on in the clauses, it says 'unless you agree not to provide it'. It puts it in and takes it out.

The Hon. K.T. GRIFFIN: This is the extension for child, spouse, parent or grandparent. That was the argument we had the other day.

Existing clause negatived; new clause inserted.

Clause 74 passed.

Clause 75—'Approval of enterprise agreement.'

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

Page 30—Insert the following new paragraphs in subclause (1):

(d) agreement provides for consultation between the employer and the 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 provision for consultation; and

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

The amendment seeks to tidy up clause 75. If the Government it is going to open up enterprise bargaining to the non-unionised work force, the commission will need to be able to ensure that workers are fully aware of the consequences of that agreement. This amendment ensures that that is the case. I commend it to the Committee.

The Hon. K.T. GRIFFIN: It seems to the Government that the provisions which we have in our clause 75 are more than adequate to address that issue, particularly because the commission has power to consider the agreement which is proposed to be approved and also must consider it in the context of the award safety net.

I draw attention to the fact that in the amendment which I have on file (subclause (4)(a)) again reflects the earlier indication which I gave that at least two-thirds of the total numbers of employees to be covered by the agreement are in favour of making the agreement. That is necessary to be established before the Full Commission, to which an enterprise agreement has been referred by a member of the commission who considered the agreement in the first place. I submit to the Committee that the comprehensive clause that I have by way of amendment adequately addresses the issues of consultation.

The Hon. M.J. ELLIOTT: Paragraph (e) of the Hon. Ron Roberts' amendment is quite well covered in both clauses 72a and 75. However, I am not sure whether I have understood subclause (d) correctly because it talks about consultation between employers and employees bound by the agreement about changes to the organisation and performance of work. It sounds as though it is talking about consultation after the agreement has been reached in some ongoing process. That is my interpretation. I do not know whether the Hon. Mr Roberts can confirm whether my understanding is correct.

The Hon. R.R. ROBERTS: My understanding of it is that the situation as outlined by the Hon. Mr Elliott is correct, but it also covers a situation where consultation should take place with employees prior to making the award, but certainly paragraph (d) covers the areas that the honourable member is talking about. I do not know that paragraph (e) takes anything away from what we are trying to achieve. Obviously the Government and the Hon. Mr Elliott both have concerns about paragraph (e), although the Government has concerns about paragraph (d) also.

The Hon. K.T. GRIFFIN: My advice is that many awards contain provisions similar to paragraph (d) and that the issue addressed in that clause would be addressed by the commission when considering whether or not to approve an enterprise agreement in relation to the award safety net provisions. In determining whether or not the agreement should be approved and whether or not it at least allows for the safety net provided by the award, that will be one of the issues that the enterprise commissioner will have to address.

The Hon. R.R. ROBERTS: He certainly would if we accepted the clause as it is put. The point the Attorney-General makes is that the enterprise commissioner must assure himself that the safety net provisions are in place. The Attorney-General says that will be one of the things that he will take into account. I do not know that we will provide absolute instruction on what he must do. In a general sense the enterprise commissioner must satisfy himself that the safety net (and it is appropriate to approve the award). You could come forward with an award or agreement which met the safety net but which could have been drawn up by anybody. There has to be consultation before and from time to time during the life of an enterprise agreement in order to ensure that employees have been involved in the process. To say that the process has thrown out something which meets the safety net is one thing. To ensure that the employees have been involved consultatively in the establishment of that award or agreement is another issue, and I do not think it will do any harm to put this clause into the legislation.

The Hon. M.J. ELLIOTT: Despite the Attorney-General's comments, I do not believe that because if there is a consultation process within an award it would transfer over to an enterprise agreement. You are talking more about the conditions of employment. You are talking about remuneration, leave and those sorts of things. You are not talking about the fact that there happens to be consultation in the workplace; and in enterprise agreements, more than anywhere else, consultation in the workplace subsequent to agreement is something that should be encouraged. I indicate to the Hon. Ron Roberts that I would be willing to support paragraph (d)

but not paragraph (e), and I suggest that those paragraphs be put separately. Since we are about to delete existing clause 75 and insert a new clause, it may be better to insert the paragraph in the new clause.

The Hon. R.R. ROBERTS: I will not pursue my amendment at this stage but, if the existing clause 75 is negatived and a new clause substituted, I will move my amendment to the new clause 75.

Clause negatived.

New clause 75—'Approval of enterprise agreement.'

The Hon. K.T. GRIFFIN: I move to insert the following new clause:

75. (1) Subject to subsection (5), the Commission must approve an enterprise agreement if, and must not approve 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 identify those terms of an award (if any) that currently apply to the employees and will, if the agreement is approved, be excluded by the agreement; and

· to explain the procedures for preventing and settling industrial disputes as prescribed by the agreement; and

· to inform the employees of their right to representation in the negotiation, and proceedings for approval, of the agreement and, in particular, that an employee may be represented by the Employee Ombudsman, an agent of an employee's choice, or an association of employees; and

(b) 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

(c) if the agreement is entered into by an association as representative of the group of employees bound by the agreement—a majority of the employees currently constituting the group have authorised the association, in writing, to act on behalf of the group and their written authorisations have been delivered to the Commission as required by regulation; and

(d) 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 other conditions of employment that are inferior to the scheduled standards; and

(iii) does not provide for remuneration or conditions of employment that are (considered as a whole), inferior to remuneration or conditions of employment (considered as a whole) prescribed by the award (if any) that applies to the employees at the time of the application for approval; and

(e) the agreement is consistent with the objects of this Part; and

(f) the agreement complies with the other requirements of this Act.

(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, 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 the employees (if any) 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 their interests are properly taken into account.

(4) Despite subsection (1)(d)(ii) and (iii), the Full Commission may, on referral of an enterprise agreement by a member of the Commission who considered the agreement in the first instance, approve the agreement if the Full Commission is satisfied that—

(a) a majority of at least two-thirds of the total number of employees to be covered by the agreement is in favour of making the agreement; and

(b) the enterprise is suffering significant economic difficulties; and

(c) the agreement would make a material contribution to the alleviation of those difficulties; and

(d) 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 for approval if the member of the Commission before whom the question of approval comes in the first instance is in serious doubt about whether the agreement should be approved.

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

Page 30—Insert the following new paragraph in subclause (1):

(ca) The agreement provides for consultation between the employer and the 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 obtain provision for such consultation.

The Hon. K.T. GRIFFIN: It is opposed.

Amendment carried.

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

Insert in proposed clause 75(4) the following paragraph:

and

(e) having regard to any relevant award (which should be considered as a whole), the agreement does not substantially disadvantage the employees covered by the agreement.

I am simply trying to make clear what I hoped the clause already made clear: that it will be possible to go below the safety net. There are a series of conditions there, (a) to (d), which include: two-thirds of the work force have to agree to it; in relation to the enterprise suffering economic difficulties, the agreement will make a material contribution to alleviate those difficulties; and that there are reasonable prospects of the economic circumstances of the enterprise improving within the term of the agreement. But there seems to be no indication at all within the subclause as to how far you fall once you go below the safety net. I am trying to give an instruction to the commission, 'Look, if you go below the safety net you should not go substantially below it', otherwise there is no indication at all. Do you let them hit the ground? That is a question that unfortunately is not adequately answered as clause 75 stands. That is the issue I have sought to address and that is why I am moving the amendment. It was one of those that was done in haste as we were walking back into the Chamber. I had a scribbled note in my hand to address this one; it is being done on the run but that has applied to the way we have handled things so far, unfortunately.

The Hon. K.T. GRIFFIN: I oppose the amendment. It is yet another hurdle for those wishing to have approval of an enterprise agreement granted.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: It may be a hurdle because, if the employees have entered into an agreement by a majority of at least two-thirds of the total number of employees to be covered by the agreement and in the circumstances where the enterprise is suffering significant economic difficulties, the agreement would make a material contribution to the alleviation of those difficulties and there are reasonable prospects of the economic circumstances of the

enterprise improving within the term of the agreement, it may be approved. There is also this additional criterion which must be addressed and it may be that there is some substantial disadvantage but two-thirds at least of the employees have recognised that in the special circumstances being addressed they nevertheless want to go ahead with the agreement. It is a matter for them, and for that reason I oppose it.

The Hon. T.G. ROBERTS: Unfortunately, that clause is open ended and, if you have a two year agreement and people make an agreement to consider the financial circumstances of that company, there is nothing to indicate in the Bill that the new agreement will not include the extenuating circumstances again; and the reconsideration of that position is not considered in the Bill. The Hon. Mr Elliott tries to take into account time frames by which people could operate on less than the award or enterprise bargaining amount and also builds in some indication that there are certain levels below which you cannot go. As already indicated in previous contributions, some companies will not survive regardless of how much wages and conditions are cut. The problem we have with the Attorney's position is that it is far too open-ended.

Amendment carried.

New clause inserted.

The Hon. R.R. ROBERTS: I have another amendment which was to a clause that has been withdrawn, I think Standing Orders do not actually provide for me to be able to pursue it, so I suppose that is the end of it.

The CHAIRMAN: It is to clause 75 but we have taken the old clause out of the Bill.

The Hon. K.T. GRIFFIN: I do not know where it goes in the new scheme. I indicate that we can recommit the new clause 75 and the Hon. Mr Ron Roberts can take some advice on it in the meantime.

The Hon. R.R. ROBERTS: I am told it can stand alone, but how do we fit it in?

The Hon. K.T. GRIFFIN: I am happy to move that this clause be recommitted if you want to look at it later. It is a matter for the table.

The Hon. R.R. ROBERTS: It is a question of sequence.

The CHAIRMAN: You may be able to insert it in this clause but it is a problem at the table getting it in the right spot. It can be recommitted.

The Hon. R.R. ROBERTS: It is the only way we can do it.

New clause as amended inserted.

New clause 75A—'Extent to which aspects of negotiations and terms of the agreement are to be kept confidential.'

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

Page 30, after clause 75—Insert new clause as follows:

75A.(1) An association that enters into an enterprise agreement as representative of a group of employees, must not disclose to the employer which employees authorised the association to act on their behalf.

(2) However—

(a) an association, if authorised in writing by an employee, may disclose to an employer that the association is authorised to act on behalf of the employee; and

(b) an association may be authorised or required by the commission to disclose to an employer the identity of employees who authorised the association to act on their behalf.

(3) An enterprise agreement, once approved, must be lodged in the registrar's office and must, subject to an order under subsection (4), be available for public inspection.

(4) The commission may, if satisfied that an order under this subsection is justified by the exceptional nature or circumstances of the case, declare that an enterprise agreement or a particular part of an enterprise agreement is to be kept confidential to the persons bound by it, and make an order suppressing public disclosure of the agreement or the relevant part of the agreement (but an order under this subsection cannot prevent disclosure of the agreement to the employee ombudsman).

(5) A person must not contravene an order of the commission under subsection (4).

Penalty: Division 7 fine.

