LEGISLATIVE COUNCIL

Wednesday 5 April 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:

Adelaide Festival Centre Trust (Trust Membership) Amendment,

Gaming Supervisory Authority,

Real Property (Witnessing and Land Grants) Amendment,

Statutes Amendment (Gaming Supervision).

INDUSTRIAL AND EMPLOYEE RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That the sittings of the Council be not suspended during the continuation of the conference on the Bill.

Motion carried.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

The Hon. DIANA LAIDLAW (Minister for Transport): I move:

That the sittings of the Council be not suspended during the continuation of the conference on the Bill.

Motion carried.

PAPERS TABLED

The following papers were laid on the table:

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

Department for Employment, Training and Further Education Act 1994—Corporate Review and Annual Report 1994.

Industrial and Commercial Training Commission—Report, 1993-94.

Response to the Economic and Finance Committee—Interim Report on the Management of the Government Motor Vehicle Fleet.

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

Australian Barley Board—Report, 1993-94.

Agriculture and Resource Management Council of Australia and New Zealand—Records and Resolution Third Meeting, September, 1994.

Agriculture and Resource Management Council of Australia and New Zealand—Records and Resolution Fourth Meeting, October, 1994.

Regulation under the following Act—

Workers Rehabilitation and Compensation Act 1986—Claims and Registration.

By the Minister for Consumer Affairs (Hon. K.T. Griffin)—

Regulation under the following Act—

Fair Trading Act 1987—Health and Fitness Industry—Code of Practice.

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

Regulations under the following Acts—

Local Government Act 1934—Insurance Against Civil Liabilities.

Physiotherapists Act 1991—Fees Renewals.

District Council By-law—Coober Pedy—No. 6—Sewerage Scheme.

Corporation By-laws—Glenelg—

No. 1—Permits and Penalties.

No. 3—Vehicle Movement.

No. 5—Parklands.

No. 6—Public Conveniences.

No. 7—Caravans.

No. 9—Inflammable Undergrowth.

No. 10—Dogs.

No. 11—Bees.

No. 12—Garbage Removal.

No. 13—Tents.

No. 16—Patawalonga Boat Haven, Recreation Reserve, Boat Ramp and Boat Ramp Carpark.

No. 18—Jetty.

Development Act 1993—District Council of Tatiara—Keith Industrial Estate Plan Amendment Report.

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

Regulation under the following Act—

Art Gallery Act 1939—Opening Times.

LEGISLATIVE REVIEW COMMITTEE

The Hon. R.D. LAWSON: I bring up the twenty-third report 1994-95 of the committee.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. CAROLINE SCHAEFER: I bring up the interim report of the committee in relation to environment, resources, planning, land use, transportation and development aspects of the MFP Development Corporation for 1994-95.

JOINT COMMITTEE ON WOMEN IN PARLIAMENT

The Hon. A.J. REDFORD: I bring up the interim report of the joint committee and move:

That the report be printed.

Motion carried.

QUESTION TIME

COUNTRY ACTION PLAN

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 country action plan.

Leave granted.

The Hon. CAROLYN PICKLES: In 1993 the Department for Education and Children's Services or DEET, as it was then known, established a task group to develop a country action plan. The group prepared an information paper titled 'Improving Learning Outcomes for Country Students' to assist in obtaining input on issues to be addressed in the plan. During the Estimates Committee hearings last year the Minister said that a summary report had been distributed to all school groups and individuals who had responded to the consultation. The Minister said that a draft action plan had been prepared for checking against policy and further consultation. My questions to the Minister are:

1. Following this exhaustive process, can the Minister detail the recommendations made in the plan to improve the learning outcomes for country students?

2. What action has the Minister taken to implement the recommendations, and will he table a copy of the action plan?

The Hon. R.I. LUCAS: The final action plan has still not been resolved. I have seen the most recent recommended draft as a result of that extensive consultation period to which the honourable member has referred. It was commenced under the previous Government and, as I indicated in Estimates Committee last year, was continued by the new Government. I have seen the most recent version of that plan in the past few weeks. I believe a number of issues still need to be resolved before it is in a form that I am prepared to release as an indication of the rural action plan for country students.

My office and departmental officers intend to continue to work on that plan, and we are hopeful that sooner rather than later—after what has been, I acknowledge, an extended period—that action plan will be released. I am not in a position at this stage to indicate the final recommendations as they have not yet been resolved.

POLICE COMPLAINTS AUTHORITY

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General a question about Police Complaints Authority reports.

Leave granted.

The Hon. R.R. ROBERTS: All members of Parliament from time to time become involved in situations involving the use of the Police Complaints Authority. The authority is a useful tool in our society which gives people some confidence that decisions which are made and which affect either them or their family and friends are under some scrutiny. Section 52 of the Police Complaints and Disciplinary Proceedings Act imposes an obligation on the Police Complaints Authority to report annually to this Parliament as soon as practicable after 30 June each year. I understand that this Parliament has not received Police Complaints Authority reports for the past three financial years and that the head of the Police Complaints Authority, Mr Peter Boyce, is about to leave South Australia to take up a position in Darwin. What steps will the Attorney-General take to ensure that the three overdue reports will be completed in the immediate future?

The Hon. K.T. GRIFFIN: This is an issue that I have addressed with the Police Complaints Authority. Members will realise that the Police Complaints Authority is independent of Government. It cannot be given any direction by the Attorney-General, by any other Minister or by the Cabinet as a whole. One of the advantages of the Police Complaints Authority, as with the Ombudsman, is that it is independent, and that is what helps to build confidence into the system, as the honourable member has said.

The Hon. Anne Levy: The Ombudsman gives us his report every year.

The Hon. K.T. GRIFFIN: Well, the Police Complaints Authority did not give to the previous Government the reports which were required by the Act, and the previous Government did not follow it up.

Members interjecting:

The Hon. K.T. GRIFFIN: Three years. Mr Boyce was very sensitive to this issue, because his predecessor had left an absolute mess in terms of the backlog, the processes and the failure to prepare annual reports, and he made it a priority to write the reports for those three years, even though he was not the Police Complaints Authority for at least one of those years. Those reports have been provided to my office and they are presently going through the process. Members opposite who have been in Government will know that they go from the responsible Minister to the Cabinet office and then they are brought down to be tabled in the Parliament. They will be tabled when the processes have been concluded. I have the reports from Mr Boyce. He has been diligent in trying to get on top of the workload difficulties that he inherited and the problem of having to write a report for a period when he was not the Police Complaints Authority. I am pleased to say that it will be remedied in the very near future.

The Hon. Anne Levy: Before Parliament rises?

The Hon. K.T. GRIFFIN: I do not know. It is going through the process.

RAILWAY STATION CLOSURES

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Transport a question about railway station closures.

Leave granted.

The Hon. G. WEATHERILL: On 21 March the Minister was asked about the imminent closure of Millswood, Clapham and Hawthorn railway stations. The Minister sought to evade the responsibility for these closures and passed the buck to Australian National. On ABC radio on Tuesday 4 April it was reported that passengers had been informed that the stations will be closed on 29 April. Some 250 rail passengers who use Clapham station have signed a petition opposing the closure. Local residents are incensed at the lack of consultation by the Minister over the closures and at the patronising attitude of the local member, who has told them that there are plenty of buses to service their needs. My questions are:

1. Will the Minister confirm that Millswood, Clapham and Hawthorn railway stations are to be closed on 29 April?

2. Why has she tried to make Australian National announce the decision and say that the State Government is not responsible?

3. What feasibility study has been undertaken into the provision of a broad gauge passenger loop on the Belair line to enable the present level of passenger service on the line to continue, and why was the option rejected?

4. Does the Minister agree that there are plenty of buses on which these residents can be run back and forward to work, and so on?

5. Is the fact that these stations are in safe Labor seats a significant factor in her decision to ignore the wishes of the local residents?

The Hon. DIANA LAIDLAW: I think the honourable member seems to be a little bit disoriented. Certainly the local members would be surprised to learn that Millswood and Hawthorn are in safe Labor seats. I think the honourable member has assumed that they were quite comfortable in those seats. I do not think anyone would take it for granted, but to say they are safe Labor seats is over the top. In terms of the first question, I can confirm that Millswood, Hawthorn and Clapham stations will close on 28 April. Also, in respect of the fourth question I can confirm that an ample number of buses run on adjacent routes in respect of these services, and they have done for some years as former Ministers for

Transport would be well aware. Passengers who have previously caught the train from Millswood will be able to catch adjacent bus routes 210, 214 and 216 via Goodwood Road; passengers from Hawthorn will have access to route 203 bus service on Sussex Road; and passengers from Clapham will have access to bus services 192 and 198 along Belair and Unley Roads.

I understand that some people are wheelchair bound, and all members know that, particularly for people who are wheelchair bound, we have a very adequate scheme which will be fine-tuned soon with respect to access cabs. It is one of the best schemes in Australia, but certainly it has been subject to some review and there will be changes made. Nevertheless, nobody is being left stranded as has been suggested. I was interested to hear some radio reports by some of the leading campaigners seeking to get this railway station reopened. I was rather aghast to learn that a number of people have moved into the area because in the future they think they might use it. That is the whole trouble with these stations: people think that one day they may use them, but the fact is that they do not use them now. Both the Hon. Mr Blevins and the Hon. Barbara Wiese, when they were Ministers, tried hard to get more people to use many of the inner suburban stations and I give them credit for that. However, the fact is that patronage did not increase, and we have an average of three passengers using the Clapham station per journey, four at Hawthorn and five at Millswood.

One may say that that is a sound use of State resources, but there are better and cheaper ways of providing access for people than by providing this expensive rail system for five people on average per stop. We have tried hard to improve the system for rail passengers in these areas and elsewhere with the introduction of passenger service attendants, surveillance cameras and a whole range of other initiatives to make it more attractive and less frightening from a safety perspective, and certainly the trains are much cleaner and are newer.

But it does not look as though in some areas, no matter what one does, we will be able to attract more people on to trains. In respect to the second question whether I have abrogated my responsibilities—I think that was the suggestion—by accusing National Rail of being responsible for this, if the honourable member spoke with the honourable member sharing the bench with him, the Hon. Barbara Wiese, he would be aware that as Minister the Hon. Barbara Wiese signed a memo, I think, 2½ years ago in relation to the One Nation package. I can provide a copy of that memo for the honourable member if he wishes. It was signed on the understanding that there would be railway closures along this line and so this matter has been known to Government circles—the former and the current Government—that with the standardisation of the line there would be these stations—

Members interjecting:

The Hon. DIANA LAIDLAW: I have read it more recently. What has happened—

The Hon. Barbara Wiese: I never ever gave approval—

The Hon. DIANA LAIDLAW: You may not have given approval for those three specific stations; you gave approval for station closures arising from the One Nation package. You gave approval to the One Nation package and rail standardisation and it specified in the document that there would be station closures arising from that action. I have sighted that and can provide copies if that is required. It is important for members to know that when National Rail sought funding from the Federal Government for the One Nation package—in fact, Australian National sought funding—it sought $163 million and the Federal Government provided $112 million and, therefore, a lot of the improvements that one would have hoped would come with the standardisation program have not arisen. From Belair North to Adelaide we tried to provide six loops for passing trains. In the event, there was money for only four loops, which has meant that we either keep to the timetable of half an hour at peak times and one hour intervals during interpeak time or we throw the whole system into disarray by continuing with stopping at every station, as is the case at present. I suggest we would lose much more than the five average passengers at Hawthorn and the like if the trip from Belair was much longer than it is, especially if the train trip did not provide the connections which it currently does. They are important considerations in this whole issue. I did not take down fully the fifth question, but I will provide further advice to the honourable member about that question and any additional advice if it is warranted.

NIKKI ROBINSON CORONIAL INQUIRY

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the Nikki Robinson coronial inquiry.

Leave granted.

The Hon. T.G. ROBERTS: The Minister for Education and Children's Services was serving as Acting Minister for Health at the time, and shortly after, when Garibaldi mettwurst products were identified as the source of contamination which led to an outbreak of haemolytic uraemic syndrome. Ultimately, a girl by the name of Nikki Robinson died of this illness and the coronial inquiry into her death is now under way.

The Hon. K.T. Griffin: That's *sub judice*.

The Hon. T.G. ROBERTS: You may want to rule on my question, Mr President, but I ask: is the Minister willing to give evidence to the Robinson coronial inquiry regarding his decision to use or not to use the powers available under the Food Act at the relevant time?

The PRESIDENT: I did not really hear the question, I am sorry; but I understand there is some dissension as to whether it may be *sub judice*. Will the honourable member repeat the question?

The Hon. T.G. ROBERTS: Is the Minister willing to give evidence to the Robinson coronial inquiry regarding his decision about whether to use the powers available under the Food Act at the relevant time?

The Hon. R.I. LUCAS: If you are not giving a ruling, Mr President, I am quite happy to respond, because all I am prepared to say at this stage is that I am naturally a very cautious person and, before I respond to that invitation from the Hon. Mr Roberts, kind as it might be, I will certainly take some legal advice as to the ramifications of the invitation that he has extended to me. I will be pleased to respond in due course.

STATE CHEMISTRY LABORATORIES

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Treasurer a question about the State Chemistry Laboratories.

Leave granted.

The Hon. M.J. ELLIOTT: I have been contacted by employees of the State Chemistry Laboratories, who have raised concern about the future of the laboratories. The laboratories have been in existence since 1899, when the first Government analyst was appointed. In 1915 they became a department in their own right, providing a wide range of advisory and analytical services to Government departments, statutory authorities, industry and the public. The laboratories cover every field of chemistry except mineral chemistry. The laboratories' main work is now in the testing of trace and toxic elements, nutrients, pesticides and antibiotic residues for agricultural produce, environmental monitoring and public health investigations and research.

Often there is no alternative supplier for many of the services provided, especially the non-routine and non-profitable testing that is done. In some cases independence is required in the testing process, and continuity of results is required for long running research projects and monitoring studies. The laboratories have a facility for an efficient response to chemical spills and emergency situations, such as the Gillman copper chrome arsenate chemical spill in 1985, the organochlorin pesticide scare in Australian beef exports in 1987 and strychnine use during the 1993 mouse plague.

I recall that, some five or six years ago when I asked questions in this place about organochlorins, nowhere in Australia was the testing equipment available at that stage to test for organochlorins at levels that were a risk to public health. I am aware that since that time the Government has installed such equipment. The laboratories also assist industry, manufacturers and product development, quality control and certification for export and, considering a number of the scares that we have had, that task is important. All in all it plays a vital role in South Australia's manufacturing, primary and export industries as well as public health and environmental concerns. Morale among staff is low, as they feel that the Government axe is about to fall on the service. My questions are:

1. Is the Government prepared to support the continued operations of the State Chemistry Laboratories at their current level of operation and, if not, why not?

2. Has the Government investigated where the services currently provided by the State Chemistry Laboratories would be available, should they be closed?

3. As these laboratories lead the State, and, I suspect, the nation in some regards, how can the level of consumer health and environmental protection be guaranteed with their closure?

The PRESIDENT: The honourable member has been here a long time now, but I again remind him that he has given a considerable amount of opinion in that question. I am trying to eliminate that. All members should try to keep opinion out of their questions. We have a period straight after this Question Time when members can express opinions in a five minute contribution on a matter of importance. I suggest, therefore, that members use that period and not their questions for that purpose. We were hoping to eliminate opinion from questions.

The Hon. M.J. Elliott interjecting:

The PRESIDENT: There is opinion in that question, and if he reads today's *Hansard* the honourable member will see that there is opinion in it. I call on the Minister for Education and Children's Services.

The Hon. R.I. LUCAS: I will be pleased to refer the question to the appropriate Minister and bring back a reply.

BACK TO SCHOOL PROGRAMS

The Hon. R.I. LUCAS: I seek leave to incorporate in *Hansard* additional information to an answer I provided yesterday to the Hon. Carolyn Pickles on the subject of back to school programs.

Leave granted.

The Hon. R.I. LUCAS: In response to the honourable member's question yesterday about back to school grants, the answer indicated that there was an attachment listing the schools and the individual grants. That attachment was not included, and I apologise for that.

COLLINSVILLE MERINO STUD

The Hon. R.I. LUCAS: I seek leave to provide an additional response to an answer I gave yesterday to the Hon. Mr Feleppa with respect to the Collinsville Merino Stud.

Leave granted.

The Hon. R.I. LUCAS: Yesterday, in response to a question by the Hon. Mr Feleppa about alleged racist comments made by the Treasurer, I indicated that I would be surprised if the Treasurer did not want to get back within 24 hours and set the record straight in relation to it. If I am given leave, I intend to read a further response from the Treasurer in relation to the response I gave yesterday to the honourable member.

Leave granted.

The Hon. R.I. LUCAS: The Treasurer's response is as follows:

> The honourable member should be aware that on 8 March, in another place, I responded to this particularly scurrilous claim by Mr Phillip Wickham that I agreed to sell him the Collinsville Stud on condition that he had no Chinese partners and sold no rams or semen to China. This is simply not true. As I have stated previously, during my discussion with Mr Wickham, I said that not only did I expect to find that he had financial capacity, but also I was adamant that Collinsville should remain as a key South Australian breeding establishment.
>
> The context of this conversation was that Mr Wickham had advised that he was going to China the next day. The issue was not whether he had Chinese or any other overseas partners. My concern was to ensure that South Australian, and Australian, breeders would not lose access to the world famous Collinsville breeding stock, a move which would clearly undermine a crucial industry in this State. I am particularly disappointed that the honourable member has chosen to make his comments based on inaccurate media reports and to ignore my repudiation of this outrageous claim. My concern is to protect the interests of this State, and I would have expected that the honourable member shared this goal.

ISLAND SEAWAY

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Transport a question about the *Island Seaway*.

Leave granted.

The Hon. BARBARA WIESE: On 23 March the Minister informed the Council that expressions of interest for the sale or lease of the *Island Seaway* would close the following day, 24 March 1995. I ask her now whether she will advise on what basis the Government will determine bids to lease or purchase the *Island Seaway,* and whether there will be any constraints on the use of the vessel in South Australian waters. Secondly, will the Minister release the names of companies and individuals who have expressed interest in leasing or purchasing the *Island Seaway*?

The Hon. DIANA LAIDLAW: In answer to the third question, no, although I can indicate there is considerable overseas interest. Some of the bids have been made on the basis that they do not need to sight the vessel. In relation to another, I understand that representatives of the overseas interests will be visiting Adelaide this month to look at the vessel. The sale arrangements will be assessed by a combination of peak representatives from the Asset Management Group, Treasury and the Ports Corporation, I understand.

As to the second question, that certainly has not been part of the terms on which people bid for the operation of the vessel. No such constraints were noted.

PETROL THEFT

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General a question about tougher penalties for making off.

Leave granted.

The Hon. A.J. REDFORD: In a report in the *Advertiser* this morning, the Motor Trade Association is reported as having released figures which reveal an alarming amount of alleged petrol theft from service stations in South Australia. A total of $5 million worth of petrol has reportedly been stolen during the past year, as well as food and other items, from some of the larger service stations. The incidence of making off, or filling one's vehicle with petrol and driving away without paying for it, periodically makes headlines. The Motor Trade Association is apparently calling for tougher penalties in a bid to reduce the amount of petrol theft.

The Hon. T.G. Roberts interjecting:

The Hon. A.J. REDFORD: My questions to the Attorney-General—and that is why you are in opposition—are as follows. What is the Government presently doing to prevent petrol theft? Secondly, will the penalties be increased? Thirdly, when can we expect to see some reforms in this area?

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: It is interesting to note that the maximum penalty—

Members interjecting:

The Hon. K.T. GRIFFIN: I suppose the Hon. Mr Cameron is suggesting bounty hunters.

Members interjecting:

The Hon. K.T. GRIFFIN: No, it is the Hon. Mr Cameron, not my side.

The PRESIDENT: Order!

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: The Hon. Mr Cameron is making a rather offensive remark about obtaining some riding instructions from the MTA. I do not take riding instructions from any organisation. I am happy to consult with them—

Members interjecting:

The PRESIDENT: Order! There are far too many interjections.

The Hon. K.T. GRIFFIN: I am happy to consult but certainly not to take instructions. It is a problem that the MTA has drawn to the Government's attention, but I think members should recognise that, under the Criminal Law Consolidation Act, the penalty for simple larceny at the moment is five years, and for minor theft of something like a $20 amount, which in aggregate costs business a lot, nevertheless, in individual circumstances, is a minor theft. In the nineteenth century in the U.K., I think the penalty for minor theft was death in some instances or transportation. That did not seem to stop petty theft. It may have made a few good citizens of Australia in the early days of settlement, but it certainly did not stop petty theft. That is not to underrate the seriousness of the problem.

As I say, the Government has had the matter raised with it, but even before the MTA did that the Model Criminal Code Officers Committee, which is a committee of the Standing Committee of Attorneys-General, has been working on this under the model criminal code proposals which they are developing over a period of time. A report by that committee, approved by the standing committee, was released last year on fraud and related offences. It did, as I understand it, refer specifically to a new offence of making off. The Standing Committee of Attorneys is awaiting submissions and the collation of those submissions before making a final decision on what course the law relating to theft and, in this instance, making off may take.

Certainly, the area of theft and related offences is an area which is in dire need of reform. I think the law takes its origins in the old U.K. Larceny Act of 1916, I think it was, and going back even further than that to 1473. Some 500 years ago there were no such things as service stations. There may have been some interesting equivalents, but certainly nothing akin to that. Because it has come through that developmental period, the law has not really addressed adequately the issues of making off.

The other point that needs to be made is that the Government has commenced discussions with some industry bodies in relation to crime prevention programs which might focus upon the prevention of minor theft. Offences such as shoplifting are a major concern for retail outlets, and it is obviously a problem for petrol resellers. To some extent with petrol resellers—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN:—it is a problem partly of their own making because they now have, as one of the members opposite interjected, no driveway attendants but, more particularly, it is quite easy just to drive through. It may be that, in conjunction with the MTA—

The Hon. Anne Levy interjecting:

The PRESIDENT: Order!

An honourable member: Throw her out.

The PRESIDENT: Order!

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: You do not know that. I can do three things at once. Why can't he?

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: I can listen to what is going on in the Chamber as well as read.

The Hon. Anne Levy: He is not reading. He is talking.

The Hon. L.H. Davis: Why don't you try to keep your side under control? You have enough problems over there without worrying about us.

The PRESIDENT: Order! The Attorney-General.

The Hon. K.T. GRIFFIN: I was saying, before the interjections overwhelmed me—

Members interjecting:

The Hon. K.T. GRIFFIN: I am happy to take as long as members would like to answer this question. Question Time finishes in less than 20 minutes. The fact of the matter is that—

The Hon. R.R. Roberts: You already told him the answer before you came in here.

The Hon. Anne Levy: He knows, anyway: he is a lawyer.

The Hon. K.T. GRIFFIN: Do you want the answer or not? You don't want it, obviously.

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! Members on my left will cease interjecting.

The Hon. K.T. GRIFFIN: I wanted to conclude by saying—and I was talking about crime prevention possibilities—that it is not just a matter of penalties being imposed: already, they are quite heavy. But, to some extent, there may be mechanisms by which a redesign of some self-serve petrol stations might in fact prevent that problem. Of course, service station proprietors are spending a lot of money on electronic video surveillance to watch people drive away. It is very difficult for someone in an office watching the video to stop someone driving away. Perhaps there ought to be some sort of barriers which can be automatically lowered or raised to deal with that issue.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: I am floating that. To some extent it is not—

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: I will just keep going. To some extent it is an issue that has to be faced up to by service station proprietors as well as the general community: it is not just a matter for Government. As I said—and some members opposite were in the previous Cabinet that initiated crime prevention strategies—just increasing penalties will not necessarily solve problem of the escalation in crime. With the proposed offence of making off, it seems to me that there needs to be an acceptance by service station proprietors that they, too, have some responsibility in putting in place mechanisms to ensure that, as far as is possible to do so, people do not have unlimited opportunity to drive away.

As I say, the next meeting of the Standing Committee of Attorneys-General is in July. I am not sure that the response to the theft and related offences report will be available at that meeting, but I would expect that certainly during this year we will have some proposals from the model Criminal Law Officers Committee, particularly in relation to the proposed offence of making off.

WORKCOVER

In reply to **Hon. M.S. FELEPPA** (7 March).

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

1. Neither the Government nor WorkCover has a list of employers considered to have employees at high risk due to lack of safety in the workplace. WorkCover has a number of targeted programs directed at high risk industries, employers with multiple claims, employers with a high proportion of new workers, and all large employers. Approximately 2 000 companies are specifically involved in these programs.

2. WorkCover has indicated that employers who refuse to participate in the above programs may be targeted with additional penalties. However, its preference is to work co-operatively with the employers in the first instance. At such a time that WorkCover imposes additional penalties on employers who refuse to address OHS issues in their workplace, the Government will give consideration to the proposal that these companies be named publicly.

PAROLE BOARD

In reply to **Hon. A.J. REDFORD** (9 March).

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

The decision of the Full Court to which the honourable member refers was made in the context of a preliminary hearing to determine whether or not, on the facts pleaded by the plaintiff, there would be a case to answer. Any of the factual allegations made by the plaintiff and referred to by the honourable member were never substantiated by trial. It is therefore incorrect to read the decision of the Full Court as a finding of the facts alleged by the plaintiff. The decision is not an authority for the proposition that every time an offender offends whilst on parole, the Department for Correctional Services or the Parole Board will be liable.

Further, in the case of Mr Sincock, it was never an issue as to whether it was appropriate for him to be released on parole in the first place. The Parole Board was required to release him under the provisions of legislation in force prior to the introduction of the Statutes Amendment (Truth in Sentencing) Act 1994.

As this matter has not been finalised in court, it would be inappropriate for further discussion to ensue at this stage in proceedings.

SEXUAL HARASSMENT

In reply to **Hon. R.R. ROBERTS** (20 October).

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

1. The cost to the Government to meet provision of special leave during the period between February and end of June 1993 for two complainants was $11 161.80 (for complainant 1) and $10 737.36 (for complainant 2), at a total cost of $21 899.16.

2. In addition to special leave, the Department offered counselling services to both the complainants and the constituent. Between May and October 1993 psychologist services were provided to the complainants at a total cost of $2 446. The constituent declined the offer of professional assistance.

3. The Department, whilst denying its own liability, recognised its responsibility and conciliated a settlement with the two complainants, the terms of which are confidential. As a result of a failure to achieve a speedy resolution of the matter with the constituent, the first complainant suffered considerable stress, resulting in a worker's compensation claim at a total cost of $7 425.90.

4. The Government is not seeking to recover any moneys paid. The Government acknowledged its responsibilities and conciliated the matter, and is bound by the agreement. Therefore, it would be wholly inappropriate to seek to recover any moneys paid. The second complainant referred to, withdrew proceedings against the constituent as she had left the Department, which had acted responsibly and had conciliated the matter.

5. There is no proper way to estimate the direct and indirect costs for the volume of paperwork generated, phone calls, meetings and perusal of documents involved for the senior staff from the Department for Primary Industries.

6. The Government strenuously opposes the constituent's claim for worker's compensation. The constituent did not lose his job. He voluntarily terminated his employment pursuant to an agreement entered into on 22 August 1994. He received a separation payment in the sum of $101 175.04 comprising of:

(a) a termination payment in the sum of $72 502 (gross);

(b) net leave entitlements in the sum of $18 073.04;

(c) travel and accommodation expenses in the sum of $10 000;

(d) legal expenses in the sum of $600.

Clause 3 of the agreement discharged the employer in relation to all liabilities arising from the employment except (i) the constituent's claim for damages arising from alleged defamation by the then CEO of the Department for Primary Industries, and, (ii) any statutory liability relating to worker's compensation. The agreement specifies, however, that the parties agreed that it would be unjust for him to receive any worker's compensation payments in addition to the separation package.

There was no suggestion at the time that the agreement was entered into that the constituent was suffering from any illness, and there is no evidence to suggest that the alleged illness suffered by the constituent was caused by his employment.

Finally, the constituent was not found innocent of the allegations. In regard to the first complainant, the constituent in fact settled the matter at the conciliation stage, and as a consequence, the matter did not proceed to a hearing. With regard to the second complainant, the complaint was withdrawn by that complainant because the complainant was satisfied that the Department, whilst denying its own liability, recognised its responsibility and conciliated the matter satisfactorily.

HOSPITALS DISPUTE

In reply to **Hon. T.G. CAMERON** (7 March).

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

1. A joint sitting of the Industrial Relations Commission of South Australia and the Australian Industrial Relations Commission issued orders that the South Australian Health Commission, the Commissioner for Public Employment and the Crown in right of the State of South Australia refrain from standing down, locking out or otherwise turning away from the workplace any members of the Australian Liquor, Hospitality and Miscellaneous Workers Union who attend at the workplace to perform the balance of their duties which are unaffected by the union's bans.

The Commissions did not at any time declare the 'stand downs' illegal. The employees were not stood down. Those who stated that they were not prepared to perform the full range of their duties were advised that until they were prepared to perform all their duties, they would be regarded as being on strike and taken off the payroll.

2. Volunteers from within the work force were covered by the provisions of the Worker's Rehabilitation and Compensation Act and volunteers from the public were not deemed to be employees for the purposes of the Act.

3. Members of the public who volunteered their time were indemnified by the South Australian Health Commission for bodily injury caused by violent, accidental, external and visible means as a result of being engaged in unpaid voluntary work on behalf of the South Australian Health Commission and the incorporated bodies associated with the Commission.

MARRIAGES

The Hon. ANNE LEVY: I seek leave to make an explanation before asking the Minister for Consumer Affairs a question about civil marriages and Edmund Wright House.

Leave granted.

The Hon. ANNE LEVY: Many years ago, when I was about to get married, we made inquiries regarding a civil marriage and where this could occur in South Australia. At that time the only site available for a civil marriage was a pokey little office, about twice the size of a telephone box, which contained one scratched wooden table, one steel grey metal filing cabinet and a fly-blown picture of the Queen on the wall.

