LEGISLATIVE COUNCIL

Tuesday 7 March 1995

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

ASSENT TO BILLS

Her Excellency the Governor, by message, intimated her assent to the following Bills:

Dog Fence (Miscellaneous) Amendment,

Government Financing Authority (Authority and Advisory Board) Amendment,

National Environment Protection Council (South Australia),

State Government Insurance Commission (Preparation for Restructuring) Amendment.

SECOND-HAND VEHICLE DEALERS BILL AND CONSUMER CREDIT (CREDIT PROVIDERS) AMENDMENT BILL

At 2.18 p.m. the following recommendations of the conference were reported to the Council:

SECOND-HAND VEHICLE DEALERS BILL

As to Amendment No. 1:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 2:

That the House of Assembly do not further insist on its amendment but make the following amendment in lieu thereof:

Clause 10, page 5, line 27—Leave out "Tribunal" and insert "District Court".

And that the Legislative Council agree thereto.

As to Amendments Nos. 3 to 9:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 10:

That the House of Assembly do not further insist on its amendment.

As to Amendment No. 11:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendments Nos. 12 and 13:

That the House of Assembly do not further insist on its amendment.

As to Amendments Nos. 14 and 15:

That the House of Assembly do not further insist on its amendment but make the following amendment in lieu thereof:

Clause 24, page 17, lines 20 to 22—Leave out these lines.

And that the Legislative Council agree thereto.

As to Amendments Nos. 16 to 21:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 22:

That the House of Assembly do not further insist on its amendment.

As to Amendment No. 23:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 24:

That the House of Assembly do not further insist on its amendment but make the following amendment in lieu thereof:

Clause 27, page 22, line 26—Leave out "Tribunal" and insert "Magistrates Court".

And that the Legislative Council agree thereto.

As to Amendments Nos. 25 to 33:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 34:

That the House of Assembly do not further insist on its amendment but make the following amendment in lieu thereof:

Clause 32, page 25, line 4—Leave out "Except as expressly provided by the Act" and insert "Subject to this section".

And that the Legislative Council agree thereto.

As to Amendment No. 35:

That the House of Assembly do not further insist on its amendment but make the following amendment in lieu thereof:

Clause 32, page 25, line 7—Leave out "expressly provided by this Act" and insert "authorised by this section".

And that the Legislative Council agree thereto.

As to Amendment No. 36:

That the House of Assembly do not further insist on its amendment but make the following amendments in lieu thereof:

Clause 33, page 25, line 33 and page 76, lines 1 to 4—Leave out "make one or more of the following orders:" and paragraphs *(a)*, *(b)* and *(c)* and insert "order that the dealer compensate the purchaser for any disadvantage suffered by the purchaser as a result of the purchase of the vehicle".

Clause 33, page 26, after line 4—Insert—

(7) Rules of Court may be made under the *Magistrates Court Act 1991* regulating procedures with respect to applications for compensation under subsection (6).

And that the Legislative Council agree thereto.

As to Amendment No. 37:

That the House of Assembly do not further insist on its amendment.

As to Amendments Nos. 38 to 41:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 42:

That the House of Assembly do not further insist on its amendment but make the following amendment in lieu thereof:

Page 32—Insert schedules as follows:

SCHEDULE 3

Second-hand Motor Vehicles Compensation Fund

Second-hand Motor Vehicles Fund continues

01 The *Second-hand Vehicles Compensation Fund* continues and will continue to be administered by the Commissioner.

Claim against Fund

02 (1) This clause applies to a claim—

arising out of or in connection with the sale or purchase of a second-hand vehicle before or after the commencement of this Act; or

arising out of or in connection with a transaction with a dealer before or after the commencement of this Act.

(2) If the Magistrates Court, on application by a person who purchased a second-hand vehicle from a dealer, is satisfied that—

the Commercial Tribunal or a court has made an order for the payment by the dealer of a sum of money to the purchaser; and

the purchaser has no reasonable prospect of recovering the amount specified in the order (except under this schedule),

the Court may authorise payment of compensation to the purchaser out of the Fund.

(3) If the Magistrates Court, on application of a person not being a dealer who has—

purchased a second-hand vehicle from a dealer; or

sold a second-hand vehicle to a dealer; or

left a second-hand vehicle in a dealer's possession to be offered for sale by the dealer on behalf of the person,

is satisfied that—

the person has, apart from this Act, a valid unsatisfied claim against the dealer arising out of or in connection with the transaction; and

the person has no reasonable prospect of recovering the amount of the claim (except under this schedule),

the Court may authorise payment of compensation to that person out of the Fund.

Management of Fund

03(1) The following amounts will be paid into the Fund:

contributions required to be paid under clause 4; and

amounts recovered by the Commissioner under clause 5; and

amounts paid from the Consolidated Account under subclause (3); and

amounts derived from investment under subclause (5).

(2) The following amounts will be paid out of the Fund:

an amount authorised by the Court under clause 2; and

any expenses certified by the Treasurer as having been incurred in administering the Fund (including expenses incurred in insuring the Fund against possible claims); and

any amount required to be paid into the Consolidated Account under subclause (4).

(3) Where the Fund is insufficient to meet an amount that may be authorised to be paid under clause 2, the Minister may, with the approval of the Treasurer, authorise the payment of an amount specified by the Minister out of the Consolidated Account which is appropriated by this clause to the necessary extent.

(4) The Minister may authorise payment from the Fund into the Consolidated Account of an amount paid into the Fund from the Consolidated Account if the Minister is satisfied that the balance remaining in the Fund will be sufficient to meet any amounts that may be authorised to be paid under clause 2.

(5) Any amounts standing to the credit of the Fund that are not immediately required for the purposes of this Act may be invested in a manner approved by the Minister.

Licensed dealers may be required to contribute to Fund

04 (1) Each licensed dealer must pay to the Commissioner for payment into the Fund such contribution as the licensee is required to pay under the regulations.

(2) If a licensee fails to pay a contribution within the time allowed for payment by the regulations, the licence is suspended until the contribution is paid.

Right of Commissioner where claim allowed

05 On payment out of the Fund of an amount authorised by the Magistrates Court, the Commissioner is subrogated to the rights of the person to whom the payment was made in respect of the order or claim in relation to which the payment was made.

Accounts and audit

06(1) The Commissioner must cause proper accounts of receipts and payments to be kept in relation to the Fund.

(2) The Auditor-General may at any time, and must at least once in every year, audit the accounts of the Fund.

Expiry of schedule

07 This schedule will expire on a day fixed by regulation for that purpose.

SCHEDULE 4

Repeal and Transitional Provisions

Repeal

01 The *Second-hand Motor Vehicles Act 1983* ("the repealed Act") is repealed.

Licensing

02 A person who held a licence as a dealer under the repealed Act immediately before the commencement of this Act will be taken to have been licensed as a dealer under this Act.

Registered premises

03 Premises registered in the name of a dealer under the repealed Act immediately before the commencement of this Act will be taken to have been registered in the dealer's name under this Act.

Duty to repair

04 A duty to repair that arose under Part IV of the repealed Act continues as if it were a duty to repair under this Act.

Disciplinary matters

05 Where an order or decision of the Commercial Tribunal is in force or continues to have effect under Division III of Part II of the repealed Act immediately before the commencement of this Act, the order or decision has effect as if it were an order of the District Court under Part 5 of this Act.

Application of Second-hand Motor Vehicles Fund at end of claims

06 When the Minister is satisfied that no more valid claims can be made which may require payment out of the Second-hand Motor Vehicles Fund, any amount remaining to the credit of the Fund may—

be paid to an organisation representing the interests of dealers; or

be otherwise dealt with,

as the Minister thinks fit.

And that the House of Assembly makes the following consequential amendments and the Legislative Council agree thereto:

1. *Clause 3, page 2, after line 2*—Insert the following definition:
   "District Court" means the Administrative and Disciplinary Division of the District Court;".
2. *Clause 3, page 2, after line 4*—Insert the following definition:
   "Magistrates Court" means the Civil (Consumer and Business) Division of the Magistrates Court;".
3. *Clause 8, page 4, after line 24*—Insert—
   (2) An applicant for a licence must provide the Commissioner with any information required by the Commissioner for the purposes of determining the application.
4. *Clause 16, page 9, line 29*—Before "dealer" (first occurring) insert "other".
5. *New clause, page 21, after line 32*—Insert—
   Participation of assessors in proceedings
   25A. In any proceedings under this Part, the Magistrates Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with schedule 1.
6. *New clause, page 23, after line 19*—Insert—
   Participation of assessors in disciplinary proceedings
   29A. In any proceedings under this Part, the District Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with schedule 2.
7. *Clause 32, page 25, after line 5*—Insert—
   (1a) A person of or above the age of 18 years who proposes to purchase a second-hand vehicle may, in accordance with the regulations, waive a right conferred by this Act in relation to the proposed purchase of the vehicle.
8. *Clause 32, page 25, after line 11*—Insert—
   (4) A dealer must not exhibit or otherwise publish a statement, notice or advertisement in connection with a second-hand vehicle—
   (a) to the effect that sale of the vehicle is conditional on the purchaser waiving a right conferred by this Act; or
   (b) in such manner as to induce a prospective purchaser of the vehicle to waive such a right.
   Penalty: Division 5 fine.
   (5) A contract for the sale of a second-hand vehicle conditional on the purchaser taking steps in accordance with the regulations to waive a right conferred by this Act is void.
9. *Clause 36, page 26, after line 34*—Insert—
   (2a) The Commissioner may not delegate any of the following for the purposes of the agreement:
   (a) functions or powers under Part 2;
   (b) power to request the Commissioner of Police to investigate and report on matters under this Part;
   (c) power to commence a prosecution for an offence against this Act.
10. *Clause 52, page 30, after line 22*—Insert—
    (ba) provide for the exclusion, limitation, modification or waiver of rights conferred by this Act;.
11. *New schedules, after page 31*—Insert—

SCHEDULE 1

Appointment and Selection of Assessors for Magistrates Court

(1) The Minister must establish the following panels of persons who may sit with the Magistrates Court as assessors in proceedings under Part 4:

(a) a panel consisting of persons representative of dealers;

(b) a panel consisting of persons representative of members of the public who deal with dealers.

(2) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(3) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(4) Subject to subclause (5), if assessors are to sit with the Magistrates Court in proceedings under Part 4, the judicial officer who is to preside at the proceedings must select one member from each of the panels to sit with the Court in the proceedings.

(5) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Magistrates Court is disqualified from participating in the hearing of the matter.

(6) If an assessor dies or is for any reason unable to continue with any proceedings, the Magistrates Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

SCHEDULE 2

Appointment and Selection of Assessors for District Court

(1) The Minister must establish the following panels of persons who may sit with the District Court as assessors in proceedings under Part 5:

(a) a panel consisting of persons representative of dealers;

(b) a panel consisting of persons representative of members of the public who deal with dealers.

(2) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(3) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(4) Subject to subclause (5), if assessors are to sit with the District Court in proceedings under Part 5, the judicial officer who is to preside at the proceedings must select one member from each of the panels to sit with the Court in the proceedings.

(5) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the District Court is disqualified from participating in the hearing of the matter.

(6) If an assessor dies or is for any reason unable to continue with any proceedings, the District Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

12. *New schedule, after new schedule 4*—Insert—

SCHEDULE 5

Amendment of Magistrates Court Act 1991

The *Magistrates Court Act 1991* is amended—

(a) by inserting after the definition of "minor civil action" in section 3(1) the following definition:

"minor statutory proceeding" means—

(a) an application under the *Fences Act 1975*; or

(b) an application under Part 4 of the *Second-Hand Vehicle Dealers Act 1995*;or

(c) any other proceeding declared by statute to be a minor statutory proceeding;;

(b) by striking out paragraph *(c)* of section 3(2) and substituting the following paragraph:

(c) a minor statutory proceeding.;

(c) by striking out subsection (4) of section 3 and substituting the following subsection:

(4) If a neighbourhood dispute or a minor statutory proceeding involves—

(a) a monetary claim for more than $5 000; or

(b) a claim for relief in the nature of an order to carry out work where the value of the work is more than $5 000,

a party may elect, in accordance with the rules, to exclude the dispute or proceeding from the rules governing minor civil actions[1], and in that case, the dispute or proceeding ceases to be a minor civil action.

[1.] See Division 2 of Part 5.

(d) by striking out Division 2 of Part 2 (comprising section 7) and substituting the following Division:

DIVISION 2—STRUCTURE AND CONSTITUTION OF COURT

Divisions of Court

7. (1) The Court is divided into the following Divisions—

(a) the Civil (General Claims) Division;

(b) the Civil (Consumer and Business) Division;

(c) the Civil (Minor Claims) Division;

(d) the Criminal Division.

(2) The Court is, in its Criminal Division, a court of summary jurisdiction.

Constitution of Court

7A. (1) Subject to this section, the Court, when sitting to adjudicate on any matter must be constituted of a Magistrate.

(2) If there is no Magistrate available to constitute the Court, the Court may be constituted of two Justices or a Special Justice.

(3) The Court may, at any one time, be separately constituted in accordance with this section for the hearing and determination of any number of separate matters.

Assessors

7B. If an Act conferring a jurisdiction on the Court in its Civil (Consumer and Business) Division provides that the Court is to sit with assessors in exercising that jurisdiction, then the following provisions apply:

(a) the Court will (except for the purpose of dealing with interlocutory, procedural or administrative matters) sit with assessors selected in accordance with the Act conferring the jurisdiction;

(b) where the Court sits with assessors—

(i) questions of law or procedure will be determined by the judicial officer presiding at the proceedings; and

(ii) other questions will be determined by majority opinion.

(e) by inserting after subsection (1) of section 10 the following subsection:

(1a) The Court, in its Civil (Consumer and Business) Division, has—

(a) jurisdiction to hear and determine an application under Part 4 or schedule 3 of the *Second-hand Vehicle Dealers Act 1995*; and

(b) any other jurisdiction conferred on that Division by statute.

(f) by inserting "(other than a statutory jurisdiction specifically assigned by or under another Act to a particular Division of the Court)" after "statutory jurisdiction" in section 10(2);

(g) by striking out section 15 and substituting the following section:

Exercise of procedural and administrative powers of Court

15. A Registrar or Justice may—

(a) issue summonses and warrants on behalf of the Court;

(b) adjourn proceedings before the Court;

(c) exercise any procedural or non-judicial powers assigned by the rules.

13. *Long title, page 1, line 7*—After "1983;" insert "to amend the Magistrates Court Act 1991;".

CONSUMER CREDIT (CREDIT PROVIDERS) AMENDMENT BILL

As to Amendment No. 1:

That the Legislative Council do not further insist on its disagreement thereto.

That the House of Assembly make the following consequential amendment and the Legislative Council agree thereto:

Clause 6, page 2, after line 17—Insert the following lines:

27. *Definition* In this Part—

"District Court" means the Administrative and Disciplinary Division of the District Court.

As to Amendments Nos. 2 to 5:

That the Legislative Council do not further insist on its disagreement thereto.

That the House of Assembly make the following consequential amendment and the Legislative Council agree thereto:

Clause 6, page 3, after line 17—Insert the following lines:

30A. *Participation of assessors in disciplinary proceedings* In any proceedings under this Part, the District Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with the schedule.

As to Amendments Nos. 6 to 14:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 15:

That the House of Assembly do not further insist on its amendment but make the following amendment in lieu thereof:

New clause, page 5, after line 17—Insert new clause as follows:

8A. *Amendment of s. 60A—Relief against civil consequences of non-compliance with this Act* Section 60A of the principal Act is amended—

(a) by striking out from subsection (1) "to the Tribunal" and substituting "under this section";

(b) by inserting after subsection (1) the following subsection:

(1a) An application may be made under subsection (1)—

(a) to the District Court;

(b) if the contravention or failure to comply with the provisions of this Act is the subject of disciplinary proceedings under Part III—to the Administrative and Disciplinary Division of the District Court as part of those proceedings.;

(c) by striking out from subsection (3) "Tribunal" and substituting "District Court";

(d) by striking out from subsection (4) "Tribunal" and substituting "District Court";

(e) by striking out from subsection (5) "Tribunal" and substituting "District Court";

(f) by striking out from subsection (9) "Tribunal" and substituting "District Court".

That the House of Assembly make the following consequential amendment and the Legislative Council agree thereto:
New clause, page 5, after line 20—Insert new clause as follows:
10. *Insertion of schedule* The schedule set out in schedule 1 is inserted after section 61 of the principal Act.
That the House of Assembly make the following consequential amendment and the Legislative Council agree thereto:
New schedule, after page 5—Insert:
SCHEDULE 1
Schedule to be inserted in principal Act
SCHEDULE
Appointment and Selection of Assessors for District Court

(1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of credit providers.
(2) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of members of the public who deal with credit providers.
(3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.
(4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.
(5) Subject to subclause (6), if assessors are to sit with the District Court in proceedings under Part III, the judicial officer who is to preside at the proceedings on the complaint must select one member from each of the panels to sit with the Court in the proceedings.
(6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Court is disqualified from participating in the hearing of the matter.
(7) If an assessor dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

As to Amendment No. 16:
That the House of Assembly do not further insist on its amendment but make the following amendment in lieu thereof:
Schedule, page 6, line 7—Leave out "Commercial Tribunal" and insert "Administrative and Disciplinary Division of the District Court".

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following Questions on Notice be distributed and printed in *Hansard*: Nos 57, 60, 61, 63, 64, 108, 110, 111, 112 and 113.

SEWERAGE

57. **The Hon. ANNE LEVY:**
1. What is the total sum raised by the small levy put on sewerage rates since 1990 by the Minister for Infrastructure?
2. What are the projects and their costs, to which this levy has been put?
3. As the Liberal Government is extending the levy beyond the planned five years, what projects (with estimated costs) will be funded by this levy in 1995, 1996 and 1997, and what sum is expected to be raised over those three years?

The Hon. R.I. LUCAS:
1. The environmental levy on sewerage rates has raised $44 million up to the end of 1994.
2. The Environmental Enhancement Program being undertaken by the EWS includes 38 projects to which these funds are being applied.

Project Name	Estimated Total Cost $'000	Actual to 30/6/94 $'000
Adelaide hills sewerage ext environment	24 293	4 135
GWWTP/PAWWTP land disposal sludge main	11 697	8 947
GWWTP future operating strategy	960	160
Hahndorf WWTP upgrade and nutrient removal	3 147	2 997
MFP waste management study	55	55
Sludge management plan	398	158
BWWTP stabilisation lagoons	3 735	625
Coastal reclaimed w/water plan	2 176	776
Bolivar toxic waste	280	0
BWWTP—odour control	1 605	525
BWWTP—future operating strategy	1 389	289
PAWWTP future operating strategy	1 295	445
Gumeracha WWTP nutrient reduction	340	90
Angaston WWTP future operation strategy	967	347
Noarlunga township sewers	2 135	0
Aldinga sewerage scheme	6 137	2 754
Bird-in-hand WWTP future operation strategy	63	43
Aldinga WWTP	6 182	683
Inland reclaimed w/water plan	290	90
Heathfield WWTP future operation strategy	1 871	51
Victor Harbor WWTP ext and nut	5 514	314
Myponga WWTP nutrient reduction	367	221
CBSTW sludge disposal	5 441	441
CBWWTP future operation strategy	1 317	217
Murray Bridge effluent disposal	2 158	2 071
Mannum effluent disposal	458	458
Northern WWTP investigations	130	0
Whyalla WWTP land based disposal	5 909	6
Port Lincoln WWTP	5 095	4 595
Naracoorte STW rehabilitation	329	144
Naracoorte WWTP future operation strategy	2 142	32
Millicent WWTP future operation strategy	90	30
Berri CEDS effluent utilisation scheme	0	0
Renmark CEDS effluent utilisation scheme	0	0
Waikerie CEDS effluent utilisation scheme	0	0
Barossa Valley winery waste disposal	377	330
Sewer Maslins/Sellicks	0	0
Hardwood irrigated afforestation trial	2 100	1 400
Onkaparinga wetlands	100	100
Effluent disposal review	0	0
Macrophyte bed trial	0	0

The total expenditure on these projects to the end of 1994 is $31 million.

Funds which have been collected through this levy, which have not been expended at the end of the five year period, will continue to be used to finance environmental projects.

3. The Government has been considering a range of pricing issues and a decision on the future of the levy will be announced in July 1995, when sewerage rates for 1995-96 have been determined.

YOUNG FARMERS' INCENTIVE SCHEME

60. **The Hon. R.R. ROBERTS:** As at 31 January 1995:
1. How many applications had been approved by the Minister for Primary Industries under the Young Farmers' Incentive Scheme?
2. How many applications have been rejected?
3. What is the total value of moneys granted to young farmers under the scheme?

The Hon. K.T. GRIFFIN:
1. The number of applications approved under the Young Farmers' Incentive Scheme is 47.
2. The number of applications which have been declined is 39.
3. Grants expended in 1994-95 (as at 31 January 1995) is $288 311. The maximum three year commitment from the 47 approvals is $864 933.

PRIMARY INDUSTRIES MINISTER

61. **The Hon. R.R. ROBERTS:** Since 11 December 1993, what personal or family business or financial interests has the Minister for Primary Industries divested himself of in accordance with Cabinet guidelines?

The Hon. K.T. GRIFFIN: The Minister for Primary Industries has satisfied the Cabinet guidelines and has complied with the Ministerial Code of Conduct ('the Code').

GRANTS

63. **The Hon. R.R. ROBERTS:**

1. Since 11 December 1993, what grants of moneys to Government or semi-Government agencies, other than South Australian Government agencies, has the Minister for Primary Industries approved?

2. To whom was the money granted and what was the purpose of the grant?

The Hon. K.T. GRIFFIN:

Primary Industries South Australia

1. Since 11 December 1993 the Minister has approved one grant of money to CSIRO/ Adelaide Malting Company Pty Ltd.

2. A grant of $40 000 was approved to support a project to be conducted jointly by CSIRO/Malting Company into germination/malting of grain legume/cereal mixtures for high quality food products.

South Australian Research and Development Institute (SARDI)

The following sums of money have been approved by the Minister:

· $520 000 to the University of Adelaide wheat breeding program (Roseworthy component).
· $74 000 to the University of Adelaide wheat breeding program (Waite component).
· $50 000 to the University of Adelaide (wine making program).

64. **The Hon. R.R. ROBERTS:**

1. Since 11 December 1993, what grants of moneys to non-Government agencies has the Minister for Primary Industries approved?

2. To whom was the money granted, for what purpose, and in which State electorates were the grant moneys to be expended?

The Hon. K.T. GRIFFIN: Since 11 December 1993 the Minister has approved four grants of money totalling $130 841.80.

1. TATIARA MEAT CO. P/L
   - Approved $85 841.80 on 16 November 1994—RIAD 200910
   - State Electorate—McKillop

   For the appointment of an industrial expert to work with the company and employee representatives on the cost structure of the operations.
2. SA APIARISTS ASSOC.
   - Approved $5 000 on 21 April 1994—RIAD 21872
   - State Electorate—Frome

   To establish a queen bee rearing operation in South Australia to benefit the local commercial apiary industry.
3. HEASLIP PRODUCTS PTY LTD
   - Approved $20 000 on 21 April 1994—RIAD 22802
   - State Electorate—Taylor

   To assist with the manufacturing of a low cost header harvester.
4. AUSTRALIAN IRRIGATION & TECHNOLOGY CENTRE
   - Approved $20 000 on 20 July 1994—RIAD 200247
   - State Electorate—Playford

   To provide some Government support to allow AITC to fulfil its role as a focus for irrigation technology nationally.

SOUTH AUSTRALIAN RESEARCH AND DEVELOPMENT INSTITUTE

108. **The Hon. R.R. ROBERTS:** As at 31 January 1995, what research programs were being undertaken by the South Australian Research and Development Institute (SARDI)?

The Hon. K.T. GRIFFIN: Research programs being undertaken by the South Australian Research and Development Institute (SARDI) as at 31 January 1995 are as outlined in Program Estimates and Information 1994-95.

Crop Research and Development
· Cereal Chemistry
· Oat Breeding
· Grain Legume Breeding
· Weeds Research
· Pathology
· Crop Evaluation and Agronomy

Pastures and Sustainable Resources Development
· Genetic Resource Conservation
· Medic Cultivar Development
· Lucerne Cultivar Development
· Resource Management Research
· Pasture Agronomy-permanent Pastures
· Pasture Agronomy-ley Pastures

Livestock Research and Development
· Sheep
· Dairy
· Beef Cattle
· Pig and Poultry
· Other Animals

Horticulture Research and Development
· Viticulture
· Tree Crops
· Vegetables
· Citrus
· Sustainable Resources

Aquatic Research and Development
· Determination, Improvement and Distribution of Aquatic Resources, Wild Fisheries
· Determination and Improvement of Aquatic Aquaculture
· Conservation and Aquatic Habitat Assessment

EDUCATION AND CHILDREN'S SERVICES DEPARTMENT PROPERTIES

110. **The Hon. R.R. ROBERTS:**

1. What is the procedure involved in the disposal of surplus Education Department properties?

2. Are there independent valuations carried out, is there a public auction or are tenders called?

3. What happens to the proceeds from the disposal of Education Department properties?

The Hon. R.I. LUCAS:

1. Details of properties identified by DECS as potentially surplus to requirements are forwarded to my office for approval.

If approved as being surplus, the property is forwarded to the Minister of the Environment and Natural Resources to arrange disposal on my behalf.

The property is then circularised to other Government agencies to ascertain their interest. Tenure, contamination and management issues are then resolved prior to release on the open market.

2. The Valuer-General provides valuation advice for all properties with independent valuation being obtained for some specific sales.

Generally the properties are offered by way of public auction, tender or private treaty.

3. Proceeds from the disposal of DECS properties are included as a source of funds for the DECS Capital Works Program.

EDUCATION AND CHILDREN'S SERVICES DEPARTMENT COMPUTER ASSISTANCE SCHEME

111. **The Hon. CAROLYN PICKLES:**

1. What funding is available in 1994-95 for the computer assistance scheme?

2. What is the criteria for schools to access this funding?

3. What allocations have been made in 1994-95?

The Hon. R.I. LUCAS:

1. The 1994-95 capital works budget includes an allocation of $360 000 for the Computer Assistance Scheme in the purchase of computing equipment for schools account.

2. In recent years difficulties have arisen with the allocation process including interpretation and effectiveness of the existing criteria. Schools were advised in the Corporate Services Division newsletter of July 1994 that a review of the scheme was being undertaken and the scheme would therefore not be available for 1994.

3. The Chief Executive of the Department for Education and Children's Services will advise me when the review is complete and of any allocations recommended for the 1995 school year. Existing commitments to the scheme are in the order of $150 000 for the 1994-95 financial year.

EDUCATION AND CHILDREN'S SERVICES DEPARTMENT CHIEF EXECUTIVE OFFICER

112. **The Hon. CAROLYN PICKLES:**

1. What are the details of the salary and allowance package being paid to Mr D. Ralph in his new position as Chief Executive Officer of the Department of Education and Children's Services including the level of salary and allowances, any other payments, telephone, car, car-parking, expense accounts, conditions of official travel and accommodation and term of appointment?

2. Are there any performance conditions and incentives and, if so, what are the details and how will performance be assessed?

The Hon. R.I. LUCAS:

1. The total remuneration package provided to Mr Ralph, Chief Executive Officer of the Department for Education and Children's Services, amounts to $173 202 per annum and comprises the following:

Cash remuneration	$135 000
Superannuation	$28 350
Motor vehicle (including car park)	$9 852

Other payments including telephone, expense accounts, conditions of official travel and accommodation are in accordance with standard public service conditions and arrangements.

Mr Ralph's term of appointment is for five years commencing 25 January 1995.

2. As a condition of his employment, Mr Ralph has agreed to enter into an annual performance agreement with the Minister for Education and Children's Services. However the initial performance agreement has not been developed at this stage. Performance will be assessed by the Minister in accordance with Government policy.

There are no performance pay arrangements attached to Mr Ralph's employment.

SCHOOL PROPERTIES

113. **The Hon. CAROLYN PICKLES:**

1. What are the names and locations of all school properties sold, or contracted to be sold, since 1 July 1994?

2. Who purchased these properties and what were the sale prices?

The Hon. R.I. LUCAS: The location, purchaser, price, method and special conditions of school properties sold since 1 July 1994 are set out in the tables below.

Summary—Sold

Location	Purchaser	Price	Method	Conditions
Paralowie—Blaess Drive	Craven Nominees	151 100	Sold at auction	Nil
Ridgehaven PS (portion)	G Berlingeri	46 500	Passed in at auction	Approval for 2 Homettes
Underdale HS (portion)	D. Karidis	770 000	Sold at auction	Nil
Pt Lincoln—Andrews Terrace	Aboriginal Assoc.	110 000	Private Treaty	Nil
Kalangadoo—Lot 117	F & M Madzia	45 202	Private Treaty	Nil
	Total	$1 122 802		

Summary—Contracted

Location	Purchaser	Price $	Method
Challa Gardens PS—Kilkenny	Fina Homes Constructions	140 000	Private Treaty
Port Kenny Lots 8 & 9	J & R Kyriacou	5 000	Private Treaty
Quorn Kindergarten	Quorn Senior Citizens	2 800	Private Treaty
Minlaton PS (portion)	District Council	65 000	Private Treaty (subject to Federal Grant)
Minlaton PS (portion)	Thompsons	16 000	Private Treaty
Tonsley Park PS	S.A.H.T.	830 000	Private Treaty (subject to positive contamination report)
Holden Hill PS	S.A.H.T.	1 100 000	Private Treaty (subject to positive contamination report)
Elizabeth Playford HS (portion)	Anglican Aged Care	350 000	Private Treaty (subject to planning approval)
Aberfoyle Park Campus (PS)	Blackwood Community Hospital	300 000	Private Treaty
Port Pirie—Risdon Park HS	Port Pirie Lutheran Church	420 000	Private Treaty
	Total	$3 228 800	

PAPERS TABLED

The following papers were laid on the table:

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

Regulations under the following Acts—Industrial and Commercial Training Act 1981—Variation of Schedule 1.

Friendly Societies Act 1919—Amendments to General Laws of the Albert District No. 83 Independent Order of Rechabites Salford Unity.

By the Attorney-General (Hon. K. T. Griffin)—

Dried Fruits Board of South Australia—Report, 1993-94.

Regulations under the following Acts—

Administration and Probate Act 1919—Fees.

Meat Hygiene Act 1994—Code of Practice.

Occupational Health, Safety and Welfare Act 1986—General.

Determination of the Remuneration Tribunal—Members of the Judiciary, Members of the Industrial Relations Commission, Commissioners of the Environment, Resources and Development Court and the Employee Ombudsman.

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

Regulations under the following Acts—

Motor Vehicles Act 1959—Left Hand Drive Vehicle Registration.

Guardianship and Administration Act 1993—The Board.

Mental Health Act 1993—Forms.

Corporation of Campbelltown—By-law No. 15—Moveable Signs.

DROUGHT

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by the Minister for Primary Industries in another place in relation to drought relief for farmers on Eyre Peninsula.

Leave granted.

HOSPITALS DISPUTE

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by the Minister for Industrial Affairs in another place in relation to the hospitals

dispute.

Leave granted.

QUESTION TIME

EARLY YEARS STRATEGY

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the Early Years Strategy.

Leave granted.

The Hon. CAROLYN PICKLES: On 25 August last year the Minister announced that the Government was committed to making the early years of education the No. 1 priority for his department. The Minister announced that while education spending would be cut by $40 million annually, phased in over three years, additional resources would be allocated to provide an extra $10 million over four years for the new Early Years Strategy. Unfortunately in a budget cut this year by $22 million, these so-called additional resources are obviously funds redirected from other programs. The Minister announced that the 1994-95 budget included $2.7 million for a range of initiatives, and the Opposition seeks information on how these extra services are being delivered. Should the Minister not have the detailed information, I would ask him to undertake to obtain a detailed response and table it in the Council. My questions to the Minister are:

1. What extra speech pathology services are now available?

2. What extra assessment services by psychologists are now available?

3. How many extra special education teachers have been appointed and where are they located?

4. Has the major training program to help teachers manage students with learning difficulties been implemented, and what are the details?

5. How many of the announced 50 schools have received a $2 000 grant this year to introduce the reading recovery program?

6. Has the $100 000 Eclipse program for literacy screening at four years old been commenced, and what are the details?

7. Has the $100 000 First Start program for home based literacy development been commenced, and what are the details?

The Hon. R.I. LUCAS: I thank the honourable member for her question. I am delighted further to expand upon the absolute No. 1 priority for the Government and the Education and Children's Services Department over the next four years, as announced early last year and as followed through with specific financial commitments in the 1994 State budget. The honourable member has faithfully reproduced most of the significant elements of the Early Years Strategy. Significant progress has been made in seeking to implement all the varying stages of implementation. The training and development program to which the honourable member refers has been called 'Cornerstones'. It was formally launched by me in February this year. We have appointed 24 new positions of early years coordinators in each of the districts. I might add that they are all women; I was desperately looking for a male, but all the appointees were women. They are all female early years coordinators in the 24 districts of the Department for Education and Children's Services.

They have commenced their training program; I attended one of their first sessions at the Orphanage last month. They will be trained through term 1, and the training for 3 000 to 4 000 junior primary and preschool teachers will commence in terms 2 and 3 of this year. So, I suppose the focal point of the first year of the Early Years Strategy (that is, the training and development program, which will take the substantial proportion of the money allocated for 1995 for the Early Years Strategy) is on track, is being implemented and is being warmly received by all within the Department for Education and Children's Services.

Even the Institute of Teachers has had kind words to say about the implementation of the Early Years Strategy and the cornerstones focal point of that strategy for 1995. Six new speech pathology positions have been appointed under the new Government, three of which were implemented prior to the budget last year when we reduced the administrative positions within the Children's Services Office and replaced managers with service deliverers in terms of speech pathology positions. My recollection is that I have actually corresponded with the honourable member on that particular issue, and I refer her to that correspondence.

In relation to guidance and assessment services, I will check the exact amount but I believe that the Government has made the funding allocation of approximately $300 000 for additional assessment services in the first year that that is being used by the department to try to catch up on areas where there has been a significant backlog, and we have used consultant psychologists to try to catch up on that backlog. For example, in one area, the Mid North of South Australia, not too far from the home patch of the Hon. Ron Roberts, teachers in schools told me that up to 100 students had been identified for assessment, and sometimes they were waiting for periods up to 14 months for that assessment. Frankly, that is unacceptable for any Government, whether it be Labor or Liberal, and the Government has set in place a program to try to catch up on that backlog that was left under the Labor Government prior to the last election.

I think I have covered the major aspects of the question. If any of my figures are slightly wrong I will certainly clarify those and confirm them for the honourable member but, as I said, all the elements of the Early Years Strategy are being implemented. They are at varying stages: some are in the early stages and some are a fair way down the track, such as the cornerstones commitment, and the Government also is looking at the Early Years Strategy as being an evolving one. I met with a number of key people in the primary school counselling field last week and one of the issues that arose as a result of those discussions was that possibly some of the important work that they are doing, particularly in relation to junior primary school age students, might become another strand of the evolving and very important Early Years Strategy.

So, I thank the honourable member for her question. I am sure that she, as is everyone else involved with the Department for Education and Children's Services, is very supportive of what is, for the first time, an absolute priority being given to the identification of learning difficulties in young students and, importantly, to putting in the resources to do something about them.

The Hon. CAROLYN PICKLES: I have a supplementary question. Will the Minister undertake to bring back a

detailed response to the additional questions which I asked and which he has not answered?

The Hon. R.I. LUCAS: In relation to those small parts of the question to which I have not already given a detailed response, I would be very happy to provide that. However, if the figures substantially are correct in relation to the answers that I have already placed on the record, that information stands.

POLITICAL DONATIONS

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General a question about political donations.

Leave granted.

The Hon. R.R. ROBERTS: On Thursday 2 March 1995 the Hon. Premier stated on ABC radio that the Commonwealth electoral legislation regarding disclosure of political donations was 'flawed' and that there was a 'hole in the legislation'. Does the Attorney-General share the view expressed by the Premier about political donations legislation and, if so, what changes does he consider should be made either by amending the Commonwealth legislation or by introducing appropriate South Australian legislation?

The Hon. K.T. GRIFFIN: It is not a matter that is within my jurisdiction: it is Federal legislation. I have not expressed any view in relation to that legislation. As the Premier has said, if any honourable member has any concern about the administration or the effectiveness of Commonwealth legislation, particularly in this area, they should raise it with the Commonwealth Attorney-General. After all, members opposite are of the same political persuasion as the Government in Canberra, and I would have thought that if they had a real concern about the legislation they ought to have ready access either to the Prime Minister or to the Attorney-General. The fact of the matter is—

The Hon. R.R. Roberts: The Premier is concerned but you are not really.