I think this is a reasonably balanced clause. However, I am concerned about the amendment yet to be moved by the Hon. Mr Elliott to replace new subclause (2)(b). My amendment proposes:

An association may be authorised or required by the commission to disclose to an employer the identity of employees who authorised the association to act on their behalf.

The Hon. Mr Elliott's amendment merely provides that 'an association may be authorised by the commission to disclose to an employer'; it does not require the disclosure. It also provides for the association to disclose the identity of those employees to the commission and not to the employer at any stage. That is how I see the deficiency. I do not know the purpose of the Hon. Mr Elliott's proposed amendment, but he may care to address specifically why there is no provision for the employee to be required by the commission to disclose the information to the employer.

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

Leave out subclause (2)(b) and insert—

(b) an association may be authorised by the commission to disclose to an employer the identity of employees who authorised the association to act on their behalf and may be required by the commission to disclose the identity of those employees to the commission.

I was concerned about the structure of subclause (2)(b) because there is no real indication of the grounds on which the commission will make any decision. I have always had reservations about a requirement of an association to divulge the names of the people on whose behalf it has been acting. As paragraph (b) stands, those concerns are raised even further because no direction is given to the commission as to the basis on which it should make its decision. It is the open-endedness which causes me grave concern. The Attorney-General might like to think about the ramifications for a person who has requested an association to act on their behalf, believing that that request would be treated in confidence and having the commission destroying that confidence. The reason for asking for the confidence in the first place would have been fear of what may happen to them in the workplace. That is not imaginary stuff. Are we willing to allow an employee who seeks assistance, and has done so in confidence, to lose that without any say whatsoever? The commission simply decides for reasons which are not specified.

The Hon. K.T. GRIFFIN: I oppose the amendment. The Government intended that there should be a general discretion. Courts and commissions have general discretions, and they exercise them according to the circumstances and merits of the case. That is what we envisaged in this instance. I would be very surprised if one could really identify, by an amendment to the statute, the grounds upon which the disclosure may be made. I note the honourable member's example of an employee who requests an association to act for him or her but does so in confidence. I would have thought that that is an issue that the association, if it was required to make information available, or at least there was an application for it to make that information available, might disclose to the commission, so that the commission could

make a judgment as to whether or not it was fair and reasonable that that confidence be maintained. It may also be a device, 'I give you this information in confidence', without having any genuine basis for requiring that to be kept confidential. We believe that it is reasonable to provide that the commission should have the general discretion, and that it can be trusted to properly exercise it.

The Hon. R.R. ROBERTS: If it was not so late I would find some of this amusing. What the Attorney-General seems to be suggesting is that you cannot trust the commissioner. This issue follows a pattern that flows through the way the Bill is written. Clause 75A(1) provides:

An association that enters into an enterprise agreement as a representative of a group of employees must not disclose to the employer which employees authorised the association to act on their behalf.

I mentioned this issue when we talked about sick leave. A wonderful statement is made in the first instance of, 'Look, we will provide you with protection', and then, in a clause which appears down the line, here it is again. The Attorney-General wants that facility where the commission then has to provide the names to the employer. What the Hon. Mr Elliott is proposing is quite fair and reasonable. The commissioner is deemed to be a person of high standing within the community. One would expect the commissioner to be trustworthy and honest; we charge him with the right to make discretionary decisions; to use that discretion in respect of the legislation, and the Attorney-General seems to think that we cannot trust him to say, 'Yes, this information is correct. The majority did or did not.'

The Attorney-General wants to put him through some rigorous test of his honesty. What the Hon. Mr Elliott is doing is quite laudable in the circumstances, and it will be a facility utilised more and more as we move into enterprise bargaining. From time to time it is quite understandable to expect employers in situations where there is high unemployment to put pressure on employees far more than they would if they were bound by an award. When you have an in-house agreement—and we have talked about the difference between the bargaining positions of the employee and the employer—it is an eminently sensible suggestion and the Opposition supports it.

The Hon. K.T. GRIFFIN: I do not want to prolong the debate on this. I merely want to say that it is all very well for the Hon. Mr Ron Roberts to draw attention to subclause (1), but the fact of the matter is that that is basically the provision he supported when the matter was last before us. What this clause is seeking to do is to set the maximum and then to moderate it in circumstances where it is fair and reasonable for information to be available. We think there ought to be a power in the commission to require an association to make the information available to an employer, so the employer knows which of the employees, for the purposes of negotiation, are represented by the association and which are not.

The Hon. R.R. ROBERTS: What the Attorney is saying is that you cannot get it through the front door, and I agree with that, but he then proposes to get it in through the back door.

Amendment carried; new clause as amended inserted.

Clause 76 passed.

Clause 77—'Effect of enterprise agreement.'

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

Page 31—Leave out clause and insert:

Commission's jurisdiction to intervene in industrial dispute between persons bound by enterprise agreement

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 the employees bound by the agreement.
(2) However—
(a) before the Commission intervenes in an industrial dispute between an employer and employees bound by an enterprise agreement, the Commission should ensure that the procedures laid down in the agreement for settling industrial disputes have been followed and have failed to resolve the dispute; and
(b) a determination made by the Commission in settlement of such a dispute—
(i) must not be made in relation to a condition of employment that is a subject-matter of the agreement (unless the determination is to correct an ambiguity or uncertainty in the agreement); and
(ii) must be consistent with the agreement.

We are seeking to give to the commission certain powers of intervention in industrial disputes, and to set the parameters within which that intervention occurs. This was raised in the course of the Committee when we last addressed the issue and I submit to the Committee that we now have a reasonable balance between the enterprise agreement, which cannot place certain limitations but on the other hand still leaves the commission with certain powers of intervention.

Existing clause negatived; new clause inserted.

Clause 78—'Duration of enterprise agreement.'

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

Page 31—Leave out subclause (1) and insert:

(1) An enterprise agreement continues in force for a term (not exceeding three years) specified in the agreement.

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

Page 31—Leave out subclause (1) and insert:

(1) An enterprise agreement continues in force for a term specified in the agreement (not exceeding two years).

The Hon. K.T. GRIFFIN: I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

Amendment carried; clause as amended passed.

Clause 78 passed.

Clause 79—'Power of Commission to vary or rescind an enterprise agreement.'

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

Page 31—
Lines 26 to 28—Leave out subclause (1) and insert—
(1) The Commission may vary an enterprise agreement—
(a) to give effect to an amendment agreed between the employer and a majority of the employees currently bound by the agreement; or
(b) to correct an ambiguity or uncertainty in the agreement.
Lines 29 and 30—Leave out subclause (2) and insert—
(2) In deciding whether to vary an enterprise agreement, the Commission must (unless the variation is merely to correct an ambiguity or uncertainty) apply the same tests as apply to the approval of an enterprise agreement.

These amendments seek to give limited power to the commission to vary an enterprise agreement and particularly to correct an ambiguity or uncertainty in the agreement. The Government takes the view that basically, unless the parties agree, the enterprise agreement should not be varied but it recognises that the Committee is concerned that we at least provide some opportunity in very limited circumstances for that to occur.

The Hon. M.J. ELLIOTT: This is an important part of a consequential amendment to something on which we did not dwell for very long previously. When the Bill was first

introduced it provided that an enterprise agreement could deny both conciliation and arbitration. As amendments now stand it allows conciliation and it allows arbitration in particular circumstances, one of which is the case of a dispute about something which is not subject matter to the agreement itself. For instance, if a safety issue arises which was not covered by the agreement, arbitration would be possible in relation to that. However, this now allows that, if there is some other ambiguity or uncertainty in the agreement itself, under certain circumstances arbitration is possible. I believe that that is very important and, at the end of the day, it will prevent many industrial disputes, will make for better harmony in the workplace and will be to the benefit of everyone.

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

Page 31, lines 26 to 30—Leave out subclauses (1) and (2) and insert:

(1) The Commission may vary an enterprise agreement—
  (a) to give effect to an amendment agreed between the employer and a majority of the employees currently bound by the agreement; or
  (b) to correct an ambiguity, uncertainty or other deficiency.
(2) In deciding whether to vary an enterprise agreement, the Commission must (unless the variation is merely to correct an ambiguity, uncertainty or other deficiency) apply the same tests as apply to the approval of an enterprise agreement.

This amendment addresses the same issues as the amendment by the Attorney-General, but it contains an additional couple of words. We have expanded the grounds to include 'other deficiency'. Ambiguities and uncertainties are things that are fairly intangible, but there may be a glaring deficiency in the Bill that was overlooked at the time. We think if there was a deficiency in the terms of an agreement, like ambiguities and uncertainties, we feel it is not unreasonable for the commission to be able to access that agreement to overcome that deficiency.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. The reference to 'other deficiency' is very subjective. 'Ambiguity and uncertainty' are more objective and can be assessed more objectively. It is very difficult to know how one establishes what is or is not a deficiency and by what criterion does one measure that deficiency. One can identify ambiguity and uncertainty, but what is a deficiency?

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: No. With respect, if it has power to correct an ambiguity, on your argument it is then a deficiency. If it is a deficiency, you do not need 'deficiency' because you have covered it with the description 'ambiguity'. If it is uncertain you would say it was a deficiency, and if it is a deficiency it is already covered by 'uncertainty'. I do not want it, and I oppose it accordingly.

The Hon. M.J. ELLIOTT: I must disagree with the interpretation of the Attorney-General. The way I would put it is that, in relation to matters that are actually covered by the agreement, if there is a deficiency it would immediately create an ambiguity or uncertainty. If it is not in relation to a matter that is covered by the agreement, that is a deficiency and something that can be addressed anyway. Either way you look at it, a deficiency is already covered by what we have. With respect, I disagree with the Attorney-General but come to almost the same conclusion.

Hon. R.R. Roberts' amendment negatived; Hon. K.T. Griffin's amendment carried.

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

Page 32, after line 2—Insert new subclauses as follows:

(4) The commission may, on its own initiative or on the application of a person bound by an enterprise agreement, review the operation of the agreement.
(5) If, on a review under subsection (5), the commission finds that the agreement is unfair to employees covered by the agreement, or is contrary to the public interest, the commission may vary or terminate the agreement.

This amendment recognises that the effects of an arrangement often become clear only into the period of operation. Where those effects are shown to be unfair or otherwise contrary to the public interest, the commission will be able to deal with the matter rather than allow the other party to unconscionably profit from the defect for the remainder of the term. I commend the amendment.

The Hon. K.T. GRIFFIN: I oppose the amendment. I should not use extreme language at this hour of the day, but I think it is an absurdity. The problem I see is that the enterprise agreement commissioner has to be satisfied that the parties agree, that it is in the interests of the parties, etc., and now there is a provision sought to be included that provides that the commission may on its own initiative or on the application of a person bound by the enterprise agreement review the operation to determine whether or not it is unfair to employees. I just think that is inconsistent with the obligation placed on the commission to determine in the first place whether it is fair and so on. For that reason, I oppose the amendment.