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: Not surprisingly, we did not get married at such a site. Soon after this occasion the State Government purchased what was then the ANZ Bank and completely restored it to become the magnificent Edmund Wright House, which has served as a place for civil marriages for thousands of South Australians ever since. I am sure many people have attended civil marriages in that building, and all would agree that it is a magnificent building and a most aesthetic place for civil marriages to occur.

The Hon. Diana Laidlaw: And has very good acoustics for music as well.

The Hon. ANNE LEVY: It has very good acoustics for music as well, although it would help if the back lane were closed so that trucks were not going up and down interfering with the appreciation of good music. I am referring to the use specifically of Edmund Wright House as the prime place provided by the State for civil marriages in South Australia. We all know that the Births, Deaths and Marriages Office has now left Edmund Wright House.

The Hon. K.T. Griffin: Not yet.

The Hon. ANNE LEVY: Well, it is about to leave Edmund Wright House. In consequence, fears have been expressed that civil marriages will no longer be able to take place there. This raises very important questions. The State has a responsibility to provide a site for civil marriages, and I would hope that—

The Hon. A.J. Redford interjecting:

The Hon. ANNE LEVY: Well, they had them. The Births, Deaths and Marriages Office is a State office, is it not? I hope the Government would accept—

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: —the principle that any place provided for civil marriages should be a pleasant, aesthetic and attractive place where people will feel pleasure in getting married, and not be driven away by the sort of sordid premises which were provided by the Playford Government.

The Hon. A.J. Redford: That's opinion.

The Hon. ANNE LEVY: I am happy to describe again the only place that existed for civil marriages at the time I got married.

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: My questions to the Attorney are:

1. Will the State continue to provide an aesthetic, pleasant and desirable location for civil marriages?

2. If this is not to be in Edmund Wright House, where will it be, and when will it be established?

3. If the Government is moving the office of Births, Deaths and Marriages entirely out of Edmund Wright House, what will happen to Edmund Wright House, which belongs to the people of South Australia and which is a heritage building much loved by a very large number of people in this community?

The Hon. K.T. GRIFFIN: The honourable member will know that the Office of Consumer and Business Affairs is moving out of its present accommodation to Chesser House in about June or July. I can confirm the date later. We are taking the opportunity to move the office of the Registrar of Births, Deaths and Marriages also to the new office accommodation. I am sure the honourable member will remember, as will her colleague, the Hon. Barbara Wiese, if they have been to the offices of the Registrar, that they have their character in the nineteenth century and are totally inappropriate for modern office requirements, whether by public servants—

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: Well, I am just giving you the background. You asked the question. The offices are certainly not congenial surroundings for staff. They leak when the rain gets too heavy and there are problems with computer cabling and effectively running proper systems. Anyone who has been in the lift will know that it comes from the nineteenth century. The office accommodation is a dump. That is to be contrasted with, as the honourable member described it, the most elaborate and—

The Hon. Diana Laidlaw: Splendid.

The Hon. K.T. GRIFFIN: Thank you—splendid surroundings of the banking chamber in Edmund Wright House, which is conducive to pleasant receptions, although I think many people would dispute the claim that the acoustics in that facility are ideal. I went there one evening last week for a reception, and I must say that with a large number of people there it was not particularly—

An honourable member: For music?

The Hon. K.T. GRIFFIN: No, not for music. The responses from a number of people who have been there on other occasions is that it is not an ideal place, even for the

presentation of musical recitals. Be that as it may, the Government has taken the view that those who work in the office of the Registrar of Births, Deaths and Marriages ought to have more modern accommodation which will better facilitate the work output as well as provide a good environment for staff, and they will move to the new premises.

It is intended that in Chesser House there will be pleasant but less commodious facilities for the conduct of civil ceremonies within the office of the Registrar of Births, Deaths and Marriages. Over the years there has been a significant decline in the number of marriage celebrations at the registry. I am advised that there will be a stabilisation of civil marriages within the registry at about 400 to 450 each year. A number of new private civil celebrant appointments and the availability of a number of excellent venues, including National Trust classified buildings, will ensure that weekend demands are properly met. It is important to recognise that the facilities for the civil celebration of marriage will be open all week days; they will not be open at weekends. If those who desire to marry in a civil ceremony wish to do so in the registry itself, it will have to be accommodated during the week.

The future and use of Edmund Wright House will become the responsibility of the Minister for Industrial Affairs through the Department for Building Management. I am not aware of what is planned for those premises. I will make some inquiries and bring back a response. However, I would expect that for whatever purposes the premises are used, that chamber may continue to be available for hire purposes, even to those who wish to have a civil marriage there.

The Hon. ANNE LEVY: As a supplementary question, will the Minister supply information on the dimensions and accoutrements of the place in Chesser House which will be set aside for civil marriages and an estimate of how many guests can be present and how large a function can be held there with any civil marriage?

The Hon. K.T. GRIFFIN: This matter was raised with me by the Commissioner for Consumer Affairs. I must confess that I cannot remember, but I will obtain the information. It will not be a small back room; it will be an appropriate facility, well furnished, but certainly not as commodious as Edmund Wright House. Rather than take a stab at what I recollect the accommodation to be and the numbers that it will accommodate, I will obtain and bring back the information. I can assure the honourable member that the facilities will be congenial and pleasant.

MARINO ASPHALT PLANT

The Hon. T.G. CAMERON: My question is directed to the Minister for Transport. What has been the cost of redundancies at the Department of Transport's Marino asphalt plant, which has been closed since July 1994; and will the plant be resuming production for the Department of Transport?

The Hon. DIANA LAIDLAW: Not for the Department of Transport. There are negotiations between the department and the Asset Management Group for the sale of that facility.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: Not for the department. If it is operated, it will be operated by the private sector, and they would provide material for whoever is to construct or maintain roads in the future. Regarding redundancies, I understand that most of the people have been absorbed in other parts of the work force, but I will get that information and provide it to the honourable member as soon as possible.

EWS RESTRUCTURING

The Hon. T. CROTHERS: I seek leave to make a brief statement before asking the Minister for Education and Children's Services, representing the Minister for Industry, Manufacturing, Small Business and Regional Development, some questions on the proposed privatisation of elements of the EWS.

Leave granted.

The Hon. T. CROTHERS: It is often said that South Australia is the driest State in the driest continent in the world, and this point of view has been endorsed by many people who are pre-eminent on this subject. Some of these people have expressed the view that South Australia has just about reached its capacity in regard to providing potable water from its own resources for any future increased demand. Coupling that factor with the ever increasing use of the Murray River as a convenient dump for effluent and toxic waste, particularly in the States of Victoria and New South Wales and not even excluding our own State further upstream from Adelaide, it would appear that Adelaide's future supply of potable water in the not too distant future may be in considerable jeopardy. Noting from the contents of a speech delivered by Minister Olsen recently to the Business Council of Australia in Melbourne that the date he mooted for the privatisation of the EWS is as close to hand as 1 January 1996, I direct the following questions to the Minister:

1. Does he agree that the EWS is jointly owned by all South Australians and that the Governments of this State are merely the stewards of this asset of the people; and, if not, why not?

2. If he agrees with the sentiments expressed in question one, why are South Australians not being kept better informed as to the privatisation processes than currently would appear to be the case, given that the proposed takeover date, according to Minister Olsen, is 1 January 1996?

3. Does the Minister agree that the supply of potable water to South Australia is imperative for both the future well-being of South Australians and their future employment?

4. Assuming that privatisation occurs, who will be responsible after that point of time for research and development into the State's future potable water needs?

5. Will the privatisation of the EWS mean increased charges for end users?

6. Does the Minister believe that the privatisation of the EWS will relieve the Government of the unpopular burden of having to increase charges for water from time to time, and was that exercising the Minister's mind when he thought of privatising the EWS?

7. Does the Minister believe that as a result of the privatisation going through this will lead to a reduction in charges for water rates?

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

MATTERS OF INTEREST

The Hon. A.J. REDFORD: I would like to talk very briefly this afternoon about the South Australian Baseball Association. I had the opportunity last Wednesday night of representing the Minister for Recreation, Sport and Racing at the annual presentation dinner and medal count of the South Australian Baseball Association. During the course of that evening I had the opportunity of talking to various baseball officials on the topic of baseball and its future. I discovered that baseball is now Australia's fastest growing sport; it is one of the most popular sports in school today when one considers it in conjunction with T-ball. Indeed, the biggest problem that baseball has is in relation to that growth. As with all industry that embarks upon a period of rapid growth, there are both joys and problems presented by that growth.

It is important to draw this Chamber's attention to a number of important events that are likely to happen in the area of a baseball over the next few years. The first and the most significant of those is that baseball will be an Olympic sport in Sydney in the year 2000. As such, I understand that the organising committee of the Olympic Games in Sydney is seriously considering running preliminary rounds of the competition in Adelaide and in places outside Sydney. The Baseball Association is seriously considering taking up that opportunity. Secondly, Asia, which is also a rapidly growing area in relation to the sport of baseball, is looking for venues where training can take place in Australia and, in particular, that relates to spring training because of our unique climate. I understand that so far teams have been sent to Western Australia and to Queensland for spring training. In fact, they bring in a charted jumbo jet full of people, put them up in four star hotels, and they stay in Australia for three months during their spring training. I would suggest that the boost to the economy of such activity would be enormous.

The problem confronting baseball and its growth in Adelaide and South Australia is one of finance. First, there is a shortage of grounds in South Australia for people to play baseball. The fact is that it is exceedingly expensive to set up baseball grounds because they are unique and, generally speaking, can be used only for baseball because they involve a mixture of grass and dirt. However, it may well be that, with the opportunities of the Olympics and in particular the possibility of certain rounds in the Olympics being played in Adelaide; the fact that the Asian Baseball Championships are to be held in 1997, and I understand Australia is bidding for that; the fact that the Oceania Championships are to be held in 1999; and the fact that the World Championships are to be held in 1998, there are opportunities for major events and major sporting attractions to be looked at in the context of South Australia, particularly having regard to the fact that we have sadly lost the Grand Prix and the Rio tennis tournament. I would hope that we could address those issues from the perspective of both the Government and also the Baseball Association.

The final point I would like to make relates to the Adelaide Giants. It struck me that it was a very young team when one looks at baseballers in South Australia. It was our best team in South Australia, and the average age of the players was around 20 to 21 years, and one can compare that with the average age of baseballers in the United States, which is closer to 30 years. The simple fact is that there is not sufficient remuneration in the sport as yet to enable them to continue in the job. An Adelaide Giants player is expected to train every night of the week and every other week travels interstate for Friday, Saturday and Sunday games. If they do not travel interstate, they play at Norwood Oval on Friday, Saturday and Sunday nights. No-one needs to be a Rhodes scholar to work out that that means that they also need to hold down full-time employment. So, a person who gets to the age of 23 or 24 and has family and financial commitments has to give up the game.

The PRESIDENT: Order! The honourable member's time has expired.

The Hon. T.G. CAMERON: On Wednesday 8 March the Hon. Angus Redford regaled us with his knowledge of Australian economics. I thought, 'A lawyer lecturing us on economics; I had better stay and listen to this one.' The speech was long on rhetoric, short on economic facts and sadly astray in its analysis and conclusions. The reality is that the Labor Government of the 1980s and 1990s displayed considerable courage in tackling issues that the Liberals had ignored for decades. To name just a few, there was the deregulation of the Australian financial system and opening the banking system to foreign competition; the floating of the Australian dollar; the structuring of tariffs and quotas to make Australian industry more competitive; and I could go on. Rather than lapse into the empty rhetoric of my friend on the other side of the Chamber, I will quote some statistics that compare the Labor Government's performance with the period of Liberal rule under John Howard when he was Treasurer.

This is Howard's legacy. The average rate of economic growth under John Howard from 1977-78 to 1982-83 was 2.1 per cent; under Labor from 1983-84 to 1993-94 it was 3.4 per cent. The rate of inflation when John Howard left office was 11.4 per cent; the current rate of inflation is 2.5 per cent. The average rate of inflation under John Howard was 9.7 per cent; under Labor it is 5.4 per cent and, since June 1990, the rate of inflation has been 2.1 per cent in Australia. The 90 day bank bill is a key indicator of short term business interest rates. In March 1983 the 90 day bank bill rate was 15.9 per cent; on Friday 2 February 1995 it was 8.2 per cent, and it has gone down since then.

The total number of jobs created under the Labor Government was 1.8 million. The average number of jobs created per year under John Howard was 52 000; under Labor it is 154 000. Government revenue as a percentage of GDP under John Howard in 1982-83 was 26.1 per cent.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. CAMERON: Under Labor in 1994-95 it was 24 per cent. Government outlays as a percentage of GDP under John Howard for 1982-83 was 28.8 per cent; under Labor in 1994-95 it was 26.2 per cent. The top marginal tax rate under John Howard was 60 per cent; under Labor it is 47 per cent, and I could go on and on, but time does not permit me to do that.

The approximate increase in Government revenue, if taxes and charges were as high today as they were under John Howard, would be $10 billion. The one point raised by the Hon. Angus Redford on which I can agree was his concern with the balance of payments. I share that concern. But were we provided with any answers to this problem or given an insight into what a future Liberal Government might do? Of course we were not. However, we were told:

> One only has to speak to people in the wine industry to understand that the 2 or 3 per cent change in exchange rates makes their products uncompetitive.

What an illuminating statistic from the honourable member!

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: If they are sailing that close to the wind, Angus, on their export pricing, then heaven help us if the balance of trade problems are resolved. You had better go back and check your economic textbooks. There is a difference in economic terms, which Mr Redford should appreciate, between the balance of trade and balanced Commonwealth budgets—they are not the same thing. The last time we had a balance of payments problem in Australia under a Liberal Government Fraser plunged the country into a recession that Labor had to drag us out of. Just how much damage will Howard do if he becomes Prime Minister? It is difficult getting lawyers to agree on the law and economists to agree on the economy. Here we have a lawyer talking about economics who cannot even agree with himself.

The PRESIDENT: Order! I remind the Hon. Mr Cameron that members are addressed as 'honourable' in this Council.

The Hon. T.G. CAMERON: I apologise, Mr President; I know that Mr Redford is an honourable man.

The Hon. BERNICE PFITZNER: My matter of importance relates to immunisation. A recent television program known as *Vox Populi* ran a story on immunisation about three weeks ago. The program was damning of the lack of immunisation information given to parents and showed that parents were ill informed and therefore not prepared for the side effects that do happen. It showed also that parents were not prepared for vaccine failure, as no vaccine provides immunity in 100 per cent of recipients. Misconceptions were also shown to exist with regard to contra-indications to immunisation. For example, some health professionals, wrongly, do not recommend immunisation if a child has asthma, hay fever, is premature or has cerebral palsy. Further, an article in the local newspaper also criticised health professionals for placing the injection site in the wrong position. For example, for infants the injection site should not be in the arm, as there is not much muscle bulk there, and should be in the front of the thigh, which is the most bulky and muscular area. However, despite all these deficiencies the National Health and Medical Research Council (NHMRC) states:

> . . . immunisation has prevented more suffering and saved more lives than any other medical invention in this century. It is one of the safest and most effective procedures in modern medicine. It is also the most cost efficient.

For example, I refer to smallpox. The World Health Organisation (WHO) rationalised and coordinated the vaccine campaign in 1967 and in 1979 smallpox was eradicated. As the NHMRC notes, this eradication remains one of the miracles of modern medicine. This was an outstanding achievement using vaccine introduced by Jenner 180 years ago. This example has encouraged health professionals to attempt eradication of other common viral diseases such as polio, measles, mumps and rubella with vaccines introduced 25 to 30 years ago. These are viruses that can be eradicated as there are no latent infections, no long-term carriers, no alternative hosts and there is relative enduring immunity.

Polio has been effectively eradicated since its immunisation program in 1956. Measles immunisation started 20 years ago and has encountered some problems with its acceptance rate which, at this stage, is at best 80 per cent. This level of coverage is not sufficient to eradicate measles. However, the disease of infants born with congenital measles (rubella) syndrome has been reduced by more than 10 times.

Hepatitis B is in a different category as there is a long-term carrier state. New borns are immunised if they are at risk from a community known to have a high carrier rate. Long-term hepatitis B infection can result in cancer of the liver and other liver diseases. Diphtheria has virtually disappeared in Australia and we are aware of the lethal nature of that disease which has a 10 per cent mortality or death rate. Tetanus is also rare here and is only displayed in older non-immunised people. Pertussis—whooping cough—has had a poor acceptance rate due to an unreasonable fear of its side effects. Haemophilus influenza B or Hib is a bacteria. With the introduction of routine immunisation of babies with Hib vaccine there has been a dramatic fall in the lethal side effect, which is meningitis.

In conclusion, eight diseases have been controlled: four are bacterial, diphtheria, tetanus, pertussis and Hib; and four are viral, polio, mumps, measles and rubella. It is hoped that with better information and education of both health professionals and parents these diseases, which have the potential to disable and kill, may one day not only be controlled but be eradicated. To achieve this, this State must have a more comprehensive, aggressive and energetic immunisation program.

The Hon. G. WEATHERILL: I want to talk about a favourite subject of mine: smoking. The problem was brought home to me loudly and clearly when I spoke to an old digger from the Second World War. I have spoken to several people about smoking and whether State and Federal Governments are really dinkum about people giving up smoking. It is obvious that they are not. Many platitudes are spoken in State and Federal Parliaments about smoking. For years the Adelaide Grand Prix advertised smoking and now that the Grand Prix is to move to Victoria the Federal Minister has also allowed smoking to be advertised in Melbourne. Are we dinkum about encouraging people to give up smoking?

The Second World War digger to whom I spoke the other day has been smoking since he was about 12 or 13 years old and he has a lot of problems trying to give up smoking. Of course, his criticism was of governments and the discrimination against people who smoke in restaurants or their own homes, say, when they have guests. I believe that all smokers are aware of people's rights and so, when they wish to smoke, they go outside so as not to disturb others. An area for smoking has been put aside in this Parliament for smokers. As a smoker, I enjoy a smoke and I enjoy a drink. As a member of a committee investigating the use of drugs, I have told the committee that the worst drugs are those two drugs that we have legalised: smoking and drinking.

As I see it, the problem is that the State and Federal Governments are not dinkum about helping people give up smoking. In the past 20 or 30 years we have discovered that smoking is bad for our health. Most of us would like to give up but we find it difficult to do so. I refer to the withdrawal symptoms from this drug, and there can be no argument that nicotine is a drug. I refer to the amount of tax paid by people who have smoked all their lives. Because of their need for revenue, State and Federal Governments do not give a damn whether or not people give up smoking and that is obvious. If these Governments were dinkum, they would help people

with a method of giving up smoking which has worked for thousands and thousands of people.

I refer to the smoking pads that some people wear. They work by reducing the nicotine intake to the body over a period. This reduces the withdrawal symptoms. Obviously there are such symptoms, because some people get frustrated in trying to give up smoking. If the Government was dinkum, assistance would be provided in this area. I do not suggest that the pads should be given willy-nilly, but when a person tries to give up smoking one course of these pads should be given free. Then, if you want to continue, naturally, you should have to pay for them.

This old digger wants to give up smoking and buy these smoking pads, but he cannot afford to. He gets his pension and he pays so much each week for his cigarettes or tobacco. To get these pads he has to pay a bill of $300. He cannot afford to do that in one lump sum. If he could afford to pay an amount every week, he would do it. He has argued with members of Parliament and doctors, etc., but he still cannot get the pads unless he first pays $300-odd. If the Government is dinkum, a course of these pads should be on the free list.

The Hon. R.D. LAWSON: In this Council we sometimes tend to focus so strongly on the affairs of the State that we overlook the wider picture. I wish to draw attention today to a national issue, namely, the issue of the widening gap between the well off and the poor in this country. Although this is of national interest, it affects this State, as it affects the whole of our country. In 1983, the Hawke Labor Government was elected on a promise that it would bring about a fairer society through a comprehensive economic plan of action that would provide a safety net for the disadvantaged, give tax relief and incentive to the middle class and make those well off pay their fair share back to society. However, the Joseph Rowntree foundation published an international study recently in which it showed that of all the nations in the developed world Australia ranked fourth in terms of the growth of inequality between those best off and those worst off during the 13 years from 1979 to 1992.

Some time ago the Australian Bureau of Statistics published its figures for the 1990 income distribution survey, and it concluded that there was an increasing inequality in earned income received by male and female workers during the period 1981-90. During that period the highest 10 per cent of income earners enjoyed a dramatic increase in their real income, but all other income earners experienced a dramatic fall. For example, in 1989-90 the average annual income earned for the bottom 10 per cent of full-time workers was $9 010. Ten years before that, in 1981-82, after making an appropriate adjustment for inflation, the average annual income for this bottom 10 per cent of full-time workers was $9 376, some $266 more in 1981-82 than it was in 1989-90.

By contrast, the average annual income of the top 10 per cent of full-time workers was $64 910 in 1990 and approximately $61 000 in 1982. That represents a 6 per cent increase for Australia's high income earners, whilst the lowest paid had their pay slashed by 4 per cent. When one compares that—a 6 per cent pay rise for the top 10 per cent and a 4 per cent pay cut for the bottom 10 per cent—it is no surprise that the gap between rich and poor is growing.

In 1983 the Labor Government promised tax reform, but statistics from the Australian Taxation Office show that over the decade to 1993 the share of total taxable income earned by the richest 10 per cent of income earners rose from 21.9 per cent to 24.9 per cent. On the other hand, the share of the total taxable income earned by the poorest 10 per cent of income earners fell from 3.5 per cent to 2.8 per cent. The same point is made again: poverty in this country is increasing.

Figures released by the Australian Institute of Health and Welfare, an independent research agency of the Federal Government, show that the proportion of households living in poverty increased by 14 per cent between 1981-82 and 1990—a 14 per cent increase in the number of those living in poverty. In a recent study by Professor Anne Harding of the National Centre for Social and Economic Modelling at the University of Canberra estimates that there were in excess of 1.8 million Australians living in poverty in September 1994. How hollow these figures make Mr Hawke's much derided claim in 1987 that by 1990 no Australian child would be living in poverty. It is clear that the economic—

The PRESIDENT: Order! The honourable member's time has expired. The Hon. Mr Crothers.

The Hon. T. CROTHERS: I want to continue the dissertation I commenced when last I was on my feet in this debate some three weeks ago. I think I had taken the Westminster parliamentary system up to the resignation of Richard Cromwell, who had governed as Lord Protector for some six months after his father, and the restoration of the English monarchy in 1660. Two other matters of some moment have continued to assist the evolution of the Westminster parliamentary system. The first was the capacity for the system to reform itself over some 150 years in so far as it did away with the so-called rotten borough system, whereby boroughs with electors of some 150 to 200 people could elect their member of Parliament and as such that was a vote for either the Whig or Tory Party, as the two Parties were colloquially known at the time when they were in power. Most of those rotten boroughs were controlled by the middle class yeoman; the fairly wealthy rural agricultural worker of land.

The Hon. R.I. Lucas interjecting:

The Hon. T. CROTHERS: That was of course done away with over a period of some 150 years. I suspect that in the case of interjector it would probably take some 200 years to do away with him and his type, but we will keep trying. The only remnant remains of the aristocracy in Australia are the people who have the abbreviation of Queen's Counsel after their name. The second major issue which was germane to the continuing involvement of the Westminster system was led by the Pankhurst sisters and other suffragettes who sought to extend the franchise for parliamentary voting by allowing females the right to vote for the first time. That proceeded over a period of time in successive measures of legislation, until in South Australia we succeeded in gaining electoral reform in the Upper House, where for the first time 25 years ago people who were not land owners could register on the electoral roll and cast their vote for the Legislative Council of this State.

Some five or six weeks ago a person interjected against the Hon. Mr Elliott, the Leader of the Democrats, from the public galleries, and I resent that; the interjection was absolutely unwarranted and unfair. I opened my dissertation three weeks ago by quoting from the French philosopher, Descartes. I wish to conclude this volume of my dissertation by quoting from another French philosopher by the name of Voltaire, who said, 'I do not agree with what you say, but I will defend to the death your right to say it.' In spite of other systems of parliamentary democracy operational throughout

the rest of the western world, I wish to quote Churchill when he said, 'It is a bloody awful system we've got, but I do not know of another one that can take its place.' I commend this system and its continuing evolution to members and thank them very much for the opportunity, brief as it was, to answer my interjectors on my left and to address the Council on the subject matter with which, hopefully, I have dealt reasonably succinctly.

The Hon. J.C. IRWIN: It is always a pleasure to hear our colleague, the Hon. Mr Crothers. The last two occasions I have participated in this debate I have followed the honourable member. In fact, I wish I had prepared something in the same material with which to go on after he had finished. Four weeks ago in this debate, without collusion with the Hon. Angus Redford, I had exactly the same sort of thing to say to the Council on an economic matter that the Hon. Terry Cameron has attacked. I commend to members some of the facts and figures that were used by the Hon. Mr Redford.

I want today to refer to what actually happens in the real world of international competition where, quite clearly, we as a country can survive with anywhere near the surety of the standard of living we have now only if we are able to compete overseas. It has nothing to do with supplying the domestic market. Everything about Australia's prosperity is to do with the Commonwealth and farther out to the rest of the world.

I hope that the Hon. Mr Cameron will listen to what a mere farmer, as opposed to a lawyer, has to say in this place. I am one of those people who has worked with his hands and does know what it is like to take a risk and to work with nature, with which, thank goodness, no Government can interfere.

The recent record balance of payments deficit has not produced much analysis of its cause. Canberra continues to assert, and the media report almost daily, that Australia has lifted its export game, the point made by Mr Redford. This is patently not true. Australia's export performances are not competitive by international standards. Low export levels are a major cause of the balance of payments deficit. Australia's export to GDP ratio lags behind most OECD countries of a similar size. The ratio of total Australian exports—goods and services—to GDP rose from 16 per cent in 1980 to 18 per cent in 1991. It stabilised in the recession but appears to have fallen again with a recovery in 1994. OECD exports to GDP average are close to 30 per cent. If large countries, such as the U.S. and Japan, and those at a low level of development, such as Spain, Turkey and Greece, are excluded, Australia has the lowest export to GDP ratio in the OECD.

A 1987 study by the Centre of International Economics suggested that, on the basis of comparison with OECD countries, the ratio of Australia's merchandise exports to GDP should be 28 per cent. This was reduced to 20 per cent in the 1989 report of the committee which reviews the export market assistance scheme to make the assessment politically palatable. Even this target has not yet been approached. When the economists rank OECD countries by their exports of services to GDP ratios, including the U.S. and Japan, where large flows of trade are domestic—the point I made earlier—Australia was twenty first out of 22 countries—a great result!

Let us consider how the Government has created the illusion that Australian export is booming. Calls for value adding reveal abysmal ignorance. All production adds value. Research into the ratio of value added to output shows conclusively that the amount of value added in production does not necessarily rise with degrees of processing. Value added is often higher in basic agriculture and mining than in manufacturing and services. I wonder if the Hon. Mr Crean can understand that.

The argument for processing primary production in Australia makes sense only if it adds to Australia's production at internationally competitive prices; that is, goods and services have to be produced competitively with imports or exported without subsidies. At the margins where investors have to make a choice in funding new primary processing activities, investment usually makes sense only if it makes additional primary production feasible. Processing fruit and vegetables that cannot be exported fresh is an example. Processing can reduce value adding in the economy if it lives up to the benefits of comparative advantage in raw materials in inefficient downstream processes.

The dismal state of Australia's export primarily reflects the uncompetitiveness of our economy. Until we strengthen out our microeconomic processes so that exporters can rely on an equilibrium and stable exchange rate, we will continue severely to damage our primary product exports.

The PRESIDENT: Order! The honourable member's time has expired.

PORT ADELAIDE COUNCIL

The Hon. L.H. DAVIS: I move:

That the Legislative Council expresses its concern about the administration and financial management of the Port Adelaide council and asks that the State Government conduct an investigation into the matters raised in debate on this motion.

This story may seem unreal. It sounds like pure Hollywood. Sadly, it is real and it is at Port Adelaide. The first chapter is about the flowers that ate Port Adelaide. In 1988 the Port Adelaide council decided to establish a flower farm on land at Pelican Point on the Le Fevre Peninsula. The farm was the brainchild of the council's Town Clerk and CEO Mr Cyril Keith Beamish. From the outset, Mr Beamish took control and he was the CEO of the Port Adelaide Flower Farm.

The flower farm was hailed as a way to reduce Port Adelaide council's reliance on rates. Mr Beamish told council that 'the project offers the council a tremendous opportunity. . . to generate wealth for itself.' Mr Beamish claimed it was a business that would create up to 130 seasonal jobs at the height of the picking season (October-December). Council was told that the 12 hectares of land at Pelican Point would be made available at a peppercorn rental of only $100 per annum, with a commercial lease coming into operation only at the end of five years.

Port Adelaide council remained the owner of the flower farm, but agreed to sell all product from the farm to International Horticulture (Management) Pty Limited (IHM), which managed the farm and also marketed the product. IHM received a management fee for its services. Twelve hectares of land was planted, and by October 1989 there were 43 000 kangaroo-paw plants and 7 000 Geraldton wax. However, because the water table was only 1½ metres below the surface and there was poor quality land fill, the soil was simply not suitable for cultivation.

The kangaroo-paw and Geraldton wax were planted in grow-bags of sand on top of weed control matting. Harsh winds on the Le Fevre Peninsula meant that wind breaks of netting, initially 10 kilometres, now 30 kilometres, had to be

erected. The salt spray also was a challenge. But the Port Adelaide council was confident and downplayed the problems of weather by saying, 'The only danger is frost or hailstorms, but this is rare on the Le Fevre Peninsula.'