The Hon. K.T. GRIFFIN: It is not a question for me to be concerned about: it is Commonwealth legislation.

Members interjecting:

The Hon. K.T. GRIFFIN: The Premier is entitled to make those comments, and he is the person who has been dealing with a whole range of misdirected questions from the Opposition on this issue. All I am saying—

The Hon. R.R. Roberts: So the Premier is concerned and you are not.

The Hon. K.T. GRIFFIN: The honourable member has asked the question and he needs to get an answer. The fact of the matter is that it is Commonwealth legislation, and it is not for me to give advice to the Commonwealth Attorney-General about what is or is not appropriate, remembering that the Commonwealth electoral law, the public funding legislation and the legislation in relation to disclosure of donations was a Federal ALP Government initiative: it brought it into the Parliament of the Commonwealth. That legislation went to the House of Representatives and it went to the Federal Senate.

It was resolved, and we must remember that there was an ALP Government in office here. I would like to know whether the ALP made any representations to the then Federal Attorney-General. Was it a matter of concern to the then ALP State Government, or was it concerned about the extent to which it might require public disclosure? We have no evidence about what the then State ALP Government's view might have been in relation to the Federal legislation. I repeat: it is Federal legislation; it is under the authority and responsibility of the Federal Attorney-General. I have made no judgment about its adequacy or inadequacy because the Federal legislation is not within my area of responsibility. Members opposite have the remedy in their own hands: they can contact their own colleagues of the same political persuasion in Canberra and make their submissions.

The Hon. T. CROTHERS: I have a supplementary question. The Attorney has said that it is Commonwealth legislation and, of course, he is correct.

Members interjecting:

The Hon. T. CROTHERS: Okay, straight to the question. I will oblige. Straight to the question. The Federal Attorney-General has made an announcement, as reported in this morning's paper, that he will close the loopholes in the Federal Act. Does the State Attorney concur with the action of his fellow member of the Standing Committee of State and Federal Attorneys-General?

The Hon. K.T. GRIFFIN: This issue has not been raised at the Standing Committee of Attorneys-General. I am not aware of what the Federal Attorney-General may do in relation to this matter. I am not aware of any statement that has apparently been made by him either late yesterday or today. It is a matter under his authority.

ENVIRONMENTAL REHABILITATION

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for the Environment and Natural Resources, a question about environmental rehabilitation.

Leave granted.

The Hon. T.G. ROBERTS: A number of dump, mine and industrial sites exist around the metropolitan area of Adelaide, in the Hills and, in some cases, in country areas that are in desperate need of rehabilitation as they pose major risks to the health of South Australian residents as well as environmental risks. Some of those sites, such as the Islington Workshop railway site, have been identified in the media recently. Information I have received from the Housing Trust Tenants Association indicates that the Brukunga mine site is such a site. I recently attended a meeting at Highbury where residents indicated their concerns about old dumps in that area. It has also been brought to my attention that other dump sites in the areas to which I have referred need major work done on them to enable them to be rehabilitated to an acceptable standard to improve the lives of those residents who are affected. My questions are as follows:

1. Has the Government an acceptable policy for rehabilitation of sites that removes all risks to public health during that process?

2. Has the Government a priority for a rehabilitation program?

3. When will the Brukunga mine site be rehabilitated to the residents' satisfaction?

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

COMMUNITY HEALTH CENTRES

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about the real

costs being incurred due to cutbacks in community health funding.

Leave granted.

The Hon. SANDRA KANCK: In light of the State's debt, Government policy has been to make cutbacks across all sectors, including health. Within the health portfolio, community health centres have been cut back by between 4 and 9 per cent. I have been informed by people who work in these centres that they are concerned that these cutbacks have been made irrespective of the role that the centres play in health prevention and thus in reducing costs to the public health system in the long run.

To give an example, the following scenario has been brought to my attention. Late last year a married man with two young children contacted his local community health centre requesting urgent counselling as he knew he had a serious problem with violence and he feared for his family's safety. He was informed that there was a four week waiting list for counselling. He appealed for an earlier appointment and, in response, a meeting was arranged sooner, with a wait of five business days but with a weekend in between, effectively a week's wait.

Unfortunately, before the man was able to be counselled, a gross act of domestic violence was committed on that weekend. Subsequently, his two young children and their mother were hospitalised with stab wounds. Community health workers have put to me that, therefore, the real financial cost of not providing counselling services at community health centres has far outweighed the so called cost saving measure of making cutbacks in community health which led to a reduction of counselling services.

Following this incident, this man's marriage has broken up, he has lost his job and the psychological damage incurred by his family, and particularly his two children, is immeasurable. As a result, the added cost borne by the Government, because this incident was not prevented, includes hospital, police, correctional service, legal and social security costs—just to name the most obvious costs. Therefore, my questions to the Minister are:

1. Does the Minister believe that the Government could have actually saved money in the long run if it had provided counselling services as a measure of preventive health at community health centres?

2. Can the Minister advise what processes are in place at the ministerial level so that cutbacks in one portfolio are not simply shifted to another portfolio, as was the case in the incident just described?

3. Can the Minister advise what resources or courses of action are reasonably available to people who urgently require counselling?

The Hon. DIANA LAIDLAW: As the honourable member would know, counselling services have always been a key feature of the work of community health centres and since that time there has always been a waiting list. I have never known it to be different from the circumstances the honourable member just outlined. However, I will seek a more detailed reply from the Minister and bring that back.

BREAST CANCER

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about the treatment for breast cancer.

Leave granted.

The Hon. BERNICE PFITZNER: I noted with great concern today's *Advertiser* article on the report released by a Federal parliamentary committee on the treatment of breast cancer. The article is headed 'Inquiry slams treatment for breast cancer'. Breast cancer statistics are as follows. In 1993, total deaths caused by breast cancer in Australia were 2 641 women, with the following break-up: women 75 years and older, 839 women; 65 to 74 years, 591 women; 55 to 64 years, 539 women; 45 to 54, 439 women; and 35 to 44, 235 women.

Here in South Australia we have total deaths caused by breast cancer of 264. I understand that the committee found that treatment in Australia was fragmented and poorly coordinated and that health professionals were poorly informed on the appropriate treatment of this cancer. The Federal Health Minister, in typical fashion, has blasted her way through the findings of the report and has criticised the report as being 'flawed', 'baseless' and—

The Hon. Anne Levy interjecting:

The Hon. BERNICE PFITZNER: This is a quote.

Members interjecting:

The PRESIDENT: Order!

The Hon. BERNICE PFITZNER: She has criticised the report as being 'flawed', 'baseless' and 'misleading. It is amazing to me that she has accused a Federal select committee of an erroneous conclusion, instead of stating that she would look into the matter. The key recommendations of the report included: an increase in research funding; investigation into the unacceptable delay between diagnosis and treatment; mammary prosthesis to be included in the Medicare rebate; medical curricula to be accorded more time for the teaching of oncology—which is the study of cancer—and GPs be further upgraded in the treatment and management of this cancer; multi-disciplinary teams be set up to provide total breast cancer care; and a national data base be set up on breast cancer. My questions to the Minister are:

1. Can the Minister inquire of his Federal colleague the basis of her criticism of the report?

2. Can the Minister request the Federal Government to look at the recommendations objectively rather than defensively with a view to implementing the recommendations?

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

WORKCOVER

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Industrial Affairs, a question about high risk in the workplace.

Leave granted.

The Hon. M.S. FELEPPA: A report in the *Advertiser* on 13 February 1995 stated that the Government intends to crackdown on companies with poor safety records—which the United Trades and Labor Council has demanded for some time now. In another report in the *Advertiser* on 1 March 1995 there is the shocking revelation that more than 70 000 South Australian workers, or 10 per cent of the work force, were injured in the workplace in the last year. Then still another report in the *Advertiser* on 4 March 1995 tells us that there is a blow-out of unfunded liability of $187 million that may be needed to compensate injured workers.

Sadly, a large share of the blame for this situation lies squarely with a number of specific industries and the

Government, recognising this grave situation, intends to target them in an attempt to reduce accidents in the workplace. In the meantime, it is the workers who are the ones at risk, who suffer from accidents and who suffer financially because of the combination of lack of safety in some industries and a blow-out with an unfunded liability at that level. The companies needing to be targeted were not named in this report. Workers in these situations, I believe, should be made aware of the risks they are running. Workers have a right, I believe, to know what risks they are taking being in any workplace: in my view, they should not be kept in the dark about matters which so directly affect their own health and well-being. My questions to the Minister are:

1. How many employers are there in South Australia that the Government consider have employees at high risk due to lack of safety in the workplace?

2. Will the Minister reveal the names of those poor performing employers who have undoubtedly contributed to the very high numbers of claims for WorkCover compensation?

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

PROSTITUTION

In reply to **Hon. A.J. REDFORD** (30 November).

The Hon. DIANA LAIDLAW: The Minister for Emergency Services has provided the following information:

In relation to the questions asked by the honourable member the Police Commissioner has advised that:

1. If a complaint is made pursuant to the Police (Complaints and Disciplinary Proceedings) Act 1985, the secrecy provisions of the Act mean that officers complained of may be unaware of any complaint made against their activity. The fact that a member of the public has made a complaint may not be brought to the attention of the police officer concerned until the investigation is well under way. The Police Commissioner is adamant that police officers do not harass persons who make complaints about their alleged activities. Such claims of harassment could well be regarded as part of the tactics of the prostitution industry to discredit police.

2. The guidelines for procedures to be followed when exhibit property is seized are laid down in General Orders. In most instances a field receipt is issued for all property of value seized during an investigation.

3. Police officers have the discretionary power to report or arrest for any breaches of the law. The current operating procedure used by Operation 'Patriot' utilises this discretionary power. If a person is a continual offender and it is obvious that reporting will not prevent the continuation of or repetition of the offence, arrest is a considered option.

There is an instruction to members of Operation 'Patriot' that when persons are arrested and charged with prostitution offences, the police bail authority be requested to impose a condition of bail that the charged person is not to re-attend at the particular brothel during the remand period.

This condition is requested to prevent the situation of the charged person being arrested for the same offence whilst on remand for a previous offence. If the charged person subsequently refuses to sign the bail agreement, then that person will stay in custody until they appear before a court the next day.

'Customers' are normally cautioned when first located in a brothel. If a person is subsequently found on premises frequented by a prostitute, charges are laid; however, there is difficulty in proving such cases and in some instances the 'customer' gives evidence against the prostitute.

4. Objectives of Operation 'Patriot' are to:

- identify, apprehend and prosecute offenders soliciting for prostitutes and living off the earnings of prostitution
- identify, apprehend and prosecute offenders who endeavour to procure other persons to become common prostitutes
- effect the closure of brothels and vice related establishments
- minimise the influence of organised crime in prostitution
- identify and apprehend persons involved in illicit drugs
- eliminate child prostitution

The mission statement of Operation 'Patriot' is to effect the closure of brothels and other vice related establishments by the apprehension and prosecution of nominated persons involved in prostitution.

In hypothetical terms, if all brothels were closed, some would relocate and recommence activities; this would incur considerable expenditure on their part.

Operation 'Patriot' commenced in December 1989. Whilst the responsibility for policing vice and prostitution laws rests with metropolitan and country divisional commanders, Operation 'Patriot' members co-ordinate policing activities and remain the focal point for most investigations. Whether it remains an 'operation' or else, becomes a standing vice and gaming task force is a matter to be considered once the departmental review of the Police Complaints Authority's latest report on prostitution issues is completed.

The effect of Operation 'Patriot' has been one of making organised and Asian crime, drug traffickers, procurers, brothel owners and prostitutes aware that the Police Department has a unit specifically assigned to actively detect, prevent and monitor crime occurring as a result of the vice 'industry's' activities.

5. There is evidence of child prostitution in South Australia. The prostitution industry claims it self-regulates to prevent child prostitution. However, it is felt that without the policing tactics of Operation 'Patriot', the industry would soon dispense with self-regulation and concentrate on increasing profits with juvenile prostitutes of both sexes. The police therefore may be credited with the prevention of child prostitution.

6. Yes. A copy of the report was requested by the Minister for Emergency Services following the honourable member's questions.

DRUGS

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question on drug costs as they impinge on the cost of the Government-run State health services.

Leave granted.

The Hon. T. CROTHERS: A channel 2 program *Quantum* has been advertising very heavily recently regarding a program which it will feature on Wednesday 8 March at 8 p.m. This program concerns an Australian-born doctor who was carrying out research on stomach ulcers and who discovered that ulcers were due to viral bacteriological complaints, not stress, as was previously thought and is apparently still thought to be the case by the medical profession and associated companies which manufacture drugs and medicines. He found that a cocktail of antibiotics administered to patients who had ulcerated stomachs effected almost instant cures in many, if not all, of the patients who had previously had ulcerated stomachs. Many of the patients who had those complaints were completely cured of their ulcers in four to seven days; in other words, their ulcers were totally eradicated in that time.

I am told that the doctor in question made these discoveries 10 years ago. This event is coupled with the recent disclosures that most doctors will prescribe drugs manufactured only by big name pharmaceutical companies, yet we are told by chemists throughout Australia who dispense these drugs that these same expensive drugs are manufactured much more cheaply by smaller companies and that the cheaper drugs have the same effect on the patients who are being treated. If these two facts which I have just stated are true, the chances are that millions of Australians and dozens upon dozens of South Australian hospitals are being ripped off for no other apparent reason than to line the pockets of large international pharmaceutical companies.

The case of the Australian doctor to whom I have referred was first brought to my attention some months ago by an 86

year old second cousin of mine who resides in England and who found it 'appalling that such a cost-saving health treatment in respect of stomach ulcers should not be pursued with some vigour'. Indeed, if what he tells me is true, a great deal of time and effort has been taken by powers unknown to discredit this newfound treatment.

I notice recently that the Minister for Health has been expressing great concern about the cost of South Australian medical services, so my questions to him are as follows (and I would indicate to him that, because of the heightened public interest in these matters, basically induced by him, the sooner they are answered the better it will be for public understanding of these matters):

1. Will the Minister watch the channel 2 *Quantum* program to which I have referred?

2. If he finds truth in this program, what will he do which will prove cost effective by way of savings to the South Australian health service?

3. Does the Minister believe that many doctors, when they issue prescriptions for patients, are not considering the lower cost of drugs which are, we are told by dispensing chemists, every bit as effective as the much more expensive same type drugs, and if he does not believe the prefaced contents of this question, why does he not do so?

An honourable member interjecting:

The Hon. T. CROTHERS: I do not know who laughed over there about South Australians who are in ill health and cannot get treatment. Would you identify yourself?

Members interjecting:

The Hon. T. CROTHERS: Ms Laidlaw? Oh well, she does not know much about her own portfolio; what hope has she got in relation to medicine?

The PRESIDENT: Order!

The Hon. T. CROTHERS: Thank you, Mr President. My questions continue:

4. What average percentage costs do drugs and medicines constitute of the total costs of patients being treated in South Australian hospitals?

5. Finally, and by no means exhaustively (I may have follow-up questions), will the Minister raise these matters at the next meeting of State and Federal Health Ministers with a view to effecting cost savings? If he is not prepared to raise the matter, why is he not prepared to do so?

The Hon. DIANA LAIDLAW: I recall that the honourable member said that it was a brief explanation to a series of questions, but I will nevertheless refer his quite lengthy explanation plus five questions to the Minister and bring back a reply.

SHARES

In reply to **Hon. L. H. DAVIS** (9 February).

The Hon. K.T. GRIFFIN: Country Estate and Agency Co. Pty Ltd is licensed by the Australian Securities Commission as a dealer in securities. Off-market offers of the nature made by the company are not prohibited by the Corporations Law. However, the law does place an obligation on all licensed dealers to act honestly, efficiently and fairly.

In April 1994 the Australian Securities Commission issued a media release to advise that it had revised the licence conditions of Country Estate and Agency Co. Pty Ltd. The revised conditions required the company, when making unsolicited offers for listed securities at prices below the market price, to make various additional disclosures to offerees. This action by the ASC followed expressions of concern by many parties that the offers by the company were substantially below market prices and offerees would be better off selling their securities on-market.

In September 1994 the ASC issued a further media release warning investors to look closely at unsolicited offers to purchase their shares. The media release instanced an offer by Country Estate and Agency Co. Pty Ltd of $6.50 for a parcel of shares with a market price of $11.50.

The ASC is continuing to receive expressions of concern about such offers and is also well aware of the costs being incurred by listed corporations in giving warnings to their shareholders. These concerns are now under consideration by the ASC.

LAW GRADUATES

In reply to **Hon. BERNICE PFITZNER** (21 February).

The Hon. K.T. GRIFFIN: LL.B. graduates are required to undertake a course of practical legal training which is in line with national requirements and approved by the State Admitting Authority.

Until 1993, the University of South Australia offered the Graduate Diploma in Legal Practice (GDLP), a course of one year's duration which attracted HECS funding of approximately $2 500. Completion of this course entitled a person to obtain admission as a legal practitioner in South Australia.

Early in 1994, the University of South Australia indicated that Federal funding available to the University to provide the GDLP was insufficient. The University indicated it would offer about one third of the required studies under the previous arrangement (that is, students would pay post-course HECS fees) as the Graduate Certificate in Legal Practice. The remaining practical requirements of four units would attract up-front course fees of $1 000 per unit, or $4 000 for the program.

The Law Society, using its own education staff and the services of senior voluntary practitioners, indicated that it would assist the PLT course initially at a cost of $200 (1995 increased to $300) for each of the five to eight units or modules (each of 10 hours contact time).

This cost compares very favourably to the proposed $5 000 for the course, for example, at the Australian National University, and the $5 000 for four units proposed by the University of South Australia should funding be withdrawn for the GCLP.

The $300 per unit goes to the course provider, The Law Society of South Australia, and is used for staffing, assessment preparation and marking costs, printing, venue hire, equipment hire, administration and similar costs.

The Law Society has published a comprehensive booklet on the course options and it is available from the Society on request.

UNCLAIMED MONEYS

In reply to **Hon. R. D. LAWSON** (9 February).

The Hon. K.T. GRIFFIN: Mr Caulfield Barton died in 1937. Under the terms of the will, his son Felix had a life interest in his assets which terminated on the son's death in 1979. Thereafter, the estate passed to certain named nieces and nephews of Caulfield Barton. All but one of the beneficiaries (or their heirs) received their entitlements under the will. The remaining nephew, Michael Barton, lived in the U.K. He was classified as a 'mental defective' and had died intestate in 1942, aged 47, without leaving any children. He was the only child of his father's second marriage and both of his parents pre-deceased him.

Extensive and thorough investigations have been carried out since 1979, using the professional services of a legal firm in Surrey, U.K., and an international investigative organisation. Because of the Michael Barton intestacy, the U.K. Public Trustee was also consulted throughout this process.

After some 15 years' research, no living person has yet been identified with the necessary legal standing to instruct the U.K. Public Trustee to apply for the equivalent of Letters of Administration in the estate of Michael Barton under U.K. intestacy laws.

Public Trustee administers a considerable number of intestate estates where extensive and complex next of kin inquiries need to be undertaken to determine the persons entitled to share in the distribution of the intestate estate. Under section 79(v) of the Administration and Probate Act, Public Trustee can and does act as an administrator of last resort.

In those instances where a person dies without making a will, leaving assets in South Australia and without any known next of kin, only Public Trustee can seek an order to administer the estate. It is often difficult to establish next of kin in these estates. Public Trustee makes every endeavour to identify and locate the next of kin of all deceased persons.

In September 1993 a position of Estate Services Officer (Genealogy) was created for the purpose of tracing the next of kin of specified deceased estates, both intestate estates and partial intestacies, locating missing beneficiaries and arranging for the access of archival information. In addition, a genealogical research service including the preparation of family trees will be offered to the public in the future.

Since her appointment in January 1994, the Genealogy Officer has undertaken a number of complex matters requiring considerable genealogical research and has successfully completed many of them.

The Genealogy Officer is well resourced with the latest software packages, which complement many of the Births, Deaths and Marriages records in CD-Rom format, together with fiche and other available printed data. The accessibility of the date has facilitated the identification and location of many beneficiaries who would otherwise have been deprived of their entitlement.

Public Trustee will soon be registered as a search agent and a research service at the Australian Archives, and will shortly be listed on Internet as a search agent. Ms Worrall, the Public Trustee, has advised me that her office would be keen to undertake genealogical research for deceased estates earmarked for unclaimed balances where the next of kin cannot be found and, similarly, would welcome instructions from administrators early on in the administration of an estate to conduct next of kin inquiries on their behalf. Such a service could be provided without amendment to the Administration and Probate Act on a fee-for-service basis. However, given the Public Trustee's expertise, I will also investigate further the possibility of an amendment to the Act as suggested.

I have also received a response from the Trustee Corporations Association of Australia (South Australian Council) which reads, in part:

All executors, whether they are natural persons or trustee organisations, are under the same common law obligations to attempt to locate missing beneficiaries. No statute places any special obligation in this respect either on the Public Trustee or a trustee company.

All of the South Australian trustee organisations (including the Public Trustee) employ staff with experience in this field and have established links with interstate and overseas search organisations. They have an excellent track record in this area. Furthermore, our member organisations have always been prepared to collaborate with each other in estate matters where appropriate.

It is acknowledged that Public Trustee has established a specialist genealogy department, but unless there is some evidence that the trustee companies are less successful in locating missing beneficiaries, there seems to be no justification for requiring the Public Trustee to take over this activity—particularly when a testator has specifically nominated another trustee organisation to administer his/her estate.

Even if there was such a requirement, the process would present practical difficulties for both parties. Would the assets pass to Public Trustee immediately the trustee company recognised that a search was required; or would the executor be bound to undertake prescribed inquiries for a specified period before handing over responsibility? Would the nominated executor be indemnified by Public Trustee and relieved of its obligations once the transfer had taken place?

Trustee companies are required to treat funds of missing beneficiaries in accordance with the Unclaimed Moneys Act. Under the Administration and Probate Act (section 116), Public Trustee must also pay over unclaimed estate funds to the Treasurer. The obligation to locate missing beneficiaries does not cease merely because the funds are transferred to the Treasurer.

Under these circumstances, there seems to be no good reason why the trustee companies should be required to transfer amounts belonging to missing beneficiaries to the Public Trustee.

AGRICULTURAL ADVISORY COMMITTEES

In reply to **Hon. R.R. ROBERTS** (9 February).

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

1. Funding for the Women's Agricultural Bureau and the Rural Youth Movement and the Agricultural Bureau of SA beyond June 1995 has never been dependent on their joining the new advisory council. Future funding for each of these groups is currently being negotiated. The Women's Agricultural Bureau and the Agricultural Bureau will not amalgamate as organisations but they will both be represented on the peak body and may well forge closer working relationships on issues at a local level in the future.

2. The future of the rural groups as I have already said is not determined by their involvement in the advisory council. The rural groups are made up of grass roots members of the rural community and it is the members themselves who will determine the future of their own organisations. The Government will not force anything on these groups. While amalgamating the organisations was an option discussed, the groups have always been encouraged to determine their own future and plan how they will move their organisation into the year 2000. The level of support from Primary Industries to the organisations is currently under negotiation. I have spoken to the Rural Youth Movement who are currently formalising their requests for support from Primary Industries. I have also met with representatives from the Women's Agricultural Bureau and Primary Industries has undertaken to provide office space and equipment as well as financial grants through to 1997. PISA facilities will be made available for meetings and support for projects that are in line with Departmental priorities will be ongoing through the Rural Affairs Unit. It is anticipated that all groups will retain strong linkages and form partnerships with Primary Industries and access services through the Rural Affairs Unit.

3. I have received representations from a number of my colleagues in support of South Australia's community based rural organisations who, like myself, are concerned whether the groups are able to cope with and meet the challenges of the nineties and move with confidence into the year 2000.

Additional answers to supplementary questions:

I have briefed the Minister for the Status of Women on the current situation and the Minister will be invited to be involved in the Women's Agricultural Bureau Forum that is expected to be held in March 1995. This forum will offer an opportunity for the Women's Agricultural Bureau, and interested stakeholders to fully consider the options and opportunities for WAB in the future.

The Advisory Board of Agriculture is not comprised of, nor does it represent, Rural Youth and Womens Agricultural Bureau. It was not appropriate to seek its opinion on these matters.

WORKCOVER

In reply to **Hon. T. CROTHERS** (8 February).

The Hon K. T. GRIFFIN: The Minister for Industrial Affairs has provided the following response:

1. The funding ratio is based on a comparison of liabilities to assets. The funding deficit experienced at 30 June 1994 was due to a combination of factors. The major factors are:
   (a) the discontinuance assumptions made by the actuary (rate at which workers return to work each year)
   (b) the scheme has continued to find it difficult to return workers to work in the current economic climate.
2. Answered in Parliament—No.
3. WorkCover rates and other Government rates are not included in the average weekly income figures quoted by the Hon. T. Crothers. The 'cost competitiveness' referred to by the Minister deals with the additional costs that employers must pay to operate in a particular State, not employee wages.
4. The legislative amendments that are referred to applied from 1 July 1994, while the actuary's estimate of outstanding liability applied to claims incurred before 1 July 1994. This means that the actuary's evaluation does not take account of the legislative amendments relating to travel related injuries as any journey claims incurred before 1 July 1994 will be accepted by WorkCover.
5. The actuary seeks advice from the management of the corporation regarding its initiatives in reducing costs and balances this with experiences in other workers compensation schemes in Australia and throughout the world. Therefore, any significant cost reductions or initiatives that are occurring around the world are normally brought to the attention of the corporation by the actuary. Medical advances, however, are likely to reduce long term medical costs that will reduce costs for the scheme, but at the cost of increasing costs now. The corporation examines the use of new medical treatments carefully before adopting to ensure it has long term savings.

FARM HOLIDAYS

In reply to **Hon. BERNICE PFITZNER** (29 November).

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

There is certainly an interest in farm holidays from some market segments overseas. However, I advise that there is a limited demand

and that such farm holidays in South Australia are not unique. Therefore, it would not be of sufficient cost benefit to spend a great deal of money specifically promoting farm holidays to the overseas market as this is only part of the overall Australian experience they are seeking.

The South Australian Tourism Commission allocates its overseas marketing budget to promote those unique or superior aspects of South Australia which will have the greatest chance of bringing in the maximum number of visitors to the State. Farm holidays is not one of these; however, it is an activity which some consumers may wish to include in their Australian holiday and, therefore, it is not totally overlooked in the Commission's promotions.

I assure the honourable member that farm holidays do feature in some of the Commission's overseas promotions, particularly in Asia, and that the Farm and Country Holidays accommodation booklet is available in that market.

This is not a decision that the South Australian Government is able to make on behalf of farmers as it is entirely their decision. I have previously mentioned that rabbits are considered a pest to the majority of farmers and I would suggest that it would only be host farms who are seriously into tourism such as Bayree Farm at Coonalpyn, who would keep animals for the benefit of their potential visitors, rather than their respective farming activity.

Although South Australia offers the packaging of farm holidays, it is entirely up to the overseas wholesalers and consumer demand whether or not they choose to package such a product. As I have previously mentioned, this is a limited market, and despite generous subsidies, there has been no participation by South Australian host farms with the Tourism Commission in any overseas trade shows where overseas wholesalers visit to investigate potential product. However, I advise that there is now a booking agent in Australia to handle this type of inquiry which will ensure that agents overseas will be more likely to package and book this type of holiday.

HOSPITALS DISPUTE

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Industrial Relations, a question about stand-downs in public hospitals.

Leave granted.

The Hon. T.G. CAMERON: The Minister for Industrial Relations recently stood down members of the Miscellaneous Workers Union employed in the State's public hospitals. The Industrial Commission, I understand, declared the stand-downs illegal and the workers concerned returned to work. In this morning's *Advertiser*, the Minister has warned that the Government could sack workers without notice. I further understand that hundreds of volunteers are now working in our public hospitals. My questions to the Minister are:

1. Will he table in this Chamber the cost to the taxpayers of his illegal action; that is, how much in wages was paid whilst these employees were off work?

2. Are the volunteers covered by the Workers Compensation Act?

3. If not, what action has the Government taken to ensure that these volunteers are covered by workers compensation or an insurance policy in the event that they are injured whilst performing these volunteer duties?

The Hon. K.T. GRIFFIN: In relation to the dispute generally, I tabled a ministerial statement by the Minister for Industrial Affairs in another place. In respect of the detailed matters to which the honourable member has referred, I do not have that information at my finger tips. I undertake to bring back replies.

TUNA FARMS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for the Environment and Natural Resources, a question about dolphins and tuna farms.

Leave granted.

The Hon. ANNE LEVY: I am sure everyone here knows that dolphins, whales and sea lions are completely protected in Australian and, in particular, South Australian waters. It is an offence for anyone to injure or kill them for any reason. Most people welcome dolphins and whales when they come within sight of our shores. They have even been up the Port River, but unfortunately there are hazards to their safety which are caused by human activity. Often this is regrettable but is probably completely unavoidable and unintentional.

However, there is an emerging problem on the coast off Port Lincoln which could be solved if the Government would take up the cudgels on behalf of our dolphins. The problem comes from the existence of 11 tuna farms which are located off the coast of Port Lincoln and which take the form of a series of nets suspended in the ocean. There is an inner net used to confine the developing tuna. There is then an outer net designed to keep predators away from the fish stock; in other words, to prevent the sharks from getting at the tender young tuna. Unfortunately, it is in this outer net that dolphins and sea lions sometimes become entangled. As they are unable to escape, they end up suffocating and drowning. The result is that they die.

I have seen a list of dolphins and sea lions which were reported as having been entangled in these nets during a period in 1994. This list of those reported by one of the tuna farms includes 10 dolphins, one sea lion and one fur seal who were caught through entanglement in a period of 10 months last year. These are those reported from only one of the 11 tuna farms.

There is a way of preventing these entanglements and deaths of dolphins which results from research done here in South Australia and also in the United States. There are available nets to be used as an outer net in the tuna farms. These nets are such that sharks cannot get through them, but dolphins and sea lions do not become entangled in them, and so die. These particular nets have a smaller mesh than is being used in the tuna farms at Port Lincoln and I gather they need to be stretched across the sea rather than suspended in a loose fashion as applies with the outer nets at the moment. Will the Minister act to regulate the type of netting which is used in tuna farms in South Australia so that dolphins and sea lions are not caught in these nets resulting in their subsequent death?

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

TRANSPORT DEPARTMENT

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Transport a question about the Department of Transport strategic review.

Leave granted.

The Hon. BARBARA WIESE: In her ministerial statement two weeks ago the Minister for Transport indicated that, under the new departmental arrangements, ownership of the motor vehicle registration database will be retained by the department, although the processing operations of the head office but not the smaller regional offices will be the subject of expressions of interest from the private sector. The Minister stated:

These expressions of interest will then be examined to test the capacity of the private sector to operate but not own the business.

As with the Modbury Hospital exercise, the Government is pursuing another exercise in semantics as it tries to confuse the distinction between outsourcing and privatisation, and indeed it raises more questions than it answers. My questions are as follows:

1. If a private sector operator is found, will the motor registration head office be closed altogether, and what are the current numbers of staff employed there?

2. Who will provide the face to face customer service aspect of the work currently undertaken at the head office?

3. Is it intended that a private operator will have access to and will collect motor vehicle data from the regional offices, the administration of which I understand will be retained by the department?

4. What role, if any, will be played by EDS, the company with which the Government is contracting to provide information technology services in the public sector?

The Hon. DIANA LAIDLAW: I will have to get answers on some of the more specific questions that the honourable member has asked, but I can indicate that, with respect to motor vehicle registration operations as a whole, we are, I suppose, continuing a process that was started by the former Government. All members would be aware that, over some time, more and more motor vehicle registration renewals have been processed through Australia Post offices. So, work being contracted out in the motor vehicle registration area is not foreign. We are looking for private sector operation expressions of interest for the head office operations, principally because head office is not as cost effective as are our branch and regional offices. That is the basis for the decision in respect of the head office.

In terms of face to face customer services, I would always consider important that whoever operates the service should have a high standard of customer service delivery, whether it is operated in the public or private sector or by another public sector organisation, such as Australia Post.

I received last night a report which made a number of suggestions for change in terms of motor vehicle registration procedures, and I know that in future we will be looking at a lot more work being done through electronic data processes—the use of bankcards and the like—to process exchange of funds. We are also looking at initiatives with Australia Post which would see that the renewal notices also go out with the registration discs. Last night I gave approval for the paper to which I am referring to be circulated for public comment. It was earlier sent to members of Parliament and others for comment. This further comment that I am seeking arises from workshops and earlier feedback.

The way in which motor vehicle registration business is being done in this State and other States has changed entirely, and it is timely that we look at all those matters with respect to motor vehicle registration in this State. I will bring back more detailed replies on the specific questions that the honourable member asked.

FRINGE BENEFITS TAX

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister representing the Treasurer a question about the fringe benefits tax.

Leave granted.

The Hon. R.D. LAWSON: The Attorney-General today tabled in this Council the determination of the Remuneration Tribunal relating to the salaries of members of the judiciary. As well as determining the salary increases for the judiciary, the determination awarded a conveyance allowance of $9 996 per annum in respect of judges of the Supreme Court and a somewhat lesser amount in respect of some other judicial officers. This allowance is payable. However, a member may elect to receive a motor vehicle in lieu and, if the member does so elect, his or her salary and allowances shall abate and be reduced in accordance with a formula set out in the determination.

On 23 February 1995 the Federal Treasurer announced changes to the fringe benefits tax regime and in particular he announced that additional fringe benefits tax is payable in respect of motor vehicles. My questions to the Minister representing the Treasurer are: first, does the State pay fringe benefits tax on vehicles provided to members of the judiciary? Secondly, if so, what amount was paid in the year ended 30 June 1994, and will the changes announced recently have any effect—and, if so, what effect—on fringe benefits tax payments in the future?

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

AGED PERSONS, OUTPATIENT SERVICES

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about elderly access to outpatient services.

Leave granted.

The Hon. M.S. FELEPPA: In his annual report for 1993-94 the Commissioner for the Ageing implies a serious abuse of health services to the elderly. On page 81 the report states:

In its response to selected recommendations of the Audit Commission's report, the office of the Commissioner for the Ageing:. . . Urged caution in discouraging older people's use of hospital outpatient services, as advocated by the Audit Commission, on both health and economic grounds.

A search of the 77 recommendations of the Audit Commission concerning the South Australian Health Commission does not reveal any specific recommendation that could give rise to the Commissioner for the Ageing's concern. I do not doubt that he has a genuine concern and is not mistaken. His concern may have arisen from the implications of outsourcing or contestability, but even under these headings there is no reference to the policy of discouraging the elderly from using hospital outpatient services.

There seems to be some hidden policy to discourage the elderly from using outpatient services. The supposed reasons, according to the Commissioner for the Ageing, are health reasons but, more importantly, economic cost saving reasons. If the elderly are channelled into private sector medical practices, which the elderly might not wish to use, the funding then shifts from the State Government to the federally funded Medicare, with South Australia avoiding health funding responsibility. The fact that the quote I have given should have appeared in the commission report should give rise to grave concerns as to the way in which the Government's policy is implemented. My questions are:

1. From where in the recommendations in the Audit Commissioner's report could the concern expressed by the Commissioner for the Ageing have arisen?

2. Will the Minister reveal to the Parliament whether there is any hidden policy that is designed to discourage the elderly from using hospital outpatient services?

3. Will the Minister seek clarification of the concern expressed by the Commissioner for the Ageing in his statement in the annual report, as I believe it reflects on the Minister's portfolio?

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

CHARITABLE ORGANISATIONS

In reply to **Hon. A.J. REDFORD and Hon. M.S. FELEPPA** (9 February).

The Hon. R.I. LUCAS: My colleague the Treasurer has supplied the following response.

By way of background, let me provide some words of explanation. In late 1993, the Commonwealth Government asked the Industry Commission—an independent body—to examine the role of charitable organisations in Australia. These days we refer to them as 'community welfare organisations' or 'community social welfare organisations'. The Industry Commission was to look at things like funding of the sector, improving quality and performance, accountability, relations with government and the like.

I have been asked whether the State Government provided any submission at that time. Early in 1994, this Government provided information to the Commission, mainly in the form of funding statistics, but preferred to wait for the draft report before providing comment. The draft report—very extensive and wide-ranging—was made available in November 1994. The Government is preparing its response on the draft report which will shortly be made available to the Commission. It is important to note that any person or body can make submissions to the Industry Commission. I am sure that many community organisations are doing so at present on this topic.

I was also asked some questions on the link between the sector and the State budget. The sector is extremely significant in budgetary terms. Community social welfare organisations are funded to operate along with Government services and some for-profit firms to achieve a wide range of social welfare goals in South Australia.