The Hon. R.R. ROBERTS: With the best intent in the world—and I am talking about three parties to an agreement (the two signatories to the agreement and the commissioner)—it is possible for a significant deficiency to be established. It is my belief, in circumstances where that would be recognised, accepting the goodwill of all the parties, where a disadvantage was being suffered and it looked like continuing for two to three years, that is a situation where the commission, using its discretionary powers and acting in equity, good conscience and substantial merits in that case, ought to be able to intervene and provide proper relief where the circumstances clearly require it.

Amendment negatived; clause as amended passed.

Clauses 80, 81 and 81A passed.

Clause 81B.

The Hon. K.T. GRIFFIN: I indicate opposition to this clause, which deals with notice of an agreement to be given by the commission, and that is to be published in accordance with the regulations. A registered association that is a party to an award is entitled to receive a copy and may appear at any hearing to approve or vary the agreement. As we said at the time this was first considered, we find that objectionable and contrary to the whole process of entering into and having approved enterprise agreements.

The Hon. M.J. ELLIOTT: I am no longer insisting on this amendment in the light of a number of other changes that have happened. I know that some people will disagree. A number of things have happened which have alleviated the major concerns I had previously. For instance, there was no certainty when we were first debating this legislation that agreements were even going to be public documents, and now it is guaranteed that almost all of them will be. It is also guaranteed that all of them will be open to the scrutiny of the Ombudsman.

It has now been made quite clear that there are obligations on the employer at the beginning of the process, which were not there before, to inform members about their rights, and particularly their right to use associations. There have been

a number of other changes as well. In the overall scheme of things, I am not insisting on this amendment.

The Hon. R.R. ROBERTS: The Opposition will be opposing this proposition. The trade union movement believes in modern democratic management techniques, including information sharing, consultation and, indeed, joint decision making. That is why the trade union movement has been at the forefront of enterprise bargaining. We support the philosophical view that this notification to unions should take place. It is a sensible thing; it will do no harm.

Clause negatived.

New clause 82—'Confidentiality.'

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

Page 32, after line 15—Insert new clause as follows:

Confidentiality

82.(1) If an enterprise agreement prohibits the disclosure of information of a confidential nature, a person who discloses the information contrary to the agreement is guilty of an offence.

Penalty: Division 9 fine.

(2) However, an enterprise agreement cannot prohibit the disclosure of information of a statistical nature to the Minister.

This is consequential. It creates an offence in the very limited circumstances which have been referred to in an earlier clause, where information of a confidential nature is disclosed where an enterprise agreement prohibits that disclosure.

The Hon. M.J. ELLIOTT: My first reaction was to oppose this clause. However, one needs to realise that the fact that the Government has insisted that the contents of a very small number of agreements, those which are to be treated as exceptional, cannot be divulged. As I understand it, legal action could be initiated in other ways unless we actually have a clause which attracts one of the lowest penalties we can have, namely, a division 9 fine. The reality is that I do not think that this sort of thing that will ever be applied. I expect that many of the prohibitions will apply not to smaller firms but rather to big ones. The interesting point is that every person who works in the work place is entitled to a copy of the agreement. It is a nonsense, but it appears on balance, despite that, that it is better there than not.

The Hon. R.R. ROBERTS: The Opposition opposes the clause. As it reads the clause would prohibit, on my understanding, a situation where a member of a union could not disclose information to his unionist to seek advice as to his rights and entitlements. On my reading of it, it would prohibit him from speaking to a solicitor or lawyer to ascertain whether he was being disadvantaged in any way. At best it is poorly drafted. I draw to the attention of the Committee the fact that it introduces the notion again where the Government seeks to amend its drafting and put out a motherhood statement that it will do something and then override it. In this clause it says that a person who discloses the information contrary to the agreement is guilty of an offence. However, the rider on the bottom is that you can give part of it to the Minister. It is a give and take clause and ought to be opposed.

New clause inserted.

Clause 83 passed.

Clause 84—'Power to regulate industrial matters by award.'

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

Page 33, line 8—Leave out paragraph (a) and insert:

(a) the commission cannot regulate the composition of an employer's work force except to the extent the regulation is necessary to ensure appropriate conditions of employment or the proper regulation of an industrial matter; and

The Hon. K.T. GRIFFIN: We vigorously oppose the amendment. The Bill has a provision in it which we debated at some length whereby the commission cannot regulate the composition of an employer's work force. The amendment seeks to provide an exception to ensure appropriate conditions of employment or the proper regulation of industrial matter. I do not know what are appropriate conditions of employment, but I would have thought that it had the potential completely to frustrate the provision in the Bill presently and get the commission very much involved in the management of the work force—a consequence which, in the Government's view, is totally unacceptable.

The Hon. R.R. ROBERTS: This Bill contradicts a power given elsewhere under clause 4 regarding the definition of 'industrial matter'. This amendment cross-links those two provisions and the change allows the commission to regulate on merit issues regarding the percentages of juniors and trainees but limits regulation to *bona fide* issues as defined in the Bill.

The Hon. M.J. ELLIOTT: I invite the Attorney to respond to the fact that the definition of 'industrial matter' as now contained within paragraph (e) defines 'industrial matter' as the 'employment of juniors and apprentices in an industry, including the number or proportion that may be employed'. That is deemed to be an 'industrial matter'. Surely an industrial matter is something that an award can look at.

The Hon. K.T. GRIFFIN: I do not see that there is any problem. That is an express provision relating to an industry matter and, because it is expressed, the normal rules of statutory interpretation are that that would not be overridden by a general proposition that the commission cannot regulate the composition of an employer's work force. It is my view that because it is in the definition of 'industrial matter' the commission has the jurisdiction to deal with that issue, and that would not be overridden by what is in clause 84(2)(a). It is an industrial matter and is an express provision.

The Hon. M.J. ELLIOTT: The proposed amendment says that the commission cannot regulate the composition of an employer's work force 'except wherein provided for in the definition of "industrial matter"'. In the definition of 'industrial matter', the only place it is provided for is in paragraph (e). It is not producing any inconsistency and I cannot see how anything else within that definition will be covered by the words 'except wherein provided for' in the definition of 'industrial matter'.

The Hon. R.R. ROBERTS: This is the old pea and thimble trick. The Government claims that the commission can intervene in an industrial matter and then seeks to limit what an industrial matter is. We have canvassed these issues elsewhere, but this is a two pronged attack that is being used in a number of areas and it is wrong.

The Hon. M.J. ELLIOTT: I wonder whether an alternative suggestion would be an amendment which reads, 'The commission cannot regulate the composition of an employer's work force except in relation to the employment of juniors and apprentices.'

The Hon. K.T. GRIFFIN: As specified in the definition of 'industrial matter'—I would be happy with that.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: If you read what you have on file, I would have expected that that is exactly the way it would be read in any case. If I am wrong, you can explain it to me. I believe that the amendment as moved by the Hon. Mr Roberts has that practical effect (as best I interpret it). If I am wrong, I am willing to be persuaded of that and willing to look at it further. The amendment does not state 'except all

matters covered in the definition of industrial matter'; it states 'except wherein provided for'. It is expressly provided for in paragraph (e). I do not see it expressly provided for elsewhere.

I would not expect that that is exactly the interpretation. Whether or not that is a drafting matter, I do not know. But that is the interpretation I would have expected, which is why I could not work out why the Government was opposed to it, because it seemed to be the only reasonable interpretation of it in any case. I now move to amend the Hon. Mr Roberts' amendments as follows:

Delete all words after 'except' and insert 'in relation to the employment of juniors and apprentices'.

The Hon. K.T. GRIFFIN: It seemed to be very broad. I think the specific is preferable. I had a concern that it might be interpreted more broadly but, if it is limited as the honourable member suggests, I would certainly be prepared to support it.

The Hon. T.G. ROBERTS: I would like to examine the difference between the two positions. One is more prescriptive and only indicates juniors, trainees and apprentices; but if it is an industrial matter, staffing does become an issue as it does in a lot of disputes now. It could be occupational health and safety, for example. In the case of *Hansard*, if you only have half the number of staff to cover a 24 hour sitting period, and if you have a lot of 24 hour sitting periods, staffing levels do become a key matter for industrial dispute. Those concerns need to be taken into account. For instance, you may have a shortage of nurses or staff in all sorts of areas. The clause should not be prescriptive to a point of just indicating juniors; it should be prescriptive enough to say that staffing levels are a matter that can be considered by industrial negotiations through enterprise bargaining.
If you do not agree with that principle, state it.

The Hon. K.T. GRIFFIN: I have some difficulty with that. As I said, I am attracted to the Hon. Mr Elliott's reference to the employment of juniors and apprentices which specifically deals with the issue of proportion.

The Hon. T.G. ROBERTS: But the problem you will find—and I will use the police as an example—where you do not have enough police officers to cover and you are working extended shifts—

The Hon. M.J. Elliott: It is not a composition question.

The Hon. T.G. ROBERTS: It then becomes a consideration that is not open for negotiation. If you become prescriptive in the number of hours you can work you then cannot have flexibility in hours or arrangements for work if your staffing levels are not adequate to be a part of that bargaining process.

The Hon. M.J. ELLIOTT: But you are not talking about the composition of the work force in that circumstance. Of all the things said so far, juniors, apprentices and possibly casuals fit into that category but I do not think I have heard anything else. I may be wrong but I do not think these other matters are compositional.

The Hon. T.G. ROBERTS: I would not like to see them excluded. If it is not the intention of the clause to exclude those matters as being open for discussion at an enterprise level, then I suspect we have no argument.

The Hon. R.R. ROBERTS: In the definition of 'industrial matter' there are listed quite a few clauses that could affect juniors and the composition of the work force. There are other areas in this definition of 'industrial matter' which impinge on the rights of juniors. You do have situations where there are requirements for apprentice training, in particular where you have to have certain numbers of tradesmen as per juniors; they cannot be changed. The conditions of pay for juniors obviously is much lower than for seniors. Where exploitation is taking place is where overly large numbers of juniors are clearly doing work at the expense of seniors purely for that reason or it is contrived for that reason rather than to provide proper working conditions and other issues involving training, for instance, which are in the paragraph (d) where it comes to the training for juniors, apprentices, trainees and other classes of worker.

That also impinges in all of these areas. If it is an industrial matter which affects juniors and it falls within those terms in this definition of what is an industrial matter, it ought to be considered and the commission ought to take into account all the circumstances of the employment as it affects juniors or seniors as far as that is concerned. The broadest definition allows the commission to judge the case on its merits. Using its basic three platforms that we have spoken about it can make decisions properly in respect of a combination or one of these segments of this definition in isolation to provide relief where relief is necessary.

The Hon. K.T. GRIFFIN: I understand the point the Hon. Mr Terry Roberts makes but it seems to me that one has to distinguish between composition of the work force; that is, if you employ three police officers you have to have one secretarial support staff, or if you employ four registered nurses then you have to employ one enrolled nurse. I do not think they are issues in which the commission ought to intervene. What the commission does is to say, in relation to the hours of work, 'This is what you are committed to work, this is what we will approve you working as part of the arrangement of the award; you will be paid a certain amount of penalty rates and so on.' If the work is there it is not for the commission to say it will be done in a particular way—apart from occupational health and safety issues—and it is not for the commission to say, 'Well, if there is too much work this is how you will manage your work force to ensure the work is done.' The conditions of employment are different from the specific reference to composition of the work force. That is why I tend to the view that the Hon. Mr Elliott's proposition is supportable and ought to be supported, rather than the broad proposition either the Hon. Mr Terry Roberts or the Hon. Mr Ron Roberts makes.