The Port Adelaide Flower Farm (hereafter called PAFF) had many advantages over its private sector competitors, such as the peppercorn rental of only $100 per annum. Another advantage was that PAFF was in receipt of Government grants: $50 000 in 1989-90 and a Commonwealth Government Capital Works Program grant of $250 000 in 1992-93 which was used to buy windbreak fencing, an irrigation bore and 20 000 additional plants, so increasing the plant stock by 40 per cent. The predictions of profit were always optimistic.

Mr Beamish, in a report to a key committee of Port Adelaide council on 19 September 1988, forecast a profit of $373 712.29 in 1991 (year 4 of the project) and $585 048 in 1992 (year 5). On 6 June 1989, the PAFF Board's forecasts were even more optimistic—a predictable loss of $228 000 in 1988-89, a loss of $209 000 in 1989-90 and then profits in the next three years: 1990-91, $137 000; 1991-92, $467 000; and 1992-93, $737 000. In fact the PAFF Board predicted that accumulated profits at the end of year 5 would be $901 738.70.

But that forecast was fantasy. The real loss of PAFF in the first six years was $2.5 million, and that loss is suffered by the ratepayers of Port Adelaide. The optimism in those early days was boundless. On 6 August 1990 Mr Beamish, reporting to a committee of the Port Adelaide council, confirmed 'the original plan forecast losses in the first two years, with a small profit in the third'. He projected a 1990-91 profit of $36 939 before depreciation was taken into account. The reality was dramatically different. The losses in the first three years, after properly taking into account depreciation and interest charges, were as follows: 1988-89, a $232 039 loss; 1989-90, a $367 000 loss; and 1990-91, a $372 104 loss. The 1990-91 loss of $372 104 was a long way from the $36 939 profit before depreciation projected by Mr Beamish only 10 months earlier.

In fact, before the end of this financial year, on 13 May 1991, Mr Beamish was realising that there might be flowers at the bottom of the flower farm, but fairies there certainly were not. He admitted that 'interest and principal repayments would be greater than the levels of profits generated,' and was suggesting that the Port Adelaide council should absorb the interest costs or repay the flower farm's debts to achieve a positive return on the investment. Nevertheless, Mr Beamish remained optimistic and forecast profits before interest and depreciation for 1991-92 of $60 000, 1992-93 of $160 000, and 1993-94 of $270 000. The flower farm's supervisory board on 22 July 1991 confirmed Mr Beamish's optimism and reported:

> All indicators point to an exceptional season and market interest in our product has never been higher.

The flower farm lost $180 465 in 1991-92 after the council took over the payment of interest on mounting debt. In other words, the real loss to ratepayers in 1991-92, after taking into account the $254 000 interest now paid by council, was $434 000. In 1992 the endless optimism was in evidence yet again. The Messenger Press of 9 September 1992 quoted Mr Beamish, saying that he 'now expected the farm to return to regular profits'—a strange phrase because the farm had never reported a profit. Mr Beamish added:

> The council had originally expected the farm to reach break even point within about four years.

Notice how that varies from the original optimistic forecast in the early days of a profit in year three. A year later, the Messenger Press of 28 July 1993 reported that the flower farm expected a loss for 1992-93 of $90 000. But all was not lost. The Port Adelaide council was advised of the financial projections for the flower farm over the next three years—in 1993-94 a loss (presumably before depreciation and interest) of $38 373 and then profits in four years, 1994-95 through 1997-98, as follows: $62 180 for 1994-95 and $157 611 in each of the next three years. But the real results continued to belie the optimistic forecasts. There was a loss of $434 000 in 1991 (a $180 000 loss before interest payments) compared with the earlier forecast of profit. In 1992-93 there was a loss of—

The Hon. Carolyn Pickles interjecting:

The Hon. L.H. DAVIS: Just listen. This will quieten you right down when you get to the nub of it. Just listen, because you will be shocked, as I was. In 1992-93 there was a loss of $123 768 before taking into account interest and depreciation and a $250 000 Commonwealth grant. The loss in 1992-93 was $624 000 if interest payments are included and grant moneys excluded. It is legitimate to adjust for this Commonwealth grant money and take into account interest payments in establishing the real loss to ratepayers and for the purpose of making comparisons between the flower farm and private sector operators.

Despite the optimism, there was a loss of $190 077 in 1993-94 if interest payments are excluded. But the real loss to ratepayers in 1993-94, including interest payments, was $441 000. However, followers of the flower farm should not despair. Little more than 3½ months ago, on 12 December 1994, Mr Beamish reported:

> Income will start to flow in 1994-95 from the increase in farm capacity funded by the local capital works program. Present indications are that budgets will be met.

I beg to disagree. The profits for the flower farm have been represented in the public arena in a curious way. Mr Beamish has consistently quoted operating results before depreciation and interest charges are deducted. This is at odds with financial practice. The true bottom line—that is, the net profit or loss—is arrived at only after taking into account all operating expenses and also including depreciation and interest charges.

The excuses for the poor results since the farm started in 1988 have been numerous. In March 1990 the reasons for the poor 1989-90 result were many and varied: the pilot strike was a most valid reason; but there was also late installation of equipment, weather, plant immaturity, weeds, yield of plants, late seasons and missed buoyant Japanese markets.

The poor 1990-91 result was put down to poor prices, storm losses, quality issues, seasonality, shortfall in production and the failure to take advantage of favourable European market conditions due to lack of information. In 1992-93 the poor result was blamed on bad and unpredictable weather, a depressed economy and difficult times in overseas markets.

There were endless broken promises. IHM, which managed the farm and marketed the product, had promised at the outset to contribute equity to the Port Adelaide flower farm. Mr Beamish told Port Adelaide council on 19 October 1987:

> The consulting firm IHM Pty Limited has indicated that it would be prepared to inject equity capital into our project.

In a report to council on 18 April 1988 Mr Beamish said:

Dr Freeman of IHM has indicated that his firm will be prepared to leave in an agreed proportion of their commissions as equity.

The business plan (section 10.7) said that on the basis of forecasts up to $530 000 could be injected by IHM in equity capital. Other equity sources have also been indicated in the business plan. After five years not one brass razoo of equity capital has been invested. It never happened. On 13 May 1991, Mr Beamish told the Port Adelaide council:

An investor from Hong Kong is seeking to make a small investment with the farm.

No more was heard about that. On 4 June 1990, the CEO advised that:

Council will become responsible for accounting, provision of office accommodation for IHM, communication and an extra vehicle and, in return, IHM will relocate its total operation to Port Adelaide from Gosford.

I am advised that IHM did not relocate its total operation to Port Adelaide. Growers having plants processed through PAFF continue to receive accounts from IHM's office in New South Wales. Mr Beamish at the time also advised as follows:

There will be a reduction in the contracted administration fee to IHM and the flower farm will share in both export and domestic commissions earned by IHM and also consulting income of IHM. There is a net financial gain to PAFF.

This gain was never quantified and certainly does not appear to have helped the bottom line of the flower farm accounts. The deep red ink remained. The production levels and income from the flower farm reflect the same story: 179 000 stems of kangaroo-paw were produced and sold in 1989-90; 787 000 stems were produced in 1990-91; and 1.39 million were produced in 1991-92, which appears to have been the farm's peak year. But what is alarming is that in this peak year, where everything went right, the farm still lost $180 465 before taking into account the $254 000 interest burden which had been taken over by Port Adelaide council in that year.

For the past five years, the Port Adelaide council has been bombarded with information about the restructuring of the flower farm. Mr Beamish advised the Port Adelaide council on 4 June 1990 that negotiations were taking place with three major investors. A year later the Messenger Press reported on 19 June 1991 that a major restructure of Port Adelaide's controversial flower farm would mean that the flower farm was no longer to be responsible for its $1.89 million debt. Mr Beamish was quoted as saying that the debt of $1.89 million had been offset by $1.2 million in assets, a recent increased valuation for flower stock of $370 000 and its 'excellent reputation and goodwill', which was the farm's most valuable asset.

In other words, the council had effectively taken over the farm's $2 million debt in return for equity or ownership of the farm—a curious phase since it already owned the farm. But with interest rates running at record levels, the debt was costing the council around $300 000 a year to service. The debt was still there; it just did not belong to the flower farm any more. As Mr Beamish explained in the Messenger Press on 9 September 1992, 'What the council has done is convert and take responsibility for the debt as if it's a library or a park, or something like that.'

This huge debt must be put in perspective. When the farm was first established in 1988, it was agreed that the Port Adelaide council would invest $250 000 in equity and $250 000 in loan moneys into the flower farm. It was predicted that the overdraft for the flower farm would peak at $630 727 on 17 July 1989. But by November 1989 the flower farm overdraft was already $712 000 and out of control, although the project was barely one year old. Within three years the flowers that ate Port Adelaide led to debt skyrocketing to over $2.2 million.

The council took over the debt because the grim reality, as explained by Mr Beamish to the council on 5 May 1991, was that 'liabilities are currently greater than the value of the assets'. There would be a net cost to the ratepayer. Shortly after this the council was advised that the flower farm board was seeking to restructure the flower farm. It was proposed that the flower farm should become part of a cooperative trust by merging with International Horticultural (Management) Pty Ltd (the farm manager and marketer) and Australian Berry Farms of Coffs Harbor. This restructure was known as Newco Horticultural Trust, and this restructure was to cost Port Adelaide council $160 000, which would be paid back within a few years along with the council's original investment.

I have perused the details of this 1991 scheme, which was long on rhetoric and without the detail which was necessary to make a competent and commercial assessment. No basis whatsoever was provided for the optimistic figures and forecasts. Nothing came of the Newco proposal. However, with the farm financially haemorrhaging, something had to be done. The council was advised by Mr Beamish on 31 May 1993:

. . . with the benefit of hindsight, the project was under capitalised and the council resolved on the recommendation of the flower farm board in November 1991 to convert the debt accumulated to equity—that is, to capitalise the contributions. The council has funded this equity by long-term credit foncier loan. The council equity contribution as at 30 June 1992 is $2.13 million.

So the search for a solution continued.

In a pamphlet on the flower farm issued by the Port Adelaide council in June 1994 it was argued, 'It is logical that the Port Adelaide Flower Farm becomes part of a bigger and more diversified business.' No reason was given to justify the logic of this statement. It could just as easily have been argued that the commercial operation, which had effectively lost about $2.5 million in just six years, could lose even more in the next six years if it became part of a larger but similar operation.

The solution agreed to by council in mid-1994 was a new company called Flowers of Australia, which was to buy or lease flower farm assets, a nursery from the council and land at Penola, raising between $4.8 million and $10.5 million from investors. Flowers of Australia lodged a prospectus for registration with the Australian Securities Commission in Sydney on 20 May 1994. Registration of that prospectus was refused. A second prospectus was lodged on 20 February 1995, and that again was refused. On 23 March 1995, a third prospectus for Flowers of Australia was lodged with the ASC.

I find it curious that the application for registration of the prospectus has been made in Sydney on each occasion when the company has its centre of operations in Adelaide. Obviously, I do not know why the ASC has declined registration of the prospectus, but there are many things that can be said about the Flowers of Australia prospectus. Professional flower growers and accountants have examined it, and the words used to describe it range from 'breathtaking' to 'the impossible dream', 'unrealistic', 'clearly unachievable' and 'a very big ask'. The first thing that strikes me about the draft prospectus, which is an invitation to the public to subscribe between $4.8 million and $10.5 million, is that it does not contain—

The Hon. Carolyn Pickles interjecting:

The Hon. L.H. DAVIS: Just listen to this—one line of information, not one figure, not even a hint of how the Port Adelaide Flower Farm has been trading since it was started in 1988. Nor is there any trading information about the nursery attached to the Perce Harrison Environmental Centre or the Penola flower farm, which apparently has some flowers planted. Whether any are being sold and whether the Penola business is a profitable business is left to the imagination of the investor.

The Hon. Carolyn Pickles: Who owns it?

The Hon. L.H. DAVIS: I understand that the Penola flower farm is privately owned. Nor is any detail provided about the profitability of IHM, although, if Flowers of Australia's one-third interest costs only $10 000, the answer seems pretty obvious.

This scenario reminds me of the Budget Rent-a-Car float on the Australian Stock Exchange, where directors of the unlisted Budget Rent-a-Car group and Budget Transport Industries concealed $20 million of losses when floating the Budget business in a newly created company, Budget Corp Ltd. People who were induced to buy shares in Budget lost all their money very quickly. Two directors of Budget faced charges relating to omitting material from the float prospectus and making false and misleading statements.

Let me make it quite clear that I am not making that accusation here. But surely it is relevant for any prospective investor to know that the Port Adelaide Flower Farm has lost about $2.5 million since 1988. Mr President, I seek leave to have inserted in *Hansard* a table of a statistical nature which sets out the losses incurred by the Port Adelaide Flower Farm since 1989 through to the present time.

Leave granted.

The Financial Facts on Port Adelaide Flower Farm—From Go to Woe

	1988-89	1989-90	1990-91	1991-92	1992-93	1993-94	1994-95
INCOME Made up of:	$118	$426 000 budgeted $72 000 actual	$1.2 m budgeted $337 000 actual	$1.114 m budgeted $1.074 m actual	$1.12 m budgeted $630 000 actual	$926 000 budgeted $671 000 actual	$985 000 budgeted
Sales			$770 000 budgeted	$840 000	$400 000		
Consultants fees			$40 000 budgeted	$51 000	$45 000		
Contract processing			$228 000 budgeted	$71 000	$35 000		
Commissions			$162 000 budgeted	$72 000	$91 000		
Grants		$50 000*			$250 000*		
Other				$40 000	$59 000		
EXPENDITURE Made up of:		$570 000 budgeted	$1.16 m budgeted	$1.02 m budgeted	$1.12 m budgeted	$926 000 budgeted	$985 000 budgeted
Expenses	$146 000	$194 000	$429 000	$1.074 m	$737 000	$739 000	
Depreciation	$69 000	$90 000	$71 000	$181 000	$266 000	$122 000	
Interest	$17 000	$155 000	$208 000	$254 000†	$251 000†	$251 000†	
TOTAL	$232 000	$439 000	$708 000	$1.509 m	$1.254 m	$1.112 m	
LOSS	($232 000)	($367 000)	($372 000)	($434 000)	($624 000)	($441 000)	

TOTAL LOSSES (including interest payments and excluding grants = $2.47 m.
* = Excluded to measure PAFF as a commercial enterprise.
† = Included to measure cost to ratepayers—Council in 1991-92 took over $2.2 m farm debt burden.

The Hon. L.H. DAVIS: To unsuspecting investors the Flowers of Australia float could be Budget revisited. The financial facts on Port Adelaide Flower Farm—from go to 'woe'—reveal losses of $2.47 million after taking into account interest payments made directly by the farm or on its behalf from 1991 onwards by the Port Adelaide council. Government grant moneys have been excluded to provide a fair comparison with private sector operators. It should also be remembered that the flower farm operates with the benefit of no sales tax, council rates or land tax.

Equally alarming is the deterioration in the Port Adelaide Flower Farm balance sheet. In 1989-90 and 1990-91 there was a deficiency in assets and the farm was technically bankrupt. Even after 1991, when the council took over the farm debt, the asset position continued to weaken. This financial engineering in 1991-92 and the exclusion of debt and the revaluation of stock achieved a $1.7 million turnaround. Council had on its books its original equity contribution of $250 000 in 1988-89, plus $1.88 million of loans—an additional debt burden of $2.13 million. If the council had not taken over the assets, the flower farm's deficiency on assets at that time would have been nearly $1 million. Net assets at 30 June 1994 have shrunk to $660 000, dramatically lower than the $980 289 just two years earlier. It is likely to be even less on 30 June 1995.

A forensic examination of the balance sheet of the flower farm reveals a business with a terminal financial disease. I seek leave to have inserted in *Hansard* a table, of a purely statistical nature, which highlights the deteriorating asset position of the Port Adelaide Flower Farm.

Leave granted.

PORT ADELAIDE FLOWER FARM
THE BALANCE SHEET

YEAR	NET ASSETS	COMMENT	
1989-90	$346 501 deficiency		
1990-91	$718 605 deficiency	Loans and overdraft exceed $2.2m *Creditors $2 295	
1991-92	$980 289	Farm debt taken over by Port Adelaide Council and stock revaluation assists $1.7m improvement in net assets. Port Adelaide Council investment in farm at 30/6/92—$250 000 equity plus $1.88m debt=$2.13m *Creditors $310 000	
1992-93	$856 521	Assets include farm plants and grow bags (depreciated value) plant and equipment land and buildings (leasehold improvements) office equipment	$716.000 $145 000 $333 158 $ 92 910 $1 203 124
		*Creditors	$630 845
1993-94	$666 000	Assets include Other † plant and equipment land and buildings office equipment	$720 000 $112 000 $272 000 $ 5 000 $1 109 000
		*Creditors	$758 000

†Other is not defined—presumably farm plants and grow bags.

This table also reveals an alarming growth in creditors. Monies owed by the flower farm as at June 30 1994 were $758 000, 2½ times the figure of $31 000 two years earlier.
The second matter of serious concern is that Flowers of Australia seeks to raise a minimum of $4.8m, but offers in exchange assets valued at less than $1m.

The Hon. L.H. DAVIS: This table also reveals an alarming growth in creditors. Moneys owed by the flower farm as at 30 June 1994 were $758 000—two and a half times the figure of $310 000 just two years earlier.

The second matter of serious concern is that Flowers of Australia seeks to raise a minimum of $4.8 million but offers in exchange assets valued at less than $1 million. Flowers of Australia (FOA), is the company which will buy or lease the assets of the Port Adelaide Flower Farm from the Port Adelaide council. I have examined the company's draft prospectus dated 24 May 1994. Assuming that only the minimum subscription of $4.8 million is raised, what assets will Flowers of Australia acquire and what are those assets currently worth? In the draft prospectus, the head agreement between Port Adelaide council and Afcorp, which is Flowers of Australia, lists under the Afcorp purchase from Port Adelaide Flower Farm the following: grow bags, $380 960; equipment, $50 000; and trading stock, $80 000, making a total in those purchases from the Port Adelaide Flower Farm of $510 960. It also includes the purchase of the Penola farm for $180 000; the purchase of the nursery, which is associated with the Perce Harrison Environmental Centre, for $250 000; a third interest in IHM of $10 000, making a total of $950 000.

Then Afcorp will rent from Port Adelaide council land and buildings for the nominal figure of $1 per annum; nursery and buildings for $45 000 per annum; and plant stock, irrigation equipment and plant and Flower Farm equipment for $579 000 per annum. That rental increase for plant and flower equipment, plant stock and irrigation equipment increases to $729 000 in the second year and decreases thereafter. The 82 hectares of land at Penola purchased for $180 000 will be used to grow flowers. IHM is the company now managing the farm and selling the product. So, $4.8 million is being raised to purchase less than $1 million in assets. Even if we were generous and assumed that Flowers of Australia purchased rather than leased all the assets of the Flower Farm, net assets as at 30 June 1994 were valued only at $660 000 and total assets just at $1.46 million. The acquisition of the nursery, Penola farm and interests in IHM costs only $440 000. This is an extraordinary proposition. There is no way that the Port Adelaide Flower Farm could expect to attract any goodwill for the business, given that it has never made a profit in its five years of operation. Goodwill surely only comes into play in valuing a business if that business is supported by strong and consistent past earnings and potential earnings.

The proposed rental of $45 000 per annum for a nursery which is valued at $250 000 but which has never made a profit is commercial nonsense. The proposed $579 000 per annum rental payable to Port Adelaide council for the plant stock, irrigation equipment and other plant and equipment on the Flower Farm, which in the 1993-94 balance sheet is valued only at $832 000, is financial fantasy. The Port Adelaide council may well be big winners under this proposal, but its loss of credibility will be enormous. The draft prospectus also details the fees paid to BCG Rural, which will manage the affairs of Afcorp and deal with IHM and other consultants. BCG Rural receives $264 000 for managing the share issue. In addition, it will receive an annual management fee of $60 000 plus 1 per cent of the amount raised in the prospectus, assuming it is $4.8 million, and that amounts to $48 000 and it will also receive $32 810 per annum for office services and facilities. This is an annual

total payment of nearly $141 000, and these annual fees are indexed for inflation.

IHM will provide technical services and is scheduled to receive an annual fee of $36 000 plus .67 per cent of the funds raised in the prospectus, and that will be $32 160. That is an annual total payment of $68 160. Under the draft prospectus, these two consultants are due to receive nearly $210 000 per year. The draft prospectus also reveals that the estimated amount of the formation and registration of the company and of the issue is $1.429 million, which includes brokerage of $1 165 440. I will give an example of how the new structure will work using the latest figures available from the Port Adelaide Flower Farm. If we take the actual income from the Flower Farm in 1993-94 of $671 000 we will see that this is a generous figure because the 1993-94 financial statement did not provide a breakdown between Flower Farm sales, commissions and other earnings.

In relation to expenditure, let us assume that 1 000 investors have each purchased a $4 800 unit, and that provides the total of $4.8 million. Each grower is guaranteed under the prospectus a return of $390 each year per unit for four years. So, the return to the growers is $390 000. The rental to Port Adelaide council for plant stock, irrigation and equipment is $579 000; for nursery and buildings, $45 000; payment of fees to IHM is $68 160; and the payment of fees and office services to BCG Rural is $140 810. So there is a total expenditure of $1 222 970. But no provision whatsoever has been made for operating costs. So this calculation shows an annual loss of $551 970 without including any major costs.

It has to be stressed that if the minimum subscription of only $4.8 million is raised, there are no additional plantings proposed for the Port Adelaide Flower Farm or for Penola, or a proposal for the building of a 5 000 square metre greenhouse at the nursery. Nothing changes. Therefore why will the income from sales of the Flower Farm be significantly better than for the past five years? The 1994 draft prospectus for Flowers of Australia forecasts revenue from the Flower Farm in year one of $716 000 and in year two $1.16 million. In year six the forecasted total revenue from all sources is a remarkable $7.3 million. But the grim fact is that, in five years of trading, sales of flowers grown at the Flower Farm have only on one occasion exceeded $400 000 and that was in 1991-92 when sales were $840 000, and even in that year there was still a loss of $180 000 before interest on borrowings was taken into account.

Sales of flowers from the farm in 1989-90 were just $72 000; in 1990-91 sales were $337 000 against a budgeted income of $770 000; and in 1992-93 sales were only $400 000. In 1993-94 income from all sources—the flower sales, consulting fees, contract processing, contract commissions and miscellaneous income—was only $671 000. I must emphasise that I am not using my figures but the details contained in the draft prospectus and the Port Adelaide Flower Farm financial statements. The figures do not stack up. Port Adelaide council certainly does very nicely out of the proposal with over $1.3 million in rental repayments in the first few years, but there is a catch. Port Adelaide council must guarantee the performance of the Port Adelaide Flower Farm for four years.

The float is the great escape for the council. But what about the credibility of Port Adelaide council and local government? What about the credibility of the Australian flower industry as it moves into international markets? The industry does not need sad but true stories such as this. Most importantly, what about investors? On the facts presented today, the road to Flowers of Australia is a one-way street but the arrow is not pointing to the shareholders. Certainly the prospectus states that, of the $4 800 invested per unit, $4 079 is tax deductible, and that will be of some benefit to investors. But real profits have to be earned for investors to prosper.

All the data leads to the irresistible conclusion that Flowers of Australia is most unlikely to bloom. The five year track record of the Port Adelaide Flower Farm and the lack of any information whatsoever in the Flowers of Australia prospectus leads to the inevitable conclusion that the Flower Farm does not come up smelling financial roses. I have spoken to many people in the flower industry here and interstate. All are concerned about the consequences to the flower industry if this prospectus does proceed and the Flower Farm fails. There is not one person that I have spoken to in the cut flower industry or the native flower industry who does not believe there are grave risks of damage to the industry.

A significant point often raised is that at least four ventures similar to Flowers of Australia in other States have failed. Individual growers of native flowers may prosper but structures such as Flowers of Australia have a poor record. It is never easy to raise serious matters such as this under the privilege of Parliament, but I do so as a matter of public interest and after examining the facts and speaking to people with knowledge of the flower farm's activities and the Flowers of Australia proposal. In the past, the Port Adelaide Council and its Chief Executive Officer, Mr Beamish, have quite often taken legal action against anyone who has publicly dared to criticise the flower farm and its operations. The time for taking legal action is over. It is time for corrective action. It is time for the State Government to thoroughly investigate the serious allegations which are contained in this speech. Not only am I concerned about the possible damage—

The Hon. R.R. Roberts interjecting:

The Hon. L.H. DAVIS: The Hon. Ron Roberts pretends to represent the interests of primary industry people and should be most concerned about this because the people in the flower industry are certainly concerned. As the honourable member will find out, the information that I am getting, which comes more from Labor members than Liberal members in Port Adelaide, will make you end up supporting this motion. It is time for the State Government to thoroughly investigate the serious allegations which are contained in this speech. Not only am I concerned about the possible damage to the emerging flower industry in Australia, but also I am concerned for the long suffering ratepayers of Port Adelaide. I hope that the Labor Party would be concerned as well. They have been given a rough deal, they have been kept in the dark and it is time that their interests were protected.

Port Adelaide has a major place in South Australian history; it is an important heritage precinct and has enormous tourist potential. Finally, there is the reputation of local government to be protected. Members of all political persuasions do not lightly intervene and raise matters relating to local governments unless they are of utmost importance. I do know that in the past there has been an occasion where a Labor member of Parliament has raised allegations of financial mismanagement with the relevant Minister on behalf of concerned ratepayers of Port Adelaide. I am also aware that a letter from a sub-branch of the Labor Party in Port Adelaide was sent to the Port Adelaide council expressing concern over another controversial entrepreneurial venture of the council.

So, I emphasise that this motion is not playing politics. Both major Parties over the last seven years have raised questions about the financial management and administration of the Port Adelaide council. This motion is about recognising some unpalatable facts and investigating them in the interests of the ratepayers of Port Adelaide. I now wish to canvas further irregularities at the flower farm which merit investigation.

There have been suggestions that the business plan signed by the Minister of Local Government at the time, the Hon. Barbara Wiese, evidencing the agreement to establish the flower farm is different from the business plan approved by council. It has been alleged that budgets have been changed and alterations, additions and deletions made to the original plan. That is a matter requiring further investigation. There were some safeguards built into the original business plan and some recommendations were made by the council's solicitor to ensure proper accountability.

In a letter dated 6 September 1988 from the council's solicitors to Mr Beamish, it was recommended that, 'Council should establish some sort of committee or board of management to regularly oversee and review performance by IHM' and 'appoint appropriate professionals/experts to the board to interpret and explain to council all aspects of. . . the flower farm. These experts would protect council's interest and alert council to any problems.' The solicitor's letter to Mr Beamish went on:

> The committee. . . should give instructions or directions to IHM if. . . IHM failed to meet certain minimum performance criteria. These could be related back to projected harvests and sales set out in the business plan.

This was good advice, but the question has to be asked: did the council and its CEO take any notice of this advice? The agreement between the council and IHM made specific reference to minimum performance levels in terms of quantity of product and sale of product. There is no doubt that these minimum performance levels have not been reached, but has council ever been told about this? Has there ever been any discussion of IHM's performance and whether or not the option to terminate given in the agreement could or should have been exercised?

The terms of reference for the flower farm, circulated by the Corporation of the City of Port Adelaide, in clause 32 require that:

> The board shall not later than the 31 day of August each year submit to the council an annual report detailing the activities, statistical data and performance of the flower farm for the 12 month period ending the 30 day of June last preceding. The annual report shall have appended to it for such 12 month periods prepared by the Chief Executive Officer relevant statements of profit and loss and a balance sheet to reflect the activities of the flower farm.

There has been a clear breach of this important term of reference. The council has not received an annual report detailing the activities, statistical data and performance of the flower farm, according to clause 32. Council in fact receives very little information about the flower farm apart from discussion papers on its proposed restructuring over the last four years.

The results for the year ended 30 June 1994 were not tabled at the council until 12 December 1994. The income and expenditure statement was most unsatisfactory, with only total income being provided from the flower farm, rather than a breakdown of income between sales of flower farm stock, commission earned by processing and exporting other growers' flowers and other sources of income. The terms of reference stipulated in clause 11 that the Chief Executive Officer of the Port Adelaide Flower Farm Supervisory Board shall be the Town Clerk/Chief Executive Officer of the Corporation of the City of Port Adelaide. Clause 11(b) states:

> The Chief Executive Officer shall be responsible for the efficient management, financial organisation and administration of the activities of the board.

In other words, the buck stops with Mr Beamish. Had the Port Adelaide council ever been told of some of the challenges faced by the flower farm at Pelican Point? First, because the flower farm is located on a salt marsh the soil is unsuitable for growing native flowers. The kangaroo-paws and other flowers are placed in grow-bags. This bagged culture, according to flower professionals, has to add at least 15 to 20 per cent to the cost of production. The plants receive poor drainage and poor aeration in soil which is chemically very inert. While the kangaroo-paws seem to cope with the grow-bags, Geraldton wax tends to go woody if kept in containers. This means that the plants will not get much new growth and this reduces production. Being close to the sea there is atmospheric salt load which does not help the growth process. I have not spoken to any flower grower who believes that Pelican Point is an ideal site for growing native flowers. In calculating the $2.47 million loss since the flower farm was formed in 1988-89, no allowance has been made for the benefits which the farm receives and which are not available to private sector competitors. For example, the Port Adelaide Flower Farm, as a corporate body under the Port Adelaide council umbrella, would pay no council rates and no land tax. Until the end of 1993 the farm paid a peppercorn rental for the 12 hectare site of only $100 per annum. The flower farm also has the benefit of paying no sales tax, unlike its private sector competitors. The Port Adelaide council, its management of the flower farm and the attempt to raise between $4.8 million and $10.5 million from investors by way of a prospectus for a business based on the flower farm clearly merit investigation.