The economic statistics on the sector are startling. There are at least 11 000 community social welfare organisations in Australia. The sector's combined total annual expenditure was more than $4.4 billion in 1992-93 of which Governments funded more than $2.5 billion. Recipients of some social welfare services—particularly in aged care—themselves contribute significantly to the overall cost of the sector. Client fees in 1992-93 were some $900 million. Indirect funding from Commonwealth and State Governments in the form of tax concessions, also provided considerable support for the sector—in excess of $400 million per year. The sector employs about 100 000 people. Behind all this stands the generosity of the Australian community which provided over $500 million by way of donations in 1992-93. This contribution is further backed by some tax deductibility for donations to certain types of community social welfare organisations. In addition, the community contributes some 95 million hours of voluntary time each year to support the work of the sector.

The Industry Commission has made a number of recommendations about taxation arrangements for the sector. Some of these I understand would be quite welcomed by the sector: such as, the recommendation to extend tax deductibility to donations to all community social welfare organisations; the recommendation to make any bequests to the sector free from capital gains tax liability and the recommendation to simplify and standardise criteria for input tax benefits between different taxes and across the different jurisdictions. I would imagine this list would assist those organisations that operate in more than one State. It makes two recommendations that are likely to be controversial. One is that the Commonwealth Government should remove the exemption from Fringe Benefits Tax (FBT) from Public Benevolent Institutions. (Only certain community social welfare organisations—those providing direct services to those in need—qualify as Public Benevolent Institutions). The community has always been somewhat sceptical of FBT because there is potentially no end to its application in transforming salaries into fringe benefits. The Australian Taxation Office (ATO) has clamped down on its use and State Governments are required to pay it in relation to their own employees. The Industry Commission is perhaps reflecting this perspective. The other controversial recommendation relates to asking the Council of Australia Governments (COAG) to look at a revenue neutral package of assistance to the sector rather than the current range of input tax exemptions which are unequal and somewhat unknown in the benefits they produce for their dollar value.

It would be premature and extremely difficult at this stage to attempt to quantify what would be the overall effect of all these recommendations—if they were implemented—on the State Government budget and the sector as a whole. What would need clarifying is whether the 'revenue neutral' package of assistance which would replace tax concessions would be revenue neutral in aggregate or revenue neutral down to the program or organisation level. One could also imagine initial calls on the State Government to increase its funding to organisations which were required to pay a Commonwealth tax such as the Wholesale Sales Tax even if the value of the tax were eventually to be returned to the sector. On the other hand the Industry Commission suggests that a more comprehensive tax base would mean a stronger revenue base for State Governments. As I have said, the question is complex and very difficult at this stage to speculate on precise impacts for a State budget.

As to the supplementary question, the Industry Commission has rightly acknowledged the complexity and potentially far-reaching implications of attempts at reform of taxation and funding mechanisms applied to charitable organisations. Because of this they have recommended that the Council of Australian Governments should establish a working party to examine the practicality of direct Government assistance to the sector versus the current indirect assistance provided by input tax exemptions. I would support this recommendation of the Commission in that a high-level analysis needs to be done on the implications of the proposed reform. Given the concerns that have been expressed by the industry, it is difficult to suggest at this time that input tax exemptions be removed and replaced with more direct forms of assistance.

Tax exemptions have the virtue of being a simple form of assistance that Government can provide to organisations. However they come with a cost. The cost is obviously that the tax is not collected and has to be borne by the community as a whole. And, as the Industry Commission points out, there are other disadvantages in terms of efficiency. One is that we do not know the full costs to Government and the community of the various concessions like the Fringe Benefits Tax concession. Another is that such indirect assistance makes no distinction between effective and performing organisations with high quality results and the less effective organisations whose practices and quality of services would bear some criticism. Again, for all sorts of historical reasons, these benefits are available to some organisations in the community services sector and not to others, although we might place equal value on both types of organisations from the community point of view. I should point out here that my understanding is that the sector itself is somewhat divided about the Industry Commission's report—there are potential winners and losers.

Another disadvantage that I see from the point of view of the economy as a whole is that tax exemptions may lower the costs faced by community social welfare organisations with commercial business activities and lead to an advantage over for-profit competitors. Some organisations, for example, would not pay payroll tax, local government rates, fringe benefits tax or wholesale sales tax. Even at the level of employment of staff they would therefore have an advantage in commercial activity. I believe it is important to examine the issue because it is extremely complex. First, we need to have information on the extent of the assistance being provided through these input tax exemptions and concessions. We need to look carefully at the alternative system being proposed and we need to listen carefully to the organisations themselves on the potential hidden problems. Then, of course, there is the complexity of Australia's Commonwealth/State financial arrangements to be taken into account. Some organisations are funded by State Government money but may be required to pay a tax to the Commonwealth Government for example.

I can assure the Parliament and the community that this is not a matter which we would be prepared to rush into on the strength of an Industry Commission draft report. This Government is extremely aware of the valuable role played by the community social welfare organisations—if you like by 'charitable organisations'. We value their work and see ourselves working with this sector for a better quality of community life. . . just as we see ourselves working with the sector for a more efficient and effective sector where we ensure

the greatest value for the dollars invested in the sector by the public and from Government funding.

SMALLGOODS

In reply to **Hon. R.R. ROBERTS** (8 February).

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

1. The Premier, the Minister for Health and the Minister for Primary Industries met company representatives on 4 February 1995, to discuss options relating to the company's future. In the event, the company itself took action the following day to wind up the company. The Government hopes that the initiatives it has taken to fast-track the introduction of new quality assurance standards for the smallgoods industry will help to rebuild consumer confidence with the result that there may be opportunities in the industry for former employees of the Garibaldi Company.

2. As well as fast-tracking of new quality assurance standards, the South Australian Government, through the Minister for Health, has written to the National Food Standards Council to highlight the national importance of ensuring that food processing standards take account of new and developing risks in establishing a consistent set of national standards for special smallgoods production, particularly for fermented meat products. The Government believes that this issue must be addressed nationally, given the extensive trade in smallgoods between the States.

ENTERPRISE BARGAINING

In reply to **Hon. CAROLYN PICKLES** (1 December).

The Hon. R.I. LUCAS: My colleague the Minister for Industrial Affairs has provided the following response.

1. In October 1994 I advised the South Australian Institute of Teachers (SAIT) (Australian Education Union South Australian Branch) that I saw the potential for both parties to benefit by embarking on the process of enterprise bargaining with a view to exploring a more productive and efficient means of delivering an education for children in this State.

The union indicated a willingness to explore the opportunities for enterprise bargaining and subsequently lodged a Notice of Initiation of Bargaining period in the Australian Industrial Relations Commission (AIRS) pursuant to the Australian Industrial Relations Act. On 4 November 1994 the chief executive of the Department for Education and Children's Services was provided with a list of specific proposals which the union indicated it had an interest in pursuing through the enterprise bargaining process.

On 11 November 1994 the chief executive advised the union that whilst the department was prepared to pursue enterprise bargaining, it considered that any agreement reached should, consistent with Government's policy, be certified in the Industrial Relations Commission of South Australia.

The union persisted in its attempts to bring the matter before the AIRC. At a conciliatory conference between parties on 15 December 1994 the commission was advised that the department was in the process of developing its platform for negotiations and that this had taken some time because of the significant agenda proposed by the union. The commission was also made aware of the department's desire to progress negotiations with all of its employees and their representatives through a Single Bargaining Centre and of an enterprise bargaining offer made to the United Trades and Labor Council (UTLC) by the Government.

Pursuant to the provisions of the Industrial and Employee Relations Act 1994 a notice of intention to negotiate an enterprise agreement was forwarded to all employees of the department on 16 December 1994. On 21 December 1994 notification that negotiations were about to commence was given to all employee associations with members in the department.

The parties met on 12 January 1995 to begin informal discussions in respect of the union's agenda, which had been subsequently expanded. Further meetings have been scheduled since that date. A number of issues have been discussed with the parties having agreed a commitment to develop a revised recruitment/placement scheme for teachers to operate in 1996, by the end of March 1995.

Formal enterprise bargaining negotiations are scheduled to commence on 28 February 1995 when it is hoped that the Single Bargaining Centre (SBC) will be established. It is intended that the SBC be constituted of management and all employee representatives, however SAIT (AEU SA branch) may not participate due to its keen desire to progress enterprise bargaining through the Federal industrial relations system.

2. The notification of staff of the commencement of formal negotiations was delayed for several reasons. The ongoing negotiations between the Government and the (UTLC) and its affiliates in relation to the 'across the board' wage offer for public sector employees contributed to the delay, however this was not the main factor. The most significant reasons for the delay were the department's need to carefully determine its agenda for enterprise bargaining (which has now been done) and SAIT's (who is the principal union) reluctance to participate in the SBC.

3. As stated, SAIT has lodged a Notice of Initiation of Bargaining Period in the Australian Industrial Relations Commission (AIRC). This matter has been before the AIRC and has been adjourned until 15 March 1995 for further consideration. The AIRC is aware that the Department for Education and Children's Services has forwarded a notice of intention to negotiate an enterprise agreement pursuant to the Industrial and Employee Relations Act 1994 to all employees and that the department is keen to commence bargaining, as soon as possible and for any agreement reached as a result of these negotiations to be certified in the Industrial Relations Commission of South Australia.

Given SAIT's position in relation to this matter, it is difficult for the Department for Education and Children's Services to determine a timetable relating to the progression of these negotiations.

Further, the Government is still negotiating with the UTLC and its affiliates in relation to the 'across the board' wage offer for public sector employees and the outcome of such negotiations will have an influence on enterprise bargaining within the department. The commencement of negotiations at enterprise levels is an integral aspect of the Government's offer and in any event, the department is anxious that they proceed as soon as practical.

FUEL SUPPLIES

In reply to **Hon. M. J. ELLIOTT** (30 November).

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

Stocks are kept of all petroleum products supplied to the South Australian market. These stocks include Motor Spirit, Liquid Petroleum Gas, Automotive Diesel Oil, Jet Fuel, Aviation Turbine Fuel and Heating Oil.

The normal working levels maintained for the SA market are:

Motor Spirit (Unleaded)	10 days
Motor Spirit (Leaded)	10 days
Automotive Diesel Oil	14 days
Jet Fuel	21 days
Aviation Turbine Fuel (all imported)	21 days
Liquid Petroleum Gas	Major export product
Heating Oil	Very small demand

These stocks are additional to approximately 2-3 days supply at the retail outlets.

An arbitrary level of three days terminal storage (based on normal consumption rates and excluding retail storage) for each of motor spirit and automotive diesel oil has been set as a minimum level required for the essential services. This level was determined following discussion between the Government and the oil companies.

ASIAN TOURISTS

In reply to **Hon. T. CROTHERS** (30 November).

The Hon. R.I. LUCAS:

1. The Government recognises that bilingualism is an important asset for all students not only for purposes of economic growth but also as a means of improving educational outcomes and enhancing Australia's social cohesiveness. Within the context of these principles the Government acknowledges that changes to Australia's trading patterns and sources of tourism require modification of priorities in the area of languages education. Over the last decade we have seen a considerable increase in the number of students studying Asian languages in our schools. In 1994, 22 per cent of all students in South Australian government schools were studying one of the following Asian languages:

- Chinese
- Indonesian
- Japanese

· Khmer
· Vietnamese.

With full implementation of the State Languages Policy in 1995 the percentage of students studying an Asian language will further increase.

2. In 1994 the Government spent approximately $8.0 million to support the teaching and learning of Asian languages within the Government schooling sector. The majority of these funds constitute recurrent expenditure in the form of teacher salaries as well as support for teachers in the form of curriculum materials development; advisory support; and training development. With increased provision for Asian languages in 1995 and within the context of the likely phased implementation of the COAG Report on 'Asian Languages and Australia's Economic Future' there will be increased funds allocated to Asian languages.

3. As stated earlier in the response the Government has already implemented strategies to ensure increased numbers of students are studying Asian languages. However, the Government is also committed to ensuring access to the study of languages spoken by indigenous Australians and Australians from non-English speaking backgrounds as an indication of our commitment to multicultural education. This will also mean utilising the rich cultural and linguistic resources available to this State for purposes of enhanced educational outcomes for all students, improved social cohesiveness and economic development.

4. At this point in time it is anticipated that an additional 43 primary schools are likely to be introducing an Asian language in 1995. Advisory services, curriculum development and training and development will continue to be provided for teachers of Asian languages and are likely to be increased through the implementation of the COAG Report on 'Asian Languages and Australia's Economic Future'.

5. The provision of studies in Asian cultures will be at least as important as Asian languages as such studies have the potential to involve all South Australian school students.

DECS is already active in this area through its participation in the national Asia Education Foundation Magnet School Program, which aims to develop schools as centres of excellence for the incorporation of studies of Asia across the curriculum. In South Australia there are over 20 schools participating in the program across all year levels of schooling.

SSABSA has already included some compulsory objectives relating to knowledge of Asia in courses such as Stage 1 Modern History and the SSABSA Board has approved the development of a Stage 1 Asian Studies course which is likely to be available in schools at the beginning of the 1996 school year.

WATER MAINS

In reply to **Hon. G. WEATHERILL** (25 October 1994) and answered by letter 8 January 1995.

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

1. Metropolitan water mains bursts increased in the 1993-94 year compared with 1992-93.

2. The majority of pipe bursts during 1993-94 were caused by ground movement. Much of the Adelaide suburban area is founded on expansive clay soils which either heave or crack depending on whether we have wet or dry conditions. More than half of the burst mains during 1993-94 occurred in the expansive soils of the North Eastern suburbs.

Even though the number of bursts increased last financial year, in comparison to Eastern States, the numbers were still very low. Bursts per 100 km of main are listed below (ARMCANZ).

Year	Sydney Water	Melb Water	EWS	Brisbane City Council	Hunter Water
90-91	41	43	20	37	94
91-92	35	30	19	37	76
92-93	37	50	16	39	71
93-94	unknown	unknown	23	unknown	unknown

3. The number of burst water mains in the metropolitan area causing loss of supply over a five year period are as follows:

1990-91	1991-92	1992-93	1993-94	Since July 1994
789	800	612	1 077	235

The main reasons for the increase in 1993-94 have been addressed in Answer 2.

Contractors will not be taking over the EWS.

4. Any future agreement between contractors and the EWS to undertake works will include specific performance agreements which will include response times. These response times will be equal to, or better than, current EWS response times.

HIGHBURY DUMP

In reply to **Hon. M.J. ELLIOTT** (7 February).

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

1. Under Section 48(2) of the Development Act an Environmental Impact Statement (EIS) may be called on any major project which is of social, economic or environmental significance. The Governor when making a decision on a major project (Section 48(7)) must have regard to:

(a) the provisions of the appropriate development plan and regulations (so far as they are relevant); and
(b) if relevant the building rules; and
(c) the planning strategy; and
(d) the EIS and Assessment Report.

An EIS is often called when a project conflicts with the provisions of the Development Plan because major projects are often not foreseen in the writing of the Development Plan.

2. No.

3. None.

COLLEX WASTE MANAGEMENT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister for Housing, Urban Development and Local Government Relations a question about the proposed Collex liquid waste treatment plant.

Leave granted.

The Hon. M.J. ELLIOTT: There has been a great deal of concern about this proposal by Collex Waste Management to have a treatment plant on the old Tubemakers site at Churchill Road, Kilburn. The local Enfield council and the local community oppose the project, which would be within several hundred metres of a school and a nursing home. A local action group has raised many questions about the proposal directly with Collex in the past few months and it has not received any answers as yet from the company. It has raised similar questions with the Minister but has had no response from him, either.

The group is concerned that, despite Collex's promises to consult with the public, it has failed to do so. The group has raised important issues regarding the ownership of land, the accident history of the company and details of the current waste plant proposal. I tried by freedom of information to pursue certain matters in terms of the history of this particular

company, and I met a very solid brick wall with a total refusal to answer any questions on many grounds—

An honourable member interjecting:

The Hon. M.J. ELLIOTT: I should have; I would have had more chance. I did not even understand it. People have been trying to find out who currently owns the site, and they have been told that so far Collex does not own it. If this is correct, the residents contend that arguments about the company suffering financial hardship because it has to relocate are fallacious. In the past, the Minister has indicated some support for the proposal, and the lack of answers to local residents requires those questions now to be asked in the Parliament. My questions are:

1. Does the Minister know who owns the site for the proposed Collex waste treatment plant and, if so, can he indicate who that owner is?

2. Is there any other deal associated with the site which grants Collex or any associated company the use of the land in any way and, if so, what are the arrangements?

3. Are there any negotiations currently under way regarding the site and, if so, what are they?

4. Would the Minister indicate also whether he intends to override the local development plan, as he has done already in one other place only in recent times?

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

SUPPLY BILL

Adjourned debate on second reading.

(Continued from 22 February. Page 1281.)

The PRESIDENT: I call on the Hon. Terry Cameron and remind members that it is the honourable member's maiden speech. I ask that the normal courtesies be extended.

The Hon. T.G. CAMERON: I consider it an honour and a privilege to have been preselected by the Australian Labor Party to represent it in this Chamber. I have been a member of our great Party since I was 14 years old. I can still vaguely recall visiting the Botanic Gardens as a six year old child with my father, the former Senator Don Cameron, who would love to listen to the speakers who assembled there on a Sunday enunciating their political philosophies. Needless to say, I grew up in a political and trade union family. My grandparents, particularly my grandmother, were politically active. She passed her political philosophy onto her children and in turn my father passed his onto me.

My childhood was peppered with attendances at union meetings and Party meetings, handing out how-to-vote cards and letter boxing. Saturdays were often spent at the Australian Workers' Union office and then over at the Earl of Zetland, where I would drink my raspberry and lemonade and listen to my father, Uncle Clyde, Jack Wright, Mick Young, Reg Groth, Jim Dunford and numerous others discuss unions and politics for hours. I would marvel at their sense of friendship and good humour. My father was involved in a bitter dispute within the Australian Workers' Union which dragged on for years. He won the election to become Secretary of the Australian Workers' Union in South Australia only to be thrown out of office by the union's National Executive. There was a protracted court battle and a long wait before the decision reinstated my father and all the successful AWU officials on his team. The political history for Labor in this State perhaps would have been quite different had the Federal Court decision gone the other way.

Loyalty and mateship are essential ingredients in the Labor Party culture. The men from the Australian Workers' Union that I have mentioned earlier in my speech stuck together through extremely difficult times. They were backed to the hilt by their wives, Norma Wright, Mary Young, Dorothy Groth and my mother Colleen, who suffered terribly during this period. I learnt about friendship, about family, about politics and about the trade union movement. My father is a wonderful human being who never sought high office himself but who just wanted to help his fellow unionists and those less fortunate than he. Without his support and encouragement I would never have embarked on a career in politics.

I spent over nine years working as an industrial advocate with the Australian Workers' Union, only to become involved in another bitter struggle for power within the union. I really enjoyed working for the AWU; it was the most enjoyable period of my working life. Fortunately, like my father, I was on the winning side and made many friends. However, time will not permit me to mention all of them, so I will mention only two. The first was a young man called Ian Cambridge, who was a garbage runner with the Meadows council. He went on to become an organiser and President of the South Australian branch. He is now Joint National Secretary of the AWU-FIME Amalgamated Union. Ian is a fine example of all that is good about the trade union movement: he is an honest, intelligent, hard-working union official whose primary interest at all times is the welfare and well-being of his members.

I wish him every success in his forthcoming union election. The second official is John Thomas, who was working as a construction worker for the Burnside council. John loved the union and had a keen interest in politics. John was a migrant to this country from India and for many he was just the wrong colour. We became friends and political allies. I admired his struggle against prejudice and racism. He never gave up and he fought against the odds and prevailed. I understand that John will be running for President of the South Australian branch at the forthcoming election, and, again, I wish him well.

My time as an advocate for the Australian Workers Union brought me into contact with many industries and occupations. My experience with local government and council workers taught me a great deal about life and impressed upon me the vital importance that local government plays in our community. All unions are not necessarily militant nor are their members. Achieving wage gains and decent working conditions is damn hard work if one is a union official, and it is often thankless. The Australian trade union movement faces an enormous challenge to maintain its relevance and to continue its pivotal role in Australian society. The trade union movement has weathered many storms in its history and I am confident that it will continue to play an influential role in Australian society long after we have gone. The real losers, if the trade union movement in Australia goes the way it did in America, will be the workers, particularly the lower paid sections of the work force who will be left at the mercy of unscrupulous employers.

My political life in the Labor Party has been wide ranging, from the trade union movement, to sub-branches, to Party official. I have been privileged to hold almost every position possible within the Labor Party, from membership officer,

sub-branch secretary and President, to Party secretary, national Vice-President, and I am currently a member of our national executive. I have had the privilege of working with some outstanding people during my political life, and I would like to use this opportunity to say a few words about two who have become valued friends.

The first is John Quirke, whose loyalty and friendship saw me through some difficult times. When I was receiving some stick in this place John, without my knowledge, would ring my wife and explain to her what was going on. He would reassure her and tell her not to worry and that things would be fine. I will never forget that act of friendship. The second person is Trevor Crothers. His faith and confidence in me kept me going during many a difficult period. I judge people by what they say, not by what they look like. For a while I was a single parent and State secretary. Again, it was a difficult period for me. It was then that I saw a side to Trevor seen by few. This man would baby sit my children; he would take them on outings; and he would talk to them for hours. He would help them with school projects and their homework. On one occasion my young son David wanted to ring Trevor about a problem he was having with his homework. I referred him to the *Encyclopaedia Britannica*. He replied, 'But Dad, Trevor always knows more than the encyclopaedia.' I fight more with Trevor than anyone else in the Party, but he is the first person whose advice I seek when I have a political problem.

The last election was the hardest six weeks of my political life. Our research told us that we would lose the election and lose it badly. The redistribution ensured that a large number of seats would be lost. Many fine people lost their seats through no fault of their own. The State Bank debacle and the electorate's view that we were tired and had run out of ideas created an overwhelming mood that it was time for a change. The people of South Australia passed their judgment. They felt that we had to be punished, and punished we were. Dean Brown and his Government have four years to prove to the electorate that they have the answers to South Australia's problems, and problems we have. Saddled with a huge debt, a fragile economy, distant from markets and few natural advantages, South Australia has not had the success enjoyed by other States with mineral and oil exploration.

Tourism, because of our distance from the eastern seaboard, is more difficult. South Australia is often referred to as a 'rust bucket' State and, unless difficult decisions are taken, South Australia will fall further and further behind. The electorate at the last election, in my opinion, did not vote for a Liberal Government: it just wanted us out. Recent by-elections, particularly in Torrens, demonstrate the volatility of the electorate. Voters are more demanding, more critical and many of the old established, traditional voting patterns have been broken down. Today, more than any other time in our political history, we have a huge pool of swinging or unaligned voters.

These voters will make two critical judgments at the next election. They will judge the Liberal Government on whether or not it has kept its promises, and they will judge its record in Government. Secondly, they will judge whether the Labor Party has learnt from its mistakes of the past, and whether it stands before the electorate as a viable alternative Government. It will not be enough for us to be a good Opposition, we must be constructive and, where necessary in the interests of our State, be bipartisan. We must develop new ideas and be forward looking. We must not forget the past and our history. The 90s will bring new challenges and new problems for us to grapple with. We must show our leadership and have the courage of our convictions to change and adapt to a world and an economy that often leaves political Parties trailing behind.

I believe that the South Australian Labor Party is up to this task. There is a new spirit of consensus and cooperation afoot within our Party. I can feel it and so can others. In Mike Rann we have a Leader of substance and courage: a man whose political philosophy, ideals, vision and courage are in tune with the 90s. Many will argue that it is impossible for Labor to win the next election. The Liberal Party will believe that at its peril. With Mike Rann's leadership and with a committed and united Labor Party we can win the next election. I look forward to the challenge. I thank members for their forbearance regarding the delay in my making my maiden speech. I have been unwell for quite sometime. However, whilst it may disappoint some people, my medical condition is treatable and, hopefully, I am now on the mend. I also thank you, Mr President, for your tolerance and the leeway you have extended to me. I thank the Council.

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

WORKERS REHABILITATION AND COMPENSATION (BENEFITS AND REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 February. Page 1300.)

The Hon. BERNICE PFITZNER: In rising to support the second reading, I am keenly aware of the unsustainable blow-out of unfunded liabilities to $153 million—the debt increasing by $7 million per month. More recent reports say its position is deteriorating at a rate of more than $12 million a month and the unfunded liability is now $187 million. The Workcover scheme must be reformed, as this liability is the strongest of indications that the scheme is not working. Reform of the scheme takes into account the need for reassessment of benefits, reorganisation of payments and flexibility of levy rates. To that end, some of the reforms proposed are: new pension based benefit structure; higher benefits for seriously injured workers; increased access to lump sum payments, rather than pensions; claims must be employment based; limits on re-employment obligations of employers; greater employer involvement in Workcover claims management; flexibility to defer levy rates for businesses in financial difficulties; and improved review and appeal systems to increase efficiency, conciliation and reduce costs.

These reforms look as though they will have to be watered down in this Council, as the Government in this Council does not have the majority. It is a pity, as without these reforms we will continue to be the State with the highest Workcover levy. The average Workcover levy in New South Wales is 1.8 per cent; in Victoria it is 2.25 per cent reducing to 1.8 per cent; in Queensland the average levy is 1.6 per cent—under a Labor Government. Here in South Australia the levy is currently 2.86 per cent and it will possibly be increasing to 3.3 per cent. The workplace here is surely not that dangerous. The high levy is due to South Australia's having the highest worker benefits in Australia. Reforms need to be made and this Bill will not reduce benefits for 95 per cent of Workcover claims.

I would like to address the continual accusations made against doctors who have become the scapegoats of this dysfunctional Workcover scheme. We note a recent article in the *Advertiser* of 9 February 1995, entitled 'Doctors, Lawyers in Rorts Row' in which doctors and lawyers are accused of rorting the workers' compensation system for millions of dollars through over-servicing and encouraging inflated claims. It is interesting to note from the Workcover statistics that physiotherapists were paid $8.04 million for 1993-94; orthopaedic surgeons were paid $4.9 million; psychologists were paid $2.07 million and psychiatrists were paid only $1.9 million.

Of the specialists who attend to musculo-skeletal disabilities, we note that the doctors (orthopaedic surgeons) are paid less than the physiotherapists. We also note that of the specialists who attend to mental disabilities, the doctors (psychiatrists) are paid less than the psychologists. Yet, we accuse the medicos of rorting the system. It is true that GP's are paid $8.6 million, but they are the primary health care workers and see patients who have both musculo-skeletal disabilities and mental disabilities, which are the two main disabilities claimed under Workcover.

To further expand into the medical area, and in addressing this most important Bill, I have communicated with a number of medical colleagues who have been involved in the management of Workcover patients. Ironically, it is often these very same doctors who are accused of ripping off the system, and even of delaying the injured worker's return to the workplace. However, the picture I get is not of the average doctor ripping off the system, nor of the average injured worker ripping off the system. The picture I get is of a percentage of health care workers, probably a very small percentage, providing more services than are absolutely necessary, and of a percentage of injured workers doing what is becoming increasingly regarded as perfectly natural in today's society, and that is getting the maximum return from a given situation.

We really cannot blame the individual who has sustained an injury at work for hoping to be compensated in some form or other for his or her so-called pain and suffering. We cannot blame the individual: it is the system which is at fault, say my medical colleagues. Where there is no incentive for a speedy recovery, as there is for instance after an injury on the sportsfield, a percentage of injured workers will languish in self-pity and the desire, consciously or subconsciously, for sympathy and compensation. In recent years a major emphasis in the management of injured workers has been on rehabilitation and an early return to work. It seems to me that both the management and rehabilitation processes frequently involve a number of different specialist groups, all of whom tend to have their distinctive interpretations and methods of explanation, especially when there is no clear mechanism for the worker's continuing pain or disability.

These differences in explanation often serve to reinforce in the injured worker's mind that he or she is definitely impaired in some perhaps ill-defined way. They also may tend to confirm in the injured worker's mind, consciously or subconsciously, that he or she will be unable to return immediately to his or her pre-injury work role. Injured workers who may have sustained quite minor injuries can find themselves in a position where they can dictate, to a considerable extent, the timing and terms of a return to work. To back up these generalisations, I will outline some case histories which have come to my notice. Such case histories serve to emphasise the complex nature of the medical assessment and treatment, which has been interpreted as over-servicing. I must stress that some details have been disguised to ensure patient confidentiality.

One worker sustained a minor sprain to the right wrist whilst working in a factory. She was referred first to a specialist surgeon, who further referred her to a pain specialist. Three months after this injury, with negative investigations and no definite diagnosis of the mechanism of her continuing pain, the worker was encouraged to return to work on defined, restricted activities. Less than three weeks after her return to work, the worker re-injured the same wrist whilst performing a work role which was manifestly in excess of the defined and restricted activities proposed. Progress to recovery was even slower this time around, with the patient demonstrating an extremely negative attitude to any attempt at rehabilitation. She failed to attend an appointment made at a selected rehabilitation service and it was subsequently learned that she had later attended a different rehabilitation service, presumably having been referred there by a different specialist. At this point, the worker had been absent from work for in excess of 12 months, apart from the three weeks return to work on restricted duties. One of the specialists who was involved was subsequently asked for a medico-legal report, and it would appear that this worker, who would have returned to a career perhaps in sport in a matter of days, or at the most two or three weeks, was absent from work for well beyond 12 months.

Another factory worker sustained lacerations to two fingers, one of which required plastic surgery. Five weeks after surgery, the patient was referred to a second specialist because of continuing pain and reluctance to use the hand, and a negative attitude to recovery. Six weeks later, after investigation and treatment, the patient was referred to a rehabilitation service. She was discharged from the rehabilitation service three months later, that is, eight months after the injury, with evidence of 'abnormal illness behaviour' and the suggested need for psychiatric assistance and further pain clinic consultation. There were said to be no suitable duties for her to return to work.

Another patient with a surprisingly long recovery period was a 40 year old man who developed left upper limb pain following a collision at work. Prior to being referred to a pain specialist, he had been referred by his general practitioner to a neurologist, a rehabilitation specialist and an orthopaedic surgeon. There was no conclusive diagnosis established and the slightly conflicting explanations of the mechanisms underlying his continuing pain served to anger both the patient and his wife. To cut a long story short, it was six months before this man returned to work. At follow-up, 12 months after the work incident, he was still on light or alternative duties.

Another failure of a worker to return to a pre-injury work role involved a transport driver who injured her right upper limb in a minor accident. Although investigations and review by an orthopaedic surgeon, a rheumatologist and a pain specialist revealed no mechanism for the continuing pain, she felt unable to return to her original work role because of pain. After being off work for eight months, she was given an alternative work role which was entirely to her satisfaction. A further individual developed a recognised and temporarily incapacitating condition following an operation for a trigger finger, which is a finger with a fixed flexed position—apparently work related. He was referred to an orthopaedic surgeon, a general surgeon, a physiotherapist, a pain anaesthetist, a rehabilitation specialist, an occupational therapist

and psychologists. Two years later, although his medical condition had markedly improved, he was still not back in the work force. He had, however, completed two years of a university degree.

It must be said that at least some of those who have been working in the area of workers' compensation do not always blame the individual worker. It has been the system which has been radically flawed. Some health care workers would like to see the introduction of changes which would serve as incentives for both optimal recovery and an early return to work. There are two questions that need to be asked. First, why do sportsmen and women return to sporting activities on an early and reasonably predictable time schedule, whilst many injured workers, often with a lesser injury, return to work on a much less predictable time schedule? Secondly, why do workers in both the private and public spheres who earn in excess of twice the average wage return to work after a work related injury much earlier than those who earn less than twice the average wage?

An argument could be made that these people have a greater incentive to return to work. It is therefore not surprising when we look at the statistics produced by McGregor Marketing on the workplace safety awareness campaign which showed: 12 per cent of doctors in South Australia believed that some doctors are issuing sickness certificates in excess of the time needed; 36 per cent of employers and 20 per cent of doctors believe that some injured workers are rorting the system; and 34 per cent of employers believe some sickness certificates are issued in excess of the time required. We cannot allow this system to continue without change. We understand that education and preventative strategies must also be in place. We also note that for non-English speaking people who have injuries the costs are, on average, 40 per cent higher than those of English speaking background workers—possibly due to their higher concentration in the greater risk areas of the workplace. Benefits are not being slashed. What is being slashed is the tendency, in some cases, to claim as much as possible, and the reluctance, in some cases, of patients to return to work. There must be greater incentive to return to work, a greater emphasis on prevention and an effective education program. I support the second reading.

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

STATUTES AMENDMENT (FEMALE GENITAL MUTILATION AND CHILD PROTECTION) BILL

Adjourned debate on second reading.

(Continued from 22 February. Page 1248.)

The Hon. BERNICE PFITZNER: I support the second reading of this Bill, which is long overdue. It imposes seven years' imprisonment for what is defined as female genital mutilation, which includes: excision of the whole or part of the clitoris; excision of any part of the female genital organs; the narrowing or closure of the vaginal opening; and any other mutilation of the female genital organs. It has been reported that the practice originated to prevent females from experiencing sexual pleasure or somehow to guard against adultery. These explanations may not be entirely accurate but, whatever the reason, the means definitely do not justify the end.

This type of legislation has been criticised by some people, particularly a Sydney paediatrician, Dr George Williams, who accuses the Government of producing legislation without much community information or community consultation. There needs to be widespread community education especially in some ethnic groups, where the practice of female circumcision (this is the preferred term to use when describing the procedure) is common. There is fear that, due to ignorance, members of these communities might face jail sentences. Another fear is that this practice will be forced underground. These aspects must be emphasised in education.

There is an instance of a woman who underwent a clitoridectomy in Melbourne 25 years ago after the birth of her first child. The woman was not informed that the procedure had been performed and it was not until years later that she understood what had been done to her. Doctors have to raise the issue with sensitivity and many affected women would not raise the subject with a doctor, although the mutilation may be recognised.

In some instances, discussion of the subject may be taboo. In such cases the medico has to ask questions carefully, such as, 'I see you had something done to you as a child. How has it affected you? Do you remember what happened?' Further discussion could lead to the question, 'Have you any daughters? What are your plans for them?' One must proceed cautiously, assessing the woman's response to each question.

I should like to share with the Council a letter that was written by Dr Steven Arrowsmith, who is an assistant to Dr Catherine Hamlin, the Director of the Fistula Hospital in Addis Ababa. Dr Hamlin was recently made a Companion of the Order of Australia 1995 as she and her husband helped to found the 50-bed hospital. The *Medical Observer* magazine or journal asked her whether there was a link between the high rates of obstructed labour and the practice of clitoridectomy and infibulation in Ethiopia. I should like to quote part of this letter in reply to the questions relevant to the Bill. Dr Steven Arrowsmith writes:

> The National Committee on Traditional Practices of Ethiopia recently released an estimate that 92.1 per cent of Ethiopian women had undergone female circumcision of some sort.

It further states:

> . . . 'female circumcision' encompasses a wide range of cultural practices ranging from full infibulation to simple removal of clitoris alone. . . but by far the vast majority of circumcised patients that we see have had the mildest type—clitoridectomy.
>
> Ethiopian physicians seem to be divided in opinion as to whether or not clitoridectomy contributes to fistula disease. Some say that there is no effect whatever, while others argue that even the mild scarring associated with removal of the clitoris can interfere with the elasticity and pliability of the perineum which is so vital in the progress of normal labour.
>
> On the other hand, few would argue that infibulation does not contribute to an increased incidence of obstructed labour and fistula disease. The massive scarring associated with this practice completely distorts the tissues of the perineum.

It goes on further to state:

> Is female circumcision a factor in the cause of fistula disease?

Fistula is usually an abnormal track which links abnormally between the bladder and the rectum or the bladder and the vagina, so the female circumcision could be a factor to fistula disease. The letter continues:

> Without a doubt, the answer is yes. But it is one factor among many. Perhaps female genital mutilation might be best thought of as one 'symptom' among a host of factors which, taken altogether,

represent a kind of cultural syndrome; one in which the soil is ripe for the tragedy of fistula disease.

We applaud your legislature in taking action on behalf of the women of New South Wales. But we also recognise that culture is an exceedingly difficult thing to change. We hope that you will have the perceptiveness, patience and persistence to bring about this change; not a change of mind, but a change of heart.

That is the end of the letter from Dr Steven Arrowsmith, who is the Assistant Medical Director of the Addis Ababa Fistula Hospital in Ethiopia.

Finally, I remember performing male circumcision—excision of the foreskin only. This procedure is not without its difficulties, as one has to be very certain and careful that only the foreskin is excised. For the female it must be that much harder to perform what is called clitoridectomy. However, whatever the criticisms are of preventing female circumcision, using a heavy penalty is the only way at present to stop a ghastly procedure that deforms the female, not only physically, but psychologically. I support the second reading.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

TRUSTEE (INVESTMENT POWERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 February. Page 1298.)