The Hon. R.R. ROBERTS: Another common dispute is a dispute which may arise because of a situation where juniors are being employed, reach the age of 18 and are then cast out of the work force. This occurs generally on the basis of juniors having worked there for three years and all of a sudden they are found to be unsuited for the job. From time to time, people who are in fear of losing their job because of this very regular practice may well get into a dispute. If a dispute is taking place in an establishment because of this matter, what the Government is proposing is that you cannot actually go in there and interfere in the dispute because it may be about juniors. There are a number of issues which fall into the realm of industrial matter: not just how many juniors, how many seniors. Conditions that prevail which affect them and other employees can certainly cause disputes which would fall under the situation of an industrial matter.

The Hon. K.T. Griffin: That is not composition of a work force.

The Hon. R.R. ROBERTS: The dispute is because of the composition of the work force.

The Hon. K.T. Griffin: The dispute is about the conditions of employment, the conditions of work.

The Hon. R.R. ROBERTS: It could still be related to the fact they are juniors.

The Hon. T.G. ROBERTS: In relation to composition you could have circumstances associated with occupational health and safety where clearly they could possibly intervene on that basis. The Hon. Mr Elliott gave an example of the number of shifts that were being worked in the oil rig case where seven workers were killed after working long shifts on the basis of the rosters that were worked out. That may be an issue.

The Hon. K.T. Griffin interjecting:

The Hon. T.G. ROBERTS: It is an area that could come into dispute in terms of the number of shifts—

The Hon. K.T. Griffin: That is not prevented. They can talk about conditions of employment.

The Hon. T.G. ROBERTS: The problem we have is that there are no upper limits on overtime in the Bill so that the composition of the work force—

The Hon. K.T. Griffin: That is an industrial matter.

The Hon. T.G. ROBERTS: If that is the case then they can intervene to look at the numbers of people and the hours worked and the spread of hours, etc.

The Hon. CAROLYN PICKLES: I rise to make one last appeal to the Government to be sensible about working conditions in this place. I have already spoken to the Leader and he has ignored me. The people in this place have been here all night; the people at the table have been here all night. I appeal to the Government to stop this farce, to give them some time off, and to come back to this at a more sensible time.

Members interjecting:

The CHAIRMAN: Order!

The Hon. Barbara Wiese: We never did this to anybody.

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: One is sensitive to that.

The Hon. Barbara Wiese: You are not. If you were, you would give them a break.

The CHAIRMAN: Order!

The Hon. M.J. Elliott's amendment to the Hon. R.R. Roberts' amendment carried; the Hon. R.R. Roberts' amendment as amended carried.

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 binding only one employer or two or more employers who together carry on a single business or for variation of such 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.

This amendment provides that the commission has to give consideration as to whether an award is an appropriate vehicle for recognising industrial relationships or whether, in relation to one employer or two or more employers who carry on a single business, it is more appropriate for an enterprise agreement to be encouraged,.

The Hon. M.J. ELLIOTT: This clause has changed somewhat from an earlier version which simply talked about awards in a more general sense. On my reading, we could have an application for an across industry award and the commission could say, 'Go away and make some enterprise agreements.' This now relates to an application for an award binding one employer or two or more employers who carry on a single business. It provides that, where a person seeks an award in that context, the commission may suggest that they go away and make an enterprise agreement instead. That is by way of explanation of how things have changed from earlier versions that we have debated.

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

Amendment carried; clause as amended passed.

Clause 85 passed.

Clause 86—'Retrospectivity.'

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

Insert 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 for the award was lodged with the commission unless—

(a) the date of operation is fixed by consent of all parties to the proceedings; or

(b) 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 imperative that there should be common dates of operation; or

(c) the award gives 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 of declaration of the Commonwealth Commission and there are reasons of exceptional cogency for giving it a retrospective operation.

We have grave concerns about retrospectivity, but we can acknowledge that where there is a nexus between awards or between awards and agreements, and because of the nexus it is imperative that there should be common dates of operation, then retrospectivity can be supported. Also, if the award gives the effect to certain principles and guidelines in a relevant decision or declaration of the Commonwealth Commission, and there are reasons of exceptional cogency for giving it a retrospective operation, that may occur.

The Hon. R.R. ROBERTS: There is an inherent danger in the new clause, which is highlighted in subclause (2) and which provides:

However, an award cannot operate retrospectively from a day antecedent to the day on which the application for the award was lodged with a commission unless—

(a) the date of operation is fixed by consent of all parties to the proceedings.

That is an absolute encouragement for the person most likely to lose in monetary terms, I would suggest, to actually drag out the proceedings. We have canvassed this argument before the Committee on another occasion, and it is still as bad as it was then. We believe that this ought to be opposed, and we would ask the support of the Democrats to knock this one out.

The Hon. M.J. ELLIOTT: I am not sure whether I misunderstood the Hon. Mr Roberts when he talked about the prospect of it being dragged out, yet subclause (2) talks about applying from the date of application. If it is dragged out beyond the date of application, the retrospectivity is before the date of application. There may be other arguments but in terms of talking about dragging it out that is irrelevant, as far as I see it.

The Hon. R.R. Roberts: It cannot go back before the day.

The Hon. M.J. ELLIOTT: That has nothing to do with dragging it out because of the date of application.

The Hon. R.R. Roberts: If both parties agree, it can go back further.

The Hon. M.J. ELLIOTT: No. What it says is that it cannot go back before the date of application without agreement or for various other reasons, which are then itemised.

Existing clause negatived; new clause inserted.

Clauses 87 to 96 passed.

Clause 97—'Employer to provide copy of award or enterprise agreement.'

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

Page 39—Leave out subclauses (2), (3) and (4) and insert—

(2) If an employee bound by an award or enterprise agreement asks the employer for a copy of the award or agreement, the employer must give the employee a copy of the award or agreement within 14 days after the date of the request.

Penalty: Division 9 fine.

Expiation fee: Division 10 fee.

(3) However, an employer is not obliged to comply with a request under subsection (2) if—

(a) the employer has previously given the employee a copy of the award or agreement within the preceding 12 months; or

(b) the commission has, on the application of the employer, relieved the employer for the obligation to comply with the request.

(4) An employer must ensure that a copy of an award or enterprise agreement is exhibited at a place that is reasonably accessible to the employees bound by the award or agreement.

Penalty: Division 9 fine.

Expiation fee: Division 10 fee.

(5) However, an enterprise agreement, or a part of an enterprise agreement, that the commission has suppressed from public disclosure under this Act[1] need not be exhibited under subsection (4)

[1]See section 75A.

This amendment provides a framework within which awards or enterprise agreements are made available.

Amendment carried; clause as amended passed.

Clause 98 passed.

Clause 99—'Unfair dismissal.'

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

Page 41, lines 6 to 10—Leave out subclause (2) and insert:

(2) An application cannot be made under this section if—

(a) proceedings to appeal against or review the employee's dismissal have been commenced under another law of the State; or

(b) the dismissed employee is an employee of a class excluded by regulation (which must, however, be consistent with the Termination of Employment Convention) from the ambit of this part.

These are enabling regulations to be made excluding classes from the jurisdiction but it must be consistent with the termination of employment convention. So, there is not a problem with it.

The Hon. R.R. ROBERTS: I am advised that there is a danger in this clause with respect paragraph (b) where it talks about dismissed employees and the employer of a class excluded by a regulation which must, however, be consistent with the termination of employment convention from the ambit of this part. We are concerned that this power under regulation has the ability to exclude classes workers from time to time. In our view, it is a bad a proposition.

Amendment carried; clause as amended passed.

Clauses 100 and 101 passed.

Clause 102—'Remedies for unfair dismissal.'

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

Page 42—Leave out subclause (3) and insert:

(3) The commission may decline to make an order under this section, or to grant any other form of relief, if the employee is pursuing a similar remedy that may be available on the same facts under another Act of the South Australian Parliament, or if it appears that the employee may pursue such a remedy.

This amendment relates to the overlapping of jurisdictions. If they look at the amendment, members will recognise that it is much tighter in that the commission may decline to make an order to grant any form of relief if the employer is employing a similar remedy on the same facts under the Act or it appears that they may employ such a remedy. So it is a very much more limited provision than it was previously.

Amendment carried; clause as amended passed.

Clause 103 to 114 passed.

Clause 115—'Registration of associations.'

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

Page 49—

Lines 3 to 8—Leave out paragraph (e) and insert:

(e) that there is no other registered association to which the members of the association might conveniently belong; and

After line 11—insert:

and

(g) in the case of an association of employees—that the association is not dependent for financial or other resources on an employer, employers, or an association of employers and is, in other respects, independent of control or significant influence by an employer, employers or an association of employers.

The original Bill encourages confrontation between associations. For example, there could be 500 employees at the TAB, 100 of which seek to form a registered staff association with rules that are enterprise based. Under the Bill the commission has no option but to register the association even though another registered association already exists; for example the Federated Clerks Union, which may have 400 members employed at the TAB. The 100 employees, who could conveniently belong to the Federated Clerks Union, would have no right to argue their case before the commission.

The Bill has the potential to create hundreds of staff associations at work sites already covered by registered associations. Referring again to the example of the TAB, five 100-member based associations could be established with that one organisation, all of which are seeking registration. Those five associations would have to be registered because each of them is entirely comprised of employees employed in the single business. At a time when employers and Governments are calling for fewer associations of employees in each employer's business, the Government Bill is madness. If this provision in the Bill were to stand, Federal based unions would have no option in relation to the scenario to which I have referred, but to seek Federal award coverage and use the provisions of section 118A of the Federal Act to wipe out these staff associations.

The Hon. K.T. GRIFFIN: I oppose the amendment. This would prevent many enterprise based unions from being registered and that is fundamentally against what the Government believes ought to be allowed under the general principle of freedom of association.

The Hon. M.J. ELLIOTT: I will not be supporting the amendment.

Amendment negatived.

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

Page 49, after line 11—Insert—

and

(g) in the case of an association of employees—that the association is not dependent for financial or other resources on an employer, employers, or an association of employers and is, in other respects, independent of control or significant influence by an employer, employers or an association of employers.

Amendment carried; clause as amended passed.

Clauses 116 to 130 passed.

Clause 130A—'Limitations of actions in tort.'

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

Leave out subclause (1) and insert:

(1) Subject to this section—

(a) no action in tort lies for an act or omission done or made in contemplation or furtherance of an industrial dispute; and

(b) no prosecution may be brought for an offence against this Act for an act or omission done or made in contemplation or furtherance of an industrial dispute.