But there are other matters of public interest in Port Adelaide. First, there is the mysterious story of Streetwise Signs. The Port Adelaide council meeting of 13 December 1993 noted that there was a street sign replacement program using three previously unemployed men engaged under contract to the council. Street names were etched onto kerbs with the idea of saving council the cost of replacing vandalised street signs. But on 11 July 1994 the council discussed an agenda item by the Director of Technical Services, Mr John Isherwood, which noted that 2 500 signs still had to be completed, but that this work should be done by contract. Mr Isherwood's minute to council advised:

> One of the staff formerly operating this program has formed a company to carry out the etching service, and has approached council with an offer to purchase the existing plant and equipment used by the council over the last 18 months for the etching of street signs. These items will no longer be used by council and are surplus to requirements. The price of $7 000 quoted is in excess of book value, and in my opinion is a fair sum for the plant and equipment involved.

The council agreed:

> to dispose of Datsun utility UOS 370, the Swan compressor and the other miscellaneous equipment formerly used in the street sign replacement program to Streetwise Signs for the cash sum of $7 000.

At this meeting, Councillor Milewich asked about the age of the vehicle. He was told that the Datsun was 11 years old and that they were lucky to get $7 000 for all of it. Councillor Milewich was also critical of the fact that the truck had been

sold without its going to tender. The facts reveal that the council was conned. A business (not a company) called Streetwise Signs had been formed do the street signs. The person carrying on the business, according to a Corporate Affairs extract, was Timothy Charles Cocking. Mr Cocking is the stepson of Mr Beamish's secretary. Further inquiries reveal that the utility sold was not an 11 year old Datsun, as was claimed by the Director of Technical Services in his written minute and subsequent questioning, but was in fact a four-door Ford Courier crew-cab ute in excellent condition with the same registration number. This ute had been first registered on 29 July 1988 and so was not yet six years old. I have a photograph in my possession of this vehicle. Several dealers have confirmed that the trade-in or sale value to a dealer of this popular model would be at least $8 500-$9 000 and possibly as much as $10 000.

But in addition to the Ford ute, Mr Cocking received the Swan compressor and engraving equipment (numbers 0-9 and letters A-Z) used for etching the street signs. I am advised that this equipment has a total value of $3 500. Therefore, the Ford ute, compressor and engraving equipment had a value of at least $12 000 to $12 500. But there is more. While the street sign program was under the control of council, three people were employed, and I understand that four signs, on average, a day were completed by these three workers. However, now that the program is contracted out l understand there are only two workers and they are paid $40 a sign. If this is so, on average, these two workers are doing 12 signs a day. Productivity has leapt from 1.3 signs per worker per day to 6 signs per worker per day using the same equipment. If it does happen to still be three workers, it would still be four signs a day.

At $40 a sign, the signwriters are doing very nicely. For example, in the four week period 15 August to 11 September 1994, the two Streetwise workers collected $9 934.50. For the two workers that is equivalent to nearly $1 250 per week each, or a yearly salary of nearly $60 000 per annum, after allowing for four weeks holiday and public holidays—nice work if you can get it! But the real punchline of the story is yet to come. A monthly lease payment of $606.65 for an engraving machine is still being paid by council. Cheque 052601 in February shows the council paid this amount to the seller of the equipment. It appears to be the machine being used by Streetwise Signs.

I am also advised that the six year old Ford ute is still registered in the name of the Port Adelaide council, nearly nine months after the Port Adelaide council agreed to sell it to Streetwise Signs. It is a fair question to ask: why did the motion agreed to by Port Adelaide council stipulate a $7 000 cash sum? Has that money been paid, when was it paid and, if so, why is Port Adelaide council apparently still the owner of the Ford ute and still making lease payments for the engraving machine? And does the council have a policy of so quickly selling assets which were partly purchased from grant money?

The Port Adelaide council is quick to hit any public criticism of the council, particularly the flower farm. Defamation actions by the Port Adelaide council and the CEO are one of the tools of trade used against ratepayers and others concerned about the financial management and administration of the council. If there is another council in South Australia which has slapped more defamation actions on people, l cannot name it. Legal costs have been high. The Port Adelaide council was forced to pay more than $22 000 in legal costs of present and former councillors in late 1992 as a result of a curious defamation action taken over allegedly defamatory statements in an election pamphlet in 1986.

Mr Beamish also threatened to sue former Councillor McKell for defamation. In July 1993, a Mr lan Nielsen, a vociferous and long time critic of the council, was threatened with a defamation action following a stinging letter to the editor in the *Portside Messenger* complaining of losses on the flower farm and other council projects. Mr Nielsen also claimed that Port Adelaide council rates were too high. At the time, Councillor Nick Milewich defended Mr Nielsen's criticisms at a meeting of the Port Adelaide council. Councillor Milewich was reported in the Messenger press as saying that his negative views about the flower farm went back to misrepresentations made five years earlier (that is, 1988, when the flower farm was formed). Councillor Milewich was quoted as follows:

> During my election campaign the. . . people. . . were so strongly opposed to, for example, the Port Adelaide Flower Farm, if we started suing all these people we would be suing two-thirds, the overwhelming majority, of the people of Port Adelaide.

Mr Beamish contemplated taking action against Councillor Rogers in 1991 as a result of an alleged defamation of the CEO in the *Advertiser* of 15 June 1991. He received authorisation of council to proceed with the defamation action subject to legal advice. I understand that Councillor Rogers died after this date and so there were no further legal proceedings. I have read the *Advertiser* article of 15 June 1991. It is as tame as a church mouse. Mr Rogers was merely expressing concern about the council's management of the flower farm and calling for CEO Keith Beamish to stand down pending an investigation.

However, in September 1990, Port Adelaide council took action against my parliamentary colleague the Hon. Jamie Irwin, who was at the time the Opposition local government spokesman. Again, this matter received widespread media coverage. The Messenger press reported that Mr Beamish had called urgent 'secret' talks with the Port Adelaide council, claiming that the Hon. Jamie Irwin had damaged the council and the CEO, affecting the flower farm trading and personal reputations.

And how had the Hon. Mr Irwin defamed Mr Beamish and council? It was because, among other accusations, he used the word 'junket' to describe a proposed $6 000 trip to Japan by Mr Beamish and the then Port Adelaide council Mayor. This was the very same trip which council had voted against only weeks earlier. After the council had blocked the trip, a front page banner headline in the *Portside Messenger* of 15 August 1990 declared 'Farm hindered by council animosity'. Mr Beamish was quoted as saying that the future of the flower farm was being threatened by personal animosity towards him by some council members. As I will show later, this claim by Mr Beamish was a bit rich.

Mr Beamish said the flower farm was turning into a successful operation and could 'eventually mean a rate reduction'—so repeating a claim he had made when the flower farm was first being established. But after the council blocked Mr Beamish's trip, he submitted a report to the next council meeting. He emphasised that as CEO he was also CEO of the flower farm and was responsible for the efficient management, financial organisation and administration of the activities of the board. The council then agreed to allow Mr Beamish to go if the Port Adelaide Flower Farm board decided that he could go. Mr Beamish went on the trip, but the mayor did not.

On 30 August 1990, shortly after the Port Adelaide council meeting, the Hon. Jamie Irwin made his allegedly defamatory remarks. Mr Beamish's response was to hire a leading public relations firm to defend his trip to Japan, which resulted in extra costs to the council and a big headline in the *Advertiser* 'PR firm hired to defend flower farm junket.' Why didn't the *Advertiser* get sued for defamation for that headline? But what was interesting to the growing band of flower farm watchers was Mr Beamish's profit forecasts.

On 15 August 1990, he was quoted in the Messenger press as saying that the 1989-90 loss was $215 000 and that the 1990-91 budget 'was favourable with a better than expected net loss'. Just two weeks later in the 31 August press release from the public relations firm, Mr Beamish was quoted as saying 'a small profit was projected for the current year (1990-91)'. The truth was very different, however. The flower farm recorded a loss of $372 000 in 1990-91. Not too blooming good! These rapid changes in profit forecasts did not inspire confidence in the flower farm and the Port Adelaide council's management of it. Indeed, it is arguable that if the Port Adelaide Flower Farm had been listed on the Australian Stock Exchange, the shares could have been suspended while the Stock Exchange sought clarification of the contradictory remarks. In the same media release, Mr Beamish claimed:

> The major purpose of our trip to Japan is to underpin the negotiations that will generate more than $1.8 million in cut flower sales from South Australia in the current financial year.

Just for the record, the Port Adelaide Flower Farm sold only $337 000 worth of flowers in 1991, and sales of flowers on behalf of other growers certainly would not have made up the balance.

The Port Adelaide council and Mr Beamish proceeded with the defamation action against the Hon. Mr Irwin because he refused to apologise for calling Mr Beamish's trip a 'junket'. When Mr Beamish returned from his overseas trip to Japan the *Portside Messenger* headline was "'Farm's Future Guaranteed,' says Beamish". The article quoted Mr Beamish as saying that 'the controversial flower farm was almost guaranteed', although he's still prickly from the thorny personal attacks on him.

The defamation action started against the Hon. Jamie Irwin in late 1990 in the District Court (No. 4356 of 1990) and was eventually resolved on 23 June 1994. The details of the outcome remain confidential, but my colleague has advised me he was not unhappy with the outcome. But what is especially interesting is that, on the night before the defamation action was resolved at the instigation of the Port Adelaide council there was a special meeting of the council where its members were advised that there was a status conference about this defamation action to be held the following day in the District Court with the Hon. Jamie Irwin and council representatives in attendance.

At this same meeting, Mr Beamish refused a request from Councillor Milewich for the audited profit and loss account and balance sheet for the flower farm for each year since its establishment. He argued that the documents could be used by the Hon. Jamie Irwin in the defamation action. He claimed that Councillor Milewich had never shown any previous interest in the flower farm. By inference, if he had not shown any interest, he was not entitled to the documents! But Councillor Milewich, as I have already indicated, had in July 1993 been quoted in the Messenger Press as saying that he had been negative on the Port Adelaide Flower Farm for five years and that a large number of people in Port Adelaide were opposed to it.

Mr Beamish also attacked Councillor Milewich for being absent from council meetings. Councillor Milewich has a serious back problem caused by a serious car accident many years ago and walks with the aid of a stick. He is often in great agony, and that can be confirmed by his specialist. Most amazingly of all, Mr Beamish claimed that the material, if released, could put at risk the proposed float of the flower farm, which was styled 'Afcorp'.

So, council was being told by its CEO, Mr Beamish, that it should remain ignorant and that the council should keep information relating to its own operations confidential from itself! And all this when hopefully at least some councillors at Port Adelaide were struggling to come to grips with the true financial position of the flower farm, the implications of the restructuring proposal for the Port Adelaide council, its ratepayers and potential investors, not to mention the heavy obligations that councillors have properly to represent the interests of constituents.

Having persuaded council to withhold the financial information of Port Adelaide Flower Farm on 22 June 1994, relying heavily on the defamation action as a reason, on the following day, 23 June, out of the blue, Port Adelaide council settled the defamation action against the Hon. Jamie Irwin. Alice In Wonderland would have something to say about that—curiouser and curiouser!

But there are two more twists in this defamation drama. First, before Mr Beamish became Town Clerk and CEO of Port Adelaide council in late 1984, he had been Town Clerk of Bendigo. A headline in the *Bendigo Advertiser* on 24 May 1984 read 'Legal Suit Costs Council $11 500 in a Defamation Action Against the *Bendigo Advertiser*'. This action had been taken for an alleged libel against Mr Beamish in both an article and cartoon in that paper. The paper quoted one councillor as saying he was concerned to see in a report by the Town Clerk, Mr Beamish, that the city's ratepayers had been left with such an amount to pay ($11 500) when it had been suggested at the time of the action that there would be virtually no costs to the city.

The Hon. T.G. Cameron: What is the relevance of that?

The Hon. L.H. DAVIS: Stay tuned, Terry. Never lead with your chin! Secondly, on 23 December 1983, the *Bendigo Advertiser* reported under a headline 'Mayor's Trip Is Just a Jaunt' that the Bendigo Ratepayers' and Residents' Association was totally opposed to city funds being used to pay for a trip to Hanover, Germany, by the Mayor. The association labelled the mission as 'just a jaunt' and said the city council should not allow the Town Clerk, Mr C.K. Beamish, to join the four week trip. The Chairman of another community committee was quoted by the *Bendigo Advertiser* as saying the trip is 'nothing short of a junket trip for the boys and the final stopover in Hong Kong to extol the virtues of Bendigo as a possible site for the financial capital of the world defies description'. However, as far as I am aware, Mr Beamish never did take legal action for the allegations made about his trip to Hanover being a junket or a jaunt.

While this debate was raging, Bendigo ratepayers had also been publicly expressing concern at the increasing council rates. Mr Beamish has used legal actions and threats to block and bluster anyone who dares to criticise projects such as the Port Adelaide Flower Farm. For example, on 31 May 1993, in a report to the Port Adelaide council, Mr Beamish stated that the flower farm project 'was seriously undermined by certain perfidious actions which ultimately led to legal action

on behalf of the CEO and council for defamation'. The report continued:

> Bad and misleading publicity undermined the projects and efforts to introduce equity into it.

That statement defies logic. Councillors and other interested parties are allowed to ask questions and express concerns about the financial status of the Flower Farm and its administration. Council must be accountable to its ratepayers. Surely a flower from a farm that has been subject to public debate will still grow, and can still be cut and sold overseas at the market price!

Mr Beamish's refusal to provide information relating to the flower farm to Councillor Milewich over many meetings is not an isolated example. At a meeting of the council on 19 February 1990 a council member moved that the CEO, Mr Beamish, should give council the cost of the flower farm and that of other Port Adelaide council projects from their inception until the end of January 1990. The motion was lost.

There has been one person on the Port Adelaide council who has had the courage to ask the questions which needed to be asked. His name is Councillor Nick Milewich. To the forces at work in the Council who appear to restrict information rather than make it available, he has become the councillor from hell. But as the story unfolds, he will become a working class hero who has highlighted how the ratepayers of Port Adelaide have suffered at the hands of the council's administration.

Councillor Milewich has been subject to ridicule and abuse and put under enormous stress at council meetings. He has been in enormous pain because of his chronic bad back which has forced him to miss meetings at short notice. He has been the subject of recent allegations of sexual harassment. Because the matter is before the courts and is *sub judice* it is not appropriate for me to comment on the allegations. I do not pass judgment on the sexual harassment allegation, except to say (and members should listen to this) that several pages on the allegations have been paraded before council members over the last few meetings. Yet not one of the documents in Councillor Milewich's defence filed in court and given to the council's solicitors has been tabled in council. And not one page of information on the council agenda has been devoted to the Port Adelaide Flower Farm recently. This is staggering, particularly because the three month picking season which concluded in December would provide some better view of the financial prospects of the farm, and that would have been available to Mr Beamish as CEO of the farm. He has a clear duty to report such matters to the council.

The escalating financial difficulties of the Flower Farm have put pressure on the Port Adelaide council's financial position. The council's debt of $12.9 million as at June 30 1994 effectively includes $2.2 million for the flower farm. The council's debt is 20 per cent higher than it would otherwise have been without the flower farm. The ratepayers of Port Adelaide are the losers. In the *Advertiser* of September 1 1990, Nick Cater wrote a perceptive story about the flower farm. He said:

> There is money to be made from cut flowers, but there are also very big risks, however well the venture is managed . . . Should the farm go wrong (and despite its present $1.5 million debt there is no reason to believe yet that it will) the inescapable fact is that the council and its ratepayers will have to underwrite the whole venture. The rate payers are the involuntary shareholders.

The entrepreneurial excesses of the 1980s are now descending on the hapless ratepayers of Port Adelaide. However, there is much more to this story detailing the financial administration and management of the Port Adelaide council. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

JOINT COMMITTEE ON WOMEN IN PARLIAMENT

The Hon. A.J. REDFORD: I move:

> That the interim report of the committee be noted.

I am honoured to move this motion and, at the outset, I must say that this is an interim report, and is by no means intended to be exhaustive, on the very important topic and terms of reference that have been referred to the joint committee. I must also congratulate the committee on the way in which it has worked. In particular it has been well chaired by Julie Greig, a member of another place, and the Hon. Carolyn Pickles indicated, even after her elevation to the position of Leader of the Opposition, that she would remain on the committee. In fact, there has been very little disagreement to date, and it is pleasing to say that the interim report has been tabled unanimously.

I remind members of the terms of reference, which were agreed to on 4 May 1994 by both Houses of Parliament, as follows:

> (a) the extent and reasons of any existing impediments to women standing for Parliament; and
> (b) the strategies for increasing both the number of women and the effectiveness of women in the political and electoral process; and
> (c) the effect of parliamentary procedure and practice on women's aspirations to, and their participation in, the South Australian Parliament.

The committee is continuing to take evidence. The final report has not yet been completed but I, for my part, would imagine that we would be dealing with quite a range of topics in relation to this issue, and I certainly hope that this committee can do a far better job than has the joint Federal committee, which I must say was a little disappointing in the sense that there was a lack of detail in that Federal report other than the schedules of the submissions that were put to that committee.

I hope that we can cover issues such as the problem confronting women in the general community in being involved in ordinary community activities, such as school councils and the like; the involvement of women in politics and their nature of politics; the preselection process, particularly in relation to the nature and type of seats for which women tend to be preselected; and some of the Party practices that are adopted in preselection.

It is important also to note that at this stage we have looked at the Parties in only a general sense and we are still awaiting information from both the Australian Labor Party and the Liberal Party, bearing in mind that whilst the Democrats probably have the best record in terms of proportion of women elected to Parliaments, given that they are unlikely in the near future to achieve a dominant position in Parliament or in my view ever—

The Hon. Anne Levy interjecting:

The Hon. A.J. REDFORD: It is not often the Hon. Anne Levy and I agree—the challenge is for the two major Parties to confront this issue. There is also the question of elections, the role of women in Parliament and how Parliament can hinder their role, and how indeed they will impact on each other. I do not propose to go on in any detail on those issues as they will be covered in our next report.

In relation to this report, the principal reasons why we decided to issue an interim report at this stage was the fact that we are in the process of renovating this Parliament. It was felt that the modifications, whilst they have not been finalised, ought to take into account the views of the committee so that women can properly participate in the parliamentary process in the event that they are elected and, secondly, that women are not discouraged because of a lack of facilities or resources that are related to them in regard to this Parliament.

The President and the Speaker of another place gave evidence to the committee, and the recommendations in the report take into account the views that they expressed. In short, it is the committee's view—and I take members to the second recommendation—that during the current refurbishment of Parliament House urgent consideration be given to the allocation of space within the parliamentary building for a room or for a suite of rooms in which members could meet with their families. The report was issued at this time in order to ensure that that viewpoint was taken into account during refurbishment of the building.

During the course of taking evidence on this topic, a questionnaire was issued to the spouses of members, where those members had spouses. The questionnaire covered a number of issues, including sitting hours, when we ought to sit in terms of the year, meal breaks, problems with meals, what days are best, and things of that nature. We have annexed the schedule of results from the questionnaire to this report. They are relevant to this report and indeed may well be relevant to other matters that we will discuss in the future.

One matter did amuse me, and I draw the attention of members to question 10 of the questionnaire which asked members' spouses in both Houses the following:

> At what time do you think they should finish?

Our relative spouses were given a number of hourly options: 5 p.m. through to 10 p.m., and later. I note that two spouses believe that we ought to finish later, that is, 6.7 per cent. I also draw the attention of members to the question whether it would be helpful if we started earlier, and members' spouses were given the opportunity of choosing 'very helpful', 'helpful', 'undecided', 'unhelpful' and 'very unhelpful'. I note again that two people felt that if we finished earlier that would be very unhelpful. I hope that is not a reflection on the state of their relationship. I hope that is a true assessment of the value that they believe we have on the community of South Australia and they are prepared to make that sacrifice. I must say that I did find those two statistics very amusing. I am sure that there will be some speculation as to which two spouses in fact wanted that.

The primary issue was child-care and lack of family facilities. I will not bore members by quoting extensively, but I draw attention to some evidence given by Mr Dean Jaensch only recently. At page 4 of the report he is quoted as saying:

> I would think that the first thing the Parliament should do is to install a high quality 24-hour child-care service available to members on Parliament House property.

He then said:

> I can understand entirely how members of Parliament and Parties are concerned about how the electorate will react; but it seems to me that sometimes members of Parliament and Parties have to stand up for basic principles of how the public will react.

I draw that to the attention of members and invite them to draw their own conclusions.

In particular, the committee was concerned that we were not hit with the same problems as the Federal Parliament. When the Federal Parliament was first designed and built, there was no provision for child-care facilities. Shortly after the completion of the Federal Parliament—and it is noted in the report that that happened only a few years ago—despite the fact that child-care has been an issue for the past two decades, no provision was made for child-care. In consequence, I understand that some extensive changes have had to be made to Parliament House in Canberra, and they have imposed a huge cost on the Federal purse. What the committee is concerned about—and it is referred to at page 4 of the report—is that it would be more cost effective to address those issues during the process of refurbishment.

The other issues that we dealt with related to some of the difficulties that face women, particularly those from the country, the geographical distances involved and the fact that they are separated from their families. The committee also had regard to the age of women. Women who come into this place tend to be much older than men in the sense that they have to wait for their children almost to be off their hands before they can contemplate a political career. The committee is conscious of this Government's budgetary problems, but it is of the view that a short-term budget consideration looking negatively at child-care and family facilities may well prove to be folly in the long run. I commend the motion.

The Hon. SANDRA KANCK secured the adjournment of the debate.

POLITICAL ALLEGATIONS

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

That this Council recognises—

1. the political implications of the 'full and complete investigation' launched by the Commissioner of Police, Mr David Hunt, into the then Leader of the Australian Democrats, the Hon. Ian Gilfillan, two days before the last State election in December 1993;
2. that the announcement of such an investigation based upon information contained in a letter received by the Anti-Corruption Branch shortly before a State election had the capacity to substantially alter the outcome of that election not only for the candidate, but for the whole Party; and
3. that therefore this Council requests the Government to ensure that allegations to a body like the Anti-Corruption Branch against candidates in State elections should only be investigated or commented upon by the Police Department during the course of a State election campaign if the course of justice would be thwarted by any delay.

On 13 November 1993 an article by Peter Ward in the *Weekend Australian* suggested that Ian Gilfillan had been wrongly receiving the living away from home allowance on the basis that his principal place of residence was on Kangaroo Island, since he had also stated in a pamphlet distributed in May 1993 that he had 'lived in the Norwood electorate since the mid 1970s and with family members has maintained a sheep farm on Kangaroo Island for the past 40 years'.

I understand that shortly after this article appeared in the *Weekend Australian* Ian Gilfillan approached the chief of staff of the *Advertiser* to determine its interest in the issue of the living away from home allowance so as to make relevant details available to it for its use. I understand that the chief of staff merely said, 'We are not interested. What is the difference in your circumstances from most of the other rural MPs?'

It appears that a resident of Adelaide wrote a letter, dated November 1993, to the then President of the Legislative Council, the late Hon. Gordon Bruce, and asked for an inquiry into whether Ian Gilfillan had been improperly claiming the living away from home allowance on 1 December 1993. The late Hon. Gordon Bruce referred the letter to the Attorney-General, who then referred it to the Crown Solicitor. He replied that the matter should be dealt with after the election, and he referred it to the incoming President of the Legislative Council. That seemed to me to be the proper course of action.

It appears that on Friday 3 December, about a week before the election, the Police Anti-Corruption branch received a letter alleging that Ian Gilfillan had improperly claimed the living away from home allowance. The contents or the fact of the existence of this letter must have been made known by the author to John Ferguson of the *Advertiser* who, according to the police, in conversation with Simon Ward, who was acting as legal adviser to Ian Gilfillan, badgered the Police Department for a comment, none of which was forthcoming.

On Thursday 9 December 1993 the *Advertiser* ran a front page story asserting that the police were investigating allegations that Ian Gilfillan had illegally claimed up to $100 000 in parliamentary allowances. It could point to no confirmation of same from the Police Department. Ian Gilfillan's legal adviser, Simon Ward, of Piper Alderman, acting on behalf of both Ian Gilfillan and the Australian Democrats, in a telephone call to Commander Lean of the Police Anti-Corruption Branch, sought information as to whether an investigation was under way, as neither Ian Gilfillan nor the Democrats had any notice or knowledge of it. Commander Lean indicated that, although a complaint had been received, no investigation was under way, that for any investigation to begin required a preliminary assessment of the merit of the complaint, that this would not take place until after the election and that no investigation could begin without a direct order from the Commissioner to do so. Commander Lean indicated to Mr Gilfillan's legal adviser that the Anti-Corruption Branch did not intend to proceed at all until after the election. Again, I suggest most properly so.

On the morning of Thursday 9 December 1993, after I had read the *Advertiser*, I rang Commissioner Hunt and had a conversation in which I was careful not to enter into the facts surrounding whether Mr Gilfillan did or did not do anything. I simply pointed out that I was concerned that, if a complaint which was politically motivated had been lodged and if the Police Department was seen to be launching an investigation at that time, the police, not necessarily with intent, would be playing right into the hands of the person who was acting for political motivation. I was concerned that a consequence of that was that a person who at that stage had had an allegation made about them by a person unknown would be affected in a very significant manner and that, because this person was a Leader of a Party, the whole political Party could be hurt by that as well. So the point of view that I was putting to the Commissioner was not about whether there should or should not be an investigation or about guilt or innocence or anything else like that, but simply I made the point that the impact of an investigation at that time, even if it were without intent, could be very political. That was essentially the content of the conversation that I had with the Commissioner, because I certainly could see not only what the implications were in relation to Mr Gilfillan himself, and the concern I had about that, but also the broader political implications of what was happening at the same time.

The Hon. R.I. Lucas: What was the Commissioner's response?

The Hon. M.J. ELLIOTT: The Commissioner's response was simply an acknowledgment. I did not ask him to say 'Yes' or 'No' to anything. I simply sought to put that concern to him, and it would have been wrong of me to expect him to say that he would or would not do something. I was very careful in the manner in which I put that to him because it was very sensitive. It is not for me to interfere in proper policing, but it was not unreasonable for me to make the point to him that there was a possibility that an investigation at the time, two days before an election, had the potential to be highly political and that the Police Department should be very careful that it did not get caught in that.

Later in the morning of Thursday 9 December 1993, Ian Gilfillan issued a media statement declaring that on his information—that was information based upon discussions that had been held with Commander Lean earlier—there was no probe or investigation under way, and that was the information that he had been given. At that press release he demanded a public retraction of the *Advertiser's* allegations, which was reasonable considering that the front page of the *Advertiser* had said that there was an investigation, yet there clearly was not at that time. Bearing in mind the election was on the following Saturday, this was considered to be the only way the damage at least could be in part redressed. The media statement was based on what the Anti-Corruption Branch had told Simon Ward.

That afternoon, Commissioner Hunt issued a media statement announcing 'a full and complete inquiry into the matter'. This press release contradicted what Mr Gilfillan's legal advisers had been told earlier that day by the Anti-Corruption Branch in asserting that a preliminary inquiry had been conducted. The following morning, the *Advertiser* erroneously reported the effect of the Commissioner's press release as a 'widening' of the inquiry. The headlines read 'Investigation Widens'. In fact, there had been no inquiry until Commissioner Hunt had authorised one on the afternoon of 9 December 1993. The *Advertiser* article asserted that this announcement confirmed its story of the day before. In fact, this was not true. Mr Hunt's press release imputed that the Leader of a major political Party was under suspicion of corruption.

The press release gave some credence—although not to the extent claimed by the *Advertiser*—to the rumours and speculation publicised by the *Advertiser*. It effectively reduced both the vote for Ian Gilfillan personally and the Party as a whole, particularly in the Legislative Council. We know that that is the case because we had some very detailed polling carried out and we know that the effects on Ian Gilfillan, other candidates and on our Upper House vote was dramatic, and I know that the other Parties were polling and, in their honest moments, they would admit that it had a dramatic impact as well. It is beyond denial that in those last four or five days, the Democrat vote collapsed significantly and the only thing that happened in the last couple of days of any significance was the allegation being made about the Hon. Ian Gilfillan.

After the election, progress of the investigation was extraordinarily slow and it was not until 6 July 1994 that the police actually interviewed Ian Gilfillan for the first time and reported to the Director of Public Prosecutions. Some months later, on 23 September 1994, the DPP announced that he cleared Ian Gilfillan of any impropriety over the living away from home allowance and said that there was no basis for any

charges to be laid. By then, however, the damage was profound and irrevocable. The election had been held and Ian Gilfillan had lost.

On a number of occasions some members in this place have made all sorts of interjections about why I am standing in this place, and the reason I am standing in this place is that Ian Gilfillan had those allegations made about him, he had them hanging over his head and he had made a decision that he was not going to see the Party be damaged. Ian Gilfillan had to go through having his name being muddied in a most dishonourable way and having his reputation extremely tarnished and then had to bear another 12 months of investigation which came to nothing.

I really think that it would be not unreasonable for certain questions to have been asked of the Commissioner, such as, before he made his press release on 9 December 1993, did he or any of his officers check the credentials of the complainant, that is, was the person associated with any political Party or organisation? Before he made his press release on 9 December 1993, did he or any of his officers inquire of any authority within or without Parliament about the legislation, regulation and/or practice applying to the use of living away from home allowances by MPs and, if so, of whom and what information and/or advice did he receive? As the chief of staff of the *Advertiser* commented to Mr Gilfillan, Ian Gilfillan was in fact in no different position from almost every other country member of Parliament. Prior to taking his action on 9 December 1993, did the Police Commissioner consider the political ramifications of his announcement and the possibility that it was a political set-up? Does the Police Commissioner now realise that this procedure can be used in any election against any candidate with devastating effect? Does the Police Commissioner believe that a stay of proceedings for the period of an election would be a safeguard against the police Anti-Corruption Branch being used by unscrupulous political operators in future?