The Hon. L.H. DAVIS: I indicate support for the Bill amending the Trustees Act 1936. I address my remarks particularly to the fairly dramatic change in investment powers of trustees which are proposed in this legislation. This legislation relating to investment powers has come into effect because the States of Australia have examined the existing powers for trustee securities and believe that they are antiquated and could be broadened to give investment powers to trustees which are not subject to the same regulation and restriction that exists at the moment.

Under the Trustee Act 1936, a trustee must invest only in securities which are authorised by section 5 of the Trustee Act. That section lists in some detail the securities which are available for trustee investment, including Government securities, first mortgages on land, deposits with banks, prescribed building societies, bills of exchange, shares subject to numerous restrictions, and the common funds of the several trustee companies in South Australia.

With respect to these authorised investments in section 5, there are practical difficulties. Let me give just one example. The National Australia Bank opened a trustee office in South Australia some three years ago. It wanted the common fund of its trustee company, National Australia Trustees, to be designated an authorised investment under section 5 of the Trustee Act. However, because section 5 requires the common funds of trustee companies to be specifically listed in section 5—to be set out in the Act—it required an amendment of the legislation before its fund could be deemed to be an authorised investment for the purposes of the Trustee Act.

I can remember asking the then Attorney-General (Hon. Chris Sumner) what was happening to the promised amendment to the Trustee Act which would allow the National Australia Trustees common fund to be deemed to be an authorised investment. He assured me that it was on the way. The fact is that it took a good 12 months from the time that the National Australia Trustees made the request for their common fund to become an authorised investment to the legislation giving effect to that request going through the Parliament. That was both quite impractical and quite archaic.

Similarly, under the terms of section 5, a trustee cannot invest in stock, shares or debentures in a company unless that company has a paid up capital of more than $4 million and has paid a dividend in each of the 10 years immediately preceding the year in which the investment is made on all the ordinary stock and shares issued by the company. Again, on reflection, whilst that is a worthy aim, in practice it is not only unworkable but also unrealistic.

For example, Woolworths was floated back onto the exchange after a period of some years, when it had become a fully owned subsidiary of Adelaide Steamship Company. When Woolworths was floated back onto the exchange, no trustee in Australia could invest in Woolworths because it had not paid a dividend for the 10 years immediately preceding that year. Similarly, when the Commonwealth Bank floated off in part following the Federal Government's decision to privatise the bank, its shares were not deemed to be trustee investments for the purposes of this legislation. Similarly, if Qantas comes to the marketplace as is widely expected shortly, it would not qualify; nor would Commonwealth Serum Laboratories. Similarly, a company such as Elders Australia Limited, which may generally be regarded as a sound investment, and which because of seasonal conditions omits a dividend in one year because of drought or a weakening in commodity prices, would be automatically disqualified as a trustee investment if in any one of those preceding 10 years it had failed to pay an annual dividend.

So, whilst there were desirable aims in this legislation in the sense of trying to restrict trustees to securities which were seen to be safe, prudent and proper, there were practical disadvantages. I have experience in this area, and it became very obvious to me that these disadvantages were increasing year by year. There were new securities which came into force, which were not recognised by the Trustee Act but which could well be very desirable securities for a trustee. So, the Act continually was amended to accommodate the changing nature of the securities industry and the increase in the range of instruments in which trustees could invest.

These amendments to the Act were numerous. Probably every year or every second year the Parliament had to deal with an amendment which broadened or altered the nature of the authorised investments set down in section 5. Because these securities listed as authorised investments were distributed or known to people who were trustees, whether they be legal officers with trustee companies, lawyers, accountants or other people administering wills which were restricted to investments in trustee securities, for many people it could well have been seen that these securities were securities almost which had the *imprimatur* of Government—that the Government had set down the ground rules, as indeed it had, as to what were deemed to be acceptable securities in which to invest. So, it could be argued that, if a trustee investment failed, perhaps it was ultimately the fault of Government because it prescribed it as a suitable investment.

One of the other anomalies of this schedule of authorised investments was that many securities which could qualify under the legislative rules set down in section 5 were investments that could not properly be seen to be perhaps desirable investments from a trustee's point of view. So it was a dilemma, and whilst there was no doubt that Parties of

all political persuasions, not only here but in other States, worked hard to provide a legislative framework that prescribed suitable investments for trustees, it was a losing battle. Therefore, the amending Bill is to be commended. It introduces a concept which is already in operation in New Zealand and many States of America: the concept of the prudent person.

The trustee, of course, is not permitted to invest in a speculative manner: quite clearly he has to invest for the benefit of other people, but these investments are required to be prudent. So, this legislation introduces the concept of the prudent person approach to authorised trustee investments. The prudent person approach or rule requires that the trustee act prudently in determining the suitability of a particular investment, as well as when considering actual proposals for investment.

The onus will be on the trustee to select investments which are suitable and which are appropriate for the needs of the person or persons whose interests he is looking after. Those needs will vary from person to person. A trustee administering an estate for an elderly person may well be driven by the imperative of having a steady flow of income and perhaps an extremely conservative approach to investment, perhaps investing in bank deposits or high yielding blue chip securities, but someone investing as a trustee on behalf of the beneficiary of a motor vehicle accident, for example, a child, with the idea of building up capital as well as income for that beneficiary may take a different approach, investing perhaps in some shares and maybe real estate, taking the view that there are, say, 20 or 30 years during which the trustee will be administering the affairs on behalf of the benefiting party under that trust.

As the second reading explanation notes, the essential difference between the legal list, that is, the section 5 authorised trustee investments, and the prudent person approach to trustee investment derives from the manner in which the objective standard of prudent conduct is applied in practice to test this particular aspect of trust administration. As the second reading explanation notes, the legal list relieves the trustee from the responsibility of actually determining whether or not an investment does qualify as a trustee security. That was a terrific problem: in many cases people found as trustees that they were unwittingly holding securities which they presumed to be trustee securities but which in fact had fallen out of the category because of some failure to comply; for instance, a dividend was admitted in a particular year, or the security was not a common fund within the list set down within the Act.

There was a time when some building societies (for instance, the Cooperative Building Society, for a while) were not eligible for trustee security status. Even in today's *Financial Review* there is comment on this continuing problem in New South Wales where note is made that some credit unions have finally become eligible for trustee security status because of a loophole in the Act. So, this is a continuing problem around Australia, not merely in South Australia.

This legislation reflects existing legislation in New Zealand and in States of America, and it also recognises the fact that work has been done on this matter around Australia and that there has been general agreement that this was a preferred approach. So, I support the flexibility that the prudent person approach brings to investment choices. It has to be said that this approach does not in any way modify the liability or the responsibility of trustees: in many ways it could be said that it actually increases their task, because they have the world to pick from now. They do not have a prescribed list of investments as set down in section 5, but anything is for their approval. They still have to qualify for the test, set down in the legislation, of acting responsibly and in a prudent fashion in determining the suitability of particular investments, bearing in mind the circumstances of the trust.

This is enlightened legislation. It is practical legislation and it is legislation which is deregulatory in nature, in that it takes away from Government this prescriptive role which it has had in the past of being forced continually to amend the Trustee Act to accept that a new trustee company is in town and wants its common fund to be a trustee security, or accepting the changing nature of investments and having to amend the Act to take cognisance of that fact. I accept that this is a positive approach to a very important area of legislation.

The Hon. R.R. Roberts: Over-optimistic?

The Hon. L.H. DAVIS:I do not believe it is over-optimistic: I believe it is realistic. As I said, the onus is still on the trustees to operate in a proper and prudential fashion, and their obligations are undiminished as a result of this legislation. I support the second reading.

The Hon. R.D. LAWSON: I, too, support the second reading of this measure, and the Attorney-General is to be congratulated for bringing, for the first time in Australia, a prudent person regime into the realm of trustee investments. I will not detain the Council long this afternoon in speaking in support of the second reading. The duties of a trustee are now specified clearly in clause 7 of the Bill, under which a trustee must, subject of course to the provisions of the particular instrument creating the trust, exercise a power of investment with the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons. Or, if the trustee happens to be in the profession or business of acting as a trustee or investing money on behalf of other persons, such a trustee must exercise the care, diligence and skill that a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons.

This standard has been adopted in the New Zealand legislation and it is, we are told, operating satisfactorily there. There is, of course, no such thing as an entirely safe investment. The happenings with regard to Barings Bank in Singapore only very recently indicate that there is no such thing as a risk-free investment. The Hon. Legh Davis mentioned the defects of the *ad hoc* approach reflected in the previous legislation which necessitated frequent amendments to section 5 of the Act to extend and in some cases redefine the classes of authorised investments available.

For the first time land will be a permitted trustee investment. It is somewhat paradoxical that, although previously many different forms of investment were authorised and mortgages on land were authorised trustee investments, hitherto the purchase of land itself or even land and buildings is not and has not been an authorised trustee investment. However, the new legislation will permit a trustee who can satisfy the prudent person test to purchase land or buildings. That is a development of which initially I was sceptical. Vacant land always has been considered a speculative investment in Australia, and I venture to say that more companies have become insolvent and gone into liquidation in consequence of purchasing land with the intention of later re-developing it or subdividing it and making a profit than

companies engaged in any other form of activity. Not only have companies themselves gone broke in that endeavour but many lending institutions have come unstuck by lending to companies engaged in such speculative activity. Some, such as Finance Corporation of Australia, a subsidiary of the now lamented Bank of Adelaide, went under in consequence of joint ventures into vacant land. However, such investments will now be permitted provided that the prudent person test is satisfied.

Initially I was attracted to the inclusion in our legislation of provisions relating to land, such as presently appear in Western Australia and some other States. For example, in Western Australia, section 16D of the Trustee Act permits trustees to purchase land in fee simple subject to certain advice being obtained, including advice with respect to diversification of investments and the suitability of the particular investment. In New South Wales, amendments to the Trustee Act in 1987 allowed the purchase of land by trustees in any State or territory of the Commonwealth but a provision, section 14D, imposed limitations. Similarly, in Victoria the Trustee Act of 1958 provides in section 4A for the investment of not more than one third of the trust funds in the purchase of land in that State. However, the section requires a trustee, in making a purchase, to act upon a valuation report. I mention for the sake of completeness that the Tasmanian legislation also permits, subject to certain restrictions, investment in land provided that that advice is sought.

The new Act does not require a trustee to obtain advice. However, the prudent trustee seeking to satisfy the tests in the legislation will, it seems to me, ordinarily obtain advice. So, there will be that protection and, of course, if a trustee does not obtain advice or otherwise fails to observe the sensible matters which clause 9 of the Bill requires a trustee to have regard to, the trustee will act at his or her peril.

In conclusion, in supporting this measure, I remind the Council of one of the defects of the list of authorised investments that previously operated. It will be recalled that Mr Laurie Connell and his Rothwells Bank would have been on the list. In fact, Rothwells was a company which was subsequently renamed Rothwells and which existed and operated in Queensland, and which Mr Connell acquired for the very reason—

The Hon. Anne Levy: The list has never been a guarantee.

The Hon. R.D. LAWSON: The list has never been a guarantee, but Connell and others obtained the company, which later became Rothwells—I now forget its initial name—for the purpose of deriving authorised trustee status, and thereby obtaining deposits from the public and generally giving to his company an air of credit-worthiness to which it was not otherwise entitled. So this scheme, which has hitherto operated, is one that has been discredited, and the new prudent person regime deserves our support. I support the measure.

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

SYMPHONY ORCHESTRAS

Adjourned debate on motion of Hon. Diana Laidlaw:

That this Council, following the release of the Commonwealth Government's Creative Nation Statement supporting divestment of the Sydney Symphony Orchestra—

I. Expresses alarm at the projected impact on all other ABC orchestras, most notably the Adelaide Symphony Orchestra.

II. Notes the devastating effect of any move to reduce the capacity of the Adelaide Symphony Orchestra by cutting ABC funding by some $700 000 per annum which would mean a cut of 15 in the number of players to 50.

III. Recognises the invaluable role the Adelaide Symphony Orchestra plays in the artistic and cultural life of South Australia through its own major orchestral concert seasons, including family concerts and country touring, plus the services it provides for the State Opera of South Australia, the Adelaide Festival, Come Out and the Australian Ballet.

IV. Requests the President to convey this resolution to the Chairman of the ABC, the Federal Minister for Communications and the Arts, and the Prime Minister forthwith on the understanding that the ABC Board is to consider all options for the future orchestra funding by the end of March 1995.

(Continued from 16 February. Page 1202)

The Hon. ANNE LEVY: In rising to speak in this debate, I certainly share the concern of the mover of the motion regarding the possible effects that may flow to the Adelaide Symphony Orchestra from the divestment of the Sydney Symphony Orchestra from the ABC, should that occur. If we look at the history of this matter, we will see that the Creative Nation Statement put out by the Federal Government last year promised that the Sydney Symphony Orchestra would be divested from the ABC and would receive additional Federal Government funds so that it could become a world-class orchestra.

Without making any comment as to whether or not it is a world-class orchestra at the moment, the Creative Nation statement certainly said nothing whatsoever about the other major ABC orchestras in this country being affected by the divestment of the Sydney Symphony Orchestra. One might perhaps look at the history of the idea of divestment of the orchestras from the ABC. This idea has been put forward on numerous occasions as a result of a number of inquiries regarding orchestras in this nation. In more recent times, the first suggestion came from a Senate inquiry held in 1976. The Dix report was produced in 1980 followed by the Tribe report in 1984.

These reports recommended divestment—not just of the Sydney Symphony Orchestra but of all the ABC orchestras—from the management and control of the ABC. Basically, it was felt that, if the orchestras were divested from the ABC and became independent orchestras in each State, they would serve their local communities better; they would be more responsive to the needs—particularly the programming needs—of their own communities; that it would be possible to generate much greater loyalty to them from local audiences; and that they would no longer have as one of their main functions the radio broadcasting requirements of the ABC, which tend to influence and affect the programming of the orchestras throughout the nation.

The latest report from Ken Tribe made many recommendations regarding the organisation and management of the ABC orchestras, and I understand that, apart from the question of divestment, all his recommendations have been put in place by the ABC and that the different orchestras are very different creatures now in their management and organisation from those which Tribe was looking at in 1984. I have even been told that Ken Tribe now says that divestment is no longer necessary given the implementation of all his other recommendations and, in fact, that it may even be

undesirable to divest any of the orchestras from the ABC. This is third-hand information. I have not had the opportunity to speak to Ken Tribe, but I have had that comment from him reported to me.

If the Sydney Symphony Orchestra is to be divested from the ABC, it would obviously take with it all the resources which the ABC currently expends on the Sydney Symphony Orchestra. Currently, the whole network of orchestras run by the ABC costs the ABC approximately $30 million a year, and one would expect the Sydney Symphony Orchestra to take from that budget its share of those resources. There would also be other expenses of the ABC which have been spent on behalf of the Sydney Symphony Orchestra and which could be expected to be taken from the ABC budget and given to the budget of an independent Sydney Symphony Orchestra.

I refer to such matters as the corporate services, which have been supplied by the ABC to the Sydney Symphony Orchestra, and their share of the legal services department of the ABC, and so on. Presumably, they would also have to take liabilities which the ABC might have in relation to the Sydney Symphony Orchestra. There is no doubt that one of the consequences of divestment of the Sydney Symphony Orchestra will be a loss on economies of scale. It is obviously cheaper to handle such things as bookings, the buying of music, provision of instruments, etc., for six orchestras through one central point rather than for five orchestras through one central point, and one orchestra quite separately.

But, the cost of the divestment of the Sydney Symphony Orchestra from the ABC is not yet known. A number of figures have been floating around, but I am assured by two sources within the ABC that the final cost of this divestment is not yet known. The ABC is working on it and doing figures; consultants have been called in to advise on the total costs; and, of course, the figures are also being worked on by the Department of Communications and Arts and the Department of Finance in Canberra. At this stage it is premature to mention any particular figures, such as the $700 000 the Minister refers to in her motion, as having a possible effect on the Adelaide Symphony Orchestra.

As I understand it, this $700 000 had its origin from an article written by a journalist in early February. It has been repeated numerous times in press releases from the office of Senator Alston, the Federal Liberal spokesman on communications and arts, but it is certainly not a figure that can be authenticated from any sources within the ABC. While the particular journalist who first mentioned this figure of $700 000 may be a bit more reliable than Basil Arty as a source of information, it is still not an authenticated one. I am told that it is premature to start putting figures on what the cost of divestment will be to the Sydney Symphony Orchestra and what possible effects this could have on the Adelaide Symphony Orchestra, or any of the other orchestras in Australia.

Certainly, it is true that it is possible that the administrative costs for the five remaining orchestras will increase on a unit basis and, unless extra funding is therefore provided for the orchestral section of the ABC, there could be flow-on effects of cuts to the other five orchestras. But, as I said, the figures relating to this are as yet unknown. The ABC is certainly indicating that it will need extra resources to keep the other five orchestras at the same level as they now enjoy if the Sydney Symphony Orchestra is divested, but the amount they would require is not yet known and is still being worked on.

I noticed mention in the *Advertiser* this morning of an options paper produced by Nathan Wax, Musical Director of the ABC. While I have not had a copy leaked to me, as the *Advertiser* has, I understand that this paper contains a number of different options, but certainly includes cuts to the Adelaide Symphony Orchestra and the Tasmanian Symphony Orchestra, but the options in Nathan Wax's paper have not been accurately costed and this, too, is being worked on by the ABC.

I certainly agree that it would be an untenable situation if the Adelaide Symphony Orchestra were to suffer because of the divestment of the Sydney Symphony Orchestra. That would be grossly unfair. If the Sydney Symphony Orchestra is to be enhanced by receiving extra funds, it should certainly not be at the cost of the other orchestras in Australia, including the Adelaide Symphony Orchestra. I agree wholeheartedly with the comments made by the Minister on the value of the Adelaide Symphony Orchestra to our cultural life in this State. We all appreciate the enormous diversity it provides in its concert series: the masters' series, the family concert series and so on. It provides country tours and it makes an enormous contribution to the success of the productions of the State Opera of South Australia. Then there are its most important contributions to Come Out and to the Australian Ballet when it performs in Adelaide and, of course, the enormous contribution made by to each Adelaide Festival.

It is a valuable cultural institution in this State and we must all work to protect it, to maintain it and to enhance and improve it for its cultural contribution to South Australia. I wish to say in the strongest possible terms that the Adelaide Symphony Orchestra must not be penalised because of the divestment of the Sydney Symphony Orchestra. I wish to quote from a statement that the board of the ABC put out last week, as follows:

> . . . there are no plans to change the structure of the ABC's orchestra until the responsibility concerning the divestment of the Sydney Symphony Orchestra has been resolved.

It further states:

> ABC directors have reaffirmed the board's commitment to the orchestral network. Professor Armstrong—

Chair of the ABC board—

> said that despite the funding difficulties faced by the ABC in recent years . . . the budget allocation for the orchestras has increased in real terms. Over the last five years, the funding of the orchestras increased by 57 per cent compared to a nominal increase of 13 per cent for the ABC as a whole. 'This has been in recognition of the role that all of the State orchestras play in enriching the cultural life of their individual States,' Professor Armstrong said.

The statement concludes:

> Professor Armstrong has promised consultation with State Governments and the orchestras before any decisions are made about the structure of individual orchestras and the network.

It may be that Professor Armstrong has not yet consulted the Minister on this matter, but we have the promise that, before there is any change whatsoever to our orchestra, there will be consultation both with the orchestra and with the State Government.

We need to realise that there is a State responsibility regarding the Adelaide Symphony Orchestra also. The ABC, as indicated in this statement from the board, has been providing virtually a 10 per cent rise per year for the orchestras as a whole in the last few years. This is far beyond increases in CPI over the time. In other words, our orchestras have been increasing their grants in real terms from the ABC.

However, we must realise that it is not unreasonable for the ABC to state that it can no longer afford to give rises to ABC orchestras greater than CPI rises.

Such increases in real terms cannot be expected in the future whether or not the Sydney Symphony Orchestra is divested from the ABC. However, costs for orchestras are rising much faster than CPI and this is due to many factors. Recently there was a new award for musicians. The fees and expenses of overseas artists used extensively by the ABC are rising much faster than CPI. There is the fall of the Australian dollar, and these are all problems which affect organisations that need to bring artists from overseas. The Adelaide Festival knows all about the effect of these increases on costs and, merely to stand still, has needed increased funding beyond CPI rises in this country. The ABC orchestras are in the same situation.

Anyone connected with the Adelaide Festival would realise the necessity for increases for the Adelaide Symphony Orchestra. I have been told that the Adelaide Symphony Orchestra faces a crisis next year even if the Sydney Symphony Orchestra is not divested from the ABC. Even if the ABC contribution to the Adelaide Symphony Orchestra does not diminish by one cent, the Adelaide Symphony Orchestra is facing a shortfall of up to $500 000. It may be only $300 000 but $500 000 is a more realistic sum. It has been firmly stated that the State Government should come to the party, as have all other State Governments in Australia. Members may not know that Jeff Kennett has promised an increase of $600 000 for enhancement of the Melbourne Symphony Orchestra and the Western Australian Government under Richard Court has greatly increased its grant to the Western Australian Symphony Orchestra.

The Queensland Government is planning an amalgamation of the Queensland Symphony Orchestra and the Queensland Philharmonic Orchestra. Until now Queensland has had two orchestras funded by the State Government. This amalgamation or cooperation between the two orchestras will result in a greatly increased grant from the Queensland Government to the Queensland Symphony Orchestra. Only the Adelaide Symphony Orchestra has had no promise of an increase in State grants. I suspect the Minister is trying to soften us up and, if the Adelaide Symphony Orchestra has to cut its numbers, she will say, 'It is all the fault of the Federal Government,' but ignoring the fact that it will be necessary to cut the number of players in the Adelaide Symphony Orchestra even if the Sydney Symphony Orchestra is not divested, unless extra State funds are provided for the Adelaide Symphony Orchestra. Merely to maintain the Adelaide Symphony Orchestra at its present level we need to have no cuts at all from the ABC (which means the Federal Government) and an increase in State funds.

One might ask why the Adelaide Symphony Orchestra finds itself in this situation of requiring between $300 000 and $500 000 more from the State Government merely to stand still. The Adelaide Symphony Orchestra receives income from four different sources: from box office; from sponsors; a grant from the ABC; and a grant from the State Government. When we look at these four sources of income we know that sponsors are hard to find in Adelaide as there are very few head offices of firms in this State, but it may well be that extra sponsors could be found to assist the Adelaide Symphony Orchestra. The grant from the ABC, as I have indicated, has been rising rapidly in recent years and, whether the Sydney Symphony Orchestra is divested or not, the ABC states it can no longer afford to increase grants in this way for the Adelaide Symphony Orchestra. The box office, the other source of income, is very difficult to increase given the situation of the Adelaide Symphony Orchestra. It may be that ticket prices could rise a little, but certainly there is considerable elasticity in demand for items such as tickets for concerts and it would not be reasonable to expect Adelaide patrons to pay more for a concert by the Adelaide Symphony Orchestra than Melbourne patrons pay for a concert given by the Melbourne Symphony Orchestra.

The main problem, of course, is that the Town Hall, where the symphony orchestra plays, is so limited in capacity. The Adelaide Symphony Orchestra cannot use the Festival Theatre for its regular series of concerts. It is not very good acoustically and, apart from that, it is impossible for it to obtain the one or two night bookings at odd intervals throughout the year which it requires to plan a concert series. The Festival Centre itself survives on big runs. If it has a long season of *Les Miserables* or *South Pacific* running for six, eight or 12 weeks, it cannot interrupt such a run by having one or two nights taken out for an ABC concert. In recent years the Adelaide Symphony Orchestra has been using the Town Hall, but when it has a full orchestral stage in it only seats about 1 000 people. Concerts have to be repeated three times, but even then that means only 3 000 patrons can hear a particular program.

If we had a decent concert hall which seated at least 2 000 people, a concert could be put on twice instead of three times, so reaching 4 000 patrons instead of 3 000. For less effort from the orchestra, there would be a 33 per cent increase in audience and consequently a 33 per cent increase in box office. Not only would this increase box office considerably but the orchestra would have more time available for other entrepreneurial or money generating activities. In fact, the provision of a proper concert hall would solve most of the problems of the Adelaide Symphony Orchestra.

When we look at concert halls around the country the lack of a concert hall in Adelaide stands out with great clarity. Melbourne and Sydney have had proper concert halls for years. Perth has an excellent concert hall. Brisbane, likewise, has a superb concert hall. The Tasmanian Government—hardly the biggest or most affluent in the country—has announced it will soon build a new decent sized concert hall in Hobart, which will assist the Tasmanian Symphony Orchestra which suffers from much the same problems as the Adelaide Symphony Orchestra in terms of insufficient audience capacity in the halls it has to use. Only the Adelaide Symphony Orchestra is missing out: only Adelaide will be left without a decent concert hall.

Consideration of a new concert hall for Adelaide must be an urgent priority if we care for the Adelaide Symphony Orchestra and the musical life of this community. I spoke about this in my first contribution to the grievance debate, but it is certainly apposite in debate on this motion and should be addressed as a matter of urgency by the Government. Meanwhile, without a concert hall, box office increases are limited, as are possible sponsorship increases. It may be that there is room for economies in the management of the Adelaide Symphony Orchestra, but I doubt whether it would be feasible to expect this could be done to the extent of $500 000 a year. The players of the Adelaide Symphony Orchestra realise that extra assistance from the State Government is essential and that grants from the State Government must increase for our orchestra just to stand still. In a letter which has been sent to all members of Parliament they state:

The Federal Government's 'Creative Nation' document talks about increased State support of orchestras being crucial to an orchestra's success and we are particularly mindful that this has been happening interstate.

The members of the Adelaide Symphony Orchestra are well aware that all State Governments in this country, except the South Australian Government, are increasing their grants to their resident symphony orchestras. It is highly desirable that we, as a Council, should express a view that the ASO should not suffer if the Sydney Symphony Orchestra is divested from the ABC. We must insist that the ABC at least maintain its commitment to the Adelaide Symphony Orchestra. But the State Government cannot shirk its responsibilities either and pretend that all the problems of the Adelaide Symphony Orchestra have a Federal origin. It should follow all the other State Governments and increase its grant to the Adelaide Symphony Orchestra; hence the amendment, which has been circulated to all members and which I now move to the motion. I now move my amendment, which picks up much of what the Minister proposed in her motion, but asserts forcefully:

That the ASO must not be adversely affected financially by the divestment of the Sydney Symphony Orchestra from the ABC and that the Commonwealth Government and the ABC should guarantee that such divestment will not affect other orchestras.

Furthermore, my amendment calls on both Federal and State Governments to see that the ASO is not diminished or weakened. It is a responsibility of both Governments and it recognises that action is required at both levels of government to protect and nurture our Adelaide Symphony Orchestra.

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

RETAIL SHOP LEASES BILL

In Committee.

(Continued from 23 February. Page 1309.)

Schedule.

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

Page 35, line 10—Leave out 'Land Tax'.

During the course of our earlier consideration of this schedule, it was drawn to my attention that 'Land Tax' appeared as a detail of an outgoing even though there were constraints on landlords from passing on land tax to tenants. I acknowledge that was an error. It was picked up from the New South Wales legislation, and it is appropriate to remove it from this schedule.

Amendment carried; schedule as amended passed.

Title passed.

Bill recommitted.

Clauses 1 and 2 passed.

Clause 3—'Interpretation'.

The Hon. CAROLYN PICKLES: I move:

Page 2, after line 9—Insert—

'Magistrates Court' means the Civil (Consumer and Business) Division of the Magistrates Court;.

When we considered the Bill previously, I indicated that on the Second-hand Vehicle Dealers Bill a conference was taking place where the issue of the appropriateness of whether or not to continue the Commercial Tribunal was being looked at. Today, that conference has reported to the Parliament. I understand that there has been agreement on an issue relating to the most appropriate court to deal with these kinds of issues. For the benefit of members, I will outline what the new Civil (Consumer and Business) Division of the Magistrates Court will do. It would allow assessors to sit with a magistrate at the magistrate's discretion. These assessors can be people who are experienced in the industry and who can assist the judicial officer as to understandings and customs which are commonly held or practised throughout the industry. It is intended to be of a particularly informal nature, so that lawyers would not be essential in the process, and we would expect this informality to be reflected in the paperwork required to bring or defend a claim and the attitude of and assistance provided by the magistrate.

The magistrate or magistrates sitting in this division would develop particular expertise in dealing with matters of a specialist nature which would be dealt with by the division. We believe that in relation to this particular piece of legislation the Civil (Consumer and Business) Division of the Magistrates Court is the most appropriate forum for the resolution of retail shop leases disputes. The parties concerned in these disputes will appreciate the advantages of the Commercial Tribunal which have been given to this new division of the Magistrates Court. All other related and following amendments would be consequential, until we get to clause 76, where I wish to insert a new clause.

The Hon. K.T. GRIFFIN: It is correct that, at the deadlock conference in relation to the Second-hand Motor Vehicle Dealers Bill—and we will get a chance to discuss it later—a compromise was reached in relation to the body which would deal with issues arising under that legislation. The agreement finally was that there would be, in the Magistrates Court, a Civil Consumer and Business Division, and that it would be structured so that there would be potential for assessors in some circumstances—lay assessors on the one hand representing dealers and, on the other hand, those representing people who deal with dealers, that is, the consumers of second-hand motor vehicles.

There was also a provision that claims under $5 000 would be treated as though they were minor civil claims. It needs to be recognised that in that context there is a minor civil claims division which is the old small claims jurisdiction of the Magistrates Court, and matters involving amounts up to $5 000 would be dealt with in a way which is similar to that for minor civil claims—no legal representation, limited rights of appeal, informal approach by the court, and no obligation to deal with issues on the basis of the laws of evidence, but justice and equity would prevail. If a claim was for more than $5 000, there would be a right for a party to elect to have the matter taken out of the minor civil claims jurisdiction so that there would be less formality and an opportunity to have representation. Of course, rights of appeal would apply. The amount of $5 000 is a reasonably large amount of money for most people, and when that limit was fixed several years ago by the courts package of legislation introduced by the former Attorney-General $5 000 was finally agreed to be an appropriate level for distinguishing between those claims where legal representation should not be permitted as a matter of course and other cases.

So, the Leader of the Opposition is now proposing to bring disputes under the Retail Shop Leases Bill to the Civil Consumer and Business Division, although I have an amendment on file which seeks to ensure that beyond the ordinary jurisdiction of the Magistrates Court, that is $30 000, those bigger disputes should go to the District Court, and that would then fit in very neatly with the present jurisdictional limits of the Magistrates Court and the District Court.

The Government had proposed that there be a new division in the Magistrates Court. It would have some similarities to the Civil Consumer and Business Division to deal with all tenancy disputes including residential tenancies disputes, retirement villages residents' disputes, and so on, under the description of 'Tenancies Tribunal' or 'Tenancies Division'. That is the subject of a Bill on the Notice Paper. I have noted that at least previously there was an expression of view from the Australian Democrats and the Australian Labor Party that they would oppose the second reading of that Bill. I hope that might be capable of being revisited before that final vote is taken at the second reading. I indicate that, whilst I am not raising any opposition to the honourable member's amendment and the course she is presently following, it is my intention that, in the light of the changes made in the Second-hand Motor Vehicles Bill and now this Bill—and one has to consider what will happen in relation to builders licensing—it is my intention over the next few days to try to examine the whole range of legislation to see if there is a coherence in it in relation to the tribunals, bodies or courts that will resolve disputes.

The last thing we want is to have some *ad hoc* changes being made throughout various legislation none of which really hangs together, and obviously in the light of the fact that there is now an agreement by the deadlock conference in relation to the Second-hand Vehicle Dealers Bill I would want to have some more detailed discussions with the Chief Magistrate in relation to the way in which the jurisdiction is established and administered and the extent to which other matters might be referred to the Civil Consumer and Business Division.

All I want to do is alert members of the Committee to the fact that, whilst I do not oppose this now, I reserve my position on it in the light of what I hope will be a fairly early review across the whole range of consumer legislation that has been in the Parliament, that is in the Parliament or that will be in the Parliament, to ensure that there is a coherent approach to the resolution of disputes in appropriate tribunals or jurisdictions.

The Hon. CAROLYN PICKLES: I thank the Attorney-General for his comments and his approach on this series of amendments.

The Hon. M.J. ELLIOTT: Not having been a party to the conference, I have not had a great deal of opportunity to look at what emerged therefrom in relation to second-hand vehicle dealers. I had already indicated that the Democrats were not favourably disposed to the residential tenancies proposal that the Government was putting forward. It was one of the reasons why I said there might be a need to recommit. I have not had a chance to look in detail at what is contained herein but, if it is in fact consistent with what has emerged from other conferences, that appears to me on the face of it to be reasonable. As the Attorney-General has noted, it appears that this legislation is heading towards a conference, so if the issue needs to be revisited that opportunity might come, although the House of Assembly itself could do further tidying if it became necessary. On the face of it, the Democrats support this amendment.

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

Page 2, line 17—Leave out the definition of 'Registrar' and substitute:

'Registrar' means the Commercial Registrar.

This amendment is consequential.

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

Page 3, line 11—Leave out the definition of 'Tribunal' and substitute:

'Tribunal' means the Commercial Tribunal.

This, too, is consequential.

Amendment carried; clause as amended passed.

Clauses 4 to 12 passed.

Clause 13—'Minimum 5 year term.'

The Hon. CAROLYN PICKLES: I move:

Page 8, lines 4 to 6—New subparagraph:

(iii) Leave out 'Tribunal' and insert 'Magistrates Court.'

This is also consequential.

Amendment carried.

The Hon. K.T. GRIFFIN: I raise one issue which the Hon. Robert Lawson raised in the earlier consideration of the Bill, that is, the issue of minimum five year terms. He has made the point that, in the present Act, where a tenant enters into a tenancy for a term shorter than five years, there is a procedure by which notice may be given by the landlord to the tenant to determine whether or not the tenant wishes to have the tenancy extended to the five years. That is an option under section 66A of the Landlord and Tenant Act 1936. This clause 13 makes that an automatic extension from two years to five years.

I undertook to have the matter examined. The issue was not raised by either the landlords' or the tenants' organisations that participated in the consultation on this Bill but nevertheless there seems to be merit in the proposition that the Hon. Robert Lawson has put and therefore I indicate that the matter will be considered, if not before it gets to the House of Assembly then when it gets to the House of Assembly it may be appropriate to move an amendment to allow the flexibility that exists in the present Act rather than the rigidity of the provision in the Bill. But at one time or another it will be appropriately addressed to deal with that issue.

Clause as amended passed.

Clauses 14 and 15 passed.

Clause 16—'Repayment of security.'

The Hon. CAROLYN PICKLES: I move:

Page 10, line 21—Leave out 'Tribunal' and insert 'Magistrates Court'.

This is consequential.

Amendment carried; clause as amended passed.

Clauses 17 to 32 passed.

New clause 32A—'Harsh and unreasonable terms for rent.'

The Hon. CAROLYN PICKLES: I move:

Page 17, after line 30—

Subclause (1)—Leave out 'Tribunal' and insert 'Magistrates Court'.

Subclause (2)—Leave out 'Tribunal' and insert 'Magistrates Court'.

This is consequential.

Amendments carried; new clause as amended passed.

Clauses 33 to 42 passed.

Clause 43—'Lessee to be given notice of alterations and refurbishment.'

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

Page 22, after line 29—Insert:

(1A) The lessor must offer the lessee a renewal or extension of the lease at a reasonable rent and on reasonable terms and conditions unless—

(a) another person has genuinely offered the lessor a higher rent for the premises, the lessee has been given an

opportunity to match the higher rent, and has declined to do so; or

(b) the lessor proposes to lease the premises for a different kind of business in order to enhance the opportunities for increased turnover for other businesses conducted in other premises leased by the lessor in the vicinity; or

(c) the lessor requires the premises for demolition; or

(d) the lessee has not complied, to a satisfactory extent, with the terms of the lease,

and the reasons for not offering a renewal or extension of the lease are set out in the notice given under subsection (1)(b).

The issues have already been discussed and debated earlier. What I am doing by rewording this clause is addressing the issues which were raised by members of the Government when we last debated it. I made plain at the time that my intention was never to undermine the legitimate rights of the landlord as owner of the building. The way this is currently structured is making quite plain that the lessor does not have to lease it to the existing lessee or the one whose lease is just expiring when they have any reasonable grounds for wanting to do so. What I formally put as the conditions which would be deemed to be reasonable are now given as examples of what would be deemed to be reasonable so, quite clearly, any reasonable grounds would be sufficient. I can assure the Committee that since we last debated this I have had a large number of phone calls and correspondence from people in shopping centres in South Australia and they have reiterated to me that they see an amendment such as this as being very important in determining whether at the end of the day the legislation will be functional. I put my view very strongly that, without a clause similar in terms to this, the legislation will be seriously deficient and seriously weakened.