This allows the Industrial Commission to apply industrial rather than civil principles of dispute resolution preceding punitive measures. It reflects the philosophy of the new Federal Act as supported by the Australian Democrats in another place. It provides consistency of approach to like matters in various sections of the Bill and provides a realistic holding provision whilst wider and more in depth analysis of a secondary boycott is being considered. In a dispute situation the company can apply to the Industrial Court for relief. As this is an industrial matter under this Act, it should be treated as an industrial matter like all other matters.

The Hon. K.T. GRIFFIN: I oppose the amendment and move:

Page 57—Leave out subsection (3) and insert:

(3) If an industrial dispute has been resolved by conciliation or arbitration and the full commission determines on application under this section that, in the circumstances of the case, the industrial dispute arose or was prolonged by unreasonable conduct on the part of a particular person, then the applicant may bring an action in tort against that person despite subsection (1).

(3A) If the full commission determines, on application under this section that—

(a) all means provided under this Act for resolving an industrial dispute by conciliation or arbitration have failed or there is no immediate prospect of resolving the dispute; and

(b) having regard to the nature of the dispute and the gravity of its consequences, it is in the public interest to allow the action, then the applicant may bring an action in tort despite subsection (1).

What the Committee last did was to insert an identical provision to that which is in the present Act, but the Hon. Mr Elliott indicated that he would give some consideration to a proposition that would bring the matter closer to Liberal Party policy. I submit that the amendment does that and I would ask for his support.

Hon. R.R. Roberts' amendment negatived; Hon. K.T. Griffin's amendment carried; clause as amended passed.

Clauses 131 and 132 passed.

Clause 133—'Powers of officials of employee organisations.'

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

Page 58, line 1—Leave out 'who are members of the association.'

This amendment is necessary to ensure that officers or employees of an association are able to determine the work performed by employees and to relate that information back to an award to ensure that the employer is paying the correct rate of pay for the appropriate classification. For example, the Clerks (South Australia) Award has a five level skills based classification structure. To determine the correct classification it is necessary to observe the work being done, the condition under which the work is being done and the skills being exercised etc. Similarly, in other industries, such as the construction industry, it is important to observe the work being done for the purpose of determining the appropriate allowances to be paid, for example, in relation to dirt money, working in confined spaces etc. In summary, it is impossible to determine whether the time and wages records are correct without being able to inspect the work itself. This is an amendment that meshes with the ability for union officials to inspect work. It is an extension, a facility that allows good and proper industrial relations, and it ought to be supported.

The Hon. K.T. GRIFFIN: I oppose the amendment. We have been through the debate before when we dealt with the issue of access to time books and wage records. It was agreed on that previous occasion that the inspection of that work should be carried out by employees who are members of the association.

Amendment negatived.

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

Page 58, lines 3 to 5—Leave out paragraph (c) and insert:

(c) interview employees (who are, or are eligible to become, members of the association) about the membership and business of the association.

The majority of awards in this State provide for duly authorised officers of unions to access workplaces in paid time once a year or similar for the purpose of talking to non-union and union members about membership and business of the union. This is important in relation to the principle of freedom of association as it allows employees who may not be aware of what a union is to cover in their type of employment or who have been told by their employer that there is not one to make an informed decision as to whether or not to join a union.

It is often the case, particularly in relation to women, that the only opportunity they have to talk about union membership is whilst at work because of their domestic or other commitments outside the workplace. If the Government is serious about freedom of association, it needs to ensure that unions are given a reasonable opportunity to put their case to employees at the workplace.

The Hon. K.T. GRIFFIN: I oppose this amendment on the same basis as I previously argued.

Amendment negatived; clause passed.

Clauses 134 to 140 passed.

Clauses 140A, 140B and 140C.

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

To strike out these clauses.

We previously had a debate about the resolution of contract of disputes and strenuously opposed them for a variety of reasons recognising that in the definition of 'contract of employment' we have gone some way towards recognising contracts which are not necessarily recognised as contracts of employment at common law. I therefore indicate our opposition.

Clauses 140A, 140B and 140C struck out.

Clauses 141 to 145 passed.

Clause 146—'Intervention.'

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

Page 63, lines 12 to 14—Leave out subclause (3) and insert—

(3) However, only the Minister or the Employee Ombudsman (apart from the persons who are bound or to be bound by the enterprise agreement or their representatives) may be heard in proceedings related to an enterprise agreement matter.

This amendment relates to intervention. We are providing that the Minister or the employee ombudsman, who is now independent of the Government, apart from the persons who are bound, may be heard in proceedings.

Amendment carried; clause as amended passed.

Clauses 147 to 150 passed.

Clause 151—'Issue of evidentiary summonses.'

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

Page 64, line 20—Leave out paragraph (a) and insert—

(a)the Senior Judge or another Judge; or

This is consequential on earlier amendments.

Amendment carried; clause as amended passed.

Clauses 152 to 170 passed.

Clause 171—'Rules.'

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

Page 69, lines 17 to 20—Leave out subclauses (1), (2) and (3) and insert—

(1) The Senior Judge of the Court may make rules of the Court.

(2) The President of the Commission may make rules of the Commission.

(3) The Senior Judge of the Court, and the President of the Commission, may jointly make rules applicable both to the Court and the Commission and, as far as practicable, should do so.

This is consequential on earlier amendments.

Amendment carried.

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

Page 70—Leave out subclause (5) and insert—

(5) Subject to this Act and the relevant rules—

(a) the practice and procedure of the Court will be as directed by the Senior Judge; and

(b) the practice and procedure of the commission will be as directed by the President of the Commission.

This is consequential on earlier amendments.

Amendment carried; clause as amended passed.

Clauses 172 to 178 passed.

Clause 179—'Decisions to be given expeditiously.'

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

Page 72, Line 17—Leave out 'President' and insert 'Senior Judge'.

This is consequential.

Amendment carried; clause as amended passed.

Clauses 180 to 186 passed.

Clause 187—'Applications to the commission.'

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

Page 74, lines 18 to 21—Leave out paragraphs (d) and (e) and insert—

(d) a registered association of employers; or

(e) a registered association of employees; or

This relates to applications to the commission. The Committee did provide that a registered association of employees whose members or some of whose members were interested in or affected by the application or the outcome of the application, as well as such a registered association of employees, may make an application. We have received advice that that is unduly restrictive. We seek merely to refer to a registered association of employers and a registered association of employees who have a right to make an application.

Amendment carried; clause as amended passed.

Clause 188—'Advertisements of applications'.

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

Page 74, lines 27 to 30—Leave out subclause (2) and insert:

(2) The substance of an application and the day and time it is to be heard must be:

(a) advertised in the manner prescribed in the rules; or

(b) communicated to all persons who are likely to be affected by a determination in the proceedings or their representatives.

This ensures that applications such as applications in relation to unfair dismissal do not have to be advertised. Honourable members may recall that I raised that matter specifically. It ought to be excluded, and the way in which this is drafted will ensure that that does not occur. It reflects current drafting.

Amendment carried; clause as amended passed.

Clauses 189 to 192 passed.

Clause 192A—'Demarcation dispute.'

The Hon. R.R. ROBERTS: This new clause introduced by the Government seeks to restrict the power of the commission to deal with demarcation disputes to the point of being useless. Clause 192A contradicts the broad powers to deal with demarcation disputes given in the definitions of 'industrial matter' and 'demarcation disputes'. A broad power is sensible, especially during the on-going processes of union rationalisation, to have broad powers to deal with inter-union disputes. Under clause 192A in the Bill the union would be powerless to intervene in such a matter. This would lead to the parties seeking relief in the Federal system under sections of the Commonwealth Act. The Bill would simply leave the matter to the law of the jungle and it ought to be deleted.

The Hon. K.T. GRIFFIN: I oppose the deletion of this new clause. This is part of the Government's scheme in relation to demarcation disputes. We take the view that the limited scheme proposed really is in the interests of ensuring that the jurisdiction is properly exercised.

Clause passed.

Clauses 193 to 199 passed.

Clause 200—'Right of appeal.'

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

Page 78, after line 18—Insert paragraph as follows:

and

(c) an appeal may only be brought against the approval, variation or rescission of an enterprise agreement by a person bound by the agreement or a representative of such a person.

It relates to an appeal against the approval, variation or rescission of an enterprise agreement. We argued that there was only a limited basis upon which appeals should be allowed to be instituted. We have now provided that there can be an appeal against an approval, variation or rescission by a person bound by the agreement or a representative of such a person, recognising, as it was put on the last occasion, that there may be a minority of employees who do not approve of the agreement but nevertheless, by force of the majority, the agreement is entered into. That person ought to have a right to appeal and that is now provided.

Amendment carried; clause as amended passed.

Clauses 201 to 210 passed.

Clauses 212 and 213 passed.

Clause 214—'Notice of determinations of the commission.'

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

Page 85, lines 32 to 34—leave out subclause (2) and insert:

(a) the determination is of an interlocutory nature; or

(b) the determination relates to an enterprise agreement or part of an enterprise agreement that has been suppressed from public disclosure under this Act[1]

[1].See section 75A.

This amendment is consequential on the amendment to clause 75A.

Amendment carried; clause as amended passed.

Clause 215 passed.

Clause 216—'Boycotts related to industrial disputes.'

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

Page 86—Insert new clause as follows:

Secondary boycotts

216. The provisions of Part 6, division 7 of the Commonwealth Act (Secondary Boycotts) apply as laws of the State with the following modifications:

(a) references to the Commonwealth Court and the Commonwealth Commission are to be read as references to the court and the commission; and

(b) any further modifications and exclusions necessary for the operation of the provisions as laws of the State.

This puts into the Bill the provisions in relation to secondary boycotts which the Hon. Mr Roberts had on file but subsequently did not proceed with. We think there ought to be some provision in the Bill. We had our own provisions which were proposed to be amended by the Hon. Mr Roberts to put in the Commonwealth provisions. They ought to be provided here and, if they are in the Commonwealth legislation, we believe that translating them in the identical form into South Australian law is not inappropriate.

The Hon. R.R. ROBERTS: That is a wonderful argument. You have only opposed it on about 25 occasions in the past 60 hours of debate. The Opposition is happy with the decision made by the Committee last time and we are opposed to it.

Existing clause 216 negatived; new clause inserted.

Clause 217 passed.

Clause 218—'Discrimination against employee for taking part in industrial proceedings, etc.'

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

Page 86, lines 29 to 31—Leave out 'An employer must not discriminate against an employee by dismissing or threatening to dismiss the employee from, or prejudicing or threatening to prejudice the employee in, employment' and insert 'An employer must not disadvantage or discriminate against an employee by financially harming or threatening to harm the employee, by dismissing or threatening to dismiss the employee, or by prejudicing or threatening to prejudice the employee,'.

The amendment covers concerns expressed that the proposed amendment as debated is narrow and does not include threats to harm. This clause still provides a wider protection to ensure that a worker is given protection from vexatious employers as implied by this Bill. This amendment is necessarily broader than that which is contained the Bill, due to the greater emphasis on enterprise bargaining and the resultant greater potential pressure on individual workers, particularly those without unions.