In paragraph 3 of my motion I make the point that there may be some forms of investigation in which you cannot delay, but if you look at the sort of allegations made about the Hon. Ian Gilfillan, when they did not even come to interview him for some seven months, it is impossible to believe that a couple of days would have made any difference. It certainly made a difference to Ian Gilfillan because of the decisions that were made before the election. I believe that it is proper to address these questions with the Commissioner now as he will have had time to reflect upon the events and may well have some suggestions of his own. I would invite him to make his views known to this Parliament directly, via his Minister or via myself.

Whether or not the Commissioner responds, I believe that we must act as a responsible Parliament to prevent abuse of the democratic process by this means in future. It is clear that the Police Anti-Corruption Branch must consider all allegations no matter how far-fetched they may be. Therefore the unscrupulous operator can make an allegation in writing to the Anti-Corruption Branch about candidate 'x'—and it could be the Hon. Mr Irwin, the Hon. Anne Levy, anyone else in this place or any other candidate outside this place—and that operator can then inform the media that there is an investigation by the Anti- Corruption Branch—

The Hon. Anne Levy: Or an allegation to a select committee.

The Hon. M.J. ELLIOTT: Yes—into the affairs of candidate 'x'. Even though the Police Department usually will not comment publicly either to confirm or deny, the media may publish and/or the unscrupulous operator letterbox drop the information. The only safeguard is to refuse to act on allegations received in the time of the election. They can be re-presented after the election if the complainant is sincere. Of course, there is the matter of judging the seriousness of those things and the urgency contained within them, but I believe that the police should be capable of making assessments to avoid the potential abuse of this sort in the future.

In recent times there have been signs of increasing use of unscrupulous tactics in the last days of an election, sometimes even in relation to local government, but the very focus of this motion relates specifically to allegations being made about corrupt behaviour to the police in such a short time frame that the person has no chance of clearing themselves before the election campaign and an investigation being launched during a campaign. I believe that the Minister and the Police Commissioner should look at this question and come up with a way to avoid this sort of thing happening in the future.

As I said, one person, the Hon. Ian Gilfillan, paid a dear price because of this practice; it was a sharp practice which was grossly improper and I do not want to see this happen to anyone else, be they a member or an aspiring member of Parliament. Therefore, I urge all members to support the motion.

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

LEGISLATIVE REVIEW COMMITTEE: CRIMINAL INJURIES COMPENSATION ACT

Adjourned debate on motion of Hon. R.D. Lawson:

That the report of the Legislative Review Committee on the Criminal Injuries Compensation Act 1987 be noted.

(Continued from 15 March. Page 1524.)

Motion carried.

WORKCOVER

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

That the regulations under the WorkCover Corporation Act 1994 concerning schedules (various), made on 9 February 1994 and laid on the table of this Council on 14 February 1994, be disallowed.

(Continued from 15 February. Page 1168.)

The Hon. M.J. ELLIOTT: I do not intend to speak at length on this motion because I spoke to the issues covered by it last night in the second reading stage of the debate on the WorkCover legislation, but I will repeat the essential elements of what I said last night. There are sound arguments on both sides of this debate. The reason that I took so long to come to a final decision was that I wanted to measure up the arguments and I also wanted to have a fairly good handle on what was happening to the legislation itself before proceeding. As it has eventuated, there is a need for some amendments to the legislation and to the regulations, which I expected to see before I agreed to this regulation continuing and not being knocked out.

Whether outsourcing can be successful or not will be dependent on the quality of the monitoring of that outsourcing, that is, the quality of monitoring carried out by the corporation itself and by a parliamentary committee that I propose in one of my amendments to the WorkCover legislation. Whether or not it is a standing committee or a

joint House is not that important, but I want to see a committee that is non-Party political representing the spread of Parties in both Houses of the Parliament.

Such a committee should oversee outsourcing, the corporation and its interaction with the outsourcers. Married to that would be a requirement that these regulations would have a sunset provision applying to them so that they have a life of only three years. I would expect the working of those regulations to be examined and that a new regulation would not be promulgated unless the parliamentary committee is satisfied that outsourcing is working properly. That puts the challenge directly to the corporation and the outsourcers themselves—the claims managers—to ensure that they are fulfilling the roles required of them and fulfilling them in a fair and reasonable manner.

I also had the expectation that the monitoring, which will happen in a number of ways, will include the important form of monitoring involving bonuses that insurance companies can earn under a point system which measures their performance under a whole range of criteria. I am expecting that those criteria will not just be available for the corporation for its own use in determining who earns and does not earn those bonuses. I expect that those criteria will be available publicly and will be published by the corporation so that we can see directly the performance of those outsourcers in the whole range of areas in which they are being measured. We will then be in a position to have informed public debate about whether or not outsourcers are fulfilling their role and doing it in a proper way.

I expect that the question of whether or not the criteria should be changed or further amended would be significant issues of discussion. When I looked at the criteria under the regulations there were errors in a couple of places, and I raise that issue in the Council now. I refer to criteria 3.3.1, 3.3.2 and 3.3.3 where return to work rates are specified, but there is an error in the words. Instead of using 'less than a certain rate' the words 'greater than' are used. The impact of that is significant, yet that error has resided in the regulations for about three or four months. The regulations were not picked up until I was sitting in my room giving the regulations a final read. The error has the effect of rewarding insurance companies with poor return to work rates, and I understand the corporation took rapid legal advice about that once I brought it to its attention. The corporation has assured me that a further regulation is capable of rectifying that very easily.

WorkCover has been operating for about nine years. Claims management went out briefly to SGIC but was rapidly brought back again to WorkCover. It was a first attempt at outsourcing, of a form, but that proved to be a disaster. Since that time WorkCover has had total control of claims management and, unfortunately, claims management has not been handled well by WorkCover. It has built itself a bad reputation, not just among employers but among injured workers; not workers who have been rejected by the claims managers but in many cases workers who are in the scheme and who are not satisfied with the way things are being handled.

Any number of workers have rung me up and expressed concern about various parts of the legislation that the Government was proposing to change, and they were quite outraged by the fact that the Government was proposing to cut levies, and so on. Then, in conversation or correspondence they have gone on to tell me that if claims management were being done better a lot more money could be saved. Many injured workers who are in the system and who are supportive of it overall have expressed the view that claims management itself was not been done particularly well.

While I understand people's concerns about the privatisation of claims management, WorkCover has had a long time to get its act together and, unfortunately, has built itself a poor reputation, which is difficult to defend. That is not so much a reflection on the claims managers themselves, although it has to be a reflection: as in any business, if things are going wrong the managers are the ones who bear the responsibility. It does not matter whether you are talking about a private business or any other business, if the managers do not have their act together. I know claims managers were shuffled all over the place on and off cases, so I am not pointing the finger at the claims managers themselves. But the fact is that WorkCover has been given a great deal of time to get it right, and to this point it has not done so.

In the debate on the WorkCover issue generally I have been somewhat reliant upon Liberal Party policy. It is Liberal Party policy that has enabled me to say that benefits should not be cut, because the Liberal Party has given a clear promise. I must also acknowledge that it had given a clear undertaking that it intended to outsource claims management, and I guess it is a matter of being consistent in the handling of those various things. That does not mean that I am not prepared to go against Government promises, but if I am to do so it seems to me that I need a clear-cut case to show that the Government has absolutely got it wrong.

I do not think that clear-cut case can be put in the area of claims management. As I said at the beginning, I think we can put a case which expresses the concerns about outsourcing, and we can also talk about the negatives of the way claims management is currently working. On balance, what has tipped the scales has been that, generally speaking, the claims management has not been highly successful and, recognising that the Government did have that policy in place, we are willing to bow to the policy.

I have made clear in discussions with employers that some risks are associated with this. I have made that quite plain to them. It is the recognition that there are risks which has caused me to apply the sunset clause in relation to it and to say that the outsourcers have a limited time to get it right and, if they do not get it right, they will not find our support for them to continue in that role. For those reasons and others I covered in the debate last night I will not support the motion to disallow the regulation.

The Hon. K.T. GRIFFIN (Attorney-General): The Government opposes the motion for disallowance. I appreciate the support of the Hon. Mr Elliott in indicating that he too will not support the disallowance. The motion seeks to disallow these regulations, and the effect of the passing of the disallowance motion would be substantially to frustrate one of the State Government's major policy reforms in the area of WorkCover, and that is the contracting out of WorkCover's claims management functions to the private sector. I think it is a last gasp attempt by the Opposition to deny the Government its mandate to introduce this much needed reform. Our policy statement at the election was very clear. It stated:

> WorkCover may tender out to private sector insurance companies some or all of the collection of levy fees and the management of claims administration related to workers' compensation and rehabilitation. This model will retain the efficiency of collecting statutory information and ensure that workers' compensation health and safety laws are enforced to protect employee and employer rights. Allowing the private sector to compete in management and

administration of claims will establish a scheme which is more service oriented and cost effective.

The policy document then outlined the functions of the proposed restructured WorkCover board, and it is clear from that policy that those functions were never intended to include an operational role for WorkCover in the management of claims. So, no-one can say that we were seeking to hide this policy from the people. We were quite up front with it at the time of the election. I do not think anyone associated with the WorkCover debate, whether they are employers, employees, industry associations, unions, WorkCover management or employees, were really surprised when the Government's legislative amendments to the WorkCover Act last year sought to empower the restructured authority to delegate the management of claims to private sector bodies. It has to be recognised that Parliament accepted the Government proposals contained in section 14 of the WorkCover Act of 1944. They were accepted on the basis that the detailed provisions relating to claims management outsourcing arrangements would be set forth in a regulation, and that was done in the regulations of 9 February 1995. So, again, we have been up front with it, and we have not sought to cover up any aspect of the process or the arrangements which are proposed to be put in place.

I am somewhat at a loss to understand the reasons for the Hon. Mr Roberts' moving the motion, except as a rearguard action in the context of all of the WorkCover legislation before the Parliament to adopt what is essentially a no change policy, but that is not something which the Parliament, the State or the community at large can accept or, for that matter, tolerate. The WorkCover system is haemorrhaging under the weight of financial blow-outs. Some unsustainable legislative benefits have been subject to both public and parliamentary comment. Some review process have bogged down and essentially are not proving to be workable.

The Hon. R.R. Roberts: You want to bog them down even more with your new legislation?

The Hon. K.T. GRIFFIN: We are not going to bog them down; we want to try to free up the system. The system that the Labor Government put in place is clearly not working.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: At least if you had in place people who understood what individuals' rights were, you might have a clearer indication of what decisions might be, rather than having lay people making what are essentially *quasi* judicial decisions.

The Hon. R.R. Roberts: This is a class thing; you're denigrating the unions.

The Hon. K.T. GRIFFIN: Come on: you know it is not a class thing. It is a question of being competent to understand and identify the issues. Many of the WorkCover review officers are not trained to make those sorts of judgments.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: Rubbish! That is typical, traditional Labor garbage! The fact is that we want to provide justice to the workers as well as to the employers and to WorkCover. We pointed out what the problems would be in Opposition when legislation was originally brought into the Parliament. The problem was that it was originally proposed as a Labor Government experiment to maintain control of compensation in relation to—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Of course the employers supported it. I know. The Hon. Mr Elliott may remember that in Opposition we challenged the employers in their agreement with this system. Back to this particular issue, we have taken the view that there ought to be outsourcing. I think that, when some union officials and the Labor Opposition have addressed the Government proposals for legislative reform and they have argued that the problems should be solved through improved management administration and not by legislative action, they have ignored the fact that this is really what we are trying to do in this legislation. Those proponents of administrative reform but no legislative change now seek to argue that the most basic and fundamental administrative reform in relation to the management of claims should not proceed. You cannot have your cake and eat it too. There does have to be a recognition that there are major problems in the system and they have to be addressed. Outsourcing of WorkCover claims management is one way by which a greater level of efficiency can be brought into the system.

Unless reform to WorkCover encompasses three essential elements, it would suggest to the Government that the WorkCover system will not become competitive and will not meet objectives which are quite laudable. Those elements are: reform to workplace safety and prevention policies, reform to WorkCover claims administration and reform to WorkCover legislation. We are confident as a Government that outsourcing of the claims management will produce benefits to injured workers and employers, and they will produce cost savings to the scheme. The board has resolved independently of Government that at least $5.4 million per year in cost savings can be achieved by improving return to work rates through competitive outsourcing of claims management.

The single simple measure of claims management by WorkCover in the past seven years is that South Australia's injured workers are off work longer than their counterparts in the more competitive workers' compensation schemes of Victoria and New South Wales. Lack of competition in the delivery of WorkCover claims administration services only serves to compound the structural legislative problems with the scheme.

Members have already been exposed to a debate in relation to some of the proposals by the Industry Commission study. Commissioned by the Federal Labor Government, it completed its report in February 1994, and it did conclude that reform was necessary which maximised beneficial competition through encouraging greater competition in the provision of insurance and other services aimed at prevention and rehabilitation. The Industry Commission also said that beneficial competition can greatly improve occupational health and safety outcomes as when insurers actively compete with one another to provide firms with the benefit of their expertise in the use of risk management techniques to improve workplace safety, claims management and superior performance in the crucial areas of rehabilitation and return to work.

It is important to recognise that a central feature of the operation of private companies in Victoria and New South Wales has been continuous improvement in rehabilitation and return to work strategies. In fact, the remuneration of insurers in those systems contains substantial performance incentives geared around return to work success. In this State the Government believes that these benefits to injured workers, employers and the WorkCover scheme should not be denied in South Australia.

The record of private sector companies managing claims with a much greater workplace focus and liaison with the

employer and the injured worker contrasts quite starkly with the constant criticism from employers, employees and the their agents, such as legal practitioners, in relation to the almost clerical fashion in which a central monopoly manages claims. I suppose one might better describe that as a bureaucratic approach.

The Government has been conscious of the need to ensure that the ground rules underpinning the outsourcing should be clearly established and tight enough to realise the benefits of outsourcing but not prejudice those gains by inadequate controls on performance. We have deliberately designed the regulations to establish the best possible performance standards on private sector claims managers of any Australian jurisdiction. The Government has ensured that the selection process of claims managers will be conducted by the WorkCover board independently of Government and on the basis of ensuring that the best possible results are achieved from outsourcing. We have adopted a conservative approach to the outsourcing process. At this stage it is only claims management which is to be outsourced and not other activities such as levy collection or investment of funds.

Since the legislation was passed and came into operation last July, an extensive process has been undertaken by WorkCover in order to implement the reform. The process included a public discussion paper in September 1994 engaging external consultants; consideration of the issues by the WorkCover board in December 1994 and deciding to proceed with outsourcing of claims management; advertisements in local and national newspapers in December 1994 seeking expressions of interest; establishing in January this year a comprehensive five stage selection process with stringent tender procedures to ensure that tenders were managed securely and that a systematic process was applied to evaluation and selection. We have been advised by WorkCover that this selection process has now been completed, and the WorkCover board will be in a position to consider the tenders in the event that this Parliament rejects this motion for disallowance.

Due to the fact that this motion has been placed before this Parliament, the benefits to injured workers and employers from outsourcing of claims management have been deferred and the earliest start-up date for claims management outsourcing is now estimated to be August 1995. In considering the progress of this matter, the Government has had a number of issues raised with it by the Australian Democrats. In particular, the Government has been prepared to accept the proposition that these regulations be subject to a three year sunset provision, and that a number of other matters relating to staffing issues, the release of statistical material and reconsideration of the outsourcing experiences by a parliamentary committee in two years time will be addressed.

The motion by the Labor Party and the grounds which it raises in support of its motion do fail to recognise the rigid performance criteria surrounding this process. We are intent, as is the WorkCover board, on maximising the benefits of outsourcing. Many of the matters mentioned by the Hon. Mr Roberts do not take into account the conservative nature of these regulations and the claims management agreement. I suggest that the Opposition does need to have a vision about what a restructured WorkCover as a regulator should do and what its crucial role should be in ensuring the delivery of these benefits by the private sector. It is that change of focus which we believe is important in providing benefits to both employers and employees in South Australia, and that is why we so vigorously oppose the disallowance of these regulations.

The Hon. R.R. ROBERTS: I thank members for their contributions to this debate, but I do that out of courtesy and not out of respect for what they have said. I want to touch on some of the issues that have been raised. It must be remembered that when this motion for disallowance was moved it was not moved against the present Bill that is before the Parliament today, so references to what is contained in the present Bill were never considered when these regulations were brought to this place. When these regulations were introduced with respect to the original Bill, they were generally recognised by the Democrats, now by the Liberal Party and certainly by the Opposition as being absolutely obnoxious, unworkable and unfair to injured workers. These regulations were trotted into this place against that background.

There was an expectation that the regulations would come in, that we would set up outsourcing of the claims management and then we would look at the particular Bill. The Bill is an apparition of anything decent: it has nothing whatsoever to do with a decent Bill. Anyone in this place with any knowledge of the history of WorkCover legislation knows that there has never been a Bill concerning WorkCover that has left this place in the form in which it was introduced. So, we had regulations relating to a Bill about which we knew nothing and which laid down conditions that had to be met by contractors.

At the time that Bill came to this place concerns were being expressed publicly that the contracting method and the fixed fee for service would always be a problem, especially taking into account inflation and other factors. It is easy to see that in the long run and without WorkCover, if the costs blow-out the private insurers will come back to the Government and say, 'We need more money.' The Government will then be in a position where it has nothing to which to return.

During the contributions made by honourable members a couple of points were made. The Hon. Mr Elliott said that no case had been made for WorkCover retaining claims management. I believe that the onus ought to be reversed. No case has been made out which proves one way or another that the private sector will do it better. What has been proven is that, prior to 1986, when workers' compensation was in the hands of private providers they could not handle it properly.

The Hon. J.F. Stefani: Why?

The Hon. R.R. ROBERTS: They stuffed it up.

The Hon. J.F. Stefani: How?

The Hon. R.R. ROBERTS: I will tell you how they stuffed it up: because people such as you, in the industry in which you are engaged outside this place, were paying levies of about 22 per cent.

The Hon. K.T. Griffin: Speak through the Chair. Don't call him 'You'.

The Hon. R.R. ROBERTS: Well, tell him not to interject.

The Hon. K.T. Griffin: He can interject but you must answer him through the Chair. You cannot say 'you'.

The Hon. R.R. ROBERTS: Well, you. Quite clearly, it was proven that private industry could not handle WorkCover properly. A sunset clause was mentioned with respect to these regulations, but that is two or three years away. If cost blow-outs occur with the private sector, as I suspect they will, we will not have the monitoring systems in one place, as we have now with WorkCover, which enables proper scrutiny to take

place and which develops proper and informed health and safety strategies for the prevention of injury to workers in South Australia. Those functions will now be dissipated over a number of private companies.

People will leap to their feet and say, 'It will be fed back to WorkCover.' This is the first of a couple of areas which are intended to be taken away from WorkCover. The Attorney-General said, when referring to the Liberal Party's policy, that the Liberals may tender out. The policy did not say it would, it said it may. In his contribution the Attorney-General said that the Government would allow private industries to compete for WorkCover. What happened when the Liberal Party was elected to Government and had to pay back all its mates? It said, 'No, there is no competition. WorkCover has been told quite conclusively that it cannot compete.'

The people in WorkCover who have been providing a proper service to the people of South Australia are being condemned. We need to look at the condemnation of the handling of claims management by WorkCover. With the greatest respect in the world, we are talking about people who are often in crisis and about busy people who want everything done yesterday. It is easy to accuse WorkCover, but if anyone had clearly looked at the documentation and the submission I put in this place when I moved for the disallowance they would see that many things are contestable. That is not to say that problems have not been experienced within the system. People from WorkCover are being condemned with very little or no chance to defend themselves.

I am extremely disappointed that before the final legislation on WorkCover is determined—and it will be determined in this place in the next couple of days—the Australian Democrats have, despite their explanation yesterday, decided today that they will vote against my motion for disallowance. I believe that in the long run problems will be experienced with this outsourcing project and the people who are now employed in WorkCover may well be picked up by the private industry.

Over the past six years, by and large, we have had the best WorkCover system in Australia employing people who have acted with a great deal of dedication and who have done a reasonable job in the circumstances. All that information and expertise will be lost over the next two years. If we find, as we found with the private insurers when they were handling WorkCover a few years ago, that the costs blow out beyond reasonable expectation and they come back and say, 'We are going to drop out of this,' as happened with third party insurance in this State, who will come and pick up the wreck? Obviously, once again it will be the taxpayers of South Australia. We will sell something else and put another millstone around the necks of South Australian taxpayers. I am disappointed, but I understand that the numbers will not be with us, and it is not my intention at this time of the day to call for a division.

Motion negatived.

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

LOTTERY AND GAMING (TWO UP ON ANZAC DAY) AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

I have much pleasure in sponsoring this Bill on behalf of my colleague in another place, Mr Michael Atkinson. The Bill seeks to make legal the traditional game of two-up which is normally played on Anzac Day and which hitherto has been illegal. It seeks to make it a proper pastime for our returned servicemen and their friends in RSL-owned properties or on military bases in South Australia.

This legislation has probably come at a very opportune time. In this State we can bet on almost anything—the horses, the lottery and go to the Casino—but it is illegal to bet on the game of two-up. One can understand many people, who in the past had a violent objection to gambling, wanting to stop this game being played on a much wider basis than is proposed in the Bill. However, the Bill is succinct in that it says where it can be played and it lays down conditions on which commissions can or cannot be taken, as the case may be.

Those of us who regularly attend Anzac Day celebrations and dawn services and who watch returned servicemen and their families gather on this day may often wonder why Anzac Day holds such a special place for Australians. My reasoned opinion is that Anzac Day represents to most people in this country the first occasion on which we entered a theatre of war as Australians. Whilst it can be argued that the battle of Gallipoli was an absolute military disaster, what happened was that for the first time Australians stood up and said, 'This is what we are all about in Australia. We are out for a fair go and we are prepared to fight for the things that we hold dear.' That was the day when the tradition, pride and high reputation of the Australian soldier was established in the battle of Gallipoli.

As we watch the Anzacs and their families gather on Anzac mornings, it is clear that age is indeed wearying them, though not their spirit, one hastens to add. However, many of them are becoming aged and frail. Anzac Day, to returned servicemen in particular, is a day of significance. It is a day on which they remember their mates, pay respect to them and enjoy the camaraderie. In the establishment of the ethos and mystique surrounding the Australian soldier there has always been a tradition of the larrikin. In the true form of the larrikin, most service people enjoyed the pastime of playing two-up, and two-up has become part of the ritual of Anzac Day. I believe that many of these returned servicemen immensely enjoy the opportunity to engage in this tradition. It is not a passion with them beyond Anzac Day, but they enjoy it. However, there has always been the spectre of illegality about it. Whilst I support the prospect of allowing this to occur on Anzac Day in the areas specified in the Bill, it is not my intention to broaden the argument further.

I would sound one note of caution in this matter. The Australian way may come into play, with our soldiers in particular, but one thing could occur: if we make it legal, it may lose its mystique. However, given the fragility of some of our returned servicemen, and whilst they may be keen to pursue this pastime, if there were to be a raid they would not be in any fit state to jump the back fences as they did in the past. Therefore, I think it is about time that we made two-up legal and allowed this small luxury to those who have served their country so well in the past. I ask members to support this Bill, and I hope that we can get it through tonight so that this changed arrangement to the law in South Australia can be put into place before Anzac Day in a couple of weeks.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I am pleased to indicate on behalf of Liberal members that this particular issue, as all gambling measures have been for many years, is a conscience issue and will therefore be decided by the collection of the individual

consciences of members of this Chamber. I indicate that I support the proposed legislation. This is the sort of issue that you have time to devote yourself to when in Opposition, and I recall supporting the notion when I was in Opposition that people should be able to play two-up on Anzac Day in particular. Frankly, I do not know what is the concern about two-up. As long as there are appropriate guidelines, I would not be worried about whether you played two-up every day of the year and whether it was played everywhere.

This is a modest piece of legislation, which basically allows people to play two-up on one day a year—Anzac Day—and because of further amendments moved in the Lower House by Mr Scalzi and Mr Lewis it actually restricts where you can play two-up on Anzac Day to RSL clubs and other Defence Force establishments, or words to that effect. So it is really a very modest piece of legislation in relation to gambling. As Mr Atkinson, the honourable member who introduced the legislation, indicated, generally those persons in the community who are interested in playing two-up are older members of the community and are returned servicemen who enjoy the game of two-up. As I said, if the legislation before us at the moment said that people could play two-up under certain guidelines any day of the year and anywhere it would not worry me. However, I hasten to say that that is not the legislation before us; it is restricted to one day of the year and can be played only in certain establishments. Certainly it is an issue that I have raised publicly when in Opposition, and I intend to support the legislation.

The Hon. SANDRA KANCK: I support the second reading of this Bill. Having grown up in Broken Hill where two-up is seen almost as a way of life, I almost feel morally obliged to support it. The one thing I would like an assurance on from Mr Roberts is that women will be able to play it too, because in Broken Hill the women were not allowed to play it: it was a man-only game.

Members interjecting:

The Hon. SANDRA KANCK: If it is a game for the ladies as well as for the gentlemen, I will support it. I am not a great fan of gambling *per se*, but two-up is very much a communal activity: it is not something that rips money away from you in the fast sort of way that poker machines do. It brings people together in an atmosphere of fun and fellowship as opposed to the poker machines, which involve very much a person to machine interface. Perhaps if we support something like this we might actually be able to get some of people away from playing poker machines and playing two-up instead. I indicate that I will be supporting this Bill.

The Hon. R.R. ROBERTS: I thank both members for their contributions. I am sure they will enjoy the enduring thanks of returned service people in South Australia, and I hope that the Bill passes through the remaining stages without delay.

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

WORKERS REHABILITATION AND COMPENSATION (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 April. Page 1719.)

The Hon. R.R. ROBERTS: In rising to speak to the second reading of this Bill I indicate that the Opposition is prepared to proceed with it. I will make a few opening remarks and put some things on the record. It is with great disappointment that I find that, after notice being given and a couple of months of sitting, we are now beginning to consider the Bill in an amended form. The process that we are now entering is almost bizarre. The previous Bill lay on the table of this Chamber for three or four months and members opposite were unenthused by it to the point that not one of them, other than the person who introduced the Bill on behalf of the Minister, felt that he ought to get to his feet and support it. So, we have had this charade of a Bill laying on the table and of some people being involved in negotiations on the side, and now we have come back with a Bill, which is claimed to be a come-back from the original position. However, the advice provided to me is that in many respects this Bill is much more draconian than the one we had before.

I enter a protest about the way in which the Government has handled the passage of this Bill. I understand that the Government passionately believes that it is necessary for changes to take place with WorkCover, but I think the way in which it has conducted this matter, with the introduction of this absolutely outrageous Bill, has been poor. Nobody—not even the Government itself—thought this Bill was ever going to get off the ground. It has protracted the negotiations and has caused untold worry and concern to injured workers to the point where some people involved in stress cases, in particular, have been pushed to the very brink.

Having said that, I intend to talk at some length on this Bill. We need to put some things on the record and, unfortunately, it will be a reasonably lengthy second reading speech. The difficulties perceived by the Government and employers with respect to the current workers' compensation and rehabilitation scheme in South Australia are not the result of the level of benefits available to injured workers. The ALP has been strong on this. The rights of injured workers have already been reduced substantially in recent years by, for example, the abolition of common law rights for loss of income and pain and suffering, and South Australia is the only State to have completely done so; restrictions on liability for stress conditions and journey injuries; and abolition of lump sum entitlements for permanent disabilities resulting from those with psychiatric conditions which remain compensable in a primary sense.

Those reductions in entitlements have not resulted in the savings that evidently were hoped for. Further massive reductions—as the only way put by this Government—both substantially and wide ranging would amount to an inequitable and unjustified 'solution' to a problem, the cause of which lies somewhere else. We should get away from the view expressed by the Minister of victim blaming.

The second Bill, which comprises 41 pages and which was given to us just over a week ago, is very complex and difficult to analyse, but I am advised that in key areas it is far worse than the 1 December 1994 Bill. All those in the 15 February 1995 rally, all workers and the general public, should not be tricked into believing that the Minister's second Bill is improved because of the concessions made. This is a confidence trick. The reality is that the provisions in this second Bill are very bad for injured workers and their rights and entitlements.

In its 41 pages it retains some of the worst features of the first Bill and introduces entirely new retrograde provisions. The main thrust is to dump injured workers on to the social

security system, to make it extremely difficult to make a successful claim and to deny natural justice when in dispute, that is, by abolishing the review hearings. That is outrageous. To elaborate on this aspect I will present three examples.

On the eligibility criteria, for the Government and the employers to want to exclude liability for workers' compensation unless 'the employment is the sole or major cause of the disability' is an outrage. It would be extremely difficult to make a successful claim. It is to return to the legislation as it existed prior to 1965. Those 1965 reforms, which are almost universally accepted with respect to assessing workers' compensation schemes, were introduced by the Playford Liberal Government. Yet this Brown Government wants to be worse than the old time Liberals. Many work-related injuries would fail. We will give details in the Committee stage but we urge a vote against such provisions and insist on retaining what we have.

Section 35 weekly payments for seriously or partially incapacitated workers will be slashed. It is very much worse because WorkCover could presume suitable duties are available for these seriously injured workers once they are no longer bedridden. The existing section 35 test for the second year review relating to 'suitable employment that the worker has a reasonable prospect of obtaining' has been deleted.

Our great concern is that the complex new proposal of section 35 will deprive most incapacitated workers of their weekly payments and seriously undermine the rehabilitation process. This time the drafting is worse: 'the availability of suitable employment is conclusively presumed'. This is the system where WorkCover says that people can do suitable work that is 'presumed' to exist;' for example, a lift attendant, a console attendant, piano tuner or a morgue attendant, etc., even where jobs are not available. Workers will have their 80 per cent slashed to less than the pension. That is totally unacceptable and is worse than before, yet this is Minister Ingerson's stated intent.