The Hon. CAROLYN PICKLES: As indicated when we debated this clause previously, the Opposition supports the principle of prohibiting landlords from forcing rent hikes on tenants by means of threatening non-renewal. We may wish to consider the wording in another place. We note the Hon. Mr Elliott's attempt to have something that will reach the agreement of all members. We have not had very much time to consider this, but the principle is important and we support the principle. We support the amendment.

The Hon. K.T. GRIFFIN: I have made a very strong plea for members not to accept even the original amendment of the Hon. Mr Elliott. I certainly do not support the principle behind either this amendment or the earlier amendment. From the Government's point of view, each is as bad as the other. So, on the basis that the Leader of the Opposition indicates Opposition support for it, it seems that I have lost the battle, but I want to put on the record that it is unacceptable to the Government.

Amendment carried; clause as amended passed.

Clauses 44 to 61 passed.

Clause 62—'The nature of mediation.'

The Hon. CAROLYN PICKLES: I move:

Subclause (1)—Leave out 'the Tribunal or a court, the Tribunal or court' and insert 'a court, the court'.

Subclause (2)—Leave out 'Tribunal or'.

This is consequential.

Amendments carried; clause as amended passed.

Clause 63—'Duty of Tribunal or court to stay proceedings.'

The Hon. CAROLYN PICKLES: I move:

Leave out 'the Tribunal or'.

This is consequential.

Amendment carried; clause as amended passed.

Clause 64—'Statements made during mediation.'

The Hon. CAROLYN PICKLES: I move:

Leave out 'the Tribunal or'.

This is consequential.

Amendment carried; clause as amended passed.

Heading.

The Hon. CAROLYN PICKLES: I move:

Page 28, line 33—Leave out 'TRIBUNAL' and insert 'MAGISTRATES COURT'.

Amendment carried.

Clause 65—'Jurisdiction of the Tribunal.'

The Hon. CAROLYN PICKLES: I move:

Page 28, lines 36 and 37 and page 29, lines 11, 13 and 14—Leave out 'Tribunal' and insert 'Magistrates Court'.

These amendments are consequential.

Amendments carried; clause as amended passed.

Clause 66—'Substantial monetary claims.'

The Hon. CAROLYN PICKLES: I move:

Page 29, line 19—Leave out 'Tribunal' and insert 'Magistrates Court'.

This is consequential.

Amendment carried.

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

Page 29, line 20—Leave out '$60 000' and insert '$30 000'.

This is to reduce the amount of $60 000 down to $30 000. Clause 66 of the Bill provides that if a proceeding before the tribunal involves a monetary claim for an amount exceeding (presently) $60 000, the tribunal must on the application of a party to the proceeding refer the proceeding to the District Court.

This has slipped through, and I accept responsibility for it, but the monetary limit for the Magistrates Court is in fact $30 000 for all claims except personal injury claims and, in limited circumstances, for the recovery of property where the limit is $60 000. It seems to me that many of the monetary claims under the Retail Shop Leases Bill certainly will involve some difficult issues. In other cases they may not: they may be fairly straightforward. It seems to me that in those circumstances it would be appropriate to maintain what is presently the monetary jurisdiction of the Magistrates Court at $30 000, with the exception to which I have referred earlier, rather than extending it up to $60 000.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I meant to make a comment on an earlier clause, and I would like to put something on the record now. We had something of a backwards and forwards debate about 10 days ago in relation to clause 4 and public companies. I had said on one occasion that I believed that public companies were allowed under Eastern State legislation and the next day in debate the Hon. Robert Lawson said that they were not. I have had a copy of the Queensland Act faxed to me, and it makes plain that retail shops with floor areas of more than 1 000 square meters owned by a public corporation or a subsidiary thereof are not covered. However, the important thing is that they are public corporations or their subsidiaries in shops over 1 000 square metres. So, in essence that would be entirely consistent with what I have been proposing in my amendment. I have not looked at other Acts, but I want to put on the record that the information given to this place when we last debated this matter was not accurate because Queensland, at least, allows public corporations to be covered where the retail lease is applying to a floor

area of less than 1 000 square metres. I want to put that on the record for the purposes of accuracy.

The Hon. CAROLYN PICKLES: I move:

Page 29—
Line 20—Leave out 'Tribunal' and insert 'Magistrates Court'.
Line 23—Leave out 'Tribunal' and insert 'Magistrates Court'.

These amendments are consequential.

Amendments carried; clause as amended passed.

Clause 67 passed.

Clause 68—'Application of income.'

The Hon. CAROLYN PICKLES: I move:

Page 30, line 15—Leave out 'Tribunal' and insert 'Magistrates Court'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 69 passed.

New clauses 69A, 69B and 69C passed.

New clause 69D.

The Hon. CAROLYN PICKLES: I move:

Insert new subclauses as follows:
Subclause (1)(a)—Leave out 'Tribunal' and insert 'Magistrates Court'.
Subclause (1)(b)—Leave out 'Tribunal' and insert 'Magistrates Court'.
Subclause (2)—Leave out 'or Tribunal'.

These amendments are consequential.

Amendments carried; new clause inserted.

New clause 69E passed.

Clause 70—'Abandoned goods.'

The Hon. CAROLYN PICKLES: I move:

Page 32, line 7—Leave out 'Tribunal' and insert 'Magistrates Court'.

This is a consequential amendment.

Amendment carried; clause as amended passed.

Clause 71—'Exemptions.'

The Hon. CAROLYN PICKLES: I move.

Page 32, line 15—Leave out 'Tribunal' and insert 'Magistrates Court'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 72—'Annual reports.'

The Hon. CAROLYN PICKLES: I move:

Page 32, line 31—Leave out 'Tribunal' and insert 'Magistrates Court'.

This is a consequential amendment.

Amendment carried; clause as amended passed.

Clauses 73 to 75 passed.

Clause 76—'Amendment of Magistrates Court Act.'

The Hon. CAROLYN PICKLES: I move:

Page 33—Leave out the clause and substitute new clause as follows:

76. The Magistrates Court Act 1991 is amended—

(a) by inserting after paragraph (b) of the definition of 'minor statutory proceeding' the following paragraph:

(ba) an application under the Retail Shop Leases Act 1994, other than an application that involves a monetary claim for more than $10 000; or;

(b) by inserting after paragraph (a) of section 10(1a) the following paragraph:

(ab) jurisdiction to hear and determine an application under the Retail Shop Leases Act 1994; and.

Most retail shop leases disputes are for amounts under $10 000, and in these cases parties should be able to litigate in an informal forum where it is not necessary for lawyers to be employed to see that justice is done. For amounts in dispute in excess of $10 000, normal court procedures will apply, and that is contained in clause 76(ba).

The Hon. K.T. GRIFFIN: I will not raise any opposition to this at present. I reserve the Government's position on it as part of the whole review of the various jurisdictional limits that we have in the legislation that has been passed so far. It may be that I will want to have this revisited, but as it looks as though it will end up in a deadlock conference that might be the appropriate place to resolve the issue.

Existing clause struck out; new clause inserted.

Schedule passed.

Long title.

The Hon. CAROLYN PICKLES: I move:

Page 1, line 7—After 'Tenant Act 1936' insert 'and the Magistrates Court Act 1991'.

This amendment is consequential.

Amendment carried.

The Hon. M.J. ELLIOTT: I have had an eleventh hour plus 59 minutes piece of paper stuck in my hand, which matter I think should at least be on the record. I have a copy of some legal advice that has been given to the Small Retailers Association in relation to franchise agreements and, as this Bill is about to leave this place, I feel that it should at least go on the record that such advice has been tendered and people can treat it as they will. It states:

I refer to your request for advice in relation to amendments made in the Legislative Council dealing with franchise agreements additional to my advice to you of 29 October 1994. I understand the amendments moved were as follows:

(a) new definition of retail shop lease to add 'and includes a franchise agreement that provides for the occupancy of a retail shop' (the first Democrat Amendment).

I understand this amendment was lost.

(b) new clause

69E (1) If a franchise agreement incorporates a retail shop lease as part of the franchise agreement, the lease must be clearly segregated from the other provisions of the agreement.

(2) A provision of an agreement that treats, or allows a franchisor to treat, a breach of a franchise provision as a breach of a retail shop lease provision, or a breach of a retail shop lease provision as a breach of a franchise provision is void.

A franchise provision is a provision that properly relates to a franchise.

A retail shop lease provision is a provision that properly relates to a retail shop lease. (The second Democrat amendment)

I understand that this document [amendment] was passed.

I advise as follows:

(1) Franchise agreements under which the franchisor grants a licence (or sub-lease) to a franchisee in respect of premises leased by a franchisor is already caught by the provisions of the present Act (see decision of *Pennywise Smart Shopping Australia Pty Ltd* delivered 23 June 1988 Commercial Tribunal Ref: 61/88/03.

(2) This has meant that franchisors cannot extract percentages of 'goodwill' from franchisees thereby ensuring that franchisees are treated the same as any other small retailer.

(3) The first Democrat amendment would have ensured that the *status quo* continues in the new Bill thereby not disadvantaging franchisees.

I stress that, in this opinion, the first Democrat amendment would have maintained the *status quo*.

The advice continues:

(4) Clause 69E(1) clearly disadvantages franchisees who will now be subject to the full rigours of franchisors demanding percentages of 'goodwill' or other contractual sums calculated by reference to sale price of the business.

Section 63 was inserted into the Landlord and Tenant Act (Commercial Tenancies Provisions) by Act 19 of 1985

specifically to protect all small retailers from these practices. The protection given to franchisees in this regard will now be removed by virtue of the defeat of the first Democrat amendment.

What will occur in practice in relation to franchisees is that there will be two agreements, the franchise agreement (containing no reference to licence to occupy) and a licence agreement subject to the Act. The practices which the Parliament sought to outlaw in 1985 will now find their way back into the market place through franchise agreements. While it has already been available to franchisors to have two sets of agreements the Pennywise decision cited above has prevented this because franchisors generally want to ensure the two agreements are subject to one another which then brings in the operation of the present Act.

Being compelled to now prepare two agreements, ostensibly unconnected but in practice connected, will provide little if any assistance to franchisees.

The franchisee has no contractual relationship with a registered proprietor only the franchisor. Failure to pay the rent or licence fee will mean a breach and termination. By being evicted the investment in the franchise agreement will be lost, irrespective of clause 69E(2) of the Bill.

In short there will be greater encouragement for shopping centres to prefer franchises because the shopping centre only needs to collect the rent from the franchisor and deal with the franchisor. The gain to the franchisor is the ability to now extract percentages of goodwill from the franchisee.

I have only just received—

The Hon. K.T. Griffin: Who gave the advice?

The Hon. M.J. ELLIOTT: I can give the Attorney that information outside this place, but the document is not signed. I have only just received a copy of it from the Small Retailers Association. Literally, it is eleventh hour stuff. It does raise some issues that deserve some attention. I could not raise them any earlier because I did not have them before me. I want to bring those matters to the attention of other members of this Chamber. The advice is arguing that existing rights are being taken away from people, and I would not think that we would do that lightly. I am sure that the Attorney-General would not do that lightly, or I would hope that he would not. I put that on the record. The Attorney or the Leader of the Opposition might like to respond to that.

The Hon. CAROLYN PICKLES: As the honourable member has indicated, this is rather late advice since we have recommitted the whole Bill. As we understand it, it is quite likely that this Bill will go to a conference. It is being examined in another place. The Opposition is happy to take on board the advice the honourable member has read into *Hansard*. It will be looked at in another place and dealt with appropriately as we examine the advice further.

The Hon. K.T. GRIFFIN: All I can say is that we will certainly have a look at the advice if the honourable member wishes to make it available. I indicated during the Committee consideration of the Bill that the issue of franchises was one that, in the light of the issues raised, we would certainly be having another look at. But, I point out that—and this is no criticism of the Hon. Mr Elliott—the Bill has been in this place since November. I would have thought that, with respect to those who have obtained the advice and provided it to the honourable member, there was more than adequate time to obtain that advice.

There have been consultations ongoing between myself and various industry groups and industry groups themselves since well before Christmas. That really is the first time I have seen the legal advice. As I say, it is not a criticism of the Hon. Mr Elliott.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: As I said: it is no criticism of the Hon. Mr Elliott. I will do as I did the first time we went through the Committee stage: give a commitment to look at the issue. Certainly, it will be something that will be raised in the other place.

Long title as amended passed.

Bill read a third time and passed.

SECOND-HAND VEHICLE DEALERS BILL AND CONSUMER CREDIT (CREDIT PROVIDERS) AMENDMENT BILL

The House of Assembly intimated that it had agreed to the recommendations of the conference.

Consideration in Committee.

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

That the recommendations of the conference be agreed to.

I am pleased to say that the deadlock conference resolved a number of issues in contention. We met last week and again today and, as a result of the conference, the Bill will now pass. I can indicate broadly where agreement has been reached. The first issue relates to the cooling off period, which had been inserted in the Bill. That is no longer to be a provision of the Second-hand Vehicle Dealers Bill. The view which I have taken and which I pressed was that the cooling off period is not workable and, particularly because of the opting out provisions and the difficult bureaucratic consequences which might flow from it, it would not be in the interests of either dealers or customers.

The provision in clause 32 dealt with odometer readings and consequences that flowed from that. As a result, the conference agreed that we should make an amendment to clause 33. One concern was that, if a dealer is convicted of an offence of interfering with an odometer of a secondhand vehicle, which the dealer has sold to the purchaser of the vehicle, then the court could make a number of orders, including an order that the contract for the sale of the vehicle is void, as well as compensation and any other order that the court thinks just in the circumstances.

The difficulty with that provision was that these would be criminal proceedings. There would be a blend of civil proceedings for compensation with those criminal proceedings. In consequence of the conference we did agree that no longer would the contract for the sale of the vehicle be void but that we would propose that damages suffered by the purchaser as a result of the purchase of a vehicle with a wrong odometer reading could be the subject of an award by the court to the purchaser. That really addresses the major issue that members in this Chamber believed had to be addressed.

The concern I expressed was the issue that the court could declare that the contract was void, particularly in the light of the fact that there might well be a finance contract on it, that it might have been sold to another party, so that the purchaser did not actually own or have possession of the vehicle. That would have unfairly prejudiced third party rights.

In relation to warranties, the Government was proposing reducing the 15 year age of the vehicle to 10 years and introducing for the first time a kilometerage limit of 160 000 kilometres. If the vehicle was older than 10 years or had travelled more than 160 000 kilometres then the warranty provisions would not apply. The concession on this was that there would continue to be a warranty period on vehicles up to 15 years old and the 200 000 kilometre limit would apply.

As to motor cycle licensing, the compromise reached by the conference was that dealers in secondhand motor cycles

would be licensed. That exposes them to all of the obligations imposed by the Act, except in relation to warranty provisions. It was the warranty provisions for motor cycles that caused most concern to motor cycle dealers and, in the light of the level of complaints the Office of Business and Consumer Affairs had recorded, I was of the view that we could concede the point that there should not be a provision for automatic warranties in relation to secondhand motor cycles. The conference agreed to that.

As to issues such as delegations, they had previously been through a deadlock conference in the real estate industry package of legislation and what was proposed then has now been mirrored in this legislation. There was concern about the indemnity fund. The Government was very keen, as was the industry, to move towards private warranty insurance for dealers because there had been concern that the law abiding and solid dealers were actually paying into indemnity funds to meet obligations to consumers who suffered at the hands of crooked dealers. I instanced the Medindie Car Sales experience.

In the light of that we have now written back into the Bill a provision for an indemnity fund to continue, as a fallback position, until the issue of insurance has been finalised. We also addressed the issue of what jurisdiction should be dealing with warranty claims, in particular. The Hon. Anne Levy made some representations to me informally about establishing a separate division in the Magistrates Court. We were not initially attracted to that. At the deadlock conference we conceded as a Government and finally the House of Assembly agreed with the Legislative Council that there could be a division of the Magistrates Court referred to as the Civil Consumer and Business Division. That will now deal with the warranty claims, in particular, arising under this legislation.

Whilst that has not been the subject of detailed examination—I do not like setting up new divisions in the courts without some consultation with judicial officers—I think the courts will be comfortable about this because it will still provide the flexibility that I was anxious to ensure for the Chief Magistrate to manage the affairs of the division in conjunction with the affairs of the Magistrates Court as a whole. We will be looking at other legislation such as the Retail Shop Leases Bill and the prospective Builders Licensing Bill to ensure that we have a rational approach to the dispute resolution structures within the courts and that will apply also to residential tenancies. That is not related directly to this matter, which has now been agreed by the deadlock conference.

As to consumer credit, the Government was always of the view that we should abolish the licence and that was never in dispute. What was in dispute was a series of issues relating to delegations but also to the jurisdiction which would deal with disciplinary and other matters, and the District Court, particularly in its administrative and disciplinary division, will be dealing with those issues.

From the Government's point of view the outcome is satisfactory and I thank members of the Committee who participated in the conference and who were willing to work through the issue constructively. I commend the motion to the Committee.

The Hon. ANNE LEVY: I support the Attorney's motion. It was a constructive conference where there was obviously a feeling that resolutions were possible and that with goodwill and a constructive approach suitable compromises could be found on a number of issues.

I must admit still to having disappointments in a couple of areas, particularly relating to the introduction of cooling off periods. I maintain that it would be of great assistance to many consumers if there were cooling off periods for second-hand motor vehicles as there are for real estate transactions and door-to-door sales. However, consumers have not lost anything in this compromise, in that they have not had cooling off periods before. It is desirable that they should have, and I very much hope that at a later stage there will be agreement in the Parliament that such cooling off periods should be introduced.

Likewise, warranties for second-hand motorcycles are not included in the compromise. This, along with the cooling off period, was a matter about which this Council felt very strongly, but the Assembly was obdurate with regard to those two matters and, in the spirit of compromise, this Council had to give way on those two matters. However, before too many years have passed I certainly hope we will see them introduced into this legislation.

[Sitting suspended from 6.3 to 7.45 p.m.]

The Hon. ANNE LEVY: Before the dinner break I was endorsing the motion moved by the Attorney-General about the Committee accepting the recommendations from the conference on the Second-hand Vehicle Dealers Bill and the Consumer Credit (Credit Providers) Amendment Bill. I mentioned a number of areas which disappointed me, and I would now like to refer to a number of the compromises which were reached in the recommendations before us and which I am delighted to see.

I feel that the maintenance of 15 years as the age of a car for which a warranty must be given is very important. Presently consumers can have warranties on all second-hand vehicles up to the age of 15 years, and the Legislative Council had certainly taken the view that these consumers' rights should not be reduced by lowering the age to 10 years. I am glad that the conference agreed with that position and that the 15-year limit for warranty will remain.

The conference agreed to make it possible for adults to waive their rights to a warranty but carefully set out that any inducement to waive this right cannot be offered by a dealer and that, if a dealer does so, he or she is liable to a penalty. The various procedures for the waivers will be detailed in regulations, and I shall be interested to see what the regulations contain in this regard. I would be grateful if the Attorney-General would, as he did with the regulations under the Land Agents Bill, provide copies of the suggested regulations before they are gazetted so that discussions on them can take place before they are finalised.

The means by which waivers can occur do need to be watched very closely. I repeat: I would like to see the regulations in this regard as they are being drafted. The matter relating to odometers was a very satisfactory resolution. Whilst fiddling with an odometer has always been illegal, someone who suffers as a result of this did not necessarily have a ready remedy to the disadvantage that he may have suffered as a result of being deceived by a false odometer reading. The compromise arrived at in the conference is that, when disciplinary action is taken against a dealer who may have fiddled with an odometer, the same court can provide compensation for any disadvantage that the buyer of that vehicle may have suffered through the vehicle's showing a false odometer reading.

The matters regarding delegations of the powers of the Commissioner and agreements which can be drawn between the Minister and any organisation which represents the interests of individuals who are concerned with secondhand motor vehicle sales, either on the side of the sellers or the buyers, have been treated in exactly the same way as they were in the Land Agents Bill, the Conveyancers Bill and the Valuers Bill which we considered at an earlier stage. I am sure that this now forms a precedent which can be followed in many pieces of legislation and will not lead to disagreements between the Houses as a result.

Finally, the establishment of the new division of the Magistrates Court is, I think, a very sensible compromise which will solve many problems, not only for the secondhand vehicles legislation before us but for many other pieces of consumer legislation which we expect to have in the near future. This new division of the Magistrates Court is aimed to provide the flexibility in court management which the Attorney very reasonably wished to achieve while, at the same time, maintaining for the benefit of consumers and small traders many of the advantages of the Commercial Tribunal which it is replacing.

The Legislative Council felt that the benefits of the Commercial Tribunal of ready access, lack of formality, low or no cost and the use of assessors were very strong points in favour of the Commercial Tribunal. By carrying over to this new division of the Magistrates Court, they will maintain the valuable points about the Commercial Tribunal while at the same time achieving the flexibility and savings which the Attorney quite reasonably wished to achieve. This is a major decision which has been reached in the recommendations before us and, as I say, will serve as a solution for many other pieces of legislation which we expect to have before us in the not too distant future. So, I certainly support the resolutions of the conference. I commend them to the Council and I commend all members of the conference for the way in which the numerous matters before the conference were tackled in a constructive, conciliatory and objective manner.

The Hon. SANDRA KANCK: With the exception of one clause, the Democrats are generally happy with the outcome of this conference. I refer in particular to clause 24 of the Second-hand Motor Vehicles Bill. Members may recall that in the original Bill warranties were imposed on the sale of second-hand motorcycles, and those warranties would have been for motorcycles up to five years of age with an odometer reading of up to 30 000 kilometres. At that time the Opposition introduced amendments which I supported on the run, because we had very little time in which to consider them, and I made the point that perhaps at a later stage I would be willing to reconsider the position, but at that time I supported the Opposition amendment, which actually increased that warranty. The Opposition increased it to 10 years and 60 000 kilometres. When the Bill went to the Assembly the Opposition moved these provisions back to five years and 30 000 kilometres.

The Motor Trade Association subsequently lobbied me—and I am sure it lobbied the Government and the Opposition—with the view that there should be no warranties at all on the sale of second-hand motorcycles. During the break from the end of November I spoke to a number of people who had purchased second-hand motorcycles. One of them informed me that, for instance, a second-hand Harley Davidson can sell for $25 000. If I bought a motorbike for $25 000 I would be wanting a warranty on it. Another person told me that two years after purchasing a Ducati he was offered more for the bike than he had originally paid for it, so there is obviously a real market in second-hand motorcycles. On the other hand there are those other bikes which probably would not have come under the warranty provisions anyhow and which the dedicated motorbike aficionados describe to me as 'screaming Jap sewing machines'. So, you get the whole range.

I do not agree with the Opposition that we had to give ground on this in the conference. I think it is a strange form of consensus that, when we are coming to an agreement on the difference between five years and 10 years or 30 000 kilometres and 60 000 kilometres, we come out with a difference of nothing. Both Bills—the Consumer Credit Bill and the Second-hand Motor Vehicle Bill—originally proposed that complaints would be removed from the Commercial Tribunal to the District Court. One of my key concerns with the legislation was that by doing this we were going into a much more legalistic, less user friendly framework and, with the creation of this new division of the Magistrates Court, I am pleased that we have a user friendly, less confrontational, less legalistic system in place. As that was one of my chief concerns, despite the lack of warranties on second-hand motor vehicles, I support the resolutions of the conference.

Motion carried.

PROSTITUTION

The Hon. K.T. GRIFFIN (Attorney-General): Mr President, I seek leave to table a police assessment of, first, contemporary prostitution in South Australia and, secondly, current prostitution laws. This in fact was tabled in the other place earlier today; I was not provided with copies for the Chamber, but I now seek leave to have this tabled.

Leave granted.

PUBLIC SECTOR MANAGEMENT BILL

Adjourned debate on second reading.

(Continued from 29 November. Page 992.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank the Hon. Ron Roberts and the Hon. Michael Elliott for their contributions in the second reading of this important piece of legislation. It has been a long time in coming to this particular stage; a lot of water has flowed under the political bridges since then. Many meetings have been held, much discussion has taken place, and many claims and denials have been made. Basically, now we can get on with it and hopefully hammer out some sort of useful piece of legislation from the viewpoint of both the community and the Government. We would hope that significant sections of the reform process that we see as being important in relation to public sector management survives the rigours of the Committee stage in the Legislative Council. After spending a few years in this Chamber, my political nose tells me that probably a few more bridges will need to be crossed after this Committee debate, further debate in another place and possibly even further debate in other forums as outlined in the Standing Orders of Parliament.

At the summation of the second reading stage I do not intend to go through point by point the individual concerns that have been raised by the Labor Party or indeed the Australian Democrats. Suffice to say that I know the Premier has involved himself personally in some of the discussions

that have transpired in recent weeks with interested parties, including the Public Service Association and others, who have an undeniable interest in this piece of legislation and what occurs with it. Given the nature of the pages of amendments that have been moved by the Hon. Mr Roberts on behalf of the Labor Party, the Hon. Mr Elliott on behalf of the Democrats and also some amendments the Government now is seeking to move in the spirit of compromise and of trying to ensure that a reasonable reform Bill passes the Parliament, and acknowledging some of the concerns that have been felt by members of the Public Service, the Public Service Association and others, I do not think anyone can indicate that the Premier or indeed the Government has attempted to ride roughshod over this particular process.

I do not think anyone can indicate that the Premier has not been prepared to listen to genuine concerns about the reform legislation and, in many cases, he has sought to reach a compromise or genuinely resolve those particular issues of concern. Obviously, there are issues on which the Public Service Association, the Labor Party and, I suspect, the Democrats will have very firm views and they will be different from those of the Government, but I think largely now it is a Committee Bill and I intend to reserve the detailed comment in relation to the clauses and the particular issues until we reach the Committee stages.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. R.R. ROBERTS: As I rise to speak to this clause, it is necessary to recognise from the outset that we are really talking about the GME Act. Certain understandings and assurances were given by the Government prior to the last election that there would be no change and the GME Act would be left in place. We have come a long way since that time.

The Hon. M.J. Elliott: They have a mandate to break promises.

The Hon. R.R. ROBERTS: I do not know whether they have a mandate: they have a penchant for breaking promises. We have come a long way since the last election. With the introduction of this Bill one could assert that the outline that the Hon. Mr Elliott just put forward, that there are broken promises involved here, is a very clear sign that the assurances given to the Public Service Association have been breached. However, we have gone on since that time, and this Bill was supposed to be passed through this House last November. Thanks to a great deal of hard work done by me and, undoubtedly, by the Hon. Mr Elliott and the shadow Minister in another place, and to submissions by a number of interested groups (mainly the Public Service Association), we were ready to go on with that exercise in November.

However, despite the fact that we were ready on the Thursday prior to our rising the Government, in its haste to avoid scrutiny in the Parliament when it wanted to introduce the increases in water rates, electricity and bus fares, decided that it would duck for cover. From that point on there has been a range of discussions, which the Opposition has actually welcomed. There have been approaches by emissaries of the Premier to the Public Service Association and, indeed, to the shadow Minister for Industry in another place, seeking to come to a compromise position and to sort out something reasonable. I think I can rightfully claim that the Labor Party and the Public Service Association have tried to make every accommodation to those people who were charged to negotiate on behalf of Mr Brown.

Indeed, as late as today I was told that, although negotiations have been proceeding—and proceeding in the right direction, I might say, since it is my advice from my colleague in another place that the amendments being proposed and negotiated are moving towards a more acceptable position than that originally outlined in the Bill—for some unknown reason, probably known more to the Premier and the Leader of the Government in this place than to me, it has been decided that there has to be a crash, boom, opera tonight and we have to put this thing through. That is disappointing, because a great deal of goodwill has been shown by the Public Service Association and my colleague the Hon. Ralph Clarke in another place to try to get an accommodation, and we have been an active participant in trying to reach a position where we could get on with the Bill.

As late as today, I am advised, the Premier has written to the Public Service Association, and I will read that letter into *Hansard*, because it is important. The letter states:

> Thank you for your letter dated 2 March 1995 providing me with comments on the Government's amendment to the above Bill. I understand that your comments have been discussed with Mike Schilling and Graham Foreman. I have been briefed on your most recent meeting with Messrs Schilling and Foreman and wish to advise you that your concerns are currently being considered. Given that the Public Sector Management Bill will be discussed by the Legislative Council this week, any response by the Government to your suggestions will be reflected in amendments to the Bill. However, at this stage I am not in a position to advise you as to whether Government will make any further changes, as I need to discuss this matter with my colleagues.

It is very clear that even the Premier is not fixed in what he sees as an acceptable solution to this. I submit to the Committee that this Bill is a massive rewrite of the Government Management and Employment Act, and the changes are so great that many amendments will be necessary to rectify the many problems contained within it. While details of the amendments have been provided, there are several key amendments. A significant number of the amendments will be consequential upon the success of the key amendments, which I now detail: clauses 15A and 22A, which deal with a recognised organisation and consultation arrangements; clause 21, which deals with the powers of the Commissioner for Public Employment; clause 27, which deals with general employment determinations and who may determine such; part 7, which includes arrangements for Public Service appointments; clause 36, which deals with conditions of employment, including individual employment contracts; clauses 44 to 46, which deal with the removal of tenure and termination arrangements; and clause 56A, which provides for an independent appeals tribunal. They are some of the key issues that we will be discussing, and it may be pertinent, as we move into Committee, to use them as the key to determine what will be consequential amendments.

Many other areas are important, and the amendments to them will also be addressed as we consider the relevant clauses. In the main, however, the clauses I have mentioned deal with the greatest volume and the most important proposals. I would like to address these clauses in more detail prior to consideration of the amendments. However, because of events earlier today, I do not know whether I can be accommodated. I point out that we are talking about the Government Management and Employment Act: an Act which was guaranteed by the Premier when in Opposition and which now has re-emerged as the Public Sector Management Bill.

We will continue to participate in these discussions in Committee. I am disappointed that the processes which were put in place by the Government for further consultation, with a view to getting a consensus opinion, have not been allowed to complete themselves and that we have to go into Committee tonight. The consequence will be that, unfortunately, we will have no other option but to revert to the position we adopted in November, despite the encouraging negotiations that have been taking place in good faith between the principal players in this exercise with a commitment to reach a solution. I will make further remarks during the course of the debate.

The Hon. R.I. LUCAS: As attractive a proposition as it sounds—that we will engage in some boom crash opera tonight—I can indicate that that is certainly not the intention of the Government in relation to commencing debate on the Public Sector Management Bill. As I indicated in responding to the second reading, the Government, from the Premier down, entered the debate, as the Hon. Ron Roberts indicates, in November last year. It is a bit of hyperbole, I suspect, to put the view that the Government is trying to ram something through when there have been interminable discussions since November last year in an endeavour to reach agreement in relation to some of the issues of concern in the legislation.

The Government is not of the view that, in the hours we have available to us tonight, we will be able to finalise debate on the Public Sector Management Bill. When one looks at the pages of amendments that the Hon. Ron Roberts and the Hon. Mr Elliott propose, I suspect it will take us some days, off and on, to conclude the debate. Sooner or later, unless the Hon. Mr Roberts, on behalf the Labor Party and with the authorisation of the Hon. Mr Rann, says that he is prepared to sit through May and June so that we have a continuous session from February through to July, we will conclude the significant pieces of legislation on our agenda during this particular sitting period.

We have extended the session by another week and a bit, so just over four sitting weeks remain. We have a whole variety of legislation, including WorkCover, that will take considerable time to debate in this Chamber. There comes a time when someone has to make a decision. The Government has engaged in the discussions. It is correct to say that, as recently as today, the Premier, with his advisers, further considered the position put forward by the PSA. Whilst the Government has already indicated its preparedness to compromise in respect of the amendments that we will be debating during the Committee stage, I point out that the Government has considered the position of the PSA and, with the exception of a further amendment that was circulated today in relation to superannuation as a result of discussions with the PSA and others, the Government's view is that its package of amendments is the Government's position for debate in this Chamber. No purpose will be served now by continuing to delay debate on the Bill in the Legislative Council. We need to make some decisions and get on with it.

It is disappointing if the Hon. Mr Roberts is going to retreat behind the view he has put forward based on the suggestion that an agreed position has not been reached between the Government and the PSA. Whilst he concedes—and I know his colleague in another place concedes—that the Government has gone a long way to meet the criticisms of the Bill with the amendments, the Hon. Mr Roberts is now trying to say,' Well, we will now retreat and go back to our position of last November. Even though we say that these amendments are a lot better than those that existed before, we now say that we are not prepared to support them because you have not reached agreement with the PSA.'

It may well be that it is impossible to reach agreement with the PSA on a number of these issues. The Labor Party has to stand up in this Chamber and vote one way or another in relation to the positions that the Government puts down. If it has taken the view previously that some of the amendments the Government is moving are better than the provisions in the Bill and now decides to stand up in this Chamber and not support them, that is a decision it must take. We cannot delay forever the proceedings of this Chamber; we have to get on with it.

As I said, we cannot ram it through tonight without proper debate. It will be a long debate, and I suspect it will take a number of sessions to get through it. All through that period the Government is prepared to listen to reasonable points. As is the nature of Committee debate, we might be able to take up the odd one and agree with it. If there is a majority or if there is half an argument, the Government may well reserve a position on it and, during the Bill's passage between the Houses, it may well be that the Premier and the Government will reconsider a number of issues if they are of substance and we believe that they will improve the legislation. I think the Government's attitude in this is as always—

The Hon. T.G. Roberts: The door is always open.

The Hon. R.I. LUCAS: The door is always open, and I will always be there. Contrary to what Claire might say, the door is always open. For my good friend Claire and my friends within the PSA I will always be there for discussions. The Government's approach to the Bill has been one of great reasonableness in wanting to reach some sort of agreement in relation to a reform Bill. Finally, it does not really matter in the end what the Hon. Mr Roberts wants to call the legislation or what the Government decides to call it. I guess we are into plain English speaking and 'Public Sector Management Bill' makes a lot more sense than 'Government Management and Employment Bill.'

It is not really Government management at all. The legislation is about public sector management. The Government is into plain English speaking and understanding. 'Public Sector Management Bill' seems to make more sense in relation to what the legislation is about. The Hon. Mr Roberts, for his own reasons and for others, may well prefer the title 'Government Management and Employment Bill.' Frankly, what it is a called is not a matter of substance. The Opposition can call it what it likes. The Government can pass it as one thing and the Opposition can call it another, if that makes it happy.

From my viewpoint, that concludes my preliminary remarks. We intend to approach the matter from a very reasonable position but, nevertheless, we believe that now is the time to get on with it and proceed with the debate.

The Hon. M.J. ELLIOTT: As it is three months since we last visited this Bill, I would like to make a few preliminary comments as well, although perhaps not as lengthy as those made by other members. Certainly, the Democrats were prepared to debate this legislation in Committee about three months ago. I concur with the Leader of the Council in one regard: that perhaps there has been enough time and we need to get on with it. It is unfortunate that what started happening outside this Council started a bit too late. Certainly, I have been given the impression that it is only in recent times that meaningful dialogue has been occurring with the Public Service Association (PSA), which certainly indicated to me that progress is being made and that, although the amend-

ments that the Government was proposing were not there, there were certainly some interesting concepts which, with further refinement, it would have supported. If my understanding is correct, it is a pity that that dialogue did not start somewhat earlier in the process, rather than being cut off part way through.

As to other developments outside this Chamber, in the meantime the Government arranged for Peter Coaldrake to come to Adelaide. I understand he spoke with the Opposition as well as with me, and I do not know whom else he spoke with. However, it was of interest to have discussions with him. Having spoken with him, I felt more confident about a number of the amendments that I am moving. I am not sure what the Government's intention was, but some of the matters we discussed reinforced the views that I already held, and I thank the Government for making him available. I think at this stage we can proceed. I note again that it is unfortunate that the meaningful dialogue which appears to have taken place in recent days with the PSA did not occur earlier. This situation is reminiscent of WorkCover where it has been only in the last week that the Minister for Industrial Affairs has sat down with employers and employees at the same table and started talking about WorkCover. This has happened at the eleventh hour, when it should have happened months ago.

Clause passed.

Clause 2 passed.

Clause 3—'Interpretation.'

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

Page 1, line 26—After 'Part 5' insert 'or 6'.

The amendment is consequential on changes to clause 56 and simply reflects the amendment to that clause. As to proposed new clause 56A, the retention of the Public Service Appeals Tribunal is essential to provide an independent appeals tribunal. New clause 56A seeks to reinforce the tribunal. The ability for public servants to have any procedure reviewed independently after internal avenues of redress have been exhausted is an important democratic right and ensures the fairness and equity of the process.

The example demonstrated by the Government is important in setting standards for the community of the requirement to be scrupulous in the management of personnel and the affairs of the State. An independent appeals process is critical to the image of the Government of the day.