The Hon. K.T. GRIFFIN: The amendment is opposed. We take the view that discrimination is what is referred to throughout the Bill, and that is what ought to be included. 'Disadvantage' is particularly broad, and our preference is to maintain consistency of language.

Amendment negatived; clause passed.

Clauses 219 to 225 passed.

Clause 226—'Recovery of penalty from members of association.'

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

Page 89, line 8—After "to pay a penalty" insert "or other monetary sum".

On the previous occasion we voted on this, I was not quick enough on my feet.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: I think there was some success on the other side of pulling the wool over the eyes. The Government believes that it is important to reinstate the provision in the Bill.

Amendment carried.

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

Page 89, line 11—After "to pay the penalty" insert "or other sum".

Amendment carried; clause as amended passed.

Clauses 227 to 232 passed.

Schedule 1.

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

Page 91, after line 6—Insert new clause as follows—

Amendment of Courts Administration Act 1993

2A. The Courts Administration Act 1993 is amended by inserting after paragraph (ba) of the definition of "participating courts" in section 4 the following paragraph:

(bb) the Industrial Relations Court of South Australia;

This is part of the scheme which I identified yesterday or the day before, where the Government indicated a view that the Industrial Relations Court of South Australia ought to be a participating court under the Courts Administration Act to bring it closer to the mainstream of the courts. That of course will ensure its independence, which was an issue of some debate earlier in this sitting day.

Amendment carried.

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

Clause 9, page 92—Leave out clause 9 and insert the following new clauses:

The President of the former Court

9(1) The person holding office as President of the former Court immediately before the commencement of this Act—

(a) becomes on the commencement of this Act the Senior Judge of the Court (and is entitled while continuing in the office to the title of President of the Court); and

(b) continues, while holding that office, to have the same rank, status and precedence as a Judge of the Supreme Court and to be entitled to be styled 'The Honourable Justice. . . '.

(2) The person to whom subsection (1) applies is, while continuing to hold office as the Senior Judge of the Court under this section, a member of the principal judiciary of the Court.

(3) The provisions of the former Act about salary, tenure and conditions of office relating to the office of President of the former Court apply (with the necessary modifications) to the office of Senior Judge of the Court for as long as the person to whom subsection (1) applies continues to hold that office.

(4) Other provisions of this Act that are inconsistent with this section must be read subject to this section.

Deputy Presidents of the Court

9A(1) Each person who held office as a Deputy President of the former Court immediately before the commencement of this Act becomes, on that commencement, a judge of the Court.

(2) A person to whom subsection (1) applies is, while continuing to hold office as a Judge of the Court under this section, a member of the principal judiciary of the court.

(3) The provisions of the former Act about salary, tenure and provisions of office relating to the office of Deputy President of the former Court apply (with necessary modifications) to the office of a judge to whom subsection (1) applies for as long as the judge continues to hold office in accordance with those provisions as a judge of the court.

(4) Other provisions of this Act that are inconsistent with this section must be read subject to this section.

Industrial magistrates

9B(1) Each person who held office under the former Act as an industrial magistrate immediately before the commencement of this Act becomes, on the commencement of this Act, a magistrate under the Magistrates Act 1983.

(2) A magistrate to whom subsection (1) applies will, for so long as he or she continues to hold office under the Magistrates Act 1983, continue to be an industrial magistrate and a member of the principal judiciary of the court unless he or she resigns the office of industrial magistrate.

(3) A person may resign the office of industrial magistrate under this section without resigning as a magistrate under the Magistrates Act 1983.

(4) The accrued and accruing rights in respect of employment of a magistrate to whom this section applies are unaffected by this section.

(5) Other provisions of this Act that are inconsistent with this section must be read subject to this section.

Other officers of former Court and Commission

9C(1) A person who held office as a commissioner under the former Act immediately before the commencement of this Act becomes, on the commencement of this Act, unless the Governor otherwise determines, a commissioner under this Act as if appointed on the commencement of this Act as a commissioner under this Act.

(2) The commissioner will be taken to have been appointed for a term of six years (which may be renewed once for a further term of six years) but if the Commissioner is over 60 at the time of the appointment or renewal, the term will end when the Commissioner reaches 65 years of age.

(3) The Registrar and other staff of the former court and the former Commission (other than those specifically mentioned above) are, on the commencement of this Act, transferred to corresponding positions on the staff of the Court or the Commission (or both) under this Act.

(4) The salary and accrued and accruing rights to annual leave, sick leave, family leave and long service leave of persons who are transferred by this section to offices and positions under this Act are not to be prejudiced by the transfer.

(5) However, a salary difference that exists between a transferee and another person in the same office or position, and in favour of the transferee, is not preserved beyond the point when the salary of the other person reaches or exceeds the level of the transferee's salary at the time of transfer.

This amendment inserts a number of new clauses. I indicate that these are really transitional provisions and in so far as it relates to the court it ensures that the present incumbents' positions are maintained within the court.

Amendment carried; schedule as amended passed.

Schedule 2.

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

Schedule 2, pages 94 to 100—Leave out this schedule.

This schedule relates to magistrates, and by the operation of the Act and the transitional provisions the magistrates are magistrates under the Magistrates Act. There is no longer a need for the schedule; they are covered by the Magistrates Act.

Schedule negatived.

Schedule 3.

The Hon. K.T. GRIFFIN:

Page 102—Leave out clause 1 and insert:

Minimum rate of remuneration

1(1) The minimum rate of remuneration for an employee for whom there is an award and an award classification is the hourly rate prescribed by the award applicable to ordinary hours of employment (not including payments in the nature of allowances, penalties, loadings or overtime).

(2) If there is no applicable award and award classification, the minimum rate of remuneration is a rate fixed by the Full Commission under this section.

(3) The Full Commission may, on its own initiative, or on application by the Minister, the United Trades and Labor Council, or the South Australian Employers' Chamber of Commerce and Industry—

(a) fix a minimum rate of remuneration for a class of employees for whom there is no applicable minimum rate under subsection (1); or

(b) vary a minimum rate previously fixed.

The schedule is proposed to be amended to ensure that when one is talking about the minimum hourly rate it is the base rate and not all the penalty rates which are in an award. Subclause (1) of clause 1 more accurately reflects that position. It is important to have accuracy in it. I suggest that that now achieves that objective.

Amendment carried; schedule as amended passed.

Remaining schedules (4 to 9) and title passed.

Bill recommitted.

New clause 16—'Appointment to judicial office'—recommitted.

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

Leave out subclause (3) and insert—

(3) A person ceases to hold office as the senior judge of the court if the person ceases to be a judge of the District Court.

The purpose of the provision is to ensure that the judges, when appointed, will remain on the bench in the case of a judge until 70 years of age and for a magistrate until 65 years of age. When the Government introduced the legislation, it intimated that it would remain as it is, but there were significant changes in that new judges and magistrates were to be appointed for only six years. That issue needs to be revisited later. It has caused a great deal of contention in the community and, despite several changes in direction by the Government, the message I continue to get is that there is a great deal of unease about what is proposed in this area. I think that it deserves a great deal more attention before we take the radical steps that the Government has been proposing.

The Hon. K.T. GRIFFIN: I shall be supporting this package of amendments to clauses 16, 17 and 18. Obviously there was a misunderstanding about the tenure of judges. I indicated earlier that I hoped I had not misled the Committee in respect of that matter. The scheme that the Government was proposing to put before the Committee related to the judges of the Industrial Relations Court becoming judges of the District Court and that new primary and ancillary judges would be appointed for six years. Although the six-year period does not prejudice the status or tenure of judges appointed in this way, it affects the tenure of those judges in respect of the Industrial Relations Court.

As there appeared to be some misunderstanding about it, for the moment at least I would be happy to support the amendments to put the issue beyond doubt. I indicate that there will be an occasion when we will revisit the issue of term appointments of judges, not as judges but as judges of the Industrial Relations Court. However, that will be some time in the future. The question of independence has been addressed by a number of the amendments that we have made, and I think this will reinforce it.

Amendment carried; new clause as amended passed.

New clause 17—'Leave'—recommitted.

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

Leave out subclause (4) and insert—

(4) A person ceases to hold office as a judge of the court if the person ceases to be a judge of the District Court.

This is consequential.

Amendment carried; new clause as amended passed.

New clause 18—'Removal from judicial office'—recommitted.

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

Leave out subclauses (3) and (4) and insert—

(3) An assignment to be a member of the court's principal or ancillary judiciary will be until—

(a) in the case of a judge—the judge reaches 70 years of age;

or

(b) in the case of an industrial magistrate—the magistrate reaches 65 years of age.

(4) However, the Governor may, by proclamation made at the request or with the consent of the judge or magistrate concerned—

(a) change the terms of an assignment so that a member of the court's principal judiciary becomes a member of its ancillary judiciary, or a member of the court's ancillary judiciary becomes a member of its principal judiciary; or

(b) revoke an assignment to the court's principal or ancillary judiciary.

This is consequential.

Amendment carried; new clause as amended passed.

New clause 75—'Approval of enterprise agreement'—recommitted.

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

Page 30, after subclause (2) insert as follows:

(2A) The commission must not approve an enterprise agreement if the agreement applies to part of a single business or a distinct operational or organisational part of a business and the commission considers that—

(a) the agreement does not cover employees who should be covered having regard to—

(i) the nature of the work performed by the employees whom the agreement does cover; and

(ii) the relationship between that part of the business and the rest of the business; and

(b) it is unfair that the agreement does not cover those employees.

The reason for this amendment is that enterprise bargaining should not be used to advantage certain groups in the enterprise over others. This amendment seeks to ensure that groups of workers will not be unfairly excluded from the benefits of an enterprise agreement. It reflects a very sensible provision contained in the Federal Act, and I commend it to the Committee.

The Hon. K.T. GRIFFIN: We are having difficulty finding it in the Federal Act but, on the basis of the Hon. Mr Roberts' assurance that it is there, and because it seems to be reasonable, I indicate that we will support it.

Amendment carried; new clause as amended passed.

Bill reported with further amendments; Committee's report adopted.

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a third time.

In so doing, can I extend my appreciation to those members who have been working through this rather difficult piece of legislation. It is a significant piece of legislation and certainly will set good framework, we believe, for industrial relations in South Australia.

The Hon. M.J. ELLIOTT: In rising to support the third reading, I express concern that the legislation had to be handled in the way that it has. That we should be finishing debate at 8.20 in the morning, having started the day at 10 o'clock the previous morning, and having been up until 1 o'clock the morning before that and until midnight for the two nights before that, is an extraordinary way of handling very important pieces of legislation. If there are major errors in this it—or even minor errors for that matter—which lead to litigation, then it will be a direct consequence of the hurried way in which it has been handled. Having made those comments, I will comment more specifically on the legislation itself.