Changes to section 35 involve a major cut to benefits. When a worker is on social security benefits, the taxpayer pays. Injured workers will receive either a pittance or nothing, having to seek social security benefits and this is what the earlier anger was about. It is uncaring and irresponsible to throw people on to the scrap heap. The taxpayer and not the employer pays through the Commonwealth Government's increased welfare payments. For example, it was reported in the *Age* on 25 March 1959 under the heading 'WorkCover buck pass':

> The Commonwealth was being forced to subsidise Victoria's WorkCover scheme by $34 million a year through increased welfare payments, a Department of Social Security survey has found. A copy of the survey findings showed that 37 per cent of injured workers forced off WorkCover were now receiving a Commonwealth disability allowance. A further 34 per cent were receiving a sickness allowance.

Proceedings before a review officer are another concern and are effectively abolished, disadvantaging injured workers' rights to natural justice in the hearing. The review officer process—an accessible and most effective system—often corrects the application of wrong decisions by WorkCover. Rather than a fair hearing on terms of natural justice, the review officer will not be able to interview the injured worker but is to be the umpire on the documents.

There will be a serious bias against the party who documents their case poorly. Nearly always the workers with less literate and non-English speaking backgrounds are worse off. Again, this is outrageous. Little will be resolved and hearings will be shifted to the WCAT (the Appeals Tribunal), which are legalistic and costly. It could be even more difficult for employees with private sector claims management coming in. The ALP is putting up significant reforms in this area to end delays and introduce successful mediation. We reject the contempt that this Government has for independent tribunals.

The Australian Labor Party rejects the Government's second Bill and its arguments to cut off benefits and attack workers' rights to a fair umpire in a disputed claim. We put on record our utter disgust at the Minister's public attack on alleged rorters or bludgers and backed up by outrageous *Advertiser* headlines on the extent of the blow-outs. We reject these tactics as reprehensible.

The Bill contains more than 100 changes. The Government has not given anyone the courtesy of explaining honestly what is going to be in the new Bill. It has not consulted with the ALP or with the United Trades and Labor Council or with interested community groups. The Government has not identified the precise deficiency of the Act or clearly worked out a policy to remedy it. Amendments should be made only where there is a need, but the Government has hundreds of unnecessary and ill thought out amendments which will lead to legal nightmares and much suffering for injured workers.

What should we do with a WorkCover system that has three pillars: one, prevention; two, compensation; and, three, rehabilitation? What reforms should there be? Let us start with these points. First, implement the Act. Secondly, implement prevention programs and, thirdly, rehabilitation. To implement the current Act would be reasonably simple. This should be the main focus as this is where Minister Ingerson has failed. The alleged blow-outs have occurred only since he has been a Minister. The Government's and the employers' primary concern—the cost of long-term weekly payments being made to workers with minor disabilities—is already fairly addressed by the current Act which is not enforced.

Some exempt employers under the Act have far less of a problem with the liability for long-term claimants for workers with minor disabilities than do those employers whose claims are administered and paid for by WorkCover Corporation. It can be shown that a good proportion of exempt employers meet their responsibilities to provide alternative employment and arrange for rehabilitation of injured workers—areas where WorkCover and non-exempt employers have failed badly. Under the present Act it is incumbent upon the corporation to provide suitable rehabilitation under section 26, and for an employer to provide suitable alternative work under section 58b.

The corporation can avoid the problem perceived by the Government—long-term weekly payments to workers with minor disabilities—by ensuring compliance with sections 26 and 58b. Its relative failure with respect to these requirements and with respect to claims management generally are the real reasons for the problems about which the Government and employers express concern. The Minister has done nothing about this, rather being obsessed with cutting the entitlements of injured workers, denying natural justice and paying off election promises by privatising.

It is a fundamental misconception that any significant proportion of injured workers, whether with minor or major disabilities, choose not to return to work when suitable work is available. We simply do not accept that a 'bludger' mentality is to blame—as the Minister asserts in the *Advertiser* rorts campaign—for any alleged funding difficulty

on the part of WorkCover. Any amendments which have the effect of depriving any genuine claimant of compensation, rehabilitation and the right to review should be defeated. The 'bludger' mentality argument completely overlooks the invariably demoralising effect on a worker by being off work on a long-term basis. Workers generally are sufficiently intelligent and perceptive to realise that their long-term prospects of returning to their workplace continue to diminish during the period of any absence from work.

The hassle of dealing with WorkCover with respect to claims and all too often a meaningless and ineffective rehabilitation process and endless job hunting are further disincentives for workers to remain off work unnecessarily. To dispel negative community attitudes regarding work injured people, rather than blaming the victim as does the Minister, we suggest that the objects of the Act should contain a provision to improve the community's understanding of the workers' rehabilitation, compensation and occupational health and safety. There is no lack of perception, either, on the part of the workers with respect to the right of WorkCover to discontinue weekly payments to which the worker is not genuinely entitled. As all injured workers ought to know, sections 36 and 37 enable the corporation to discontinue weekly payments of income maintenance, if the worker either rejects an offer of suitable employment or refuses or fails to engage in rehabilitation. Most injured workers know their obligations.

We accept that change can be made here. We must be careful, however, to ensure that, in making changes, any tightening up has its desired outcome, that it does not create a rehabilitation police force, has fair discontinuance applications and provides review rights for the worker. This is not the case with the Government's Bill. Under the Democrats' proposals there are further problems, for example, lack of right for workers: the worker will still not have a right to request rehabilitation. Workers, too, are universally informed of the right of WorkCover to have them independently medically assessed under sections 53 or 108 of the Act. This provides a separate basis for the entitlement to income maintenance to be tested. The future liability of WorkCover to continue weekly payments of income maintenance in any case remains, at best, uncertain.

The vast majority of workers do not prefer uncertainty and a somewhat bleak future in preference to a return to secure employment. The only reason a worker with a continuing minor disability remains on weekly payments of income maintenance is that WorkCover and the employer have failed to meet their obligations under sections 26 and 58B to rehabilitate the worker and offer suitable alternative employment. The less serious the continuing disability, the easier it should be for WorkCover and the employer to meet their responsibilities to restore the worker to the work force.

If the Minister, the employer and WorkCover fail to meet their responsibilities, why should the worker, if genuine, be penalised? Any failure or lack of genuineness on the part of the worker may be challenged under the current provisions of the Act. Some at least of the current 'long term claims' are the result of particular inefficiency or complete lack of action in the past, particularly during the period from 1988 to 1991. Unless the rehabilitation and return to work process is undertaken quickly and efficiently, it soon becomes more difficult to arrange at all. In particular, employers become more reluctant to take a worker back the longer the worker is absent.

In the years after the Act was first introduced, the early rehabilitation and return to work process was quite unproductive in many cases. More careful attention in recent years has made it more productive. In the early years it may have been that WorkCover intended to rely on the two year review process rather than rehabilitation and return to work, in order to avoid long term claims. Now this Minister wants to put in imaginary jobs to cut the 80 per cent benefit, with the option to do it under one year, rather than focus on rehabilitation and a return to work. The Minister has been too preoccupied with preparing and politically promoting in the 1 December Bill, and now in the second Bill, a combined massive attack on the WorkCover system and injured workers rather than enforcing the current Act. This simply was the task. The Act should be enforced. This is why we do not need hundreds of amendments. We are not into amendment fetishes. In enforcing the Act there should be included a vigorous collecting of levies against employers who do not even pay.

Let me move onto occupational health and safety. The problems of WorkCover can be fixed by preventing injuries and illness, not slashing benefits and rights. Most importantly, improving occupational health and safety prosecutions against negligent employers has not been done. Improvement and prohibition notices are not being implemented. Putting increased health and safety resources into targeted prevention policies has not been done, either, but the real issue is prevention. Prevention programs on health and safety should be provided in this Act. The Australian Labor Party will put up an amendment on this. Under new section 29A, prevention programs would provide:

> Employers may be required by the corporation to participate in prevention programs where:
>
> (a) in the opinion of the corporation, the employer;
>
> (i) is in a class of industry which has a high risk of injury;
>
> (ii) is an exempt employer that fails to meet the standards required for exempt employer status;
>
> (iii) incurs a penalty or supplementary levy under this Act.
>
> (b) in such other circumstances as the corporation sees fit, provided that such action is consistent with the objectives of this Act.

The argument is that accident reduction and return to work have been the best strategies. In the cry about reduction of cost to employers and levies, the Minister has not sufficiently directed his energies to prevention strategies targeted to important and high risk areas. What is centrally missing from the Government's strategy is an approach which provides that the cost savings can also be achieved through putting resources into health and safety to improve the performance of South Australian employers. For example, in all the cry over the actuaries' figures for long term liabilities for injured workers still on the scheme there is no economic modelling whereby future costs of WorkCover would take into account the cost benefits of improved occupational health and safety performances in South Australia in the longer term. The question is, why not?

Over 70 000 workers, that is, 10 per cent of our work force, suffered injuries at work in 1994. About 30 workers a year are killed at work in this State of South Australia. A safe and healthy workplace is a fundamental human right, and this Government must act. If the Government was so concerned about the economic costs rather than focusing entirely on cutting the entitlements, rights and benefits of injured workers, it should have looked at the other costs so that it could focus on prevention. The other costs include those of

rehabilitation, WorkCover, hospital beds, the medical system, the legal system, the loss to the community of the skills and productivity of each individual injured worker, the cost of retraining, the impact on industrial relations, the cost of looking after disturbed people and the social and family pressures. All of these should be addressed properly in terms of discussing the true costs to the community of unsafe and unhealthy workplaces. All of this would amount to a cost of well over $1 billion a year to the South Australian economy.

The United Trades and Labor Council, supported by the Australian Labor Party, with support from health and safety professionals and some employers, released on 27 February 1995 for public discussion a working party paper entitled 'Worker Health and Safety in South Australia—Costs, Prevention and Enforcement'. There was considerable discussion. It was given to employers, Liberals and Democrats, and a good deal of consensus is being developed. Mr Ingerson has moved from PR releases to some reluctant activity; for example, finally moving on the consolidated regulations. In the UTLC paper there was a detailed presentation which the Australian Labor Party supports, spelling out what the problems are and where the targeted resources could be best put.

For example, if a 25 per cent improvement in the safety performance was achieved, then there would be about a $50 million saving. It has been estimated that $20 million could be saved by appropriate targeting of non-English speaking background workers. Even a small improvement of the performance of a group of worse performing employers—say, 10 per cent improvement amongst 80 employers—would save WorkCover about $9 million a year. It is for this reason that the ALP is prepared to pursue the amendment which makes it virtually compulsory for prevention programs to be put in place.

As stated earlier, we would be looking at amending section 29 of the Act. The ALP believes that employers should be required by the corporation to participate in the prevention of programs where the employer has a high risk of injury, is an exempt employer who fails to meet standards and incurs a penalty or supplementary levy, or any other reason which would make it necessary to have these prevention programs. This is a provision to which we believe the parties would all agree.

What would these prevention programs involve? There is a specific need to target prevention policy to people of non-English speaking background, who are the most prone to high cost claims, and it has been admitted by unions, WorkCover, the Department of Industrial Affairs and the Minister that not enough is being done in this area. Non-English speaking background women workers are most prone to muscular skeletal injuries due to over use or over exertion. They also show a tendency to delay the reporting of injuries. The end result is the long-term claim which is expensive and frequently has permanent disability. The Minister's approach is to cut these injured workers from the system. What we really need is a belief that there should in the future be targeted programs to prevent that injury occurring.

Non-English speaking background injury costs reach 40 per cent higher than those of English speaking background workers. The ALP argues that there should be an extensive resourcing of WorkCover to enable the Department of Industrial Affairs, employer and employee organisations strategically and urgently to deal with this matter. What will happen in this next budget? Are the resources to be allocated or cut back as is the present trend of this Government? For example, the very comprehensive new consolidated regulations brought in on 3 April really need to be implemented and targeted in non-English speaking background areas, high risk areas and in small business, as a reason to increase the number of inspectors. We believe that if the Premier was serious he would set up a high level task force to ensure the reduction of injury rates amongst non-English speaking background workers, particularly women, over the next two years.

We also believe that WorkCover should put more resources into publicising the solution to non-English speaking background workers. Employers, particularly those in small business, say they require assistance in relation to advice, consultancy and material specific languages. We are assured that eventually WorkCover will be collecting ethnicity data on claims forms to allow better management and targeting of resources to workers from non-English speaking backgrounds. We believe there should be a campaign by WorkCover to encourage early reporting of injuries amongst non-English speaking background workers. More resources should be put into the quite difficult high risk areas. I understand that some attempt has been made in the tuna fishing industry in Port Lincoln.

There should be a WorkCover campaign targeting young workers and students at TAFE and in our high schools. There should be a comprehensive health and safety education program incorporated in all trade and industry training, and the 'Stop the Pain' campaign should also be targeted. We believe that there is work to be done in relation to enforcement. Under this Government, there has been a continuing decline in the enforcement of the Occupational Health, Safety and Welfare Act.

There has been a decline in resources in the Department of Industrial Affairs inspectorate. We should all agree that we need more inspectors with the relevant knowledge and skills to deal with some of the most urgent problems in our workplaces. Over time the constitution of our health and safety inspectorate should change to reflect the democratic profile of our work force, particularly women of non-English speaking background and young people. Their training and work patterns should allow them better to relate to the problems of non-English speaking background people.

However, the real issue is the number of inspectors. In the past few years the resources of inspectors, including those in regional offices, have been cut back. The consolidation of the regulations inevitably increases the amount and complexity of the work to be undertaken. Will the Government match this with an increase in the number of inspectors? Will there be additional resources to the Department of Industrial Affairs? We will have to see what happens in the coming budget.

The ALP is supportive of the introduction on April 3 of consolidated regulations which were developed on a tripartite basis under the former Government. These have taken four years to produce. The Government has gazetted these regulations, but only after complaints from the unions and employer organisations about the delay over the past 12 months. What is really required is for the Government to resource, implement and enforce these regulations.

However, there is one matter which is of vital importance and which the Minister has deliberately weakened, and I refer to the national standards in relation to noise. Under the consolidated regulations with respect to standards for exposure to noise, South Australia would remain at 90 dBA. The national standard established by WorkSafe Australia is

85 dBA. This standard has been adopted by all other States of Australia and has been recommended nationally by experts since 1974. Why is this being allowed? Is the hearing of South Australian workers less valuable than that of workers in other States? This is unacceptable to workers and confusing to employers, making compliance with different standards in different States a nightmare to administer. This aspect of the consolidated regulations should be rectified.

I return to the inspectorate. We are afraid, however, that the Minister has gone soft on prosecution, saying that inspectors should act in a more advisory fashion, rather than enforce the occupational health and safety penalties. It is less likely now that the inspector will issue improvement or prohibition notices, let alone recommending that prosecutions should occur. There was a reduction in the prosecutions from 13 in 1993 to one in 1994. Over the years the issuing of prohibition improvement notices by inspectors has also declined. Action is virtually never taken to ensure compliance with process requirements, such as providing training in accessible languages. Reports from health and safety representatives indicate that inspectors are increasingly failing to liaise with health and safety representatives upon entering work shops as they are required to do under the Occupational Health and Safety Act.

At the 1994 international health and safety conference organised by WorkCover in Oregon, it was reported that they had a system of on the spot fines which was effective in providing an immediate deterrent and an incentive to employers to improve health and safety compliance. The Minister has not done anything to introduce such a safety system. The ALP believes that the number of inspectors should be increased by at least eight, with particular emphasis on recruiting and retraining women. We consider that non-English speaking background inspectors would be worth while. This was the figure put up by the UTLC. Remember that the right to sue a negligent employer at common law has been abolished. The *quid pro quo* was to have effective health and safety laws. The Minister should be doing more in areas such as exempt employers. In addition, the safety achiever bonus scheme could be extended significantly, particularly to the small business area.

Employers who do not pay their appropriate levy are the true bludgers in the WorkCover system, not the injured workers, yet the Government is not prepared to crack down in this particular area. WorkCover is not a dirty word. The community needs to be educated to accept that workers on compensation are genuinely injured and are worthy of community support. As members can see, there is much to be done in the health and safety area.

Members should recall that in 1986 the unions gave up the right to sue negligent workers for loss of income and for pain and suffering at common law. Such a right also meant there was some deterrent and incentive for employers to maintain safe and healthy workplaces. The new Occupational Health, Safety and Welfare Act introduced at the time was meant to balance the loss of this common law right to sue for negligence. However, over the years, if this Occupational Health and Safety Act is going to be a virtual toothless tiger with regard to prevention policies and enforcement of breaches of the Act, then the community will suffer considerably. We note that the Government is not willing to strengthen the powers against negligent employers. The Government's proposals, in essence, allow negligent employers to get off the hook.

The Opposition did much in introducing WorkCover and occupational health and safety reforms together as a tripartite agreement. The Liberals are wrecking WorkCover and are soft on occupational health and safety. This is an outrage. There is no tripartite agreement. Mr President, why is all this presented in a debate on a WorkCover Bill? It is because reduction of accidents and elimination of ill health at work is absolutely vital. This is why the Australian Labor Party strongly opposes the hundreds of Government amendments, is prepared to entertain some of the Democrats' amendments, and will put up minimal but vital amendments. Members of Parliament should live in the real world and be part of the real solutions and the real reforms, not like the wreckers on the Government benches.

The area of rehabilitation needs to be addressed and workers' rights in rehabilitation need to be recognised. However, we have already suggested that employers in WorkCover do not meet their obligations adequately under the current Act. WorkCover and legal resources have to be put in place to enforce the Act.

In addition, however, it appears that where rehabilitation is provided WorkCover has adopted too rigid a model. There has been a complete unyielding refusal to allow, let alone to accommodate or encourage, retraining. We want to amend the current Act to ensure this. There is a large national training agenda assisting the long-term unemployed. The injured, where practical, must be retrained.

We suggest that where a worker has been incapacitated for work for a period of not less than two months the worker, the employer, or the corporation may propose retraining under this section. Such a proposal should be in writing and must include a proposed scheme of training. Proposed schemes of training may include but are not limited to trade certificates, ITAB approved courses, language courses, particularly the English language where the worker is from a non-English speaking background, and courses of training under the Commonwealth Government's employment programs. The corporation may, after due consideration of all proposals under this provision, approve, reject or amend a retraining proposal within 90 days. Other details can be worked through but if the long-term unemployed can be retrained so can injured workers. We would urge the Government and the Democrats to consider these provisions.

With regard to workers' rights in rehabilitation, it is important to ensure that workers undergoing rehabilitation programs are entitled to the following:

(a) a choice of treating experts;
(b) a choice of vocational rehabilitation provider;
(c) independent advice from their union or any other source prior to commencing a rehabilitation program;
(d) being accompanied by a representative of their choice at any meeting involving rehabilitation;
(e) translation and interpretation in their usual language of all written and all oral communication relating to their rehabilitation as required;
(f) direct and meaningful involvement in all decisions regarding their rehabilitation programs;
(g) having personal information relating to them kept confidential at all times;
(h) security of employment during rehabilitation;
(i) access to medical or vocational information pertaining to their rehabilitation;
(j) the review and change of rehabilitation programs that prove to be unsatisfactory or inappropriate;

(k) compensation for all reasonable expenses incurred as part of their rehabilitation; and

(l) to be treated with dignity and respect throughout their rehabilitation program.

We urge the Government and the Democrats to consider these proposals also. The rehabilitation provider should be an advocate for the worker in the rehabilitation process or at least an independent professional. The rehabilitation provider's role should not be to elicit the cooperation required of the corporation employer to enable a return to work. There should not be, lurking in the background, the prospect of the rehabilitation provider's becoming an advocate in effect for WorkCover or the employer in ceasing income maintenance by being asked to comment on whether the worker has a positive commitment or otherwise.

It is a fact that, during this WorkCover debate, much attention has focused on the issue of rehabilitation and return to work. The employers' unions, the UTLC, rehabilitation providers, the Hon. Mike Elliot and, reluctantly at the last moment, Minister Graham Ingerson have realised that the essence of the scheme is effective improvement on rehabilitation—not cutting down the benefits. This is where cost savings can be made. However, Minister Ingerson's rehabilitation provisions are too restrictive, too formal and binding on parties, and this could lead to technical breaches ending rehabilitation rather than the flexibility required if the return to work plans are not entirely suitable to the individual's needs.

We must be aware of developing a new rehabilitation police force which has a rigid approach and which is too onerous or difficult for the injured worker to comply with, or there not being a mechanism to seek change in the program. Minister Ingerson has indicated that he would be prepared to look at this but it has not appeared in his amendments.

It should be stressed that the role of the rehabilitation adviser is as a trained professional independent middle person to work in conjunction with the injured worker and the employer to facilitate rehabilitation. The essence of this relationship is one of confidence, trust and mutual desire to achieve the objects of the return to work plan.

Central to this understanding is the existing section 28(3), which provides that no statement made by or to a rehabilitation adviser in respect of a worker who is participating in a rehabilitation program shall be subsequently disclosed in any proceedings under this Act unless the rehabilitation adviser and the worker consent to the disclosure. The Minister's proposed amendments strike this out. We are strongly opposed to this as the original intention of the Act was to facilitate full and frank discussions between an injured worker and a rehabilitation adviser.

The privileges given to such communications meant that workers could be frank in their dealings with the rehabilitation adviser without the need to be concerned about comments subsequently being quoted against them in legal proceedings, possibly out of context. As has been pointed out in the submission from the Australian Plaintiff Lawyers Association to us, and supported by unions and rehabilitation advisers, if the privilege is abolished workers will have to be on their guard in any dealings they have with the rehabilitation advisers for fear that these comments may later be used against them in proceedings against the Act.

It is particularly unfair as the Minister is stepping up the powers for a discontinuance through not participating in rehabilitation programs. We are fearful that economic pressures would be put on the rehabilitation adviser by WorkCover or an exempt employer if this section is deleted. It should be stressed that rehabilitation advisers are not agents of the employer or of WorkCover, but rather have a meaningful independent role in the rehabilitation of the injured worker. With the economic strength of the employer and of WorkCover, the worker would have virtually no clout in his dealings with the rehabilitation adviser. If the worker refuses to cooperate with the demands of the rehabilitation adviser, the worker runs the risk of having payments terminated.

It is the ALP's submission, supported by a wide community opinion, including employers, unions, lawyers and rehabilitation advisers, that the abolition of section 28(3) would, in many cases, result in the death of any effective rehabilitation system. A major plank of the 1986 legislation will have been destroyed.

It should also be noted that the Minister has kept within the original Bill—which was widely opposed—the provisions that after 12 months employers will no longer be required to rehabilitate or find light duties for injured workers under section 58B. This is outrageous. Section 58B should be maintained and enforced. The Australian Labor Party believes in reasonable rehabilitation reforms with rights of injured workers and obligations for people to be treated with dignity and respect. We will deal with these matters in due course.

There are many other points about reviews and appeals on which we shall be touching in the Committee stage. I have given a fair background to some of our major concerns, and I shall be speaking extensively on some of the clauses in the Committee stage. We are opposed to 99 per cent of the Bill as proposed by the Government. We have some consideration for amendments that have been put forward by the Hon. Mr Elliott, which we will indicate in the Committee stage. However, we have almost universal opposition to the Bill.

The Hon. K.T. GRIFFIN (Attorney-General): I appreciate the indications of support for the second reading of this Bill. Obviously the consideration in Committee will be complex. Hopefully it will not be drawn out, but one cannot make any predictions about Bills on which passions sometimes run high. Nevertheless, this is an important piece of legislation. I dispute the assertion of the Hon. Ron Roberts that this is a charade of a Bill or that Government supporters are uncomfortable with it. That is not the case. This Bill is a consolidation of the previous Bill, taking into account the views of a variety of people and organisations in the period during which the original Bill was on the table and in the public arena. This Bill consolidates a number of the provisions, amendments and issues which have been raised with a view to making it somewhat simpler to deal with, particularly in the Committee stage.

The Hon. Ron Roberts protests at the way that the Government has handled this Bill. He can protest as much as he likes: the fact is that this matter is controversial and passions do rise when debating these sorts of issues. The Government believed that it had an obligation to endeavour to reduce the costs of WorkCover, particularly as ultimately they are borne by the whole community in the costs of services and products, whilst still recognising the rights of injured workers and ensuring that matters are dealt with expeditiously and fairly.

The Hon. Ron Roberts says that untold worry has been caused to workers by the original Bill. That is not correct, except to say that a lot of the anger has been whipped up by the Opposition and its trade union supporters against the objective assessment of the original Bill as an effective means

by which reforms may be achieved. It is not, as the honourable member suggested, far worse than the previous Bill, nor is it a confidence trick. I repeat that the Government has genuinely endeavoured to reflect the concerns in the wider community that the WorkCover legislation does not provide any incentive to return to work and has in many respects been cumbersome and unsympathetic to the concerns of employers or employees.

The Government has consulted a variety of organisations, including the United Trades and Labor Council. There were seven months of consultation, starting with an issues paper which was publicly released in August 1994. The Government has not been provided with any suggested amendments to the present legislation which the UTLC may be prepared to accept as part of the reform and in a genuine attempt to reduce costs and streamline the processes. The Government has met the UTLC on a regular basis. The UTLC's response has been that, if the WorkCover scheme is blowing out, the employers should pay more in levies. That is a pretty one-sided approach to a very difficult and complex issue.

The Hon. Ron Roberts claims that the Labor Party does not accept that WorkCover has any financial difficulties. The Hon. Mr Elliott suggests much the same, and I will deal with his comments shortly. I suggest that the Hon. Ron Roberts really has his head in the sand and is obviously oblivious to the concerns which have been raised publicly and privately and in other forums by employers and those who represent them. They are also reflected by a number of ordinary men and women in the category of employees who are concerned about the problems which have occurred with WorkCover.

The Government has not gone soft on workplace safety, as the Hon. Ron Roberts asserts. I think he ignores the fact that this Government has put a $2 million contribution from WorkCover into workplace safety campaigns. On 3 April, only two days ago, far-reaching reform of the regulations relating to occupational health and safety came into operation. They are by far the most reformist approach to occupational health and safety for at least a generation. The former Labor Government either did not want or was reluctant to bring that new reform into operation.

The Government, through the Industrial Court, has prosecuted breaches of the law and negligent employers. Recently, the Industrial Court imposed a record fine of $102 000 on an employer. The Government has sought advice from the Occupational Health and Safety Advisory Committee on whether penalties under that Act should be further increased. In this Bill we are strengthening penalties against employers who commit fraud.

The Hon. Ron Roberts claims that rehabilitation providers should not seek assistance from WorkCover or the employer to achieve a return to work. That is a quite incredible assertion.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: I understood the honourable member to say that rehabilitation providers should not seek assistance from WorkCover or the employer to achieve a return to work. That is nonsense, because the employer provides the opportunity for work, and it is in the employer's interest to get employees back to work. I should have thought that a tripartite approach to this issue was likely to be more effective than WorkCover trying to go it alone. If we do not have the cooperation of employers, we will not achieve the objective. To make that assertion was really ignoring the facts of life.

I want to deal quickly with several matters raised by the Hon. Michael Elliott. I do not want to deal with them in depth but they are matters which have a wide ranging application. I want to pick up again on the point which was made by the Hon. Ron Roberts and which was also made much more expansively by the Hon. Michael Elliott, that the unfunded liability of WorkCover was not really a debt and was prone to significant fluctuations. I have not heard any greater level of nonsense than that. That is part of the problem with all superannuation schemes—

The Hon. T.G. Roberts: The Hon. Angus Redford said the same thing.

The Hon. K.T. GRIFFIN: No, he did not; he is all right. It is nonsense; it is a debt. In whatever way you look at it, it is a debt. It is an unfunded liability and one day it will come home to roost. It is really a question of whether you meet your obligations now and provide for it or you put it off for your kids and your grandchildren. That is the problem with superannuation in the unfunded public sector, and that is what the Commission of Audit and countless inquiries have drawn attention to. If you do not make provision now for a liability which will accrue in the future, you are living in a fool's paradise and to suggest that WorkCover ought to be run like that is, in my view, to ignore the facts of life. It is really postponing for future generations, future employers and future employees the consequences of not properly funding WorkCover now. We are deluding ourselves if we think that we can get away with that.

The unfunded liability has to be actuarially assessed; it represents an existing liability however you look at it; and it must be taken into account in determining whether or not the scheme is solvent. Everyone should recognise that the Australian Democrats did support the provision which was put into the Bill in 1985 that the liability should be fully funded. Of course, there is a dilemma there because if you limit the amount of the levy which can be imposed and at the same time you want to make it a fully funded scheme there is always constant tension, and that is one of the reasons why WorkCover has some bonus and penalty scheme provisions, which help to even out the peaks and the troughs of inequity. I am told that the unfunded liability is increasing at the rate of $12.6 million per month. It has increased by $76 million since the Government's original Bill was introduced.

The fundamental reason for the unfunded liability is the inability of the scheme to deal with or review long-term claimants because of a grossly inadequate legislative review mechanism. As legislators we have to address that issue. The Hon. Mr Elliott claimed that a 2 per cent return to work rate improvement would save $25 million, and the Government does not disagree with the principle of improving the return to work rate and does not disagree with the assertion that that is one of the keys to turning around the WorkCover system. However, you can do that only if the legislative rules permit it and permit the return to work rate to be improved. With the highest benefit levels in Australia and no review mechanism for long-term claimants with very low disabilities, there is no real incentive to return to work. That is what we have been arguing all along. There has to be structural change made within the legislation to enable us to meet the objective.

The Hon. Mr Elliott also emphasised the need for statutory amendment to rehabilitation and return to work provisions. As a Government, we agree that these provisions need to be amended. We assert that the Government Bill does this, but I think it is important to recognise that the return to work rate will not be improved simply by changing the rehabilitation

provisions of the Act. The benefit levels and the second year review provisions are really central to that objective. The Hon. Mr Elliott also emphasised the need to improve workplace safety. Again, we agree that it is a critical issue and that the prevention of workplace injuries is part of the solution to that problem.