The Hon. M.J. ELLIOTT: As I have the same amendment on file, I will clearly be supporting it.

The Hon. R.I. LUCAS: The Government opposes the amendment. I acknowledge both the Labor Party and the Democrats seek to move a similar amendment so the numbers are not with the Government on this issue. However, the Government believes that the structure of the Bill as it is now appropriately separates the Commissioner's previous Caesar to Caesar role, when he or she determined the rules for employment conditions and then also reviewed the observance of his or her rulings.

The Commissioner's greater independence from day-to-day operational matters in agencies under this Bill better enables the commission to monitor and report independently on public employment matters. The Government's position is fairly simple in relation to this: that, in the shifting of powers to make general employment determinations from the Commissioner to the Minister under the Bill, in essence the Commissioner has been, in effect, put into a position of making a decision and then being asked to be the independent judge afterwards. It is a very difficult position in which to place the Commissioner for Public Employment, where the initial decisions are taken by a person and then that person is the one who makes the judgment.

I suspect that when we get to the debates about appeal mechanisms a large part of the argument from the Labor Party and the Democrats will be that when one person appeals on some particular issue one prefers not to, in the end, eventually have to appeal back to the person who made the first decision. One would like to have some further step in the process in relation to the appeal mechanism. As I am advised, the Bill reflects what has been the current practice within the public sector for the past 30 or 40 years anyway, so, irrespective of the legislation, what the current practice has been is now reflected in the Bill. I recognise that both Labor and the Democrats are moving this particular amendment, so I do not seek unnecessarily to delay the Committee stage. I nevertheless record the Government's opposition.

Amendment carried.

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

Page 1, line 27—Leave out paragraph (f) and insert—
(f) the Tribunal;.

This amendment reflects a change to clause 27 whereby conditions were set by the Commissioner. Again, it is necessary for me to outline what is entailed in clause 27 so that we can make more sense of this part of the amendment. Clause 27 gives the authority to make general employment determinations to the Minister compared with the existing GME Act, which has the Commissioner exercising this power. The Government's clause fundamentally changes the independence of the Public Service. This is a particularly dangerous clause as it puts into the political arena the mechanism for determining employment conditions of public servants.

The proposed amendment gives this authority to the Commissioner for Public Employment as is presently the case under the existing GME Act. The Premier, as the Minister responsible, in moving this Bill has not provided any justification for why such a major change is necessary. The Public Service needs to be able to serve the Government of the day, rather than serve the interests of a political Party. Unless the amendment is accepted, we will see a situation where all aspects of employment are determined politically rather than through the use of the independent statutory officer. The Government may claim that it will not exercise that authority in Party-political fashion and, even if we were to accept this assurance, there will always be the suspicion because of the involvement with a political figure. The experience of Queensland under Joh Bjelke-Petersen has clearly demonstrated the danger of not separating political and Public Service decision-making.

This Bill clearly allows the Premier to exercise authority which could be used in a partisan manner. The very independence of the Public Service can only be guaranteed to the greatest extent possible by separating its operations from the political process. The amendment provides for the continuation of the current arrangements, which have worked well and provided both a sufficient and stable mechanism for dealing with these matters. The Opposition will be moving in that direction. I point out to the Committee that this amendment is determined by and large by what we do with clause 27. I commend the amendment to the Committee.

The Hon. R.I. LUCAS: The Government opposes this amendment and the amendment that I presume will be moved soon by the Hon. Mr Elliott to establish or re-establish two

tribunals. This is one issue on which the Government, in discussions with the interested parties, including the Public Service Association, has indicated that it is prepared to move a series of amendments, which we will discuss later in the Committee, in effect, to cover the issue of the independence of the appeal process. As the Government has recognised concerns about the independence of the appeal process, and for that reason will be moving a series of amendments during later stages of the Committee, I think it is important at this stage to outline the structure and shape of those amendments in relation to the appeal process.

The amendments will mean that if an appeal becomes the responsibility of the Commissioner, he or she must appoint a panel of persons to hear the appeal. The Commissioner will establish a list of persons who are broadly representative of Public Service employees. When a panel is established by a Chief Executive or the Commissioner to hear an appeal, the appellant may choose a person from the list to be included on the panel. If an appellant appeals to the Commissioner against an appeal process and the appellate authority appointed by the Commissioner to hear the appeal is satisfied that the process is inadequate, the appellate authority can re-hear the original appeal. The powers of the Commissioner are strengthened to allow him or her to make binding directions to chief executives on personnel management matters, including grievance procedures. These proposed amendments will provide additional checks and balances in the proposed grievance resolution process while still ensuring that chief executives have primary responsibility and accountability for appropriate grievance resolution in their agencies.

The Hon. Mr Roberts, in effect, talks about the Government's position being one where the political process will be intruding into public sector management and management of the appeal process. I ask the Hon. Mr Roberts to explain further for my benefit what he is inferring. Is he suggesting that the Commissioner for Public Employment is a political puppet of the Government of the day, and is that the political influence that he is talking about in this process?

The Hon. R.R. ROBERTS: I assert that, with other changes to this legislation where it is proposed that the Premier becomes the common law employer, there is the potential for a sequence of events to occur whereby there could be interference by a political operator with the independence of the Commissioner. I do not assert that the Commissioner for Public Employment is anything other than independent. I say that the Bill provides a situation where there is at least the suspicion that this could occur. If we do as is suggested in the amendment—and I believe the Hon. Mr Elliott has a similar amendment—we put beyond doubt the independence of the Commissioner.

The Hon. R.I. LUCAS: I am advised that the Premier will not become the common law employer. If that is the concern—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: The intention is not that either the Minister or the Premier will become the common law employer. If that is the concern of the Hon. Mr Roberts, I think we can satisfy that in this debate. I am advised that it is not the intention, with the package of amendments and the way that the Bill will look from the Government's viewpoint, that the Premier or the Minister will become the common law employer. If the concern of the Labor Party is that there could be possible political influence in relation to this whole area (and the Hon. Mr Roberts, in response to my question, has further explained that by saying that he meant the Premier or the Minister might become the common law employer), I am advised that will not be the case.

I think we can therefore satisfy the concerns of the Hon. Mr Roberts without having to go down this particular path when, as I said, in the structure of the amendments that the Government is foreshadowing in the later debate in Committee, a more streamlined and cost effective process of managing appeals but, nevertheless, in an independent way, to allow genuine concerns that members of the Public Service might have about particular issues, to be judged independently and fairly without having to go through a process of establishing fully blown tribunals, one in the case of the Hon. Mr Roberts, or two in the case of the Hon. Mr Elliott, to manage these particular processes.

I presume the Hon. Mr Roberts is locked in at this stage but I would ask him that, given my explanation, in the passage between this place and another place, he might further discuss this issue with his colleague in another place to see whether or not there is some flexibility on behalf of the Labor Party in the further debate on this issue to reconsider it. As I said, on the advice provided to me, I believe that the concerns he has outlined have now been adequately answered without the need to go down the path of one or two fully blown tribunals.

The other issue I would like to put to both the Hon. Mr Roberts and the Hon. Mr Elliott is that my advice is that not only are the members trying to reintroduce fully blown tribunals in relation to managing the appeals process, but they are now seeking to extend the range of decisions which can be taken on appeal to the tribunals. The Hon. Mr Roberts was here when we went through a debate a little while ago under the Labor Government when the Government took the view that there were too many appeals within the Public Service, that the whole system and machinery of Government was grinding to a halt, and that there needed to be some restriction on the level and number of appeals within the Public Service.

The then Opposition took a consistent view with the Government on that matter; that is, it agreed that we needed to restrict the number of appeals within the Public Service. We took a slightly different approach, admittedly, and the Government eventually came to that view because the Liberal Party view at that time was shared by the Australian Democrats in relation to some particular aspects of the appeal process, but nevertheless the overall view of all members in this Chamber—Democrat, Labor and Liberal—was that we needed to restrict the number of appeals.

I am told that what the Labor Party and the Australian Democrats are seeking to do is not only reintroduce the tribunals but now to further extend the number of appeals under this appeal process. That is completely contrary to the positions that the Democrats and the Labor Party put down when we debated this particular issue on a previous occasion. In particular, I am told that, in the area of decisions relating to the review of classifications, the Labor Party and the Democrats are now seeking to include again appeals in relation to those particular decisions taken on a daily or weekly basis within the public sector. I guess I put the question to the Hon. Mr Roberts or the Hon. Mr Elliott: given they are now arguing for appeal tribunals, why do they believe we now have to extend the number of appeals within the Public Service by extending the range of options available under the appeal tribunal process that the members are moving?

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

Page 1, line 27—Leave out paragraph (f) and insert—

(f) the Disciplinary Appeals Tribunal or the Promotion and Grievance Appeals Tribunal;.

This amendment is different from that moved by the Labor Party in that it seeks to reestablish both a Disciplinary Appeals Tribunal and a Promotion and Grievance Appeals Tribunal—a judicial and a *quasi* judicial structure. In approaching this legislation I took note of the fact that the Government promised prior to the election that it would not change the GME Act at all. Essentially, in amending this legislation I have sought to retain those components which I believe provide adequate protections to guarantee the independence and integrity of the public sector whilst allowing some significant changes the Government is seeking which to some extent formalise what was already practised previously under the GME Act, but I think the legislation probably clarifies what can and cannot happen, particularly in the senior echelons of the public sector.

I believed that some of the changes the Government was seeking, when married to some already pre-existing sections of the old GME Act, gave better legislation than the GME Act itself. There was the potential with the right amendments that we might end up with something better. I felt comfortable with the functioning of the Disciplinary Appeals Tribunal and the Promotion and Grievance Appeals Tribunal. I do not believe that the amendments I have moved expand this beyond the provisions of the GME Act: in fact, consequential on a few changes which are happening within the Bill, there is a slight narrowing, particularly in relation to promotion appeals, but it is not major. Overall I have not been keen to see this area changed, and the Government certainly did not indicate before the election that it was desperate for change in this area. If it were it should have said so to the public and to the Public Service Association before the election.

The Hon. R.R. ROBERTS: I have listened to the debate of the Hon. Mr Elliott and taken advice, and I am now persuaded that the amendment moved by the Hon. Mr Elliott does not add any more to the existing system but reinforces the existing system, which was agreed to on other occasions, with comments such as that it was the Opposition's view that the then system of appeals was both equitable and fair and provided appropriate checks and balances against possible abuse of appointment provisions under the GME Act. Other members of the Opposition, now in Government, said that they supported the view that the Public Service Association had put to them in that respect that some reasonable appeal mechanism is a safety valve against nepotism and patronage, which can and does exist within the Public Service. So, Mr President, in retrospect you could say that I am now convinced by the arguments that were put some time ago. I do not intend to pursue my amendment but will support the amendment being proposed by the Australian Democrats.

The Hon. R.I. LUCAS: Again, briefly, the Government and Government members all support the last statement made by an unnamed member of the Opposition that we support a reasonable appeal process. The Government still has that view—that a reasonable appeal process ought to be available to members of the Public Service to try to prevent nepotism and patronage. Many of us put that position when the previous Government sought significantly to restrict appeal rights of public servants, and I as a member of the Government certainly still hold the position that there needs to be a reasonable process of appeal for public servants to try to prevent nepotism and patronage within the Public Service. The Government is saying that it believes that the structure of amendments that will be moved in the Committee stage fits that bill exactly; that is, a reasonable appeal process which is cost effective, not a fully blown tribunal or now, as we see the Labor Party supporting the Australian Democrats, two fully blown tribunals with all the costs associated with them, as a mechanism to provide that reasonable appeal process within the public sector.

The Hon. R.R. ROBERTS: I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

The Hon. Mr Elliott's amendment carried.

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

Page 2, after line 9—Insert definition as follows:

'the Disciplinary Appeals Tribunal' means the tribunal of that name established under schedule 2A;

This amendment is consequential on the previous amendment.

Amendment carried.

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

Page 2, line 17—Leave out 'Minister' and insert 'Commissioner'.

I understand that the Hon. Mr Elliott has a similar amendment. I contend that this amendment is consequential again on clause 27, and I ask the Committee for support.

The Hon. R.I. LUCAS: The Government opposes this amendment being moved by both the Labor Party and the Australian Democrats. It is partially linked to the first amendment that was successfully passed by the Labor Party and the Democrats and also partially is linked to a subsequent amendment in relation to definitions of 'executive' and 'executive positions' within the public sector and how they might be arrived at. However, I acknowledge that both the Labor Party and the Democrats are moving this amendment, so the numbers clearly are not with the Government.

Amendment carried.

The Hon. R.I. LUCAS: I move:

Page 2, lines 17 and 18—Leave out 'a position determined by the Minister under Part 6 to be'.

This is the first in a series of amendments to define more clearly 'an executive' so that contractual arrangements may not be introduced unfairly to other employees. It removes the Minister as the determining authority. This amendment, together with the next two Government amendments, aims to define clearly 'an executive'. This is in response to concerns that the Bill would allow the Minister to extend contractual arrangements to all employees by specifying that ordinary employees were executives.

These Government amendments make clear that executives are those persons occupying executive positions and that executive positions are only those classed as positions acclaimed by the Governor to be executive positions. The Government's view is that it is appropriate that executives are employed within a contractual framework based on performance standards. It has been stated on many occasions that most non-executive employees in the Public Service will continue to be employed with tenure. However, there has been ongoing concern that contractual arrangements will be used extensively at non-executive levels.

To make it clear that this is not the intention of the Bill, this series of amendments is proposed to try to clarify the situation. As I understand it, the concern has been that in some way the Government may define the receptionist at the front desk of whichever Government department we happen to be talking about as an executive under the provisions of the

legislation. That is a bizarre proposition but, nevertheless, it is one of the concerns that I understand the Labor Party, the Democrats and the PSA have had: that the Government might define a receptionist as an executive of the public sector, in the same group as the Chief Executive Officer of the Department of Premier and Cabinet and able to rub shoulders with the Chief Executive Officer of the Department of Premier and Cabinet as a fellow colleague within the executive structure of the public sector.

No Government in its right mind would contemplate such a situation. Within the Public Service we have a number of executive development schemes and leadership schemes available to members of the executive structures of Government. The proposition that we are going to include receptionists in the definition of 'executive' and have them as part of the executive development scheme within the public sector generally is really jumping at shadows. It has been one of the problems in relation to what the Government hoped would be a rational debate on the legislation. These sorts of bogey men have been constructed by opponents of the Bill in an endeavour to defeat what is a genuine attempt at reform of the public sector. The Government does not have the view that a receptionist will become a member of the executive force of the Public Service, and I am advised that the Government intends that the equivalent of the lowest remuneration level of the existing executive structure under the Government Management and Employment Act, which most members will recognise as the EL1 level, will remain the lowest remuneration level executive position under the new Act.

I must admit that I was quite surprised to realise just how few executive level people we have within the Public Service of South Australia. The ballpark figure is about 200 EL1 and above positions within the total Public Service. When we look at the figures for EL2 and EL3 positions, we are looking at a very small component of the public sector in South Australia. So, the Government puts on the public record its intention to look at the remuneration equivalent of the EL1 level. One of the dilemmas we have in the public sector is that we have a number of specific hierarchical classifications within some departments which do not necessarily correspond directly with EL1 and which might be labelled as something else.

The Hon. R.I. LUCAS: Mr Chairman, my understanding is that you are saying that there has been a previous amendment, but the Government is seeking to remove that part of the clause anyway. We wish to define an 'executive' as an employee who occupies an executive position, which is a bit of a tautology. We are deleting the middle of the clause. Whether the middle of the clause uses the term 'Minister' or 'Commissioner', from the Government's viewpoint it does not really matter. We are seeking to remove those particular words. There has been a successful amendment to this definition to replace 'Commissioner' with 'Minister', but the Government's amendment in effect deletes those words anyway within the context of trying to set a new definition of 'executive'. The Government's amendment is to leave out the words 'a position determined by the', and replace them with the words 'Commissioner under Part 6 to be'.

The Government's intention is to say that an executive is an employee who occupies an executive position; and then, in the next amendment, we are trying to define the term 'executive position'. As I have indicated, an executive position will not include a receptionist; an executive position will be at the remuneration level equivalent to EL1 and above. So, there has been a successful amendment and we now have a definition. The Government now seeks to exclude the words 'a position determined by the Commissioner under Part 6 to be' as part of a package of amendments which relate to a different issue, that is, the definition of 'executive position'. I seek your advice, Mr Chairman. The Government obviously wants to be in a position to debate this separate issue in respect of what is an executive position.

The CHAIRMAN: You will have to do it at this stage.

The Hon. R.I. LUCAS: I take that as a ruling. Therefore, I move:

Page 2, lines 17 and 18—Leave out 'a position determined by the Commissioner under Part 6 to be'.

I move the amendment in that amended form.

The Hon. R.R. ROBERTS: I seek some clarity on this matter. We have just amended this Bill and both the Hon. Mr Elliott and I had similar amendments in this case. I indicate that, having been successful with the amendment, I intend to oppose the further amendment. I suggest that we leave the definition the same as it stood following the amendment by the Committee a few moments ago.

The Hon. R.I. LUCAS: I point out to members, and the Hon. Mr Roberts in particular, that the amendment with which he has been successful related to one issue. We are now in effect looking at a package of amendments which relate to another issue about what is an executive position within the public sector. We are about to move onto another amendment which the Government will seek to move as to the definition of 'executive position'. That is the issue we are now addressing. I acknowledge that the Hon. Mr Roberts and the Hon. Mr Elliott have won their point, and there will be a number of other points in the Bill where they will move the same amendments to achieve the same thing and will have the numbers to do so. However, in relation to this issue we have a difficulty where it covers the honourable member's first point which he will obviously repeat to victory in other provisions in the Bill because he has the numbers to do so, so he will not lose that point. This line happens to relate to another issue which concerns the level of executive positions within the Public Service. If the Labor Party is opposing the Government's amendment in that area as well, I understand that. In effect, I suggest to the Hon. Mr Roberts that in opposing this he ought do so on the basis that he does not accept the Government's position in relation to the definition of 'executive position' which was to be a subsequent amendment. The Government has given undertakings that it will not make receptionists executives within the public sector and put them on contracts with performance bonuses and a whole range of dastardly things that evidently the Liberal Government was contemplating in the darkest process of its collective mind.

That is the issue that we are discussing here. I understand that, if the Hon. Mr Roberts is opposing that, he would therefore oppose this provision as well. I am asking the honourable member not to oppose it on the basis that he wants to hold onto that last amendment. I acknowledge that the Government has lost that, and there are other provisions in the Bill where he and the Hon. Mr Elliott will be able to crunch the numbers and achieve the process they want, namely, to replace 'Minister' with 'Commissioner'.

The Hon. M.J. ELLIOTT: The notion of 'the executive' is one with which the Democrats do not have any difficulty. I understand what the intention at this stage is as to what executives will be. Through unfortunate experience over time one has learnt that, if one allows in legislation things which

are capable of wide interpretation, even though they are not meant to have that interpretation, some time later for expedience and no other reason the wider interpretation will be applied. I have seen that happen in a number of cases. Simply being told that it is not the Government's intention to do something is about as good as its saying before the last election that it did not intend to change the GME Act. That is why we are here now: because it could not keep that up for less than 12 months. I am more concerned about what the ultimate interpretation may be than what the intention may be. I have no problems with the intention as to what executives will be, but I have grave concerns with how executive positions, once created, and various other consequent changes in the legislation will be affected if they are misapplied.

I thought the example given by the Hon. Mr Lucas was at one extreme of a continuum, and there are plenty of plausible in-betweens that would cause me concern. I have tackled the question of ensuring that people who are seen as executives are senior positions by an amendment to clause 27. I will be moving an amendment to limit the number of executive positions to no more than 2 per cent of all positions in the Public Service.

That is a goal that Peter Coaldrake advised me was the maximum for which they were aiming in Queensland when he was responsible for legislation there and they preferred it to be closer to 1 per cent, as I recall. That was not in the legislation, but it was the sort of goal they were setting themselves. It appears that I was not too far out in terms of someone whose opinion the Government here respects. I have no problems with the concept of 'executive'. I have concerns that executives will be treated differently from other public servants. That is fine if they are executives in the way the Government says it intends to appoint them, that is, to senior positions. However, it is not fine if it goes into a creep through the rest of the public sector.

I am not tempted to support the Government's amendments now, and I refer to new subclause (1a), at which it will be worth looking later on. The only thing that could possibly make that attractive—and I will not visit this now—would be if the Government did it by regulation rather than by proclamation so that, if there were classes to be specified, it would be with the approval of Parliament. However, I would not see that instead of my amendment to clause 27 but rather as a potential addition thereto. I am not at this stage attracted to support the Government's amendments.

The Hon. R.I. LUCAS: This is one of the issues about which the Government feels strongly. The Hon. Mr Elliott held out a faint hope of potential further movement on his part. I have not had the opportunity to discuss this issue in recent times with the Premier, but I can see that there are some areas where the Government ought to speak with the Hon. Mr Elliott and others if this package of provisions is not to be supported.

Another point I record for members as they crunch the numbers is that any figure—2 per cent or 1 per cent—obviously locks that figure into legislation for a significant period. I refer to a modern public sector and, if there is to be a Liberal Government in South Australia for the next few years, some might see it as a radically different structure of the Public Service in this State. We may well have a more efficient public sector, where significant numbers of people further down the line who are providing service through various contracted out companies are not formally members of the Public Service and, therefore, do not come within this percentage calculation.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: That might be the point: we might still need the people to run it. The Hon. Mr Elliott makes a populist point that we have to keep these highly paid fat cats within the public sector, but—

An honourable member: You were one before you came in here.

The Hon. R.I. LUCAS: I was never a highly paid fat cat. One can make that populist point, and many politicians from all Parties have made that point when it has suited them. In talking about the Bill, if we look at the structure of the public sector for the future, significant numbers of people may be employed elsewhere. Let us look at Modbury Hospital and examples such as that where significant numbers of people at the non-executive level no longer are members of the public sector. We will still need senior executive officers to provide the policy oversight, management control, guidelines, processes, procedures, checks and balances and those sorts of activities, whether or not some aspects of those policies and the delivery of those services might happen to be outsourced or contracted out to various companies and do not come within the Hon. Mr Elliott's calculations.

I am not sure what the calculation comes to at present—whether it is 2 per cent—but in the future as the number of public servants is reduced through contracting out, that figure relating to executives could be 3 per cent or 4 per cent. The amendment which the Hon. Mr Elliott is moving, and which the Hon. Mr Roberts, I suspect, will support, means that the Government of the day will be bound by this legislation to whatever the Hon. Mr Roberts and Hon. Mr Elliott are saying. But what are they saying? They do not want us to retrench, terminate the employment of or retire executives. You cannot sit them in a lounge somewhere: they are still executive employees. But once we exceed the 2 per cent, what provisions should the Government use to bring it back to 2 per cent?

If we reach 3 per cent and if we have to get rid of executive level positions, however many, how is the Government to do that? Before we vote on this amendment, it is important that members hear from the Hon. Mr Elliott how the Government of the day is to get rid of those positions. Does the Hon. Mr Elliott intend to support a provision which allows the Government, if the 2 per cent is exceeded, to remove executives from the Public Service?

The Hon. M.J. ELLIOTT: This debate is proving to be increasingly illuminating. What it does underline is that the Government does have a commitment to a public sector which exists in name only—a public sector which will be made up of executive positions and executives directly answerable to the Government. That is the sort of structure it is setting up.

An honourable member: On contract.

The Hon. M.J. ELLIOTT: They will be on contract and below them there will be virtually no public servants, because the Government wants to outsource everything else in sight.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: The Minister for Transport, who is not in the position to laugh right at this moment—

The Hon. Diana Laidlaw: If you part with 1 300, you can hardly say that is nothing.

The Hon. M.J. ELLIOTT: How big will it be after the budget?

The Hon. Diana Laidlaw: But this plan you heard the other day is in the future.

The Hon. M.J. ELLIOTT: How far into the future?

The CHAIRMAN: The honourable member would be well advised to address his remarks through the Chair.

The Hon. M.J. ELLIOTT: Thank you, Mr Chair; I was finding the responses most instructive and I was—

Members interjecting:

The CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: The interjections were relevant, Mr Chair, and I was willing to tolerate them if you were. I have been gravely concerned that there has been some quite fundamental change happening in South Australia which I do not believe the South Australian public had agreed to. In fact, we are surprised by more and more all the time. I do not think anybody expected Modbury Hospital to be privatised in the way it was. I do not believe that people anticipated a great deal of what is happening so far. If the consequence of my amendment is that we will have some genuine public debate on these issues, which we have not had so far, I would say that was a useful thing.

The Hon. R.D. Lawson interjecting:

The Hon. M.J. ELLIOTT: That is a nonsense. If we take this Bill as an example, my amendments were on file on 1 December last year and I have been waiting for three months for the Government to be ready.

The Hon. Diana Laidlaw: We still have not got an answer to the question.

The Hon. M.J. ELLIOTT: In fact, I just answered the question. The importance and the significance of the amendment I will be moving in relation to clause 27 has been answered by the responses that the Minister himself has given in his objections to it.

The Hon. R.I. LUCAS: I put the question again to the Hon. Mr Elliott because he did not answer it. This is important; it relates to a series of amendments that the Government intends to move and it relates, as he has introduced into this debate, amendments that he intends to move. What the honourable member is moving, and I assume what will be part of the Bill as it leaves this place with the support of the Hon. Mr Roberts, is that there will be this 2 per cent figure. One can construct all sorts of straw person arguments about the Government's saying that there will be no-one left underneath the executive level, but that is not what we are talking about.

We are asking what provisions the Hon. Mr Elliott has in his package of amendments or he is prepared to support when the Government therefore has to remove those members of the executive service if we end up with a figure of 2.5 per cent or 3 per cent because of changes that have been implemented—that is, 97 per cent of the Public Service is non-executive level, and we can dismiss the straw person argument straight away? The honourable member cannot have his cake and eat it too in relation to his provisions on termination, retrenchment or retirement, or whatever.

What provisions will be there should the Government go over this figure of 2 per cent to remove these people from the Public Service completely? What we have at the moment is a situation where members of the executive service are moved, or transferred, or they might win a position in another department, or they are put in a parking bay for a short time as they apply for a range of other jobs but are nevertheless maintained at that executive level within the public sector. Of course, under the Hon. Mr Elliott's amendment that will not be tolerated because, wherever they are in the public sector, they will be counted as part of this 3 per cent figure. So, any persons above the 2 per cent mark must be wiped from the face of the public sector. I am asking the honourable member how he intends to ensure that that figure is adhered to.

The Hon. M.J. ELLIOTT: Before we move to that—and I will answer it—will the Minister indicate the current number of employees in the public sector?

The Hon. R.I. LUCAS: We can get the exact figure, but it is about 40 000 depending on how you define what is in the public sector.

The Hon. M.J. ELLIOTT: For a reduction below 2 per cent, the Minister's having indicated that there would be about 200 executive positions—I think that is the figure he used—the public sector would have to drop below 10 000 bodies. Surely the Minister is asking an incredibly hypothetical question unless the Government has on its agenda a slashing of the public sector to 25 per cent of current levels. It seems to be a very hypothetical question unless that is what the Minister is suggesting the Government is moving towards.

The Hon. R.R. ROBERTS: I am certainly happy with the amendment that we moved and passed previously. I am aware of the amendment indicated by the Hon. Mr Elliott. In his efforts to convince me, in particular, that we ought to be supporting his amendments, the Hon. Mr Lucas has successfully made me much more concerned, because I now lament what the Government has in store for our Public Service. I would like to turn around the matter. The amendment indicated by the Hon. Mr Elliott refers to clause 27 and I doubt that we will get to clause 27 tonight. I suggest that we reject the amendment proposed by the Hon. Mr Lucas and in the period between now and when we debate clause 27 the Hon. Mr Lucas and his advisers may wish to address themselves to what they believe would be a more appropriate percentage.

Rather than dilly-dally here for some hours, asking hypothetical questions which only serve to entrench the opposition to the clause, I suggest that we ought to oppose the amendments and move on to other matters and allow the Hon. Mr Lucas and his advisers to address themselves to the amendment indicated by the Hon. Mr Elliott, which I indicate I intend to support, unless there is convincing argument that there ought to be another percentage. If the Hon. Mr Lucas has knowledge about the future of the Public Service that is not being shared with me, the Opposition, the Democrats and indeed the Public Service, he may wish to indicate that also. We will oppose the amendment moved by the Hon. Mr Lucas, and I expect that that will mean that the next two amendments will be opposed also.

The Hon. R.I. LUCAS: I thank the Hon. Mr Roberts for his reasonable position, indicating his preparedness to talk further with the Government on the figure of 2 per cent. The Government is concerned about that provision and certainly we will have discussions with various Government advisers and others and talk further with the Labor Party and the honourable member. I thank him for his preparedness to talk further on this issue.

The Hon. M.J. ELLIOTT: With 40 000 public servants in South Australia, the Government's aiming for 200 executive positions means that it is talking of a half per cent of the public sector being executive positions. The shrinkage of the public sector would have to be down to a quarter of its current size before the 2 per cent limit would be challenged. For the Minister then to say, 'What will we do if we go past that?' I cannot see it happening realistically, as the Government will find itself in a great deal of trouble long before that.

I do not believe the figure I put in was anywhere near an unreasonable one.

Amendment negatived.

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

Page 2, after line 28—Insert definition as follows:
'the Promotion and Grievance Appeals Tribunal' means the Tribunal of that name established under schedule 2A.

This amendment is consequential.

Amendment carried.

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

Page 3, after line 10—Insert definition as follows:
'recognised organisation' means an association declared to be a recognised organisation by the Commissioner under Part 5;

This amendment has implications with clauses 15A and 22A. These amendments introduce the right of recognised organisations to make representations. The Bill as it stands removes the current requirement to consult with recognised organisations where members will be affected by change. Sound management practice requires consultation with parties affected.

These amendments reintroduce the requirement for the Commissioner for Public Employment and the chief executive officers to consult with recognised organisations, including employees' trade unions. The focus of this Government has been on individuals, and this Bill removes references to the need to consult with organisations. The Government's actions are in line with its Industrial and Employee Relations Act. The Government may claim that this provides individuals with greater involvement. In reality it is quite different. By changing the focus from organisations to individuals, the Government is in reality removing from employees their collective ability to bargain.

The truth is that most individuals do not have the resources or the capacity to analyse or respond to changes that affect them without the support of a registered organisation, that is, a union. The Government claims to be involving individual employees when, in truth, it is removing their ability to negotiate. Typically, the Government claims to have consulted with employees regarding this Bill. We have moved on in that sense in the past few days, but I will not dwell on that. Individually, most workers have not by themselves been able to assess the Bill's impact. Even when they have had concerns and these concerns have been passed on to the Government, in the main they have been ignored. The 1 400 submissions to the Premier about this Bill resulted only in minimal change to it. The Government's real intent is to remove any obligation to consult so that it can do whatever it likes without question and certainly without unbiased, independent scrutiny of disputed decisions.

The insertion of new clauses 15A and 22A is important and will be necessary. It is a recognised feature of good management practice to consult prior to change and to involve those concerned. The most effective way for such consultation to occur is through recognised organisations. This amendment impinges on new clause 15A and is dependent upon it.

The Hon. R.I. LUCAS: As the Premier has indicated on a number of occasions, the Government opposes this amendment. With respect to good management practice within any organisation, there will be significant issues on which there will have to be consultation with employees and members of the work force. Regarding a good number of significant issues, this Government and I as Minister have endeavoured to have productive consultation with the unions that represent employees of the Department for Education and Children's Services, the Institute of Teachers and, to a lesser degree, the Public Service Association.

As a new Minister, one of the things that struck me was that, whilst I obviously support the view that there needs to be productive consultation with always an open door policy for recognised organisations or unions, within the Department for Education and Children's Services there has been basically a right of veto by recognised organisations over what happens. Many members of the Labor Party in their franker moments outside the bear pit of the Chamber say, 'If there's one thing you lot ought to do it is not to make the same mistakes that we made with the unions which screwed us unmercifully in relation to the decisions we were allowed to make.' I know that members opposite are not allowed to smile at this stage—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: I won't reveal the personal discussions that I have had with a number of members of the Labor Party, but that is the message which in their franker moments members opposite have put to members of the Government: you have to learn one lesson and that is not to get yourself into a position where the unions are running the ship or running the organisations as they did with the Labor Government. As I said, it is not fearful, right wing ideology within the Liberal Government that says these sorts of things; these are your colleagues speaking frankly about their experience of 10 years in Government in South Australia. In their franker moments in the interests of good Government they say, 'Be cautious, be careful in relation to these areas.'

The Hon. T.G. Roberts: You're being a radical conservative.

The Hon. R.I. LUCAS: I'm not a radical conservative. Good government and good public sector management means that with respect to significant issues the employees must be consulted. However, in my judgment, good Government does not mean the whole process grinds to a halt, where you are required legislatively to take every case that the recognised organisations will argue. Some of them have said, 'You should have consulted us on this or that.' We have to govern; we have to manage the public sector. A Government is elected to govern, and it should consult on the big issues. A recognised organisation might say, 'Well, you should have discussed this particular issue with us before you did this, that or whatever else it might have been.' I am sure that the people of South Australia, if given the choice of the Government or the union governing, would say, 'The Government has been elected; let's get on with it.' Sadly, the community does not get that choice. The decision is taken by a majority in the Parliament. I have not heard from the Hon. Mr Elliott yet, although his amendments are strikingly similar to the amendment being moved by the Labor Party, so I suspect that the numbers are not with us.

The numbers are with members of the Labor Party and the Australian Democrats who obviously are anxious to curry favour with the unions and to garner whatever support they can in the passage of the legislation. That is a valid part of the political process. If you are on 30 per cent of the vote, you are desperate for every extra vote that you can hold onto or get within South Australia. Nevertheless, it is not very productive in relation to trying to make sensible decisions on good Government and good public sector management—

The Hon. Diana Laidlaw: Accountable Government.

The Hon. R.I. LUCAS: —accountable Government and good public sector management. As I said, the Government accepts that there needs to be consultation with its employees

on significant issues. However, the Government does not accept that in relation to every trifling issue that the recognised organisations will argue: 'This isn't a trifling issue; this is a significant issue to us'—and believe me, what most people judge to be relatively small issues can soon be portrayed by the union and its representatives as very significant issues to them and their employees—and that all these issues cannot be decided until there has been consultation with the union. If you were going to go down that path, you would spend half your life talking to various union representatives. If you just happen to be lucky enough, as I am, to have a good number of unions represented within your workplace, you cannot get them to agree, anyway.

We have the situation with school services officers where we have one union saying, 'Quick! Give us the money, and we'll take it and go.' The PSA, which represents some SSOs, is saying, '$15, $10 and $10' and we have the Institute of Teachers saying, 'No, our members will not have that. We will go Federal and argue.' That is just one example where the unions themselves do not have a shared view as to what is of importance to their members. They are the same members: the SSOs who happen to be members of the PSA and the SSOs who happen to be members of the Institute of Teachers, and when you line them up next to each other they do not look markedly different. They are the same type of people doing the same type of work, but for whatever reasons they happen to be members of different unions.

The processes of Government really have to move on. Will we have this situation if we go down this path where everything has to be taken to the union? As I said, certainly within the Education Department, basically the institute and some others had a veto right as to whether or not you progressed various issue. If you did not get a tick in your box from Clare McCarty or her predecessors, you did not pass 'go' and you did not collect $200; you did not do anything, unless you got the tick in the box from the Institute of Teachers. That is not a process for good Government. Sadly, this package of amendments being moved by the Hon. Mr Elliott and the Hon. Mr Roberts will leave the process of public sector management in that same position, should their will prevail eventually, not just in this Chamber but through the various other processes that this Bill must endure before it finally sees the light of day.

The Hon. M.J. ELLIOTT: Again, I remind the Minister that this clause comes out of the old Act which the Premier 15 months ago promised not to amend in any way. That is the starting point. He has also grossly exaggerated what the clause does. It does not refer to any decision that will be made. It has to be something which will affect a significant number of members. The last sentence clearly states:

> Nothing in this section limits or restricts the carrying out of a function or exercise of a power by a Chief Executive under this Act.

In other words, there is no limitation on the Minister's or the Chief Executive's capacity to make decisions and to govern. All it is saying is that when something affects a significant number of people at least there might be some consultation. That is what the old Act said—the Act that the Government promised not to amend. Why the Government should now want to reject that is beyond my comprehension.

The Hon. T.G. ROBERTS: The contributions that we have had on this clause and on other clauses indicate the frustrations that we have in this Committee in debating a Bill on which we do not have agreement on the principles that we are trying to debate and which are inherent in the context of all the clauses. The fact that the Minister has a package of amendments in front of him that would probably add another metre to his height if he stood on them indicates that we are having trouble in making progress and that the final wash of the outcomes will not be satisfactory to the Government on the basis that we are entirely at opposite points on the philosophical questions that we are debating. When we get to the conference, that will take as long as the debate in this place in getting to the end of the Bill.