It was a very difficult Bill to handle because it was a piece of legislation which was a central plank of the Liberal Party's policies, and yet in many ways the legislation that came to this Parliament did not reflect those policies. It contravened the policy, and in many cases some quite extreme parts of the legislation simply were not mentioned in the policy. So, in that sense, it was extremely difficult. The Democrats certainly struggled because we realised there was a need for a central policy plank legislation to pass through, yet we sought to take off the rough edges—the rough edges produced by breach of policy and by matters that were simply not included. I can only hope that this place has succeeded in doing that; that was certainly our endeavour. It is fair to say that this legislation is not in the form that we prefer. But I note that, with a Government that has been elected with a very significant majority, I do not think that we can expect to have achieved that. What we did seek—

The Hon. Carolyn Pickles interjecting:

The Hon. M.J. ELLIOTT: I think that's a very easy comment to make. You would not know the work that has been put into this, although you should. So, as I said, a central policy plank was to be passed. It is not an ideal piece of legislation, but I certainly believe that had it not been for the Legislative Council it would have been an extraordinarily bad piece of legislation.

The Hon. R.R. ROBERTS: I rise to indicate that the Opposition will not be supporting this Bill. At the outset, we said that we were opposed to this drastic rationalisation of the legislation which covers the working conditions of workers in South Australia. At the outset, we claimed that this was about dispossessing workers and trade unions and their rights. At the opening we did indicate that we would be participating in this debate. However, our worst fears have been realised. This legislation cuts asunder those industrial regulations that have served South Australia so well over the past decade, in particular, where we have had the lowest rate of disputation and we have had industrial and harmony. They were regulations built up over 100 years—100 years of experience with no significant signs of industrial turmoil. The Government has claimed that it has a mandate but that has been disproved on a number of occasions during Committee. The Hon. Mr Elliott had to point out at least 15 to 20 times major diversions from the Liberal Party policy. However, during the discussions I did get some confidence. This Committee sat here for hour after hour and thrashed out this Bill step by step and discussed each clause.

We reached a situation on Friday night where we said we have a deal. We went through the complete program of discussion and debate and Committee stages. On numerous occasions in my five years in Parliament I have heard the lauding of this particular system by members opposite. We have heard how the Committee of the Legislative Council is able to improve legislation. We went through that process and we have reached an end. The Government was not game to follow the proper processes by taking it down to the other House of this bicameral system, test it and bring it back. The Government brought people into this Chamber and kept them here for hour after hour.

At the start of my contribution I said that this Government is about dispossession; it is about treating workers much more harshly than has ever been done in the past. If you want proof positive there it is; these workers have been here since 10 o'clock yesterday; they have had no relief. This is the way the Government treats its staff; this is the way this Bill has been designed to treat workers in this State. It is an absolute disgrace; it is a farce; it is an insult to the Westminster parliamentary system and it ought to be condemned. The Opposition will be dividing on the third reading.

The Hon. C.J. SUMNER (Leader of the Opposition): I want to add my voice in opposition to this Bill. What effectively happened during most of Saturday was that the Democrats and the Liberal Party got behind closed doors and reached agreement—

Members interjecting:

The Hon. C.J. SUMNER: You can interject if you like. I think the public is entitled to know what happened; that having gone through four or five days of debate on this Bill last week, the Democrats and the Liberal Party then got into informal conference for most of yesterday and organised the amendments, which have now been put in. It took from 11 o'clock last night until now to deal with those amendments.

Members interjecting:

The Hon. C.J. SUMNER: All right, I will remind you about the gaming machine legislation. That finished in the early hours of a Saturday morning. One issue was in dispute and—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I am quite happy to tell you about it if you want to stay here. Perhaps we can move that I have leave to conclude my remarks so that we can come back and deal with the thing properly on Tuesday, which was my suggestion. I was going to say that the formal stages of this process started last night at 11 o'clock when the new set of agreed amendments organised between the Liberal Party and the Democrats was put before the Council, and it has taken from that time until 8.30 a.m. non-stop for this issue to be dealt with.

At that time I, together with the Hon. Mr Elliott, asked the Government to adjourn the proceedings until Tuesday. He said he was not going to take responsibility for mistakes in legislation; we said we were not going to take responsibility for mistakes in the legislation. The point is that things will be stuffed up in the legislation. There is absolutely no doubt about it. You cannot legislate in this way in an effective manner. We made that request to the Government last night. We said, 'Put the debate off; no-one wants to say that we are not going to debate the issue and go through it.', but to do it in the way that it was done last night shows that this is an arrogant, pig-headed and insensitive Government. The point is that they have sat the Parliament here all through the night and the matter is not finished yet. The matter still has to be dealt with in the House of Assembly. We probably will not get out of here before midday today.

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: What is the point? There are still more Bills to be dealt with, such as the Workers Rehabilitation and Compensation (Administration) Amendment Bill. We said that the debate should be put off. No-one wants to say that we should not debate the issue and go through it, but to do it in the way it was done last night just shows that this is an arrogant, pig-headed and insensitive Government. The point is that the Government has made the Parliament sit all night, and it is not finished yet: the matter must still be dealt with in the House of Assembly. We will probably not get out of here before midday today. There are still other Bills to be debated.

The procedure adopted by the Government is a disgrace. It is unprecedented, and I am quite happy to go on the record as saying that it is unprecedented in the 19 years I have been in this Parliament. We have had to sit late in the past, but there has been nothing like this—sitting all through a weekend to get something done. The Government could have come back next week. We could have come back on Tuesday and Wednesday. The interest groups concerned with this legislation, including the judiciary and the Supreme Court, could have looked at the amendments and commented on them, and we could have considered them in a proper way. The fact is that this procedure has been an affront to the staff, an affront to members of Parliament and an affront to the South Australian public, and the Government should be condemned for having adopted it.

The Hon. SANDRA KANCK: I could not let the comments of the Hon. Mr Sumner go unchallenged. The role that the Democrats have played in regard to this piece of legislation, along with the WorkCover and occupational health legislation, is one that shows democracy in action. I am very much aware that over the past weeks my colleague the Hon. Mr Elliott has gone from one meeting to another, talking to different people and hearing their views. It must be a luxurious situation for the Opposition to be able to take one position only, to have to listen to only one group of people and to take that point of view without listening to all the other sides.

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. SANDRA KANCK: There is no doubt that, as a result of the processes that have gone on within this Council and outside, whereby Mr Elliott has gone from one group of people to another continually over the past 24 hours speaking to the Government and then going with the amendments and speaking to the Opposition, he has demonstrated how democracy really works and the effectiveness of this Council.

The Hon. A.J. REDFORD: I would like to thank the staff, the *Hansard* staff in particular, for all the effort they have put into assisting us, getting our amendments ready, and so on. I also congratulate the Hon. Ron Roberts and the Hon. Michael Elliott for the spirit in which the debate was conducted. I know that we are all tired and I know that it has been difficult, and certainly we all look at this from a different perspective. Most of all, I believe that the Attorney-General ought to be congratulated. It has been a marathon effort. He has answered directly, honestly and forthrightly every question put to him. He has not withdrawn from the debate at all and he has not run away from any confrontation. We are indeed fortunate to have someone of his calibre in this place.

I also put on the record my thanks to you, Mr President, for the way in which you managed the debate. It was certainly done without rancour and with fairness. Apart from the short time in which the Leader of the Opposition has been in this place, it has been a pretty reasonable debate conducted, in the circumstances, in good spirit. I hope that all South Australians will look upon this legislation, when it is ultimately passed, as a new era that we are entering with a great deal of optimism and cooperation, and I certainly hope that this State can become competitive on world markets.

This is the end of my first session in this place. There have been many comments from colleagues in the other place that we are much slower in dealing with legislation, but I am heartened by the fact that each and every clause was fully debated. Everyone was made to justify their position, and I believe that, if the South Australian people wanted to see democracy, they have seen it in this place in this session.

The Hon. C.J. Sumner: They are all in bed.

The Hon. A.J. REDFORD: I might say that the Hon. Mr Sumner was not in this place for much of the morning. Everyone who has been involved in this process ought to be congratulated.

The Hon. T.G. ROBERTS: Given the size and importance of the Bill debated over the past week or so in this place, it could have been discussed in a different forum: it could have gone to a committee. Regarding the radical changes inherent in the content of the Bill, at a time when the economy of South Australia is picking up, we are throwing into a whole new industrial relations arena the prospect of employers in this State having to deal with a whole raft of changes of philosophical direction in the way industrial relations are carried on in this State.

There is a certain degree of nervousness in the community, particularly those people who have to deal with industrial relations. The unions are certainly nervous; and the large employers are certainly nervous. People constantly tell me that they are looking at the implications of not only the Federal legislation but also the State legislation and the complications that has brought about because of the introduction and finalisation of the Federal Bill. Now the State Bill and its implications will have effect at a time when the economy is picking up. It makes no sense at all to have industrial relations put at risk by a whole raft of new changes without broad-based discussion. It could have been done through a committee.

The worst aspects of the industrial relations fears that people have could have been allayed by broad-based discussions. It did not have to be done by ramming the Bill through during the hours we have had to put up with over the past week or 10 days. In conjunction with the WorkCover and the occupational health and safety legislation, this Bill vitally affects the conditions and employment prospects of people and the way in which they conduct industrial relations. It was a totally unnecessary process to go through.

The Government should be looking at changes to the way in which it conducts business. If this is the way it will be done from here on in, members opposite on the Government benches must realise it is not an efficient and effective way of doing it. I implore the Government to talk to the Opposition and the Democrats about a new method of wheeling legislation into this place so there is some sort of harmony about the way we proceed, so that the people out there in the rest of the State are not put in a position of fear and uncertainty, and so that we bring some sort of certainty and harmonious relationships back into industrial relations in this State.

We are off on a bad footing. I suspect that the words we have all spoken here will mean nothing. What is important is the impact in the industrial heartland where it affects wage and salary earners, and they will be telling us what they think of the legislation. I am sure that, even if there are no drafting errors in it, the Government will be bringing the legislation back for further changes to achieve a better form of industrial relations in this State that will complement the Federal Acts so that we can get a productivity lift, so that we can attain harmonious relationships that have an equal partnership, and so that employers, unions and Governments can work together to maximise the productivity that needs to be raised so this State can compete against not only other States but also other nations.

The Council divided on the third reading:

AYES (10)

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

NOES (7)

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

PAIRS

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

Majority of 3 for the Ayes.

Third reading thus carried.

Bill passed.

SITTINGS AND BUSINESS

The PRESIDENT: I would like to thank very much the members of Parliament, and the staff particularly, for the decorum that has been displayed during this long sitting. There has not been very much animosity, and I think it helped in the long term in getting the Bill through. I thank you all very much.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): On behalf of the Government, I thank all the staff—*Hansard*, the table staff and all the other staff of the Parliament—for their forbearance. We know that we have asked more than we really should have in relation to trying to get through a key reform of the Government's legislative program in the autumn session. It was the Government's intention to have this legislation through Parliament some nine or 10 days ago. Last week, as you know, Mr President, was to be an optional sitting week. We knew—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Yes, we accepted that. Very early on we indicated that we would take up the option of the last sitting week. As members would know, again it was our intention to ensure that the legislation was through by Thursday, and then by Friday, of last week. Certainly, all members in this Chamber knew that this was the Government's key legislative reform in the first session and it was our intention to get the legislation through the Parliament.