But again, the Parliament must realise that the WorkCover scheme is a no-fault scheme. No matter how safe the workplace, the scheme will compensate an injured worker if the worker injures himself or herself through no fault of the employer. That is probably part of the weakness of it. Even if the employer has done everything to make the workplace safe, if there is an injury the worker is compensated. So, the solution to the WorkCover problem must mean going beyond improved prevention practices and must really focus upon the legislative rules that relate to rehabilitation and compensation.

The Hon. Mr Elliott opposed benefit level reductions and this is where there is a fundamental disagreement between the Government and the Hon. Mr Elliott. The fact is that our scheme is nationally uncompetitive. One of the basic reasons why this is so is because our benefit levels are the highest in the nation. Benefit payments to injured workers account for two-thirds of the scheme's costs. If benefit levels are not reduced to near national standards, the Australian Democrats really cannot be serious about trying to reduce WorkCover's financial problems and establishing a nationally competitive scheme.

The Hon. Mr Elliott raised an issue about lump sum commutations or redemptions. It is our view that there ought to be more flexibility to enable workers to negotiate lump sum payments and to leave the WorkCover system. One of the concerns that has always been expressed by the Government when it was in Opposition and again now is that you have to trust the workers at some stage. That was the real problem with limiting access to redemption and commutation, and it was the problem in 1985. I can remember clearly making the point that you have to trust the workers some time, and you cannot hold their hand all the time. You have to give them a measure of independence.

So, it is pretty important to realise that there has to be some significant change in this area of commutations or redemptions rather than the undesirable concept of a continuous drip feed payment to long-term claimants with low disabilities. It is again back to the issue of allowing that injured workers do have some commonsense, if not more sometimes than their advisers, and they do act responsibly in the majority of cases when they cash out their benefits. The Hon. Mr Elliott advocated that a parliamentary committee be established and we will debate that issue in Committee. He invited the Government to consider amending the existing disability chart rather than invoking the Federal Comcare disability guide and he provided some examples which demonstrated that there are some winners and some losers by the use of the Comcare chart. That really contrasts with the Opposition position, which has been to roundly criticise the Comcare chart despite it being used by the Federal Labor Government and it being supported by the ACTU. Again, we will address some of those issues in more detail during Committee consideration of this Bill.

The Hon. Terry Roberts made a number of observations in his contribution. The Government refutes the assertion that we are bringing the WorkCover scheme back to the lowest common denominator. The South Australian scheme will, even if the Government Bill was accepted in its entirety, leave South Australia at the highest benefit levels of any State statutory jurisdiction in Australia. The changes made by the Government in this modified Bill remove any argument that workers will directly or indirectly be placed on to the social security system.

So, the response by the Opposition was disappointing. It does not face up to the reality of the situation and the problems which confront the State, employers and employees in relation to the existing WorkCover scheme. As we work through the amendments in the Committee consideration of the Bill we hope to persuade the Australian Democrats that there is still room for them to move even further to provide additional benefits to the scheme and ultimately to the people of South Australia.

Bill read a second time.

In Committee.

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

A quorum having been formed:

Clauses 1 to 3 passed.

Clause 4—'Interpretation.'

The Hon. R.R. ROBERTS: The Opposition opposes clause 4. The clause is consequential in respect of other amendments concerning reviews and appeals. The Opposition is also opposed to clause 3.

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

Page 1, after line 21—Insert paragraph as follows:

(aa) by inserting after the definition of 'foreign law' in subsection (1) the following definition:
'(indexed)'—See subsection (4);;

I note that the Hon. Mr Roberts opposes clause 3, which anticipates changes later in relation to review processes. Without getting into substantial debate on the clause just passed, I indicate to the Hon. Mr Roberts that I expect that when we get to the end of the Committee stage we will report progress to give us a chance to revisit a number of matters and tidy up. Depending on what happens to the review process, we may need to come back to clause 3.

My amendment to clause 4 anticipates a later amendment which introduces the concept of redemption. Whether or not this is accepted will depend upon which model of redemption is accepted. The Government has amendments on file, I have amendments on file and the Opposition, if it has not already, will be seeking to put forward amendments about redemption. So it is a matter of whether or not the Committee accepts the introduction of 'indexed', and the following amendment to this clause will depend upon which model of redemption members choose to adopt. In my model of redemption it will be offered to a limited range of injured workers, people who have been injured for more than two years where the condition has stabilised, where it would be expected that there would be no real prospect of the condition improving and where the level of disability is relatively low. I will not go into all the detail, because we will have a chance to argue it again, but it is my intention that there be a fixed and non-negotiable amount of $50 000 available to injured workers but only if both the worker and the corporation agree to that redemption.

Having fixed on a set figure, one would have to realise that inflation would fairly quickly devalue that figure and for that reason it is necessary for indexation to be incorporated so that figure does not lose its true value over time. Without going into lengthy debate now, I suspect that other members of the Chamber already have some fairly strong views about the model of redemption they prefer. I will not take the debate further and, depending on what happens later on, if I happen

to lose this we may revisit it. When we get to the later clauses the numbers will decide that.

The Hon. R.R. ROBERTS: The Opposition is opposed to both subclauses (a) and (b), and section 35 is a key to this. As I understand it there are still discussions as I speak with respect to sections 35 and 43. At this stage we are opposing subclauses (a) and (b).

The Hon. K.T. GRIFFIN: The Government opposes the amendment. This amendment is technical and is consequential upon the next amendment, which introduces the indexation factor into the definition of average weekly earnings. We do oppose the terms of the indexation factor proposed and, therefore, in consequence of that we oppose this technical amendment. I think that the next amendment (and I can probably deal with that at the same time) does introduce a new indexation factor of seasonally adjusted State average full time adult total earnings. It does represent a significant move away from the existing formula which is used in section 43(11) of the indexation payment of lump sums, and that present formula is related to changes in the consumer price index. The Government's very strong preference is to retain the existing indexation criterion for lump sum payments. For that reason this amendment and the next will be opposed.

Amendment carried.

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

Page 1, after line 25—Insert paragraph as follows:

(c) by inserting after subsection (3) the following subsection:

(4) If a monetary sum is followed by the word '(indexed)', the amount is to be adjusted on 1 January of each year by multiplying the stated amount by a proportion obtained by dividing State average full-time adult total earnings (seasonally adjusted) as at 30 June in the previous year by State average full-time adult total earnings (seasonally adjusted) as at 30 June in the year in which the stated amount as fixed by Parliament.

This is a consequential amendment.

The Hon. K.T. GRIFFIN: I oppose this amendment.

Amendment carried; clause as amended passed.

Clause 5—'Average weekly earnings.'

The Hon. M.J. ELLIOTT: I indicate at this stage that the Democrats do not have any particular difficulty with section 4 of the principal Act, and I do not believe the Government has made a substantial case for the changes it is proposing here.

The Hon. R.R. ROBERTS: The Opposition is opposed to the Government's Bill. This amendment will destroy the income maintenance philosophy of the Act for many workers. At least four classes of workers would be severely discriminated against if the Government's proposal were introduced: those workers who are required to work overtime, for example, people who work at Moomba on a six day roster of 12 hours per day; those workers whose work falls outside that which the award defines as ordinary hours, that is, shift workers, for example, in nursing; those workers whose employment is not governed by an award but who work long hours, for example, six day 48 hour weeks paid at a set rate of $500 per week and where the hourly rate is determined by dividing the $500 by 48; and workers who receive non-cash benefits.

This amendment creates discrimination between different groups of workers, depending on how their remuneration is structured. Many workers have a high proportion of their incomes which are earned working non-typical hours or overtime. A typical non-trades person's work weekly rate of pay is $374.20 per week, and 80 per cent of this figure after 12 months is $299.30 per week. This Bill exceeds the present family rate of unemployment benefit. The existing section 4 of the Act has been heavily litigated at review in the tribunal and in the Supreme Court. It would have been an appalling waste of resources to introduce a new concept which would require further costly litigation. We are opposed to this clause.

The Hon. K.T. GRIFFIN: Four issues need to be addressed in relation to this clause. I am disappointed to hear that the Hon. Mr Elliott in particular has not yet been persuaded of the need for change. Let me just deal with the four issues. First, it is the basis of the calculation of the average weekly earnings. There is a minor variation in relation to the calculation of average weekly earnings for apprentices. One of the most significant changes is to exclude non-monetary benefits such as company vehicle, telephone costs, free accommodation, etc., and the other is to provide for the exclusion of overtime.

This new section does make a number of changes to the current method of determining average weekly earnings to deal with the difficulties and inequities in the current position. I am told that about 12 per cent of all disputes at review are on average weekly earnings issues and, if that is the case, we have to find a way by which we make it clearer as to what is or is not included. We propose that the basis of the calculation will be the worker's gross earnings divided by the number of weeks the worker was in employment in the preceding year.

The current legislation requires that an injured worker's earnings be assessed taking into account both past and future earnings, and this has led to an administratively complicated calculation which in many cases has resulted in the workers on income maintenance being paid more than their fellow workers because overtime had declined or the industry had experienced changes to the way in which work is remunerated, due to award enterprise agreement changes. Examples can be given. The first is a truck driver on a short term contract who was injured in the first week of employment. Historically, his earnings were approximately $500, but his future earnings under the contract were $1 000, because the award provision was for payment by kilometres and not hours. The earnings above the base award rate could not therefore be described as overtime and consequently could not be reduced at the time the short-term contract came to an end.

A second example is that of a seasonal abattoir worker who worked for approximately four months of the year and relied on Social Security for the rest of the year. Following the decision of the appeal tribunal, WorkCover was required to pay the worker the average of the earnings for the entire year, despite clear evidence that the worker's income history was divided between unemployment benefits and abattoir earnings for a number of years.

The third example is that of a working director of a furniture company who earned, according to the pay records, approximately $200 per week. He was injured. He sought and was paid nearly $500 a week based on the decision of the appeal tribunal. So, there are three examples of cases before the tribunal where it is quite clear that there was a problem, at least in the Government's view, in the interpretation of the statutory provision.

If the worker's gross earnings during the relevant period, which is normally the period of the preceding 12 months, have been affected by the disability, due allowance is to be given in the calculation. A minor variation is to be proposed, as I said earlier, in relation to the calculation of average

weekly earnings for apprentices or workers under the age of 21 years such that the average weekly earnings are to be increased during the period of incapacity in proportion to the relevant award rates. This differs from the current legislation, which provides full adult wages for apprentices or workers under 21 years if permanently incapacitated. As this can include workers with partial incapacity, there are many apprentices and workers under 21 years of age who are partially incapacitated yet entitled to full wages whilst in receipt of weekly payments. That is an obvious disincentive to return to work.

As I said earlier, one of the more significant changes is to exclude non-monetary benefits from the calculation of average weekly earnings. The current requirement to include such benefits does cause complications. It also causes unnecessary disputes and can inflate weekly payments to levels that do not reflect the real level of wages. It can also lead to inequities compared with fellow workers and be a disincentive to return to work. Again, there are a couple of examples.

A worker paid a salary was also supplied with a company vehicle to carry out the duties of employment. When unable to continue to do those duties because of the compensable disability, the value of the benefit of taking the worker to and from work, approximately $100 per week, had to be included in the calculation of weekly payments. In such case, an injured worker has gained an unfair advantage over fellow workers which can significantly impact on the incentive to return to work.

The second example was a farm manager who, following an injury, was unable to continue in that position. He successfully appealed the decision of WorkCover to pay at the declared weekly earnings so as to include the value of agistment of horses, grazing rights for livestock and the value of the loss of sale of those animals, the differential in house rental, the value of one sheep per month for food and the use of a telephone.

The Bill also proposes a prescribed maximum for average weekly earnings related to the worker's ordinary hours under the relevant award or enterprise agreement or, if not covered by an award or enterprise agreement, by multiplying the worker's average hourly rate by 38. An absolute maximum of two times the State average weekly earnings, which is currently $1 256 per week, will remain as at present.

The current legislation allows for the inclusion of overtime, as I have already indicated. Despite attempts in the past to amend the legislation in this regard, the majority of workers who have had overtime included in their weekly payments have been able to maintain the overtime component because of the court's inflexible interpretation of what constitutes regular and established patterns of overtime work.

There being a disturbance in the President's Gallery:

The CHAIRMAN: Order! The person in the gallery will not interject.

The Hon. K.T. GRIFFIN: This has resulted in weekly payments that exceed fellow workers' earnings and acts as a disincentive to return to work. As this proposed amendment bases the average weekly earnings on ordinary hours, overtime is excluded, thus simplifying calculations and minimising the scope for disputes.

The Hon. M.J. ELLIOTT: I will address a couple of the matters raised by the Hon. Mr Griffin. First, with respect to the question of non-monetary benefits, I do not believe that people take a job such as a farm manager if it was simply for the wage they got paid. They take the job because there is a house, a cheap sheep and a few of the other things that go with it. They are a real part of the employment package. To suggest that the worker is not getting any real benefit from that would be fallacious, and to suggest that that should not be transferred to some sort of monetary value if a person is injured is also fallacious.

Whether it happens to be a person working on a farm or anybody else with a non-monetary benefit, I guess the important issue which needs to be determined—and certainly what the Government has done here does not address the issue—is what is or is not a real benefit for the worker. The fact is that substantial and very important non-monetary benefits are a real part of their employment package, and to deny that to an injured worker is unconscionable.

The second issue relates to overtime. I hear the Government saying that a worker works a lot of overtime and in the intervening period, while they are off work, the company is working lower hours, yet this person stays on the higher wage. I wonder if the Government also accepts that, if a person is injured and the factory started working extra hours, an injured worker should be paid more. It would seem to me that the logic is identical. There are swings and roundabouts in all this. If the Government wants to argue that if overtime went down it should be cut, I wonder if it would also accept it increasing if overtime picked up. I know it would not. I just think that is a nonsense argument. So, on the basis of those two issues alone, this clause deserves to fail.

The Hon. R.R. ROBERTS: This is a very simple argument. It is clearly designed to reduce the benefits to injured workers in South Australia. These matters have been litigated on many occasions and it is clearly defined that there is a benefit. Not only does it restrict the amount of benefits that will be available to injured workers who may have suffered injuries exactly the same as other workers, but also this has another effect that when we start calculating the 80 per cent or, if we go through the Government's proposition, the 75 per cent and the 60 per cent, the cumulative effect is disastrous cuts in weekly incomes to injured workers. For that reason, despite the other reasons and examples that we have explained, this needs to be opposed.

Clause negatived.

Clause 6—'Territorial application of this Act.'

The Hon. R.R. ROBERTS: The Opposition is opposed to this amendment to the territorial application of the Act. There is some confusion amongst the people who have advised me. We believe that this is directed at some sort of mischief. I am not quite clear if there is some concern that people on both sides of a border could be disadvantaged by that. Will the Minister provide more information as to what this clause actually means? My concern is that an injured employee may miss out on compensation on both sides of this Bill and a corresponding law. At this stage, I indicate that we oppose it and ask the Minister to explain what he is trying to achieve here.

The Hon. K.T. GRIFFIN: Some practical problems are involved. Some employers, whose workers travel beyond the borders of this State, end up having to pay a levy in South Australia and the other State, and that is on full wages, not just proportionate wages. Then, when the worker is injured, he or she makes a claim generally against the South Australian scheme because the South Australian scheme provides a higher benefit. That is the problem. We are trying to overcome that issue of with which State does the employee have the greatest connection in order to avoid the double-whammy levy position.

The Hon. M.J. ELLIOTT: I have not found any problems with this clause. Indeed, having heard the Opposition say it is opposed to it, I ask what in particular do they think will cause a problem. I have not, on my reading of it, been able to come up with a problem; nor have I received any submission which points to a particular problem with respect to this clause.

The Hon. R.R. ROBERTS: The concern is that the application of this clause may lead to a situation where an employee may miss out on compensation under both this Act and the corresponding law. I am not briefed beyond this. My instructions are that we are opposed. I understand that the Democrats are supporting it. If necessary, I will need to take further instruction and we will look at it at a later stage.

Clause passed.

Clause 7—'Rehabilitation advisers.'

The Hon. R.R. ROBERTS: This clause seeks to remove the confidentiality of communication between workers and their rehabilitation officers. It represents a step backward and is totally out of keeping with the approach taken by the Government, the Democrats and the Australian Labor Party in seeking to promote the rehabilitation objective of the Act. Rehabilitation advisers were initially intended to provide support for injured workers in their return to work. It has, up to this point, been accepted that rehabilitation is best progressed in an environment of trust and confidence.

As those who have been closely involved with the rehabilitation processes are aware, the anxiety caused by conflict and uncertainty can be the difference between the injured worker coping, or failing to cope, with the difficult and sometimes painful return to work plan. Being able to confide in their rehabilitation adviser is an essential part of the support necessary for a successful rehabilitation program. If the Government's amendment is accepted, a rehabilitation adviser may be compelled to testify as to statements made to him or her by an injured worker during the course of establishing a rehabilitation program.

Rehabilitation requires some compromise all round: an injured worker to endure sometimes painful attempts to return to work; and an employer to alter their system of work to accommodate the disabled worker. Workers will be less inclined to cooperate and to make what could later be interpreted as concessions about their work capacity in the course of communication with a rehabilitation adviser. For those reasons we oppose this proposal.

The Hon. K.T. GRIFFIN: I am disappointed to hear that. We give too much emphasis to this issue of confidentiality and privacy in the context of trying to get a worker back to work. Let us face it: the employer has a statutory obligation under section 58B to ensure that the worker is given the opportunity to get back to work. The contract with the rehabilitation officer is between WorkCover and the rehabilitation officer and not between the worker and the rehabilitation officer. So, there is a mess—and I say 'mess' rather than 'mass'—of conflict within the framework of the legislation.

I think everyone recognises that the focus should be on getting the injured worker back to work. If the employer and WorkCover have an obligation then, in my view, it is quite proper for the rehabilitation adviser to provide information both to the employer and to WorkCover about what work can be done and what length of time will be needed for particular sorts of rehabilitation. It is perfectly proper again for the rehabilitation adviser, who is in a good position to know the position of the worker, to assess how quickly the worker will be back and off the WorkCover account. I should have thought it was just commonsense. We cannot hide behind the issue of patient care/provider confidentiality to say, 'We oppose this' if we are really serious about trying to get people back to work. It is in the interests of the worker, the employer and WorkCover.

With respect to the Hon. Mr Ron Roberts, I do not think the argument about confidentiality really washes in the context of the statutory obligations which are placed upon others within the system to provide both the opportunity and encouragement to a worker who is injured to go back to work.

The Hon. T.G. ROBERTS: I wish to clarify the problems which we on this side of the Chamber see in relation to this clause and to relate a practical application of the clause. I was personally involved in a rehabilitation program at a particular hospital which included hydrotherapy. One of the other participants in the program was a migrant who was not particularly fit. He did not want to get into the hydropool, for whatever reason; he was not able to remove his clothing freely because he had a back-skeletal problem because of an industrial accident and, for many reasons, would not give his treatment provider a reason or excuse. He did not bother to explain because he felt that a 'No' was enough. In that case the rehab provider would regard that individual as being hostile to his treatment program in the first instance and, under the Act, would probably have benefits removed on the basis that the person concerned was refusing to be part of the rehabilitation program when in fact he lacked confidence. The participant had been used to hard work.

It was one of those cases where a migrant worker lacked those skills to be able to be confident in mixing in a rehabilitation program. What we are doing is legislating for all best practice positions and the fact that everybody is confident and skilled in being able to move through these rehab programs and able to sit down and confidently talk to the rehab provider about some of the problems they have. If the rehabilitation program has stitched together a rehab provider who has a wide range of medical skills that crosses all of the medical ranges—and there are not too many of them, as most of the rehab providers have specialist skills or are involved in providing a service to identify some of the problems that some of the injured workers have—then that may be a different case. But, in most cases, you are not dealing with specialists involved in rehabilitation; you are dealing with people who have a broad range of general practice skills.

It is all right for us to legislate here, but in practice there are a lot of people who, as I said, do not have the social skills and experience to be able to articulate their problems. In some cases they are not able to clearly define the injury. There are a lot of rehab providers who become frustrated because, in a lot of cases, people cannot define the nature of their injuries and from where the pain is coming. That is not an unusual circumstance if you ask doctors. Generally, in the first case where you have a trauma, most of the pain is broad based and the pain does not settle until later, when the injury has begun to be treated. There are a wide range of problems and the thrust of most of the Opposition's amendments are to try to get adequate representation at all levels for individuals to go through the treatment programs, to go through the rehabilitation programs, to be represented in all forums in rehabilitation re-entry into work and to have adequate counsel for those positions.

If we do not provide that, the rehab provider then becomes an avenue for putting together a program that may be based on a false reading of the position. I have, through personal experience, come across rehab providers who are excellent

and are able to read those programs very well on behalf of individuals. Another rehab provider may have been able to coax the individual, whom I used as an illustration, into that hydro pool and taken him a few steps further towards adequate care and rehabilitation and another step closer to re-entry to work. In the real world that does not happen; it is unfortunate. But, if we legislate, what will happen is that people will use the legislation as a protection for their position and any of those skilful negotiations that might occur through rehabilitation programs being put into place and the development of plans for rehab may go out the window. I only say 'may' because personal experiences vary but, in my experience, that would be an inhibiting factor in putting together a management plan for a rehabilitation program unless those integrated skills were a part of an individual provider's skill development.

Over the past eight years, as the rehab providers have grown, the skill developments have grown and some of those problems I indicated earlier may be starting to be overcome, but it still remains that the confidence levels of individuals' rehabilitation and work programs for re-entry depend on a good relationship between the rehab provider and themselves and, if that is not there, whatever the reason—

The Hon. K.T. Griffin: It may depend on a good relationship with the employer as well.

The Hon. T.G. ROBERTS: The employer's relationship with the rehab provider and the injured worker is a part of the mix. Once the nature of the injury is determined, then the employer can be contacted to see whether there is work available for the skill range or the flexibility ranges that person would have in relation to their injury and they would work out a tripartite program that may be able to work. If you do not have that mix and you have one party hostile—it may be hostile out of ignorance or it could be due to their inability to read the situation through inexperience—then the employer is not able to put together a package. You may have a worker being put back into work earlier than would normally be accepted as a re-entry program and it may, in fact, end up doing more damage to that worker than would be regarded as a safer re-entry through further rehabilitation.

We had the Hon. Mr Lawson reading out a whole list of accident reports in South Australia that give high figures when compared with other States. In a lot of cases in South Australia what is reported as an accident is not in fact an accident, but an aggravation of existing injuries. In fact, it can cost WorkCover, or a private insurer, more if those elements of rehabilitation and re-entry are not managed properly. It is putting a little too much responsibility back on to a rehab provider who may not have those specialist skills that are required to make a proper diagnosis for the reasons I outlined.

In a perfect world the rehab provider would have a specialist on site. That is generally not the case. They might refer them to a different site. That all takes time, effort and energy. That is why a lot of injured workers become frustrated with their programs and one of the reasons why injured workers ask for commutation of their pay, because they do not feel as though the rehabilitation programs and the re-entry to work are matched adequately. They become frustrated and go to the union officials or third parties to try to obtain a settlement. I hope that has thrown a bit of light on some of the problems that people face.

The Hon. R.R. ROBERTS: It is easy to read a Bill which says, 'Strike out section 28 (3)'. Subsection (3) provides:

> No statement made by or to a rehabilitation adviser in respect of a worker who is participating in a rehabilitation program shall subsequently be disclosed in any proceedings under this Act unless the rehabilitation adviser and the worker consent to such a disclosure.

This provision goes back to the very fundamentals of the legislation. It is about rehabilitation and compensation. A clear decision was made to include the word 'rehabilitation'. It is about rehabilitation. Under this program, the corporation is responsible for the scheme and it is the corporation that appoints rehabilitation advisers as necessary for the purposes of this legislation. The legislation provides:

> A rehabilitation adviser shall assist in devising and coordinating rehabilitation programs for disabled workers and shall be responsible to the corporation for monitoring the progress of disabled workers who are involved in a rehabilitation program and may, subject to monitoring limitations set by the corporation, expend money of the corporation in obtaining for a disabled worker services and equipment that may assist a worker, and shall consult with the worker's employer with a view to expediting the return to work of the disabled worker.

There are at least three distinct players: the corporation, which overviews it; the employer, whose interests must be protected; and the injured worker, who has a concern. It was recognised that, if we were to have proper rehabilitation, as my colleague the Hon. Terry Roberts said, there needed to be trust and confidence, and those persons needed to be of a competent standard.

If the union were to provide the rehabilitation program, understandably, one could say that there might be some bias in it. If the employer were to provide the rehabilitation provider, one could say that there might be some bias in that. Clearly, the decision was made in the early days that these people had to be above all that. The Attorney-General is right. There is a responsibility on providers to consult with the employer with a view to expediting the return to work of an injured worker. That is a responsible thing for the rehabilitation provider to do and he also has to coordinate programs with the worker. At the end of the day, he is responsible to WorkCover.

Without harping on the politics of this issue, I must say that the structure of the corporation has been changed in such a way that I am no longer confident of the independence of the board. I am happy to say in this place and elsewhere that it is loaded in respect of employers and Government representatives, and the board selects the providers. When the Act was drafted, it was determined that, to avoid problems about a lack of confidence and to avoid these people becoming professional pimps or rehabilitation policemen, these provisions had to be put above that. That is absolutely vital.

It is only a simple change to the legislation, but it is a very important principle. It is a plank in the Bill, and it could destroy confidence in rehabilitation. If there is no confidence in the rehabilitation providers, all sorts of angst will develop. There will be conflict between the corporation and employers and that will lead to litigation. This provision was included in the legislation for a specific reason—to maintain neutrality so that, in a time of tenderness, both emotional and physical, an injured worker could have confidence in his rehabilitation provider.

One of the requirements of a rehabilitation provider is to gain the confidence of that injured worker. We will not maintain that trust and confidence if he is under the constant threat that anything he says may be taken down and used in proceedings against him.

I ask the Democrats not to support this amendment and to leave this extremely important plank of the rehabilitation process in place. It does not stop consultation with the employer, it does not take away the rehabilitation provider's

responsibility to consult employers, and it does not take away his right to co-ordinate rehabilitation programs. Ultimately he will still be responsible to the corporation, because that will be his employer, to monitor the injured worker and provide systems and programs which will rehabilitate that worker and make him a valuable part of the work force again. I emphasise that this is a pivotal part of the rehabilitation program. It is absolutely vital that this provision stays, and I ask the Democrats to support our opposition.

The Hon. M.J. ELLIOTT: Overall, I think this is a third order issue and both sides are probably guilty of gross exaggeration about the importance of this clause. Subsection (3) relates only to statements, so there is nothing to stop the rehabilitation adviser from being engaged in proceedings and discussing not so much what the worker says as what he does. At the end of the day that is probably the more important thing. All it does is to defend conversations between the two. I can imagine few circumstances when a conversation in itself would be particularly useful, but I understand the Opposition's view that having a degree of confidence in people is important.

Interestingly, subsection (3) relates not only to conversations between the rehabilitation adviser and the worker, but to statements made to the rehabilitation adviser in respect of the worker. It means that if the employer or the claims manager says something to the adviser about the worker, which might be to the worker's detriment and should find its way into court, the adviser could use this clause as a defence to say, 'I will not repeat it in court, because I do not consent.' We should not assume that it is all one way. The Hon. Ron Roberts said he was concerned that advisers could be appointed with a bias. If we accepted that advisers have a bias and the employer is telling them to do something, whatever they tell them to do in respect of the worker cannot be disclosed in any proceedings. That is why I said that both sides have been guilty of overstating their case. I think there is some value in the personal discussions between the injured worker and the adviser being protected, but this offers protection beyond that, and protection in some cases that we do not really want.

Having said that, I do not think that the Government has made a substantial case for change either. I think this is a third order issue. I am not sure how it crept in, because a substantial case for change has not been made. In fact, I think that the case that I made for it was probably better than the Government's. Employers and claims managers from time to time might say, 'We have to work this character a little harder because we think he is swinging the lead,' or something far more damning than that, such as, 'Perhaps we should put this person through the grinder.' However, that would not find its way into proceedings, because they would be protected. Perhaps the Opposition should give some thought to that. I will not agree to the amendment at this stage. I would argue that it cuts both ways, but it is not a substantial issue.

The Hon. R.R. ROBERTS: I thank the Hon. Mr Elliott for his indication that he will be supporting our viewpoint. I point out that the case he mentions about things that may be introduced into the court which may assist the injured worker is covered whereby the rehabilitation adviser and the worker can, under this clause, consent to the disclosure.

The Hon. M.J. Elliott: 'And'.

The Hon. R.R. ROBERTS: That is right.

The Hon. M.J. Elliott: The adviser may choose not to.

The Hon. R.R. ROBERTS: It still falls within the Act. If the adviser, who has the worker's trust and confidence, says, 'We ought to say that,' the worker can say, 'I am happy for you to reveal that on my behalf.' I thank the Hon. Mr Elliott for his support.

The Hon. K.T. GRIFFIN: I hope it is only temporary and that we might persuade the Hon. Mr Elliott that there is a need for change. It is a nonsense that in this area and this area alone communications of the sort covered by section 28(3) should be absolutely protected. In any other area of personal injury, for example, if there is a court case and a medical adviser gives advice and support to the injured person, that information and assistance are not privileged or protected from disclosure because, after all, we are ultimately trying to get to the truth. There can be no reason at all why one would want to cover up information that might have been provided one way or the other in respect of a worker who is participating in a rehabilitation program if ultimately we want to get to the truth. It is a red herring to suggest that, if there is not the protection there, there will not be the same level of comfort between the rehabilitation adviser and the injured worker. With respect, that will not wash. The fact of the matter is that, ultimately, if there is a dispute we want to get to the truth. One should not seek to cover it up by providing for a privileged communication which is only applicable under this legislation and in no other. Ultimately it can have the consequence of preventing access by the relevant tribunal or court in getting to the truth.