One of the major problems is an agreement on many of the indications as to where the Government wants to go with the public sector. Indeed, each Minister has problems, as indicated by the problems that the Minister for Transport is having in getting a total picture for the restructuring of her department.

The Hon. Diana Laidlaw: There are no problems. There is a very clear picture.

The Hon. T.G. ROBERTS: We will wait for the budget. When the budget comes and you have to cut another 10 per cent off your figures there will be pressure on you to reduce—

The Hon. Diana Laidlaw: What scaremongering are you doing? You Labor lot are desperate.

The Hon. T.G. ROBERTS: There will be an application. If you look at the indicators for the final numbers of people in the Public Service through outsourcing and contracting, we are all realistic enough to know that the restructuring programs which are going on will not have a final number on them. The negotiators in the PSA and organisations representing membership are having difficulty in negotiating with each departmental section and Minister because there is no indicated end to the Government's ambit. That leads to difficulties for the representatives of those organisations to go back to their membership. Fortunately, or unfortunately, we cannot change the culture and nature of public sector participation in the democratic processes that they have. We are trying by legislation to change all that and take away the inherent rights of organisations not only to represent but to inform their members about the restructuring processes and the final impacts—

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. ROBERTS: No. What I am indicating is that we have difficulty in finally stating to people who are given the responsibility for restructuring what the final numbers will be, what the final outcomes of their responsibility will be when the department has finally restructured, what their classifications will be, what their take-home pay will be and what their security will be. We are talking about people's lives generally.

We have done it in a piecemeal way. The Government has put together a package of events and some indicators of what it would like to see finally through those negotiated outcomes. We are having some to and fro here which is supposed to be based on meaningful negotiations, whereas in fact we are basically jousting and we will not come to an outcome which has any commitment to it. The Government will end up with a Bill which will not be workable and we will be in the position of having made compromises to the point where the final outcomes will not be acceptable to us.

Perhaps the Bill will end up with a structure of the Public Service that might have been based on the 1950s, when in fact we want a public sector structure based on the 1990s or even the year 2 000. But nobody is painting the big picture, so what we do is keep altering the little picture and pushing people around to a point where we end up with a whole

indicated series of amendments because people are paranoid with the position of accepting any of those contributions inherent in this Bill because they have constituencies they have to answer to.

This is a bit like the workers' compensation problems; we need to pull back again, and I understand some progress was made in the past few days about how to take some steps forward. We may need to call a halt to these proceedings and say, 'Let's finally sit down and work out what is the final picture in relation to the public sector.' Who knows, the Public Service Association representing its members' interests might say, 'Okay, there need to be some cuts in definitive numbers but let us determine what they are and how effectively and efficiently the public sector can operate on those indicated—

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: No, I am not too sure. What you have is a package of three alternatives. You can stay there on the unknown—

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. ROBERTS: Have a look at their position. Their membership are looking at an unknown future. Whatever the Government puts forward will cause some doubts as far as the negotiating representatives are concerned, and they have to take up those doubts on behalf of their members. If there is some sort of certainty inherent in those negotiations, it will make it easier for those representatives to go back. These are the three alternatives you are offering: you can take a package and go; you can stay and have an uncertain future; or you can be restructured to a point to go somewhere else within the public sector, whether it is in that department or another, with similar sorts of classifications and pay rates. They are good starting principles and they are the principles that have been operating.

However, over the top of that is an umbrella of an Act that will change overnight the nature of those negotiations. If this were in the private sector, you would see it as a large national corporation operating under an umbrella with lots of little negotiating packages under it. If you look at the nature of this Bill, the changes that could take place will upset the rules which are taking place at an enterprise bargaining level and which have been going on for at least 18 months to two years in some places. So, at one level you have the enterprise bargaining being done in an open and honest way by shop floor representatives, the union's organisational representatives, and all of a sudden the ground rules will change. I would be very nervous, if I were an organisational representative, saying to my membership, 'We will involve ourselves in collective bargaining at this level,' while all the time the Government's position is to change the rules by which those negotiations—

The Hon. R.I. Lucas: All your old unions have done it.

The Hon. T.G. ROBERTS: What has tended to happen in the private sector is that the full picture is spelt out in relation to what the final outcomes are. In most cases, the Government does not have a plan in relation to how the final wash will be. You have privatisation running at the same time as you have outsourcing running, and you have restructuring of awards, agreements and pay rates running at the same time. I would have thought you may be able to separate out some of those to make it a little easier for some of those people to work out some of the packages, so you did not have all those agendas running at once. All the uncertainty has come to a point where you will lose a lot of skills. A lot of people will be taking packages, and the Education Department is one, where you will lose a lot of experienced people at one end, and the inexperienced—

The Hon. Diana Laidlaw: That does not mean they will not still be working in the same field but it will be with a different employer.

The Hon. T.G. ROBERTS: What I am saying is that the packages are not complementary. They are negotiating under conflicting packages. It is making—

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. ROBERTS: That is right: I will take that point and accept it, but that is where the detail needs to be worked out by each independent department, separate from an umbrella Act such as that which we are discussing tonight, because this is an inhibitor to any final outcomes that people might want to negotiate. The confidence you need to get the micro-economic reforms you require through your departments is being inhibited by a lack of confidence and a drop in morale amongst those people whom you are trying to convince that those changes need to be made. It is unfortunate that you have stitched it all together, and I know that some of the Ministers would probably prefer to separate out the GME Act or the Public Sector Management Act from all the other reforms but, unfortunately, whoever worked out your time frame (and we all know there was a coordinated plan to do it that way) has actually made your job much harder. It has made our job much easier, because we can be in total opposition, but it is not a very constructive way to do it. Most of us would prefer you to put this measure on ice, go back to your negotiations within your departmental structures to get the micro-economic reforms that you require and then, when you have your departments restructured and you have worked out the final numbers, pay rates, how you will contract out and what sort of complementarity there is, you come back to put in your umbrella organisational structure for the total management plan under this Act, whatever you call it: we might even accept some sort of name change if it comes back and identifies what your ultimate intentions are for the public sector.

The Hon. Diana Laidlaw: Is that the only concession you are offering?

The Hon. T.G. ROBERTS: We will agree to that. The position should be that, instead of going right through the whole Bill and having diametrically opposed positions that we need to examine in Committee, we take time out and get the principles set before we start putting the legislation in place, because it seems to me to be a waste of time to proceed.

The Hon. R.I. LUCAS: I certainly hope that, if we get to conference, the Hon. Terry Roberts is a member of it with that burst of reasonableness, because at least part of what the honourable member said is exactly correct. That is that a position where everything the Government moves is opposed in effect potentially consigns the public sector to the 1950s. The Government does have a view of the public sector in the 1990s and the year 2000 and beyond, and that is the view that is espoused and spelt out within this framework as outlined in the legislation. There might be aspects of that with which the Labor Party would disagree; we can accept that. However, I accept the Hon. Terry Roberts's position that in playing to their constituencies people have to oppose everything the Government does and that in effect potentially (and I know these are not his exact records and I do not seek to put words in his mouth) consigns public sector management to the 1950s or the 1940s. We must have a public sector framework

which suits public sector management for the 1990s and beyond.

The Hon. Terry Roberts is correct in saying that the process where everything the Government does is opposed, the numbers are crunched and people play out set positions will not give us that framework. He may well have a different perspective of what that vision is; I accept that. The Government may well have a different vision; nevertheless, the framework of what the Hon. Terry Roberts is saying is correct. Certainly, when we get to conference I would welcome his constructive input, because he has been representing unions out there in the real world where there has not been this certainty or confidence that he is talking about. If he speaks to his colleagues within the old metals unions or those representing the wharfside workers and so on, he will find that they certainly have not felt any confidence in working with the private sector over the past 20 or 30 years in relation to their future or vision.

Governments, the private sector and industry have been collapsing around them in relation to their particular jobs, and they have had to change. The only advantage enjoyed by the public sector has been its ability, through the parliaments of the day, to insist to a large extent on the *status quo*. As the Hon. Terry Roberts says, it may be that out of all this will come not a step forward but a step backward. Continually we hear, 'We oppose this; we oppose that; the Government wants to make receptionists executives; and the Government wants to put everyone on contracts.' That sort of scare tactic in relation to what the Government is doing is not part of productive and rational public sector management debate. Nevertheless, that is what we are confronted with.

When you hop into a lift at the Education Centre you see leaflets emblazoned around the walls describing the Right Wing mad ideology of the Liberal Government and what it seeks to inflict upon the workers of the State as a further indication of class warfare against the workers. That is what we are; we are representatives of that, and we sheepishly hide behind our briefcases as we go up in the lift with our fellow employees and say, 'We are the people the Public Service Association is talking about' or 'We are the people the Institute of Teachers is talking about.'

Members interjecting:

The Hon. R.I. LUCAS: The Hon. Ron Roberts says, 'They can tell by the horns.' The Hon. Terry Roberts has introduced some philosophical discussion into the evening, and we could go on for hours, but it is not productive to do so; we can do that on another occasion. The Government takes a slightly different view in relation to the strategic approach about which the Hon. Terry Roberts is talking. He says that we should go to the departments, make the decision and then come back and construct the framework. That is the wrong way to go if you are talking about strategic planning in any corporate sense, whether it be in the private or public sectors. That is not the way to go about strategic planning for the future.

You must construct the framework first. You develop your vision and agreed principles, and I agree with that aspect of what the Hon. Terry Roberts says. However, you construct the framework within which all the arms of your organisation operate: you do not go out and say to all the departments, 'Go and sort out all your wage rates, and this, that and whatever' and then come back and construct the framework. In my judgment, that is the wrong way to go about any sensible process of strategic planning for the future, whether you are talking about the private or public sectors.

You must agree your principles and then set the framework. One of the most important aspects of the framework is the Public Sector Management Bill. That is the framework for moving the public sector from the 1990s into the year 2000. So, I disagree with the Hon. Terry Roberts in relation to how we should go about this process. Nevertheless, I recognise the numbers are not with us and we will go down in a screaming heap.

The Hon. R.R. ROBERTS: While we are all being philosophical, let us get this into context.

Members interjecting:

The CHAIRMAN: Order!

The Hon. R.R. ROBERTS: The Minister talks about developing a Public Service tailored to the 1950s. Let me bring him into the world of reality when it comes to management. He is talking about the Taylorist theories of the sixteenth century, where he wants every little widget to be in its place and, when the boss says 'Jump', people jump. In relation to modern day management techniques in private industry, which the Government wants to mirror in the Public Service, it has been recognised for many years that there is a thing called 'dignity in the workplace,' and that is taken for granted in the successful companies; it happens in Japan, where it is often held that techniques in management are to be applauded. It works on three principles—information sharing, consultation and then joint decision making.

No-one is asking for joint decision making in this Bill, but it has been recognised by good managers and good management techniques right throughout industry that employees working in any organisation ought to be consulted about decisions that affect their day to day working life. We are asking for that to be done in a constructive way, where employees can be properly represented by people with an understanding of the law and the way the industrial situation works and, in fact, in many instances by people with management skills. I put it to the Government that there are people in the Public Service who can be extremely helpful, and I do not believe for one minute that everyone in the Public Service is obstructionist. If the Government is talking about moving into the twentieth century, it should consult properly with its employees, if it is committed, as it says it is, to freedom of association. Freedom of association goes both ways: to be represented or not to be represented by a union. Those employees who want to be represented by people with some skills ought to have the right to be represented properly by those people. At the end of the day, that will result in good decisions that affect the organisation.

Going back to the philosophical point of view about modern techniques, the Hon. Mr Lucas talks about the vision statement. I can tell him that most successful companies have a vision statement, which is the vision of the whole organisation—the points of view of the employees as well as management. All we are saying with these amendments is that people who are legitimate members of an organisation, who want to put a point of view when decisions are going to be made that affect their day-to-day working lives—and, indeed, their whole future, as the Hon. Terry Roberts pointed out—ought to be consulted. No-one is claiming that they ought to have the right to veto a decision that the Government may think appropriate. We are saying that they ought to be consulted and ought to be able to have some input into the decision making process, and I am confident that in many instances there will be some welcome surprises.

I believe that the people in the workplace in most instances know more about the day-to-day running of their jobs

than some whiz-kid executive who is brought in off the street, given a contract and told to reorganise the department. We are saying that public servants, like any other work force, ought to have the right, first, to representation and, secondly, to be consulted about those decisions that affect their day-to-day working lives and, in that process, to make positive contributions to the way that ought to be done. Rather than coming in and slashing and burning, it may well be possible to improve the productivity of the organisation in a cooperative manner rather than a confrontationist manner. I urge the Committee to support my amendment which, I understand, has the agreement of the Hon. Mr Elliott.

The Hon. M.J. ELLIOTT: I guess we have taken a slight sideways diversion with a little bit of discussion of the big picture. Whilst I did not agree with a number of things the Hon. Mr Roberts said, he was right when he stressed the importance of the big picture. Frankly, I believe that the Government's legislation, as I was proposing to amend it, was consistent with what I understood the Liberal Party's vision to be in terms of the important changes such as executive positions and parts of the legislation that surround them. I understood what the Government wanted to achieve in the public sector and, on my understanding of its big picture, I was not objecting to that in itself.

Like many other people, I have heard other concerns expressed about what may or may not be part of this picture. Without taking that analogy too much further, I think that, if the Government wants a Public Sector Management Bill to enable it to do certain things, it would be very helpful to the people who work in the public sector now, to the public generally and to the people in this place to know precisely what that vision is. We may agree or disagree on it, but at least we can then say, 'We need these amendments to achieve these goals as part of our broader vision as to what the public sector will become.' I think the Hon. Mr Roberts is perfectly correct when he says that that picture has not been painted. I reiterate that, to start off with, the Government said that it would not change the Act at all. Now we will be getting a new Act, it will have some substantial change in key areas such as executive positions, and the Government is complaining bitterly that other parts of the old Act are staying.

If the Minister is complaining about that, I would like to know in what way the amendments interfere with some parts of his vision. If he is prepared to share the vision with the Parliament and the people of South Australia we can then have a debate in which we do not argue about whether secretaries are executives and various other sideways diversions which, in fact, were raised not by me but by the Minister himself. I certainly do not agree with everything the Hon. Mr Roberts said. I did not agree with him when he said that we could end up with a 1950s Bill because, as I said, executive positions are to some extent a recognition of what was already happening in the public sector. I suppose it is a recognition that, in an attempt to get the public sector working correctly, we must get the upper echelons of management working as well as we can. I invite the Minister and the Government to share their broader vision if they find that the amendments being moved are obstructing what they see as being key components of it.

Amendment carried.

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

Page 3, line 15—Leave out 'Minister' and insert 'Commissioner'.

This is a consequential amendment.

Amendment carried; clause as amended passed.

Clause 4—'General management aims.'

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

Page 4, line 5—Leave out 'competitive' and insert 'efficient'.

Frankly, the word 'competitive', in some cases, is inappropriate. I have no problems with saying that public sector agencies should be efficient, and in some circumstances that also means that they are competitive. However, some public sector agencies are not about being competitive. It is not unreasonable at all to try to get efficiency, but how do we ask a nurse who is working perhaps in a high-tech ward and providing services that are not available anywhere else or in the private sector to be competitive? It really is a nonsense. The public sector is about service; we are asking for efficiency and not necessarily competitiveness.

The Hon. R.I. LUCAS: The Government's big picture is in part, anyway (because it is in many other documents), outlined by the general management aims that are enumerated in this Bill. The Government is looking for public sector agencies which will provide responsive, effective and competitive services to the community, the Government and a range of other things as well.

The Hon. M.J. Elliott: How is a fishing inspector to be competitive?

The Hon. R.I. LUCAS: The Hon. Mr Elliott takes the view as someone who has obviously never run a Public Service department—

The Hon. A.J. Redford: And never will.

The Hon. R.I. LUCAS: And never will, unless he joins the Liberal Party again. If he does that, he might have a chance. The Hon. Mr Elliott puts a point of view and his vision is that 'competitive' is nonsense in relation to the public sector. That is a simplistic view and is consistent with the Democrat attitude to many things. From the Government's viewpoint, I see that as a nonsense. The Hon. Mr Elliott puts the position that 'competitive' is a nonsense in relation to the public sector. The vision of the Public Service moving into the next century is that we will be benchmarked not just on the basis of being efficient or competent but being, in effect, world-class competitive and being able to benchmark the service delivery in the public sector not just with other Public Service agencies in Australia but internationally.

If the Hon. Mr Elliott looked at some of the benchmarking studies that have been done on the public sector, he would see that we are now benchmarking services within the public sector with private sector organisations in relation to service delivery. The Deloitte benchmarking study, which was done under the previous Labor Government (saints preserve us), looked at benchmarking South Australian public sector services not only with other public sector agencies but also with private sector organisations in relation to the delivery of those services.

The intention or the vision that the honourable member is talking about is a world-class competitive public sector in South Australia, not just about being efficient. The honourable member thinks that we will grind along in our own little backyard, do it efficiently and stay a little island in South Australia, oblivious to what is going on in the real world, in other States and in the private sector. The Hon.

Mr Elliott says, 'Let's hear what the Government's vision is.' The Government's vision, as I indicated in a number of documents, is in this Bill. We want a public sector which is responsive, effective and world-class competitive. That is what the Government is looking for. That is the vision the

Government has for the Public Service in South Australia. We do not see 'competitive' in terms of the public sector as being nonsense. The honourable member asked how a fishing inspector could be competitive. If that is all to which public sector management is reduced in the viewpoint of the Hon. Mr Elliott, it is a very microscopic view of what the public sector is about. It is not just about fishing inspectors: it is about world-class competitive public service, and that is what the Government's vision is in relation to this. That is the Government's position and we therefore oppose the amendment.

It may well be that when we get to further stages we can look to a combination of words, and we can all think about what those words might be. Somewhere in this package the Government wants some words about the general aims or vision of South Australia relating to something that is beyond just 'efficient': it is something which is world-class and competitive—competitive not just with other public sector agencies but with the best of private sector practice as well. As I said, the previous Labor Government in its benchmarking study sought to do just that. The comparison of the service delivery in the Public Service with that in banks and a range of other service delivery organisations in the private sector included response times and a whole variety of other things such as that, in an effort to ensure that we have a world-class competitive public sector.

The Hon. T. CROTHERS: I want to take issue with the Minister regarding the nonsense and diatribe that he has just put to those of us who think through such matters. He talks about a world-class—

The Hon. Diana Laidlaw: What about the—

The Hon. T. CROTHERS: What about Hindmarsh Island bridge? I could go on about Golden Grove, but I will let those inane interjections slide past.

Members interjecting:

The CHAIRMAN: Order! It is not helpful if there is an argument across the Chamber.

Members interjecting:

The CHAIRMAN: Order!

The Hon. T. CROTHERS: Thank you for your protection, Mr Chairman: I needed that. The inane utterances of the Minister about a world-class, competitive South Australian Public Service fail to impress me. The fact is that we in Australia, no matter how much we might be technologically in advance of some of our competitors, fall a long way short in regard to technology and research and development.

Members interjecting:

The Hon. T. CROTHERS: I don't know what sector it is. It is a tried and true fact: we buy our defence technologies from overseas. The submarine technology was brought in from Sweden and our fighter defence and bomber attack aircraft were brought in from the United States. We buy the Airbus from Europe and we buy Boeing 757 and 747 from the United States. It is just appalling for a Minister as senior as the Leader of the Government in this Chamber to claim that the Government's aim is a South Australian Public Service that is world-class competitive. That aim is beyond our reach if we want to compare ourselves on a global basis.

The Government intends to let out our Public Service computer sector to an overseas firm; the Government intends to let out our water supplies—if the press is to be believed—to an overseas consortium. If we had any opportunity to have a world-class public sector, why do we have to go overseas in respect to technological matters to do things like that? Why do we have to do that if it is here already? That is my point. There is the introduction of technologies from the countries that involve themselves in research and development such as the United States and, to a lesser extent, some of its European allies in what was the old NATO pact; they involved themselves in these technologies, and I refer to nations such as Sweden, France, Belgium, Switzerland, Britain and the like. But Australia lags behind the technologies of those nations at all times in almost all levels. The Americans will not sell us the phantom bomber because it is too technically advanced.

Members interjecting:

The Hon. T. CROTHERS: You speak for yourself. Sometimes I would like to have one so I could pass over your ranks and deliver a stinging rebuke or two. Australia lags behind in its capacity to gets the research and development technologies that are developed in the nations that do that throughout the world, and there are about five or six such major nations. Anyone who thinks differently is not living in the real world at all. Look at how we are dragging the chain with the introduction of the information highway in Australia, yet it is technology that already exists in other areas.

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: I do not care whose fault it is: it could be anyone's fault. It is a fact—

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: I know your definition of a fact is a lie and a half. I say to the Hon. Mr Redford that it is a fact that that is a weakness in the Minister's argument. I hope I do not get the Minister into trouble with his mess mates or his mates who are in a mess, with other members of the Liberal camp, but I think young Mr Lucas, and the Hon. Mr Griffin too, are head and shoulders above many of the other members of the Liberal Cabinet in respect of intellectual capacity—and I am not saying how smart that makes them. So, I am doubly appalled when the Minister proffers the argument that we have to have a world-class Public Service here. Clearly, if we compare ourselves with the other nations that he is comparing us with, that is not possible at all. We can see how we are denied technologies. We can see how other technologies lag behind. We can see that through our own fault we have not availed ourselves of the technologies that exist. But whatever the facts, whoever is responsible, whatever the reason, it is a fact of life that you have to live with. So, Mr Minister, if you want to convince this member of the Opposition in respect of the *bona fides* of what you are proposing, please use more cogent logic, which can be backed up, than your references to world-class—

The Hon. R.I. Lucas interjecting:

The Hon. T. CROTHERS: You almost had me, that's true. Having made that contribution, my first for the night, I will rest my case and sit down.

The Hon. M.J. ELLIOTT: I have never disputed that the terminology 'competitive' is not appropriate in some cases, and perhaps in many cases, but I would also argue that in the public sector there are areas where the word 'competitive' is not appropriate. How do you talk about having a world-class competitive Department for Aboriginal Affairs, for example? What sort of nonsense is that? When you are talking generally about working with real people with particular problems and very special issues, they may not be directly comparable. If you have different problems of a different scale from those in other places, you cannot compare one State with another.

It is certainly worth looking at what other people do to ask whether we can do it better, and it is certainly worth asking whether we can make things more efficient, but is it feasible

to talk about their being competitive? We ought to have a world-class competitive program for saving endangered species: how much should you spend per endangered species when, in fact, you may be facing significantly different problems? It really is a nonsense. The word 'efficient' is not a weak term. It can be a relative term, as are the other terms the Government uses, such as 'responsive' (the Government does not say how responsive); or 'effective' (how effective?). So why the Minister baulked at the term 'efficient' and said it sounded wishy-washy has me beaten. It seems to me that you would try to make it as responsive, as effective and as efficient as you could. The word 'competitive' is simply inappropriate in some circumstances and that is why I took affront to that term.

Amendment carried.

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

Page 4, after line 12—Insert subclause as follows:

(2) Public sector agencies must implement all legislative requirements relevant to the agencies.

It should be self-evident, but sometimes is not, that one of the principal functions of the public sector is to carry out its legislative requirements and from time to time I have noted that legislative requirements have not been carried out, often because of instructions from a Minister or from a very senior executive.

I think that it must be recognised that the public sector is not just a tool of the Government. The public sector belongs to the people and in many cases is directly instructed by legislation itself. That is one of the reasons why people would argue consistently and strongly for the concept of an independent public sector—one which has integrity—because it is recognised that it has obligations not just to the Government but also to the legislation that it has to implement.

The Hon. R.I. LUCAS: We are not going to go to the wall on this. We think it is self-evident that if the law says something then you have to follow the law. To say, in effect, that you have to follow the law as a public sector agency seems to be a waste of space. However, if it pleases the Democrats and the Labor Party we will not oppose it.

Amendment carried; clause as amended passed.

Clause 5—'Personnel management standards.'

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

Page 4, line 16—After 'fairly' insert 'and consistently and not subject employees to arbitrary or capricious administrative decisions'.

All would agree that it is proper to treat employees fairly. What is fair treatment? Employees need to be assured that they would not be subjected to arbitrary or capricious administrative decisions by their employer. Such definitions are important to protect employees if problems arise. This amendment clearly defines actions which are not acceptable rather than providing a vague statement as proposed in the Bill about fairness. I commend the amendment.

The Hon. R.I. LUCAS: The Government opposes it. The Government believes that the term 'fairly' incorporates the meaning of the proposed amendment and that any of the potential circumstances the honourable member envisages would be covered by the term 'fairly'. It says simply that we should treat employees fairly, and that covers everything.

The Hon. M.J. ELLIOTT: I note that the Leader of the Government in opposing this did not oppose what it might achieve other than saying that he felt it was not necessary because the word 'fairly' covered what is contained within the amendment. Frankly, I do not see difficulties created by the amendment and, if it does more clearly spell out what 'fairly' means, that is all to the good.

Amendment carried.

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

Page 4, lines 17 and 18—Leave out paragraph (c) and insert—

(c) prevent unlawful discrimination against employees or persons seeking employment in the public sector on the ground of sex, sexuality, marital status, pregnancy, race, physical impairment or any other ground and ensure that no form of unjustifiable discrimination is exercised against employees or persons seeking employment in the public sector; and

(ca) afford employees equal opportunities to secure promotion and advancement in their employment; and

(cb) afford employees reasonable avenues of redress against improper or unreasonable administrative decisions; and

The amendment seeks to better define unacceptable activities. The Bill currently provides for the prevention of nepotism, patronage and unlawful discrimination. This amendment makes clear that specified actions are unacceptable in the public sector, whether or not the legislation deals with the issue. The amendment clearly spells out to the public sector managers and employees which actions are indeed unacceptable. Specific references to race, sexuality and other areas where discrimination may occur assists in preventing discrimination and also assists in the resolution of problems by removing any ambiguity. I commend the amendment.

The Hon. R.I. LUCAS: The Government's clause 5(c) in effect gives a commitment to equal employment opportunities. The Government says that basically it is unnecessary to restate or list again the grounds for unlawful discrimination as they are already in the Equal Opportunity Act. I assure the Hon. Mr Roberts, if he says that we ought to make doubly sure, that all members of the Public Service (in particular I can speak for the Department for Education and Children's Services) are well versed in the provisions of the Equal Opportunity Act. It is not something that is far from their minds in relation to most issues. So, it does seem to be superfluous. If you are to put this provision of the Equal Opportunity Act in there, do you want to put a whole range of other provisions into the Act? If not, why not? Why pick this particular provision of the Equal Opportunity Act to put in and not all the other provisions? Is this provision more important than other provisions?

The Equal Opportunity Act applies to all public sector employees and they are aware of it and therefore do not need to be reminded again in this piece of legislation or in other pieces of legislation of the same provisions that already exist under the Equal Opportunity Act. The other point is that the Labor Party's amendment seeks to remove the whole of clause 5(c), which talks about affording equal employment opportunities but also talks about trying to advantage diversity in the work force as a new provision. One could look at diversity, I presume therefore, in terms of non-English speaking background, age and a whole range of other similar provisions, in effect stating that as a positive provision. The Labor amendment seeks to remove that attempt to talk about the importance of diversity in the public sector and to restate the provisions of the Equal Opportunity Act. I suspect, as with the other amendments, the argument will fall on stony ground, but it is disappointing that the Labor Party and the Democrats are, in doing what they are seeking to do, throwing out the baby with the bath water.

The Hon. M.J. ELLIOTT: It is not a matter of throwing out the baby with the bath water. This amendment is important to clarify what is intended. I do not think that it is beyond

the wit of the Government to be able to pick up what is contained in the Opposition's amendments on this matter and to further amend the Bill to make sure that some of the bits that the Government thinks it is losing are reincorporated. There are some important issues involved and, if the Minister feels that something else will be lost in the process, it is capable of further amendment.

The Hon. R.I. Lucas: Why is it important? It's already in the Equal Opportunity Act.

The Hon. M.J. ELLIOTT: As I said, I do not see any problems being created by spelling out what is contained in the amendment moved by the Hon. Ron Roberts.

Amendment carried.

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

Page 4, line 20—Leave out ', patronage and unlawful discrimination' and insert 'and patronage'.

This amendment is consequential on the previous amendment. It deletes words which have been inserted in more detail in clauses 5(c), (ca) and (cb). It provides a more detailed description of the intent of these clauses.

Amendment carried; clause as amended passed.

Clause 6—'Employee conduct standards.'

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

Page 4, line 26—Leave out 'the Government and'.

Members who have been in this place for some time would know that the issue of information and how it is dealt with has always been important to me. That is why I fought hard to have good freedom of information legislation, which, in fact, we do not have in this State. In general terms, we should have Government that is as open as possible, and only under extraordinary circumstances should information not be made available to the public. Obviously this relates to matters involving policing and commercial confidentiality, although sometimes that can be open to a broad interpretation.

I have had experience in the past of information which in the ordinary course of events would have found its way to the public being withheld by a specific instruction of the Government. I am not sure what the Government hopes to achieve with the Bill as it stands, but on my reading of it it would allow continuation of suppression of information which rightfully should find its way into the public arena, noting that it relates to employee conduct standards, and that will have application later in the legislation. I do not want to see a public servant being put into the position of being punished for carrying out what is otherwise their duty, yet this infers that it is their duty to withhold information when instructed to by the Government.

It could actually produce positions of conflict in some circumstances. There may be a better way of tackling the issue if the Government feels there is a legitimate case for the Government to specifically require information to be held back. But I am not happy with the Bill as it stands. It is for that reason that I am moving to strike out the words 'the Government and'.

The Hon. R.I. LUCAS: I am advised that this amendment is based on a complete misunderstanding of the intentions of this employee conduct standard. During the consultation process, considerable concern was raised about the protection of information and intellectual property of which public sector employees have knowledge in their work within agencies and within private sector organisations. This standard now makes it clear that employees are to deal with this information in line with guidelines established by the Government and its individual agencies.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: What do you think information and intellectual property is?

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: That is the reason why this has been raised. I am advised that this is why the provision is there. During the consultation process concern was expressed about the protection of information and intellectual property of which public sector employees have knowledge. It was to make clear that those employees were to deal with the information in line with guidelines established by the Government and their individual agencies. The Hon. Mr Elliott is jumping at shadows saying that this provision says that employees will be required to conceal information from the public which otherwise they would have to reveal. Frankly, I do not see how any sensible reading of the provision can interpret that meaning from the subclause. There is a Freedom of Information Act. The Hon. Mr Elliott might have some problems with the way it operates, but—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Elliott says that officers of the Public Service who interpret it are abusing it. That is offensive to those officers in the Public Service.

The Hon. M.J. Elliott: I said that the instructions are coming out of ministerial offices.

The Hon. R.I. LUCAS: I can speak only for my agency, but I have one or two FOI officers and they make the decisions. I do not issue instructions to the FOI officers in the Department for Education and Children's Services. They make the decisions in accordance with the provisions of the Act. The Hon. Mr Elliott says that ministerial officers are interfering with freedom of information officers in Public Service departments. If he has evidence of that, he ought to take up the issue with the Premier or the Minister involved or raise it in this place. There is a Freedom of Information Act in relation to public access to information under guidelines. To suggest that in some way we are seeking to subvert the Freedom of Information Act through this provision in the Public Sector Management Bill is to stretch a long bow. There is no such intention. The intention is to draft a genuine provision in relation to the issues that have been raised in consultation. The FOI Act remains. This will not prevent the operation of the Freedom of Information Act from continuing and being interpreted as it is by public servants operating as FOI officers in agencies.

The Hon. M.J. ELLIOTT: Unfortunately, the Minister has misinterpreted what I said. I raised the FOI legislation in the context that I am consistent in this place in wanting to see open government and having as much information as can be reasonably provided made available to the public. The Minister has now given some reasons why the Government wants something like this clause in terms of talking about intellectual property, which I understand. It talks about dealing not with intellectual property but with information, which is a broad generic term covering not just intellectual property. The Minister also talked about the guidelines. It does not refer to guidelines; it refers to 'the requirements'. I think it has quite a broad ability to suppress information, and that causes me concern.

Over the years I have on occasions been aware that information which any reasonable person would have thought would be made public was suppressed—for instance, agencies writing reports required under legislation, such as environmental impact statements. We have had Ministers instructing officers, who were acting under the clear guidance

of their legislation and writing an EIS, to rewrite the EIS because they were not happy with the content. The content was generated independently, as required under legislation, and it happened on a couple of occasions. Surely that is dealing with information. In this instance they are dealing with information as required under legislation, but they can be told, 'Rewrite that report. This information is not to become public because it does not suit us that it should.' I find that unacceptable. It is a conflict between the requirements that the public servant had under legislation elsewhere. I understand the Government's concern, but I am not happy with the wording.

Amendment carried.

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

Page 4, after line 30—Insert paragraph as follows:

(f) observe all relevant legislative requirements.

I have already argued this on one other occasion. I think it is important that employees in terms of their conduct should be behaving according to legislative obligations.

Amendment carried; clause as amended passed.

New Part 2A—'Public Service Management Board.'

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

Page 4, after Part 2—Insert new Part as follows:

PART 2A

PUBLIC SECTOR MANAGEMENT BOARD

Establishment of Board

6A. There is to be a Public Sector Management Board.

Constitution of Board

6B. (1) The Board is to consist of not more than seven members, of whom—

(a) one is to be the Commissioner; and

(b) the remainder are to be persons appointed by the Governor.

(2) Of the persons appointed by the Governor—

(a) one is to be a person employed in the public sector who has been nominated by the United Trades and Labour Council; and

(b) the remainder are to be persons who, in the opinion of the Governor, have appropriate knowledge and experience in the area of management.

(3) The membership of the Board must include at least two men and at least two women.

(4) One member of the Board is to be appointed by the Governor to preside at meetings of the Board.

(5) The Governor may appoint a suitable person to be the deputy of a member of the Board.

(6) The deputy of a member may, during the absence of the member, act as a member of the Board.

Conditions of appointment

6C. (1) An appointed member of the Board is to be appointed for a term not exceeding three years and on conditions determined by the Governor.

(2) An appointed member of the Board is, at the end of a term of appointment, eligible for reappointment.

Termination of appointment to Board

6D. (1) The appointment of a member of the Board may be terminated by the Governor on the ground that the member—

(a) has been guilty of misconduct; or

(b) has been convicted of an offence punishable by imprisonment; or

(c) has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or

(d) is incompetent or has neglected the duties of the position.

(2) The appointment of a member of the Board is terminated if the member—

(a) ceases to have a qualification for continuing membership of the Board required by a condition of his or her appointment; or

(b) becomes a member, or a candidate for election as a member, of the Parliament of the State or the Commonwealth; or

(c) is sentenced to imprisonment for an offence.

(3) An appointed member of the Board may resign from the position by notice in writing to the Minister.

Procedure at meetings of Board

6E. (1) The person appointed to preside at meetings of the Board must, if present at a meeting, preside at that meeting, and, in the absence of that person, the members present at the meeting must choose a person to preside at the meeting from amongst their own number.

(2) A quorum of the Board consists of one-half of the total number of its members (ignoring any fraction resulting from the division) plus one.

(3) A decision in which a majority of the members present at a meeting of the Board concur is a decision of the Board.

(4) Subject to this Act, the business of the Board may be conducted in a manner determined by the Board.

Validity of acts of Board

6F. An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or defect in the appointment of a member.

Functions of Board

6G. (1) The functions of the Board are as follows:

(a) to keep all aspects of management in the public sector under review and—

(i) to establish appropriate general policies in relation to personnel management and industrial relations in the Public Service: and

(ii) to advise the Minister or other Ministers on policies, practices and procedures that should be applied to any other aspect of management in the Public Service or to any aspect of management in other parts of the public sector; and

(b) to advise the Minister or other Ministers on structural changes to improve the efficiency and effectiveness of public sector operations; and

(c) to carry out or recommend necessary planning for the future of the public sector; and

(d) to review (on its own initiative or at the request of the Minister or any other Minister), the efficiency and effectiveness of any aspect of public sector operations and to report the results of the review as required; and

(e) to devise in cooperation with public sector agencies programs and initiatives for management improvement in the public sector and to recommend their implementation to the Minister or any other Minister; and

(f) to carry out any other functions assigned to the Board by the Minister.

(2) In carrying out its functions under this Act, the Board may investigate matters relating to a public sector agency and, for that purpose, may require, and must be afforded, the cooperation of the agency and persons employed in or by the agency.

General policy directions

6H. The Board may give the Commissioner general directions for the purpose of implementing its policies in relation to personnel management or industrial relations in the Public Service.

Extent to which Board is subject to ministerial direction

6I. (1) Subject to this section, the Board is subject to direction by the Minister.