The debate has taken a long time in both Chambers. As members have indicated, the legislation was introduced some eight to 10 weeks ago in another place. It had a long passage in that place and it had a long—

The Hon. C.J. Sumner: And was guillotined.

The Hon. R.I. LUCAS: I don't think anyone could complain about the length of time that was given by the Government to the debate on the industrial relations legislation. I do not intend to get into an acrimonious debate this morning about the use of guillotines by former Governments on legislation such as the WorkCover Bill and things like that.

Considerable time was given in another place for debate on the legislation. It has been before the Parliament for eight to 10 weeks. It was the key legislative reform for the Government for this session. As I indicated, we first wanted it through some 10 days ago. We indicated that we wanted it through by Thursday last week, and then Friday, and then, sadly for all of us, that deadline was not able to be met because of the legislative process in this Chamber, and the debate had to carry over into Saturday and now into the early hours of Sunday.

We are now in a position where we have asked more than we should have of the *Hansard* staff, the table staff and others. I understand that the table staff will have to spend some two to three hours preparing the schedule of amendments and other material for passage to another place. In relation to *Hansard* and all staff, we must provide an eight hour break. The Government was therefore faced with a difficult situation as it still has a debate to occur in the House of Assembly and three important WorkCover related pieces of legislation in this Chamber and, given the length of time that the industrial relations and WorkCover Bills have taken in this Chamber, it is fair to say that we are likely to face some hours more in work in relation to those three Bills. There are also two somewhat smaller agriculture related Bills

that are not likely to take too much time, although one can never bank on that.

So, we are facing a situation where to ask the staff in this Parliament to work any longer than we have already would be going beyond the pale. The Government recognises that and acknowledges that we now have the key legislative reform through the Legislative Council and, therefore, in moving the motion to make the remaining Orders of the Day Orders of the Day for the next day of sitting, I will indicate by way of further motion in a moment that the Government intends for the Legislative Council to sit on Wednesday of next week at 11 a.m. in an attempt to complete the three WorkCover Bills and other remaining pieces of legislation.

The Hon. M.J. ELLIOTT: I would like to know when exactly the Government knew when we were not going to finish and when that decision was made, because the gross abuse about which we have complained so far has just turned into a much larger abuse, because we have sat here all night, as have all the staff, and now we are being told that we must come back. I think the Government has obviously known this for some time. What is worse, we have finished off a Bill which several people have said most likely contains errors, and it has been demanded that we stay here to get the Bill out of this place so that it can undergo no further scrutiny in the Upper House, with the Government taking control of the Bill in the Lower House. That is an incredible abuse. I was angry enough before about what had happened, but this has obviously been thought about much longer than has been admitted so far. The members and the staff of this House have been use politically, and that is an absolute disgrace.

The Hon. C.J. SUMNER (Leader of the Opposition): The points raised by the Hon. Mr Elliott are very legitimate points. He asked when this decision was made—

The Hon. R.I. Lucas: In the last hour.

The Hon. C.J. SUMNER: The Hon. Mr Lucas can no doubt respond to the question asked by the Hon. Mr Elliott but, if we were going to come back next week on Wednesday, we could have come back and done this Bill that we have just completed, and completed the other matters properly without going through this process of legislation by exhaustion. Because that is—

The Hon. M.J. Elliott: It has killed trust.

The Hon. C.J. SUMNER: The Hon. Mr Elliott makes that point. We could have come back next week. We could have dealt with this Bill next week, instead of sitting all through Saturday night and Sunday morning. It is regrettable that the Government has come to its senses on this issue at such a late stage of the proceedings. It could have done it last night at a sensible time, perhaps 10.30 on Saturday night, and then we could have come back and completed the matters next week. Even if it took Wednesday and Thursday to complete them, I do not think anyone would have argued about that.

No-one has disputed the Leader's proposition that this was a key promise of the Liberal Party, a key legislative reform, and indeed it has been treated as such in this House by the Opposition. But in planning its legislative program the Government should have known from past experience that issues dealing with industrial relations, WorkCover and all those sorts of things take an extraordinary amount of debate in this Council. They always have. We did not have an Act that was being amended—we had a completely new Bill being introduced, comprised of 230 clauses and seven schedules. The Opposition had a large number of amendments. The Opposition did not filibuster on it; we went through it carefully and I am sure that would be acknowledged by everyone.

The Democrats did not filibuster and the Opposition did not filibuster. We just wanted the opportunity to put our point of view. The Government should have known that when it planned its legislative program.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: It has not been brought on in this Council for 10 weeks. If you had dealt with it in the House of Assembly in the first two weeks and then brought it in here three or four weeks ago—

Members interjecting:

The Hon. C.J. SUMNER: There was absolutely no filibuster.

Members interjecting:

The Hon. C.J. SUMNER: Are you saying there was a filibuster in this Council? It is an absolutely outrageous assertion that there was a filibuster anywhere, particularly the suggestion that there was a filibuster in the Council. Everyone who saw the debate in this Council knows that there was no filibuster here.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: If you are saying there was a filibuster in another place—the debate went on for just two days in another place.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Not only that, it was also guillotined, but I forget at what clause. About a third of the Bill did not proceed, but it cannot be claimed that there was any filibuster. You say it was more than two days, but as to the Bill, we did the Committee stage this week and prior to that we had the second reading, so we have virtually spent two weeks on the Bill and that is without a filibuster. The Government cannot claim the relatively shorter time over which the matter was dealt with in another place constituted any deliberate or delaying tactics by the Opposition. That is absolutely refuted. I am sure the Democrats believe the same, that the Bill up here was dealt with in a proper way, going through it clause by clause.

It just happened to be a long, new and complex piece of legislation about which very significant differences of opinion were deeply held and about which the Opposition wanted to put forward amendments. The Opposition has cooperated to an extraordinary degree in this place with the legislative program in the past week, with 25 items on the Notice Paper for Friday 13 May, and we have dealt with them all. The Opposition and the Democrats have been incredibly cooperative and made very short speeches on Bills that could have taken more time; we have deliberately restricted the debate so we did not interfere with the legislative program, but we cannot be expected to do that on Bills such as the one we have just dealt with where points of view have to be put. I agree with what the Hon. Mr Elliott has said, but I am pleased nevertheless that the Government has finally come to its senses and I hope we can resolve the matters sensibly next Wednesday.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I respond to the important issue that the Hon. Mr Elliott has raised, that is, when the Government knew. I indicate that it was certainly my and the Government's wish that the whole of the program be completed by

late last night; then it was our wish that it be completed in the early hours of the morning; and then it was our wish, as things took longer than expected and continued to be delayed, that we finish them by breakfast.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I am not saying it was deliberate but the process took longer to be concluded. It was our intention to complete the whole of the program by breakfast; that was the last intention. The Hon. Mr Sumner indicates that he made the suggestion at 11 o'clock last night; I think the record might show that it was closer to 3 o'clock this morning when we started that debate and when he made the suggestion about delaying it. That is neither here nor there. It was the Government's intention to try to finish the program by breakfast, and I indicated by way of interjection to the Hon. Mr Elliott and the Hon. Mr Sumner that it was only in the last hour that we had to look at what the options were in relation to completing the Government's program.

One option was to keep the staff running for the rest of the day after an hour break. A number of members in this Chamber expressed some very strong views to me and others, as have some staff, about their continuing to work for the rest of the day because as I indicated to the Hon. Mr Elliott we face the situation now where the table staff here on their advice will require some two to three hours of solid work—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Okay—to get the schedule of amendments to the House of Assembly. We have some hours of work in relation to the three WorkCover Bills.

The Hon. M.J. Elliott: About half an hour.

The Hon. R.I. LUCAS: I have heard half an hour for the past 24 hours in relation to the Industrial Relations Bill. The attitudes from Labor members in relation to the WorkCover Bill are just as strong as they are in relation to the industrial relations legislation. I first heard half an hour at 9.15 last night. It is not a criticism but a statement of fact that I heard that on three or four occasions through the night and we eventually did not get here again until 3 o'clock in the morning. Whilst I accept the Hon. Mr Elliott's judgment that it will be only half an hour's work in relation to how much time we need for the three WorkCover Bills, whilst Mr Elliott might need only half an hour, because the Labor members in this Chamber hold their views just as strongly on WorkCover as industrial relations it is likely to be some hours more work on WorkCover.

Then there is the necessary translation of messages between the Houses and I presume there is likely to be a reasonable debate in the other place on the industrial relations legislation. It was therefore the Government's view, between 7.30 and 8 o'clock this morning, when trying to decide whether to break for an hour or so and come back and get through the rest of the program, that that was asking too much of the staff.

The Hon. C.J. Sumner: What about the members?

The Hon. R.I. LUCAS: The members as well, but I have more concern for the staff than for members because I suspect that we are much better paid than most of the staff. Another option was that we should come back tonight. Again, in discussions that was rejected because we owe the staff at least an eight-hour break, and the Table staff will have at least two to three hours of work before they can have their eight-hour break. The notion of coming back at 9 or 10 o'clock tonight did not fill too many people with joy with the prospect of possibly going through another six-hour program in relation to messages between the Houses and legislation.

The only other option, the least favoured option, the option that we did not want to pursue at any stage, was to come back next week, which I acknowledge was originally suggested by the Hon. Mr Sumner in the early hours of this morning. In my judgment, it will still be a full day's program, coming back on Wednesday, just looking at what remains. The notion that we would yet again have to go through the industrial relations legislation on that day, as well as all the other Bills, really would have meant—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Exactly. We would then have to go through, Wednesday, Thursday and maybe Friday.

The Hon. C.J. Sumner: No.

The Hon. R.I. LUCAS: You say that. We were meant to finish on Thursday, but we went to Friday, to Saturday and now we are into Sunday.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Well, it is not us organising it. We would be quite happy to jam the whole thing through if we had the votes, but we do not have the votes. We know our position. We wanted to finish on Thursday, but it went to Friday, Saturday and Sunday. Therefore, the notion that we could leave it to Wednesday to complete the Bill, together with the remaining program, again left open the position of having Wednesday, Thursday, and maybe Friday and, frankly, we just cannot afford to do that all through next week.

The Hon. Carolyn Pickles: Why not?

The Hon. R.I. LUCAS: Because a number of people, including your senior members, will not be here next week. A number of us have already factored in—

Members interjecting:

The Hon. R.I. LUCAS: Some reasonably influential members of your Party. A number of us obviously have factored in programs of work for next week in relation to appointments and so on. A number of you have been Ministers before and you know the commitments that Ministers have to plan ahead in relation to their ministerial programs. I reject the notion that in some way the Government has been deceitful or duplicitous. It was a decision that was taken at about breakfast this morning, in the last hour, as we wrestled with the three options that might have been available.

ADJOURNMENT

At 9.4 a.m. (Sunday) the Council adjourned until Wednesday 18 May at 11 a.m.