(2) No ministerial direction may be given to the Board—

(a) requiring that material be included in, or excluded from, a report that is to be laid before Parliament;

(b) requiring the Board to make, or refrain from making, a particular recommendation or comment when providing advice or making a report to a Minister under this Act;

(c) requiring the Board to refrain from making a particular review of public sector operations.

(3) A ministerial direction to the Board—

(a) must be communicated to the Board in writing; and

(b) must be included in the annual report of the Board.

Delegation by Board

6J. (1) The Board may, by instrument in writing, delegate a power or function under this Act.

(2) A delegation under this section—

(a) may be absolute or conditional; and

(b) does not derogate from the power of the Board to act itself in any matter; and

(c) is revocable at will.

Conflict of interest

6K. (1) If—

(a) an appointed member of the Board has a pecuniary or other personal interest in a matter; and

(b) that interest conflicts, or may conflict, with the member's official duties,

the member must disclose the nature of the interest to the Minister and must not take any further action in relation to the matter except as authorised by the Minister.

(2) The Minister may direct an appointed member of the Board to resolve a conflict between a pecuniary or other personal interest and an official duty.

(3) Failure to comply with this section or a direction under this section constitutes misconduct.

Annual Report

6L. (1) The Board must, before 30 September in each year, present a report to the Minister on the work of the Board during the preceding financial year.

(2) The report must—

(a) describe any significant improvements in the management of public sector operations effected during the period to which the report relates; and

(b) describe any major changes to the structure of the public sector during the period to which the report relates; and

(c) describe any significant reviews undertaken by the Board during the period to which the report relates with respect to the efficiency and effectiveness of public sector operations; and

(d) deal with any other matters stipulated by the regulations.

(3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

The Public Sector Management Bill scraps the provisions of the current GME Act for the Public Service Management Board. The major concern with the current Bill is that it undermines the independence of the public sector. It does so in many ways. In this issue, we intend to debate it further on as we progress through the amendments. The removal of the board, together with other changes the Government is introducing in the Bill, effectively remove important safeguards for the independence from direct political interference. I recommend the insertion of these provisions back into the legislation.

The Hon. R.I. LUCAS: The Government very strongly opposes this particular provision and for a whole variety of reasons. It seems to be fundamentally inconsistent with what both the Labor Party and the Democrats on behalf of the PSA and others have been arguing in relation to the Public Sector Management Bill.

The Hon. M.J. Elliott: Don't make assumptions about me yet.

The Hon. R.I. LUCAS: I am delighted to hear that because so far I have not seen much evidence of the Labor/Democrat nexus being broken. If that is to change, I will be delighted to see it. What we have here is a suggestion which in effect strikes at the very notion of independence in the public sector. What the Hon. Mr Roberts is suggesting is that we have a Public Sector Management Board which is to have, in effect, one commissioner, and the other six persons, up to seven, are to be appointed by the Governor or the Government. If we are looking at a Labor Government with John Bannon and Bruce Guerin driving the ship of State, we have one commissioner and six persons appointed by the politicians, the Government, who control the Public Sector Management Board.

Then, under clause 6H we have the board in effect controlling the Commissioner. The board gives the Commissioner general directions for the purpose of implementing its policies in relation to personnel management. So, in one fell swoop, the Labor Party—professing to support independence and non-politicisation of the public sector—is in effect striking at what is the very heart of the Government's Bill. The Government has a Commissioner for Public Employment who does not take direction from the Premier or any Minister but is independent. The provision in clause 22 of the Government Bill, under 'Extent to which Minister is subject to Ministerial direction', provides that 'The Commissioner is not subject to direction by the Minister except in the exercise of delegated powers.'

The Government's framework is to look at having a truly independent Commissioner for Public Employment exercising his or her powers fearlessly and independently. The Labor Party now proposes that we take this supposedly independent person and establish above him or her a public sector management board where, in the circumstances that I have outlined, the Government of the day does the appointing. Let us take the situation of John Bannon and Bruce Guerin: the Government of the day appointed six or seven of Bruce's mates as members of the Public Sector Management Board. That board, appointed by politicians—by the Government of the day—in effect had the power to issue directions to and exercise control over the Commissioner for Public Employment. Then, under the ruse of saying that it will protect the independence of the public sector, through this series of amendments the Labor Party is seeking to reinstitute Government, ministerial and the Premier's control over the Commissioner for Public Employment and the operations of the Commissioner in relation to the public sector.

So, here we see the Labor Party seeking to do with this package of amendments what it previously accused the Liberal Government of doing. What the Hon. Mr Roberts wants to do is appoint his cronies to the board, who would control the Commissioner and issue directions under clause 6(h) which provides that the board can give the Commissioner general directions for the purpose of implementing its policies; and under this provision the board is subject to direction by the Minister. It then outlines various provisions of the legislation, including the Minister telling the board what to do, the board being able to tell the Commissioner what to do and the Commissioner implementing the powers.

I ask the Hon. Mr Roberts to justify his explanation of his amendments and explain how they will protect the independence of the public sector when the Government's Bill provides that the Minister is not able to control the operations of the Commissioner for Public Employment. There is something fishy here. I do not know what the Labor Party is up to in relation to this amendment. I suppose that, if I were not genuinely interested in public sector reform and management and an independent public sector, I would sit here quietly and let the Labor Party and the Democrats crunch the numbers and then at the end of it say gratefully, 'That is terrific; we will appoint not six of Bruce Guerin's mates but six of my mates to the Public Sector Management Board. People can line up and we will appoint them to the board and then they will be able to control the Commissioner and what goes on in the public sector.'

That is not what the Government is about; we are interested in genuine public sector reform and a genuinely independent public sector in relation to the operations of the Commissioner for Public Employment. I do not understand why now, with the Labor Party having professed to support an independent Public Service and stopping the politicians controlling the public servants, on behalf of Mr Rann and the Labor Party the Hon. Ron Roberts stands up in this Chamber and says that the Labor Party wants a provision which would create a situation such as Bruce Guerin and six of his mates controlling the Public Service again.

The Hon. R.R. Roberts: What's the difference?

The Hon. R.I. LUCAS: Well, I'm interested. I am seeking from the Hon. Ron Roberts some explanation as to his arguments in relation to this provision. In a moment we will look at a range of other arguments in relation to the board, its effectiveness and things that the old Government Management Board did and did not do; basically, it was defunct for the last few months of the Labor Government, anyway.

This is an important issue, and I really do seek some guidance from the Hon. Ron Roberts with respect to how he justifies his claim in relation to this matter, the package of amendments, the structure that he is seeking to form and how it will operate, and how it will, in effect, allow the commission to operate independently.

The Hon. M.J. ELLIOTT: Has the Government appointed board members since it has been in power? What is the current status of the board under the GM&E Act?

The Hon. R.I. LUCAS: I understand that the status of the board for the last 18 months or so of the Labor Government was that it did not meet and, as this Bill indicates, the new Government is intent on getting rid of the board as it does not believe that an effective Public Service needs the board. There is a whole range of other arguments we can look at in relation to that matter, but the Government has not appointed new members to the Government Management Board because it has been the Government's intention to abolish the board and establish this new structure and framework.

The Hon. M.J. ELLIOTT: I had not intended to either move or support an amendment in this area. I have indicated that there are some areas where the Public Sector Management Bill is different to the old GM&E Act, and this is one area of significant difference. The Government Management Board is as political or apolitical as a particular Government decides to make it, and I think the Hon. Mr Lucas is quite correct when he says that the Government can make it very political if it chooses to do so by way of its appointments. Frankly, having watched the way in which a few Ministers have gone about making appointments, I would say that, given the chance, it might become a very political board anyway, so his arguments are very convincing and very accurate in terms of what the current Government could do and could be tempted to do.

As I indicated, this is an amendment of the Labor Party that I am not going to support. I think that it is significant only in so far as it was a large component of the old GM&E Act, although the board has been dysfunctional for some years. I could have taken the line of leaving it in the legislation and then trading amendments if it ever went to conference, but I do not work in that fashion: I try to get things as I think they should be first time around and I do not count how many I got and how many I gave. I do not support the amendment.

The Hon. T. CROTHERS: I listened very carefully to the Minister for Education and Children's Services when he called on our spokesperson to prove just what it was that we were after in respect of the Government's proposal. However, I believe that the onus is on the Government because, if one looks at its track record over the past 15 months in relation to any statutory authority or board, one can see that appointees of the previous Labor Government are being replaced, are being offered very generous retirement packages and are being asked to consider resigning—and I am aware of dozens of examples. I am sorry that the Hon. Mr Elliott does not see fit to support the amendment, because he did support part of the logic that I am presenting to the Chamber at this time. The track record of the Government with respect to the reconstitution of boards and statutory authorities is not good, and that is after only 15 months. In my view, and indeed in the view of any objectively honest thinker, it has been ideologically driven.

It has not been driven, as the Hon. Mr Lucas would suggest, so that the reconstitution of this particular body will ensure a leaner, meaner fighting machine. With due deference to the Minister, that has not been the case over the past 15 months, from the very first day that the Liberal Party took government in this State. I think that the matter should be reconsidered by the Democrats. Certainly, the Hon. Mr Elliott has indicated concerns along similar lines to those that I am now expressing. I do not think the onus of proof is on the Opposition at all: I think it is on the Government Minister, who may well be having to make a good fist of what is a bad track record by this Government in respect of the restructuring or the removal of boards relative to what has been, I think, an ideologically driven piece of rationale on their behalf.

There are many examples of that, far too numerous for me to cite, but everyone on both sides of this Chamber knows very well what has occurred. I suggest again to the Hon. Mr Lucas that, if he seeks to pursue this matter, he has to prove to us that the Government is not following the same course as it has until now with respect not only to the restructuring of boards but also to the appointment of new members to boards. The Minister also has clearly to demonstrate to the Committee that the board he is suggesting will in fact be leaner, meaner and more independent. I do not think he has done so currently and, in the light of his Party's and the Government's track record in this matter, even though he may well be expressing honest intent on his part, it will be very difficult for him to convince me that the majority of the dries in his Caucus room are of the same view, as good a face as he might put on it, as he with respect to the ideological component that has been constant in everything that this Government and some of its Ministers have done relative to authorities and boards in this State, particularly those that were within its province.

I think the amendment that we are moving, whereby we seek to ensure that the Government makes the appointment, is a reasonable attitude by the Opposition. Heaven knows, we have been sore put to comprehend some of the rationale that has persisted in Government ranks about this very matter in other areas. So, I would ask the Hon. Mr Lucas to convince me in respect of the matter on which he seeks to have a conviction expressed by us that will convince him. I think the boot is on the other foot, in the light of the Government's track record.

The Hon. R.R. ROBERTS: The decision to reinsert this was basically one of consistency, and it goes back to the commitment given by members of the Liberal Party when in opposition that they would not be making any changes to the GME Act. I am less attracted to it than I was when I first put the proposition, having listened to the contribution by the Hon. Mr Lucas. It is very clear what he would do with it if he had the opportunity, unlike the previous public management board, which consisted of people of the highest integrity and honour—including some members of the Liberal Party, I might add—who were so efficient and effective that they did not have to meet, and the Government was not required to have them meet.

Clearly, the Hon. Mr Lucas has indicated today that, given the opportunity to do this, it would be his intention to load it up with Liberal Party hacks and cronies. So, after his efforts to sway me, I am not as convinced that it would be a good thing for us to succeed on this. Clearly, if we are to insist on consistency from the Government in its pledge to the Public Service and to others that there will be no major changes to the GME Act, we have no alternative but to put up this proposition.

Indications are that we will not be successful with this amendment. However, I am less fussed about losing this now given the quite alarming outline that has been provided by the Hon. Mr Lucas. In fact, he has convinced me that it will not be too bad a loss after all.

Amendment negatived.

Clause 7—'Public Service structure.'

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

Page 5, line 21—Leave out 'Minister' and insert 'Commissioner'.

This amendment is consequential on other amendments, and I see that the Hon. Mr Elliott has an amendment listed in the same terms.

The Hon. R.I. LUCAS: Most of these amendments I concede are consequential but, with respect to this amendment, I want to put another proposition to the Labor Party and the Democrats. Perhaps they might consider something like 'designated by the Minister after consultation with the Commissioner'. Certainly, when we are talking about the abolition of an administrative unit, the Government has a very strong view that there is a role in there somewhere—and we believe it ought to be the role of the Minister—in relation to the abolition and the provision for the transfer of employees into another administrative unit.

We have chief executives officers and Ministers running their departments. If I am talking about abolishing an administrative unit within the Department for Education and Children's Services, the Act ought to recognise in practice the reality of what will happen. The Minister will have some say in this issue. I know that the Labor Party and the Democrats have had the numbers in relation to all these provisions, changing the wording from 'Minister' to 'Commissioner', but I should have thought that on this issue they might consider a proposition which said something like 'designated by the Minister after consultation with the Commissioner'.

I am advised that the Minister in this case is the Premier representing the relevant Minister, rather than the Minister himself, so I had that slightly wrong. What we are talking about here is a Government or, in my case, a Minister working with the Premier on the abolition of an administrative unit. In reality that will be the position. It will not be the Commissioner in his or her office talking about the abolition of administrative units, transfers and things like that. We are saying that if there needs to be an involvement it could involve a designation after consultation with the Commissioner.

In reality, Governments, Ministers and the Premier will make decisions in relation to whether or not a particular administrative unit is to be abolished and whether people are transferred from that unit to another administrative unit, or whatever. They are the sorts of management decisions that Premiers and Ministers are elected to take. I accept that the Opposition does not agree with that, but it is obviously the Government's preferred position. In relation to this amendment, a compromise position might be as I have already suggested. The reality and the facts of what ought to occur in relation to decision making are recognised, but there should perhaps be some consultation with the Commissioner as the independent protector of the interests of public servants.

The Hon. M.J. ELLIOTT: I am willing to give further consideration to this issue but not right at this moment, because I do not want to do it on the run. I had on file an amendment in identical terms and I will be supporting the amendment of the Hon. Mr Roberts. There are some issues which we have covered before that I am not prepared to revisit but this is one that I might.

The Hon. R.R. ROBERTS: In his explanation the Hon. Mr Lucas said that in the real world the decision would be taken by the Minister, and he suggested that we ought to canvass the possibility of an amendment which referred to 'the Minister after consultation with the Commissioner'. By the amendment, I suggest that we will ensure, if Mr Lucas's proposition is correct that the Minister will virtually decide, that the Minister confers with the Commissioner. By removing the word 'Minister' and inserting 'Commissioner', we will virtually ensure that the Minister must consult and explain fully to the Commissioner what his intentions are before the Commissioner gives it his imprimatur. I cannot speak for the Hon. Mr Elliott but I believe that the amendment achieves basically what you are trying to achieve. You are actually doing what you accused the Opposition of doing—applying extra words. My assertion is that, by inserting 'Commissioner', when the Minister, the Premier or the Government make a decision, they will have to confer with the Commissioner and explain fully what they are about and then the Commissioner I suggest will give his imprimatur in 99.9 per cent of cases.

The Hon. R.I. LUCAS: I welcome the Hon. Mr Elliott's indication that he is prepared to consider again some amendment along these lines. One of the problems with the Hon. Mr Robert's proposition is that under the scheme we have the Minister cannot direct the Commissioner. The Commissioner is independent and therefore the scheme of arrangements that you have here would have the Commissioner taking these sorts of decisions. I accept that the Labor Party and the Democrats have the numbers. I also accept the proposition of the Hon. Mr Elliott that he may be prepared to consider something further in this area and the Government will certainly take that up.

Amendment carried.

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

Page 5, after line 21—Insert subclause as follows:

(5a) Before a recommendation is made to the Governor as to a matter referred to in subsection (3) that will affect a significant number of the members of a recognised organisation, the Minister must, so far as practicable—

(a) notify the organisation of the proposed recommendation; and

(b) hear any representations or argument that the organisation may wish to present in relation to the proposed recommendation.

This amendment effectively reinstates a provision of the old GME Act. The provision is not binding on the Minister in terms of what action is carried out but simply gives an opportunity for representatives of employees to be consulted and express opinions. I do not think it is limiting. I think the more we encourage consultation on these sorts of matters, the better. As I said, it is simply reinstating a provision of the old Act.

The Hon. R.I. LUCAS: This has been debated before so I will not go over the arguments again. The Government opposes it for the reasons indicated earlier.

Amendment carried; clause as amended passed.

Clauses 8 to 11 passed.

Clause 12—'Termination of chief executive's appointment.'

The Hon. R.I. LUCAS: I move:

Page 7, line 24—Leave out 'four weeks' and insert 'three months'.

Currently, the Bill provides that the chief executive must themselves give not less than three months notice in writing when resigning from his or her position. This amendment extends the period of notice which must be given to a chief executive whose appointment is terminated without cause from four weeks to a similar period of three months. With cause, terminations remain as immediate upon completion of due process as specified within contracts. A similar amendment will be moved by the Government in relation to the executive. Again, this is an indication where the Government, after consultation with various persons and bodies, has been willing to make an amendment to its Bill and I urge members to support it.

Amendment carried; clause as amended passed.

Clause 13 passed.

Clause 14—'Chief executives general responsibilities.'

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

Page 8, line 20—After 'objectives' insert 'consistently with legislative requirements'.

I recognise that a unit has to contribute to the attainment of the Government's overall objectives. My amendment recognises the duality of the role of the public sector, being responsive to the Government but also being responsive to legislative requirements. I am picking up the idea that the Government should not require people to do things that are contrary to what legislation requires of them, but with the proviso that they should be contributing to the attainment of the Government's objectives.

Amendment carried; clause as amended passed.

Clause 15 passed.

New clause 15A—'Rights of recognised organisations to make representations to chief executive.'

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

Page 8, after line 25—Insert new clause as follows:

15A. (1) Before making a decision, or taking action, that will affect a significant number of the members of a recognised organisation, a chief executive must, so far as is practicable—

(a) notify the organisation of the proposed decision or action; and

(b) hear any representations or argument that the organisation may wish to present in relation to the proposed decision or action.

(2) Nothing in this section limits or restricts the carrying out of a function or exercise of a power by a chief executive under this Act.

My amendment inserts into the Bill the current GME Act provisions recognising organisations. The Bill removes the current requirement on CEOs to consult with recognised organisations whose members would be affected by change. Sound management practice requires consultation with affected parties to occur. The Liberal Party may believe that this can occur with individual employees, but anyone with an understanding of what really happens in the workplace knows that that does not work.

The Bill is a shabby attempt to reduce workers' rights and conditions by removing workers' organisations, that is, the unions, from the process. This amendment makes it necessary for proper consultation to occur with the unions. The Hon. Mr Elliott has a similar amendment on file and I have referred to this provision in a previous contribution. I seek the Committee's support.

The Hon. R.I. LUCAS: Again, the Government opposes the amendment. This is a further example of the issues that I raised earlier. The provision could unnecessarily restrict the responsiveness of a Public Service organisation—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: The way it operates in some public sector agencies is that it can restrict. As I said, in regard to major issues there ought to be consultation. We are talking here not necessarily about major or significant issues. Before any decision or action is taken, there should be consultation, and it does not have to be a significant policy decision or anything like that: it could be a decision on anything, any action on anything that affects a significant number of members of a recognised organisation. If there is a small union in the workplace, one issue involves the need to get information. Now that we do not have compulsory union membership, we will need to know the number of members of the PSA and other unions because we will have to make a judgment about whether or not it affects a significant number of them.

We will need that advice from the PSA, and I am sure the UTLC and other bodies will be more than prepared to cooperate with the Government to tell us what the numbers are in various agencies so that we can make a judgment as to whether or not it will affect a significant number of them. If you have a small union in there—it could be any trivial small action or decision—if it affects a significant number of them, the expectation under this is to consult and to give them appropriate consideration. In the real world, if anyone ever gets to the position of running a Government department, it is ludicrous that in any decision or any action—no matter how small—which affects a significant number of a small union within your workplace you should go and consult. At the very least, if you took the position of the Labor Party and the Democrats, I would have thought one could talk about some sort of significant policy issue or some sort of significant issue generally—some sort of indication in the legislation that gives an order of magnitude or importance.

Whilst I know that the Labor Party and the Democrats will not look at that on the run, I just leave that as a suggestion that, if members opposite are insisting on leaving these provisions in the Act, at least give some indication to managers—chief executive officers and others—that we are talking about some order of magnitude or importance. This is the point the Hon. Terry Roberts was making: we do not want to retreat to the 1950s just because that is a safe place to go. The Hon. Terry Roberts made what I thought was, at least in part, some sort of constructive and visionary contribution in trying to move the public sector forward, rather than retreating to the safety and security of the past.

As I said, his was a very constructive contribution because there is not much point in retreating to the security blanket of the past, saying, 'It existed before; therefore we must keep it for the future and everything will be right if we maintain those particular provisions.' We need to think through the provisions. As you do have the numbers to insist on them, let us try and look at something which is a little more sensible and talks about significant issues or some order of magnitude,

rather than as it is drafted involving any decision or any action that will affect a significant number of members of a union, with the chief executive then having to notify the people concerned and hear any representation or argument. If one is going to talk about efficiency or competitiveness in any way, this sort of notion in its current form ought not to exist in a public sector format which is aiming at having an efficient or a competitive public sector to take us into the next century.

The Hon. R.R. ROBERTS: The honourable Minister talks as though this is an enormous encumbrance. I will be interested to hear of a couple of instances where this has created a mammoth problem. I point out to the Minister the following:

> . . . a chief executive must, so far as is practicable—
> (a) notify the organisations of the proposed decision or action. . .

As to the example the Minister gave of a small group of people where it is not practicable, I do not think this has caused significant problems in the past. In fact, I have not been notified of one—I do not know whether the Minister has—where it has proved to be an overwhelming problem anywhere. It is something which we have worked with for a long time and I do not think it—

The Hon. R.I. Lucas: People are just ignoring it.

The Hon. R.R. ROBERTS: I do not know whether or not people are just ignoring it. There will be occasions when, in the interests of justice, there need to be some guidelines we can fall back on. This has been tested and tried: it introduces no new grounds into the system but is part of the commitment that has been given to the Public Service and others that there be no change. I still support the proposition as promoted.

The Hon. M.J. ELLIOTT: If previous Governments and the present Government have not carried out the sort of actions described in this proposed amendment then, frankly, I think they show themselves to be very poor managers. I have actually worked in the real world in various workplaces and I have found that good organisations are highly consultative. I might add that—

An honourable member interjecting:

The Hon. M.J. ELLIOTT: I certainly was not suggesting that that occurred in relation to every decision. Good organisations are consultative, and I would say this applied not just with recognised organisations but with employees, whether or not they happen to be members of an organisation.

The Hon. R.I. Lucas: Why didn't you put them in?

The Hon. M.J. ELLIOTT: It would be 'as well' not 'instead'. I do not believe that this will cause any difficulties. If the Government chooses to ignore it then I would say that it would be an act of managerial irresponsibility.

New clause inserted.

Clauses 16 and 17 passed.

Clause 18—'Commissioner for Public Employment.'

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

> Page 10, lines 6 to 8—Leave out subclause (3) and insert—
> (3) There is to be a Deputy Commissioner for Public Employment who is also to be appointed by the Governor.
> (4) The Deputy Commissioner is to act as Commissioner—
> (a) during a vacancy in the position of the Commissioner; or
> (b) when the Commissioner is absent from, or unable to discharge, official duties.

This amendment provides that the Deputy Commissioner for Public Employment be appointed by the Governor and not the Minister. This is consistent with the Opposition's proposition that there should be greater independence. One realises the practicalities of it but I think it needs to be there. The appointment of the Commissioner for Public Employment is to be by the Governor. To allow a different process for the appointment of a deputy opens up the risk of political interference.

The Bill allows for the *ad hoc* appointment of an acting Commissioner for Public Employment by the Minister. This could result in situations where the Minister takes the opportunity to appoint an acting CPE when it is politically convenient for the Government to do so and because it expects more favourable consideration of its views than might otherwise occur if the position were completely independent. I ask for the Committee's support on this amendment.

The Hon. R.I. LUCAS: I have been waiting for this amendment. I have been listening to the Hon. Ron Roberts talk about three quarters of the amendments being important because the Government promised to keep the GME Act as it was and he was reinstituting the provisions of that Act in accordance with the Government's commitment to maintaining that measure. The Government's amendment to this provision actually does that.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I have been waiting for this amendment all night. The Government is reinstituting, after consultation with various bodies and individuals who had some concern about this matter, the provision in the GME Act. I therefore look forward to the Hon. Ron Roberts' (consistent with all of his arguments this evening) withdrawing his provision, which is, of course, not consistent with the GME Act. It is a new provision that he has dreamt up with the PSA or someone else and it is completely inconsistent with the GME Act. He should support the Government, which on this occasion is reintroducing a provision of the GME Act. I urge the honourable member, consistent with his statements tonight, to withdraw his amendment now and support the Government's amendment.

The Hon. M.J. ELLIOTT: The Hon. Mr Roberts could argue back that, for the Hon. Mr Lucas to be consistent, he should not be putting back any of the old GME Act. It probably cuts both ways. The notion that you 'may' appoint a suitable person as distinct from you 'will': either it is a good idea or it is not and you will or you will not appoint a deputy commissioner. I do not know why the word 'may' was in the old GME Act. I have not been insisting that every section of the GME Act be reinstalled. I have certainly agreed to some changes, as indeed I guess the Labor Party has as well. The Hon. Mr Lucas has to produce a substantial argument on why it should be 'may' appoint rather than that the deputy commissioner will be appointed. That position should exist because you cannot always predict when the commissioner will be unable to discharge his/her duties. You should not wait until a person becomes ill to appoint a deputy commissioner. A deputy can and should always be in place.

Amendment carried; clause as amended passed.

Clauses 19 and 20 passed.

Clause 21—'Functions of Commissioner.'

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

> Page 11, line 3—After 'issue' insert 'directions and'.

I am inserting the words 'direction and', such that the commissioner will not only develop and issue guidelines, but the commissioner will develop and issue directions and guidelines relating to the understated things within the Bill itself. There will be a consequential amendment in relation to the directions where I will be saying that the directions

may be expressed to apply to all employees or particular employees or classes of employees, including statutory office holders with the powers and functions of a chief executive under this Act which are binding on the persons to whom they are expressed to apply.

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

Page 11, lines 3 to 14—Leave out paragraphs (a) and (b) and insert—

(a) to ensure implementation of the general policies in relation to personnel management and industrial relations established by the board;

(b) to establish and ensure implementation of appropriate practices and procedures in relation to personnel management and industrial relations in the Public Service;

(ba) to make general employment determinations under Part 6;

(bb) to develop and issue directions and guidelines relating to personnel management and industrial relations in the Public Service;

(bc) to provide advice and assistance to administrative units in relation to personnel management (including staff development and training) and industrial relations;.

The purpose of this amendment is to vary the functions of the Commissioner to include responsibility for implementation of policies. This Bill gives the CPE only policy development and monitoring roles. The amendment extends those roles to include both the establishment and the implementation of practices and procedures. Public sector conditions need a level of uniformity across agencies, and this can only occur if the Commissioner for Public Employment has a role which involves ensuring implementation. In our submission, a monitoring role is not good enough, and we ask the Committee for support.

The Hon. R.I. LUCAS: The Government's amendment is slightly different from the Hon. Mr Elliott's. We seek in line 3 to amend the clause to read 'to develop and issue guidelines or, where the Commissioner considers it necessary, directions'. The Government, in effect, is trying to achieve the same thing as the Hon. Mr Elliott, but he uses fewer words. I suppose that the Government's amendment contains the notion of a judgment having to be made by the Commissioner, but in order to expedite matters I will not move my amendment, and I indicate my preparedness to support the Hon. Mr Elliott's amendment.

The Hon. M.J. ELLIOTT: I invite the Hon. Ron Roberts to explore what he perceives to be the differences between my amendments and his and whether or not he sees them as alternatives or complementary in part.

The Hon. R.R. ROBERTS: Obviously, I take my instructions from the shadow Minister in another place, but my understanding is that it lays the matter out further. According to my brief, clause 21 deals with the powers of the Commissioner for Public Employment. Under the current Bill, the powers of the Commissioner for Public Employment are limited to guidance and monitoring compared with the current arrangement of being able to issue employment determinations and of being the common law employer of public servants. The Bill differs from the current GME Act in that it moves the current powers of the Commissioner for Public Employment to the chief executive officers. These CEOs whilst being competent in respect of the work of their agencies do not have the interests of the whole of the Public Service as their main focus. They have been employed to manage their agencies. By giving them the authority contained in this Bill, they may exercise that authority in a manner which could be to the overall detriment of the Public Service. It is necessary for the central authority, such as the Commissioner for Public Employment, to be able not only to issue guidelines but to make determinations regarding employment with the public sector. To do otherwise is likely to lead to a situation where agencies may have quite different employment practices and even in some cases be counterproductive as agencies and compete with each other.

Wealthy agencies could offer inducements drawing staff away from less well off service agencies to the detriment of the whole service. By giving CEOs the current Commissioner for Public Employment's powers rather than have a single Public Service, we will have several operating independently within the State. If the Government's current position with respect to enterprise bargaining is anything to go by, the Government is not genuine in what it is doing this Bill. Currently, agencies do not have the authority under the registered agreement in the enterprise bargaining framework agreement to negotiate enterprise agreements. They have not been permitted to do so, as the Government has sought to exercise a central control over the enterprise bargaining negotiations. Therefore, it is unclear why the Government has included this provision in the Bill, even when it has the opportunity to allow agencies to act independently in certain cases. It will not let them to do so. The amendment recognises the need for the central coordination of the employment conditions and related determinations of the Public Service and reinstates such authority with the Commissioner for Public Employment. Having exercised my duty to my shadow Minister, I am also advised that the amendment as proposed by the Hon. Mr Elliott meets the majority of the concerns expressed and we can support his amendment.

The CHAIRMAN: I point out to the Hon. Ron Roberts that paragraph (a) of his amendment has already been lost in a previous amendment.

The Hon. R.R. ROBERTS: I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

The Hon. M.J. Elliott's amendment carried.

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

Page 11, line 15—After 'personnel management' insert 'and industrial relations'.

The amendment extends to the Commissioner for Public Employment powers to review management and industrial relations practices, not just personnel. Limiting the Commissioner for Public Employment to reviewing only personnel practices as provided for in this Bill is only doing half the job. In order to address genuinely the workplace problems and concerns, the ability to review management and industrial relations practices is vital. The interrelationship between these areas is such that, without the amendment, the Commissioner for Public Employment's ability to review concerns realistically is limited. I understand Mr Elliott's amendment is the same as or similar to mine. I seek his support.

The Hon. R.I. LUCAS: The Government opposes the amendment. I am advised that for some time now the Commissioner for Public Employment, whilst it is correct to say that a similar provision has existed in the GME Act, has not exercised under the previous Government—and certainly not under the new Government—powers in relation to industrial relations management within the public sector. Certainly, the arrangements in the 15 months of the Liberal Government, which I understand were similar in this respect anyway to under the Labor Government, is that the Department for Industrial Affairs is the Government agency that

handles industrial relations for the public sector. In relation to the black bans, strikes and industrial action currently occurring in the odd place here and there in the public sector at the moment, it is the Department for Industrial Affairs which has the collective wisdom in relation to industrial relations matters—

An honourable member interjecting:

The Hon. R.I. LUCAS: I do pretty well at the moment, actually—and all Government agencies are required to work with the Department for Industrial Affairs in the resolution of industrial relations matters. The view has been that we do not go to the Commissioner for Public Employment, because he does not have the expertise in that area, and he does not seek to pretend to have that expertise. We are not meant to be establishing our own industrial affairs directorates within our agencies, with dozens of them all over the place. There is the view that there is an agency of Government that handles industrial relations for the public sector. I am advised that that was the arrangement under the Labor Government, that the Commissioner for Public Employment did not have a profile in the area of industrial relations.

The handling of industrial relations was through the Labor Government's equivalent of the Department for Industrial Affairs. It may be right to say that this existed in the Act and therefore we must put it back. It is the security blanket argument to which the Hon. Terry Roberts referred earlier. It is not a sensible or constructive argument in relation to moving forward. The structure of the public sector is and will be that there is a Commissioner for Public Employment with a whole range of important functions and there is an agency of Government, the Department for Industrial Affairs, to handle industrial relations. To think that in one fell swoop by whacking into the Bill that the Commissioner for Public Employment will become the expert on industrial affairs and we will then have the Department for Education and Children's Services or the Health Commission running to the Commissioner for Public Employment, on the one hand, or the Department for Industrial Affairs, on the other, and getting conflicting advice in relation to industrial affairs is not a sensible way of conducting industrial relations in the public sector.

Members earlier talked about consistency in many areas. Whilst we have disagreed on some of the other areas, the notion of consistency has been part of the argument. Therefore, on this aspect the Government is saying that we need a consistent industrial relations framework in the public sector or at least an industrial relations framework being handled consistently by the one agency. There may be arguments about how consistent on occasions it is, but there is one agency handling industrial relations for the public sector, and that is the way the Government has structured its public sector approach to industrial relations. I would urge the Hon. Mr Roberts and the Hon. Mr Elliott to reconsider the proposition of whacking industrial relations in as another worthy function for the Commissioner for Public Employment to take on.

The Hon. M.J. ELLIOTT: I make the point that at line 15 we are talking about monitoring and reviewing of personnel management practices and, according to the amendment, industrial relations. Monitoring and reviewing are quite different functions from other functions of issuing directions and guidelines and those sorts of things. It really is something of a watching brief. I invite the Minister to persuade me otherwise, but I am not sure how we can talk about personnel management and not see that industrial relations bears some significant relationship to personnel management. Clearly those two issues will overlap. I point out again that we are talking about monitoring and reviewing, and that can be to a greater or lesser depth. I cannot understand what the Minister is concerned about and why he feels that the Commissioner having some interest in this regard will cause any severe overlap with the Department for Industrial Affairs.

The Hon. R.I. LUCAS: In response to the Hon. Mr Elliott, there is no doubt that on occasions personnel management and industrial relations issues will overlap. They do not have to but there is no doubt that they will. The structure of the public sector under the Government is that the personnel management function will be for the Commissioner for Public Employment substantially, and the industrial relations function will be for the Department for Industrial Affairs.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Obviously you will need consultation, but we are saying that the function of the Commissioner is to monitor and review industrial relations. The function might be to consult with the Department for Industrial Affairs about the industrial relations aspects of what the department is doing. That would make some sense. In reality, that obviously has to occur. However, I am saying that we should not include in the functions of the Commissioner something which is contrary to the structure that we have and which we think is a sensible arrangement. In other words, the Commissioner is substantially there for the personnel management issues; and the Department for Industrial Affairs handles industrial relations. Clearly and sensibly, those two agencies have to work together. If, for example, it involves the Department of Education and Children's Services, our agency personnel people have to work with both areas if there are overlaps. That is sensible public sector management practice.

I am saying that I do not think it is sensible to put it in this provision. If the Hon. Mr Elliott wants to ensure that there is consultation, he should draft something that talks about consultation between the Commissioner and the Department for Industrial Affairs in relation to industrial affairs and personnel management overlaps. However, I urge him not to do it in this way but to look at some alternative mechanism for doing it, perhaps in some other provision.

The Hon. M.J. ELLIOTT: I assure the Leader of the Government that I will not be drafting anything at six minutes past midnight. The issue will remain alive through my support of the amendment because I think it is important that the Commissioner has an interest in industrial relations, even if the Commissioner does not have the prime responsibility. I can understand the division that the Minister is talking about, but it would be a mistake to try to keep them mutually exclusive and separate in the way the Minister is trying to argue. The Commissioner has to be in a position at least to be able to see what is happening in the industrial relations area, although it is not a direct responsibility because it impacts upon personnel management and he needs to be in a position perhaps to pass comment on to wherever necessary and to have some input as distinct from perhaps a direct say.

The Hon. R.R. ROBERTS: I am advised that previous Governments have had a separate industrial relations department and, as has been pointed out by the Hon. Mr Elliott, this proposal requires monitoring and review of personnel management. In reality, they cannot be separated and, if the Commissioner is to be able to make proper decisions in a holistic way, taking into account all the

circumstances of every case, obviously he needs to be aware of industrial relations practices.

We would submit that the Department for Industrial Affairs has a role in respect of major policy development issues and advice to the Government, and we believe that this amendment requires the commission to monitor and review personnel functions. We do not see it as threatening. We see it as an adjunct to his responsibilities as Commissioner and it is a performance standard, if you like, to ensure that he acts according to world's best practice, for the want of a better description, in his decision making processes in respect of matters that come before him. I ask the Committee to support the amendment.

Amendment carried.

Progress reported; Committee to sit again.

ADJOURNMENT

At 12.11 a.m. the Council adjourned until Wednesday 8 March at 2.15 p.m.