Clause negatived.

Clause 8—'Rehabilitation and return to work plans.'

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

Page 4, lines 23 to 34 and page 5, lines 1 to 8—Leave out proposed new section 28A and insert new sections as follows:

28A. (1) The corporation may establish a rehabilitation and return to work plan for a worker who is incapacitated for work by a compensable disability.

(2) If a worker is (or is likely to be) incapacitated for work by a compensable disability for more than three months (but has some prospect of returning to work), the corporation must prepare a rehabilitation and return to work plan for the worker.

(3) In preparing the plan, the corporation must consult with the worker and the employer out of whose employment the disability arose.

(4) A rehabilitation and return to work plan may impose obligations on the worker and on the employer.

(5) The corporation must give the worker and the employer a copy of the rehabilitation and return to work plan.

(6) The plan is binding on the worker and the employer.

Review of plan

28B. (1) A rehabilitation and return to work plan is reviewable in the same way as a decision about the nature of rehabilitation services provided, or to be provided for a worker.

(2) On review of a rehabilitation and return to work plan (or a subsequent appeal), the plan may be modified to the extent necessary to ensure that the plan does not impose unreasonable obligations on the worker or the employer.

Rehabilitation standards and requirements

28C. (1) Rehabilitation programs, and rehabilitation and return to work plans, must comply with standards and requirements imposed by regulation.

(2) Before the publication of regulations imposing standards and requirements for rehabilitation programs or rehabilitation and return to work plans, the corporation must consult on the proposed regulations with—

(a) associations representing employers (including the South Australian Employers' Chamber of Commerce and Industry); and

(b) associations representing workers (including the United Trades and Labor Council); and

(c) professional associations representing providers of rehabilitation services of the relevant kinds.

When the debate on the Government's first Bill emerged in the public arena I had a great deal of concern, as did many others, that the Government had decided to save money the

easy way, namely, to cut benefits. When one looked at the reasons for the rise in unfunded liability of WorkCover, the major reason was that the return to work rates were not running at the level that the Actuary had anticipated some 15 months ago.

With a reassessment of the return to work rates the unfunded liability—and I draw a distinction between that and debt—started moving out fairly rapidly. That meant to me a couple of things: first, that the situation was not desperate now in that there was not a significant debt at the moment and, secondly, that if return to work rates did not change the unfunded liability would then change into a real debt over future years, and of course that would start putting pressure on both levy rates and benefits. It seemed to me that there really was a better way to go and that was to tackle the root cause of the unfunded liability blow-out, and that was return to work rates.

Whether you talk to representatives of employees or representatives of employers you find that there is one thing that they seem to agree on, and that is that rehabilitation has not been one of the grand successes of this legislation in recent years. A lot of hope had been pinned on it but it has not worked as well as it might. The concept of a return to work plan already exists, but it has no legislative backing and, in my amendments, I am seeking to provide that there be individualised rehabilitation return to work plans for most injured workers. Subclause (2) of my amendment provides that, if a worker is or is likely to be incapacitated for work for more than three months, the corporation must prepare a rehabilitation and return to work plan for that worker. Subclause (1) provides that the corporation may establish a rehabilitation and return to work plan for a worker. The inference there is that if it is less than three months there is an option.

Obviously, it is ridiculous if you have an injury that is going to keep you away from work for a couple of days to have an individualised return to work plan, but one would hope that the option provided by the word 'may' would become a common thing for any injury that has the potential to become a long-term problem for both the worker and the system itself. So one would hope that the discretion would be used widely there. Having seen the need for an individual rehabilitation and return to work plan, I think that it is obvious that there should be consultation with both the worker and the employer about the plan, because this plan will put obligations on both. If there is something that people do agree upon, it is that employers will say that employees are not committed to rehabilitation and employees will say employers are not committed to rehabilitation, and I am saying here that both of them should be involved in the development of the plan and then ultimately both should be committed to that plan as well.

Clearly, if we are talking about commitment we are talking about imposing obligations on both a worker and an employer. For instance, in its subclause (5) the Government has a provision which I had included in an earlier draft and which I subsequently removed, and it states that a rehabilitation and return to work plan may only require an employer to appoint a rehabilitation coordinator if the employer has a work force of 20 employees or more or the employer agrees to make the appointment. I do not have any problems with that principle, but it seems to me that that is only one of many things that we may want to see in return to work plans, and I believe that that level of detail is best covered by regulations. What about the employers who have less than 20 employees? Surely there are going to be requirements about them; yet the Bill remains silent. I think it is much better in the detail that one can have in regulation to confront what small, middle-sized and larger employers would be required to have in their rehabilitation and return to work plans.

Having placed an obligation on both the worker and the employer that the corporation has to give both the worker and the employer a copy of the rehabilitation plan, the plan is binding on both. The final ingredient to this provision—and new sections 28A, 28B and 28C work together as a package—is a recognition that there may be times, and I hope not frequently, when a rehabilitation return-to-work plan may place a requirement on either the employer or the employee that is unreasonable. What can one do about it? My first reaction was to say that it should be reviewable. Of course, the danger of that is that, if either the employer or the employee gets an obligation they do not like—whether or not it is unreasonable is another question—and they go to review, that takes a considerable amount of time before it is resolved one way or the other. Most people agree that if you are going to be serious about rehabilitation the quicker you start the better the chance of a result.

I know that some employees were nervous about a plan being unreasonable, but I will lay odds that from time to time there will be employers who will complain that they have something unreasonable, too. I think that both should be offered the opportunity of review. However, it is also my belief that we cannot afford, in the meantime, for this to have a significant delay. There should still be an expectation that a person will comply with the plan whilst it is before review; otherwise either party is in a position of simply blocking the workings of the plan, and that becomes a nonsense.

The question would be asked by people: what about the person who really does have a good reason and who is simply not going to do it? They will have a second opportunity for review separately in relation to my proposed clause 37, which I will discuss in more detail later. However, I say that there are employee obligations, for instance, and if they are not complied with a worker in the first instance could be susceptible to having their payments suspended for a period of time until they comply with the request. That is a risk they take, but, of course, that is reviewable as well. If they have been asked to do something unreasonable they have two choices: either they comply immediately but say that it is unreasonable and that they want it to be changed as soon as possible, or they choose not to comply and then they take a risk in relation to clause 37. However, I make the point that the test of reasonableness is there but by structuring it in this way it is something of a compromise.

The other two choices are that you either allow review and it becomes a blocking mechanism to be used by either party, or you do not allow any review at all and allow some quite unreasonable things perhaps from time to time to be required. This is the best compromise of those two extremes that I could construct.I do not think that compromise in this circumstance is a dirty word. Of course, on review of a rehabilitation return-to-work plan or a subsequent appeal—and that would be under clause 37, or perhaps the employer may have appealed under another section—the plan may be modified to the extent necessary to ensure that the plan does not impose unreasonable obligations on the worker or the employer.

The final part of my proposed clause 28C relates to rehabilitation standards and requirements. If we are going to have rehabilitation programs and rehabilitation return-to-

work plans they should comply with standards and requirements that are imposed by regulation. In other words, this Parliament having said that we believe that there should be such programs and such return-to-work plans should also approve the regulations under which they finally will be operating.

But, before those regulations are promulgated, it is also important that there is a process of consultation which involves associations representing employers, including the Employers' Chamber; associations representing workers, including the UTLC; and professional associations representing providers of rehabilitation services. There may have been an oversight because I did not include, where relevant, medical providers as well. That is the essence of my proposed new section 28C. It is far more comprehensive than the Government's proposal, and it also offers a system of checks and balances which do not impede the proper workings of rehabilitation and return to work plans.

The Hon. K.T. GRIFFIN: The amendment seeks to delete the Government's new section 28A, which deals with rehabilitation and return to work plans, and insert proposed new sections 28A, 28B and 28C. We recognise that the Democrat amendment seeks to achieve similar objectives to the Government's amendment. I will not oppose proposed new section 28A, but I will make a couple of suggestions. First, whether now or later, it ought to reflect that there is a definition of medical expert which has special meaning in this legislation, and there may be other medical providers, as the honourable member has indicated, who it may be relevant to contact. The other issue is whether the word 'consult' is appropriate. 'Consult' suggests either speaking with them on the telephone, meeting face to face or having some dialogue when in fact it may be inappropriate to impose that burden and it may be appropriate merely to look at the medical report or some other written documentation which gives some background by the medical expert or the medical provider.

The Hon. M.J. Elliott: We are talking about the regulations.

The Hon. K.T. GRIFFIN: I am talking about your amendment. The Hon. Mr Elliott's proposed new section 28A provides:

> (1) The corporation may establish a rehabilitation and return to work plan for a worker who is incapacitated for work by a compensable disability.
>
> (3) In preparing the plan, the corporation must consult with the worker and the employer out of whose employment the disability arose—

and should consult with any medical expert who is treating the worker for compensable disability. The issue is whether 'consult' is the appropriate term, because 'consult' generally connotes some dialogue between parties. In fact, it may be appropriate merely to refer to a medical report or other reference by a medical expert or medical provider. That is the major issue there. We are certainly prepared to give further consideration to proposed new section 28A. We have some concern about the capacity for proposed new sections 28B and 28C to be abused. We are prepared to further consider the drafting to incorporate elements of the Democrat and Government amendments. It is for that reason that I do not formally indicate opposition to proposed new sections 28B and 28C. Although that is the Government's inclination, I hope that there is a way to resolve the concerns we have about aspects of those two proposed new sections.

The Hon. R.R. ROBERTS: We oppose the Government's proposition. We support the Democrat amendment and propose an amendment to proposed new section 28B to insert a decision to establish or not to establish a rehabilitation and return to work plan and that a decision about the nature of the obligations imposed on the worker or the employer under the plan is reviewable. We agree that the legislation should be refocused on rehabilitation. This provides the most effective solution to social and economic costs of work injury. The Government and Democrat amendments are useful attempts in this regard. We proposed the earlier amendment to remedy two difficulties. The Democrat amendment does not clearly remedy the effects of Toohey's case, which decided that a decision whether or not to establish a rehabilitation program is not reviewable. If this is left unremedied, there will be no redress for an injured worker to force the establishment of an appropriate program.

Proposed new section 28B(2) of the Democrats' amendment unnecessarily limits the range of issues that might render a rehabilitation plan inadequate and thereby reviewable. There is no need to specify the grounds of review. Other provisions of the legislation indicate that a review amounts to a fresh determination. If the Government and the Democrats are serious about rehabilitation becoming the salvation of this system, they must give individuals the capacity to advocate programs tailored to suit their individual needs. I support the amendment moved by the Democrats and ask the Hon. Mr Elliott to consider the amendment that we have proposed.

Our proposition provides that a rehabilitation and return to work plan is reviewable and that the establishment of the rehabilitation and return to work plan is also reviewable. The decision to establish or not to establish can be determined in cases of dispute under a review.

The Hon. M.J. ELLIOTT: Two issues are contained within the amendment of the Hon. Mr Roberts. The first is whether or not a rehabilitation and return to work plan that has been established should or should not be reviewable, and I have said that it should be. However, I have also said that in general it should not be capable of being used by either an employer or employee to frustrate a plan in the short term which, unfortunately, can occur from either. That is one issue. I have looked at that and, after balancing the issues, I think it is reasonable to say there is a review, albeit with the qualification that the plan should be complied with in the meantime.

Clearly, if it is unreasonable and the person does not comply he or she is still protected within proposed new section 37. However, the second issue is one that I think deserves some attention and is not covered by my amendment. That is the question of where the corporation does not establish a rehabilitation plan and a worker wants one. The honourable member might think about moving an amendment in addition to this clause along the lines that a decision not to establish a rehabilitation and return to work plan is reviewable. That covers workers who in proposed new subsection (1) are not guaranteed a plan: if they think there should be one, they can seek one. I do not have any problems with that notion, and would support it.

The Hon. K.T. GRIFFIN: The Government has never said that rehabilitation is the salvation of the system: what we have said is that return to work is a significant ingredient in saving the system, and I do not think the two are necessarily the same, although they should be. The Government opposes the Hon. Mr Roberts' proposal. The concerns we have about the Democrats' proposed new section 28B is this very fact of reviewability. Earlier tonight the Hon. Ron Roberts made

some assertion about the Government's approach to review and suggested that what we are proposing in the Bill will make it even more complex and burdensome in relation to the review process.

It is important to recognise that there is presently no review of rehabilitation programs or return to work plans, and what the Hon. Mr Roberts wants to do is to make all this subject to review, going further than the Hon. Mr Elliott. If that is not bureaucracy run mad, I do not know what is and, if this will not bog down the system, I do not know what will. For all the Hon. Mr Elliott says that he would hope that this will not be used by one party to frustrate another, the fact is that it provides another opportunity to do so. The more reviews you build in, the more you open up the whole system to the criticism that it is bogged down by bureaucratic approaches. With respect, I think this will mean another level of bureaucratic involvement in something which should be generally straightforward. For that reason, we quite strongly oppose the proposals made by the Hon. Mr Roberts.

The Hon. T.G. ROBERTS: What happens to an injured worker whose employer goes bankrupt between the injury occurring and the work plan being prepared? Is there any provision for the work plan to include retraining?

The Hon. K.T. GRIFFIN: One has to recognise that it is WorkCover Corporation that has the primary responsibility. The rehabilitation program can still continue, because that is where the statutory obligation applies.

The Hon. R.R. ROBERTS: I have had discussions with Parliamentary Counsel and at this stage there is some agreement between the Hon. Mr Elliott and me in respect of what the ALP is trying to achieve with this amendment. It is proving to be a difficult process to put this together at the present moment. Whilst we do not resile from our proposition, it is our intention to support the Hon. Mr Elliott at this stage and we will be paying some attention to the drafting; we will pursue the matter at the recommittal stage.

Amendment carried; clause as amended passed.

Clause 9—'Compensability of disabilities.'

The Hon. M.J. ELLIOTT: The Democrats oppose this clause, which did not appear in the Government's first Bill and is one of the examples of where the Government has sought to be even more draconian than it was the first time around. As I understand it, the test that the Government now wants to apply is far more rigorous than that which is applied in any of the other States. What I find particularly interesting is that today during a discussion with the President of the AMA in South Australia he expressed concern about this provision as well. He said that if doctors tried to determine this it would be a matter of great difficulty. He was not particularly enamoured of the consequences of trying to make a determination under this clause. In any event, I believe that what the Government is seeking to do here is extremely harsh and, in fact, undoes what Sir Thomas Playford did some 30 years ago, as I understand.

The Hon. K.T. GRIFFIN: I am disappointed to hear what the Hon. Mr Elliott intends to do in relation to this clause. The Government's amendment relates to the test of compensability of disabilities under section 30 of the principal Act. In proposing the amendment the Government has had regard to submissions made in relation to the drafting of the earlier Bill. Under clause 7 of that Bill, it was proposed that the employment be the sole cause of, or a significant contributing factor to, the disability. Although the honourable member is correct in saying that this clause did not appear in the original Bill, in fact, the substance of it did but in a different form.

A variety of submissions made to the Government have argued that the phrase 'a significant contributing factor' is too vague and uncertain and that the phrase 'major cause' is preferable. In proposing this clause 9 of the Bill, it is part of the Government's framework within which it will seek to tighten up the grounds of eligibility. A number of submissions to the Government have pointed out that the current statutory scheme is open to abuse, not only as a consequence of inadequate powers to discontinue or reduce entitlements where justification exists but also too easy to access in the first instance.

In moving amendments tightening the eligibility criteria, the Government is ensuring that the scheme is accessed only by workers whose disabilities are genuinely caused by their employment, and is not made available to those workers whose employment is only an ephemeral connection with their disabilities, or whose disabilities are primarily the consequence of domestic, social or lifestyle considerations. In tightening up eligibility for compensation, the Government is adopting a similar approach to that recently advocated by the Victorian Government and the Queensland Labor Government in their respective State legislation.

The Hon. M.J. Elliott: Two right wing Governments.

The Hon. K.T. GRIFFIN: Both are of different political persuasion. If the honourable member wants to be left wing, that is a matter for him, but the fact of the matter is that the Goss Government can hardly be called a right wing Government. I think it is a pretty crude and inappropriate inner reflection that in these two States—

The Hon. T.G. Roberts: The clause is the same: it is a pretty sad reflection on—

The Hon. K.T. GRIFFIN: The fact of the matter is that there has to be a causation test. At the moment it is arising out of or in the course of employment, and nothing can be more vague than that. It is all very well for the medical profession to say that perhaps the test that the Government is seeking to include will be very difficult to apply. It means that they must exercise a bit of commonsense and also bring their professional judgment to bear.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: Which they have to do now. It is nonsense to say that they should not be put to the test. We are trying to tighten it up to give it more certainty rather than the very vague provision which has caused abuse at the present time.

The Hon. M.J. ELLIOTT: As one attempts to move a line in these circumstances, allegedly for the reason of removing some people who it is felt should not be getting in, one then starts throwing people out who should be in. The level of test one applies here means that a significant number of genuine cases will fall on the wrong side of that line. I am afraid this sort of legislation has always got those problems as boundaries are shifted around. What the Government is doing is extreme, because in seeking to remove what is a very small number, in percentage terms, of people who perhaps should not be getting in it will throw out a lot of people who should get in.

The Hon. R.R. ROBERTS: The Opposition is opposed to the Government's proposition. The proposal that employment should be the major cause of the disability is an outrage. In effect, it will require that employment be greater than 50 per cent of the cause of the injury. It is notorious that the incurring of a disability can have several causes. The High

Court has, in common law personal injury claims, stressed that causation should be approached by the courts in a commonsense way.

To do otherwise results in absurd and unjustifiable limitations on compensability. One example of how unfair the proposal may be is where a bank teller is shot during the course of an armed robbery. Although the fact that he was engaged in his employment at the time that he was shot would mean that employment was a cause of the disability, presumably the act of the robber, the third party, in shooting him was the major cause of the disability. As such, the disability may not be compensable. Similarly, a worker with a previously unknown skin allergy to certain chemicals might be unable to continue in their employment and suffer ongoing disability after having come into contact with such chemicals. It could be reasonably argued that the major cause of disability was not the presence of the chemicals at the employment, but the worker's predisposition to the illness.

Another example would be that of a manual labourer who has previously a symptomatic degenerative spine and who aggravates the condition by lifting a heavy weight at work. The worker might therefore be unable to continue any type of medium to heavy work thereafter. The consensus of medical opinion might say 40 per cent of the resultant injury, the previous degenerative damage to the spine being 60 per cent of the cause. Again, the injury would not be compensable. We are opposed to the Government's proposition.

The Hon. K.T. GRIFFIN: It is always the position, as the Hon. Mr Elliott says, if you want to change the boundaries and you do change the boundaries that there may be some who are excluded and some who are included. It is frequently difficult to do that with any precision. Of course, what the courts have always done is to look at some of these issues. In the tax area, for example, the dominant purpose has always been an issue in relation to some aspects of tax law. The courts have always looked at what is dominant and what is subservient and they have been able to do that without too many difficulties. Whereas, if you have this vague concept of 'in the ordinary course of employment', there are no boundaries and what the Government is seeking to do is to try to establish those boundaries.

There are a couple of examples which show how ludicrous has been the approach of the courts in relation to the current provision in the Act. Let me identify these specifically. There is the infamous South Australian case of *The Corporation (Saint Basil's Nursing Home) v Eliza Duff-Tyler* which was a Workers' Compensation Appeal Tribunal decision. The worker was employed as the director of nursing of a nursing home. On Sunday, 8 December 1991, the worker attended at a friend's house where she collected apricots for a Christmas party which was to be held at the nursing home on 10 December 1991. Whilst collecting those apricots the worker fell from the tree sustaining a serious closed head injury.

The worker had not been required to work at the place of employment on 8 December 1991 (being a Sunday), nor had she been required to work on the preceding day. It was found that the worker was expected to use her own initiative and to exercise judgment in carrying out her functions at the nursing home. It was found that the worker had implied authority to decide whether she should collect those apricots and, having made that decision, she went to the premises of her friend where she was injured whilst undertaking that activity. As a result, it was found that there was a direct relationship between her employment and her attendance at the friend's home, such that it could be said that the activity in which she was engaged arose out of her employment. I would suggest that was nonsense.

The decision of the review panel in the matter of *Kohler v South Australian Health Commission (Mount Pleasant Hospital)* was made on 31 October 1991. The review officer found that the worker sustained an injury to her right shoulder whilst showering at home when her knee twisted and gave way causing her to fall. The worker made a claim and the employer rejected the claim. The review officer found that the latent knee injury caused the worker to fall in the shower, and thus effectively caused the shoulder injury. As the knee injury had been caused or contributed to by work, it was found that the shoulder injury was also compensable under section 30 of the Act. There are two broad examples of how broad the net is cast when you have such a general provision of injury occurring in the course of one's employment.

The Hon. M.J. ELLIOTT: I was supplied with a list of such cases. One thing that I noted about the list that I got was that it had a couple of cases from South Australia, a couple from the Northern Territory and a couple from Queensland—in fact, from all over Australia.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Yes, but it makes the point that there has been a similar interpretation in other States. I do not think that the Government has made a case that there is a substantial number in percentage terms, nor do we have all the details before us. Giving us the broad outline of a case can be like the famous Father Christmas case which has been raised in this Parliament on other occasions. Without all the details a story can sound one way, but with the details it can sound quite different. Even if some people slip through the net, that is preferable to taking genuine cases and casting them out because we have shifted a line. Wherever we put the line at the end of the day is an arbitrary decision. We must seek to put it in the fairest location. I am saying that the Government is shifting it from a fair to a patently unfair position.

Clause negatived.

New clause 9A—'Psychiatric disabilities.'

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

Page 5, after line 14—insert new clause as follows:

9A. Section 30A of the principal Act is repealed and the following section is substituted:

30A. A disability consisting of an illness or disorder of the mind is compensable if and only if—

(a) the employment was a substantial cause of the disability; and

(b) the disability did not arise wholly or predominantly from—

(i) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker; or

(ii) a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with the worker's employment; or

(iii) reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment; or

(iv) reasonable action taken in a reasonable manner under this Act affecting the worker.

To some extent, this is probably another of those third order amendments. It is not one of the more important ones that we will be treating, but I would also argue it is not unimportant.

It is worth noting that other jurisdictions—for example, New South Wales—do not make any differentiation between physical and psychiatric disabilities. South Australia has sought to do that. We have not made a distinction between physical and psychiatric, but we have made a distinction between physical and something called stress. Stress, indeed, is a causative factor, not a condition in itself. This point has been made to me on a number of occasions by many people. I am seeking to put some honesty into this matter. My preferred position is that they be treated in a similar manner, but that is not what is before us. I think that this legislation is more honest if it recognises that in new section 30A we are talking about psychiatric disabilities which have arisen from work, not stress.

The Hon. K.T. GRIFFIN: The amendment concerns the compensability of stress-related disabilities. The amendment deletes the reference to disabilities and describes them as consisting of an illness or disorder of the mind. The Government is not opposed in principle to the amendment, because it clarifies the fact that some disabilities consist of an illness or disorder of the mind and that they may not be caused by stress as such. We think that there should be some further amendments to section 30A by including in the proposed section 30A(b) provision for situations where the management action may not be taken against the employee by the employer as such but be taken on behalf of the employer or by a delegate of the employer. We will give further consideration to the drafting of the amendment. Therefore, I will not oppose it. The heading is 'Psychiatric disabilities'. My colleague, the Hon. Bernice Pfitzner, has suggested that the more appropriate description is 'Mental disabilities'. We shall have to address that issue when we look at the drafting.

The Hon. R.R. ROBERTS: The Opposition is opposed to this amendment to section 30A to delete the reference to stress. The only amendment that appears to be made in respect of section 30A is to delete the reference to stress as being the cause of an illness or disorder of the mind. As stress was never defined in the legislation and rarely finds favour with medical practitioners as a useful term, we do not oppose reference to its being deleted as such.

However, the practical effect of this amendment is to make all disabilities consisting of an illness or a disorder of the mind subject to the same restrictions on compensability as were previous stress disabilities. That is to say, even if an illness or disorder of the mind results from a physical cause, for example, poisoning, it would not be compensable if it was the result of reasonable administrative action. We do not support the current section 30A, either. Whilst we accept that there are specific difficulties in dealing with claims for psychiatric disabilities, we believe the restrictions on compensability contained in section 30A, in particular in paragraph (b)(iii), to be an over-reaction. Presumably the rationale for placing psychiatric disabilities in a special category of their own was that it was perceived that it was too easy for people to claim compensation simply as a result of purely emotional reactions to otherwise reasonable acts. However, that surely cannot be an appropriate justification for restricting compensability where there is a physical cause for the psychiatric disability.

I remind the Committee that we had a long discussion in this place and agreement was reached—at least between myself and the Hon. Mr Elliott—and a Bill passed this place with respect to psychiatric and psychological disabilities and claims to be made under the third schedule of the Act. There was a clear demonstration by the majority view in this place that there was a place for compensation for psychological and psychiatric disabilities, because the Act provided, as I understood it at the time, that, unless you actually had a physical injury to the brain, you were not to be assessed under the legislation. Here we now have a problem in reverse. Whilst we are not happy with the present situation with respect to so-called stress claims—and we argued that strenuously the last time we considered the Bill—we are not convinced at this time that this Bill does what we would like it to do. The Opposition will not support the amendment proposed by the Democrats on this occasion.

The Hon. K.T. GRIFFIN: To add to what I said about the heading 'Psychiatric disabilities', I am informed that 'disability' relates to a function, that is, mental, physical or intellectual; but 'psychiatric' is not a function as such. It therefore follows, when we are talking about disabilities, that they are mental, physical or intellectual disabilities. It is neither physical nor intellectual, and in those circumstances, if not by anything other than elimination, it should be referred to as 'mental disabilities'. That needs to be looked at.

New clause inserted.

Clause 10—'Compensation for medical expenses.'

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

Page 5—

Line 21—Leave out 'fixed' and insert 'prescribed'.

Line 25—Leave out 'published' and insert 'prescribed'.

Line 33—Leave out 'published' and insert 'prescribed'.

Page 6—

Lines 1 to 8—Leave out subsection (11) and insert:

(11) The Governor may, by regulation, prescribe—

(a) scales of charges for the purposes of this section (ensuring as far as practicable that the scales comprehensively cover the various kinds of services to which this section applies); or

(b) treatment protocols for treatment of disabilities of particular kinds.

Line 9—Leave out 'fixed' and insert 'prescribed'.

Lines 12 to 17—Leave out subsection (13) and insert:

(13) Before a regulation is made prescribing a scale of charges, or a treatment protocol, the corporation must consult on the terms of the proposed regulation with—

(a) professional associations representing the providers of medical services of the relevant kind; and

(b) associations representing employers (including the South Australian Employers' Chamber of Commerce and Industry); and

(c) associations representing workers (including the United Trades and Labor Council).

Line 20—Leave out 'published' and insert 'prescribed'.

In some earlier drafts I had alternative amendments to the Government's clause 10 and did not proceed with them but decided to seek to amend its clause. A number of components of this clause most properly should be fixed by regulation.

As to the first amendment, which relates to line 21, rather than saying 'a scale fixed under this section', I am arguing that the scale should be prescribed by regulation. The second amendment relates to line 25 where the Government talks about treatment protocols for disabilities of a particular kind and, according to the Government, they have to be published under that section. I am saying once again that they should be prescribed. I support the notion of treatment protocols but, if there are to be such protocols, they should be established under regulation.

The third amendment relates to line 33 which states that the amount of compensation for a service covered by a scale of charges should be published; I am saying that that again should be prescribed. All this relates to my amendment for a new subsection (11), as set out previously. So, I am saying that all of that should be occurring by regulation. Subsection

(12) also talks about the scales of charges, and I believe they should be prescribed. My final amendment relates to a new subsection (13), which I have set out above. So, I am trying to achieve the recognition that protocols can play an important part in proper medical treatments and that, before the protocols and charges relating to those are established, there needs to be a consultation process because there are three key players who have an interest in what those medical protocols will finally be—obviously the people who supply the medical services, and the people who are affected by the decisions, and they are both employers and employees. I should hope that the Government would consult, and if it fails to consult and there is a significant level of upset, because it has all been done by regulation, the regulations are subject to potential disallowance by either House of the Parliament. So, I am seeking to support what the Government is doing in principle, but saying that I would like to see a level of accountability and a level of consultation guaranteed.

The Hon. K.T. GRIFFIN: The Government understands the arguments proposed by the Hon. Mr Elliott but we are concerned about the amendments, so I will not indicate support for them. It is something that we are prepared to discuss further when the matter gets to conference.

The Hon. R.R. ROBERTS: We are opposing the Government's proposition but we will be supporting the Democrats' amendments. The Bill simplifies present provisions in relation to the medical expenses. The danger of this is that the treatment protocols would make treating workers with work injuries less attractive. It also limits new and innovative treatment until it becomes part of the protocol. I understand that there will be some problems with respect to those matters if workers are ordered to have treatment that is not part of the protocol. Therefore, it is our intention to support the Democrats' amendments on this occasion.

Amendments carried; clause as amended passed.

Clause 11—'Commutation of liability to make weekly payments.'

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

Page 6, lines 25 to 36 and page 7, lines 1 to 34—Leave out all words in these lines and insert:

(a) by striking out subsection (2) and substituting the following subsection:

(2) For the purposes of subsection (1)—

(a) the following factors must be considered (and given fair and reasonable weight) in assessing what employment is suitable for a partially incapacitated worker—

(i) the nature and extent of the worker's disability; and

(ii) the worker's age, level of education and skills; and

(iii) the worker's experience in employment; and

(iv) the worker's ability to adapt to new employment; and

(b) for the first two years of the period of incapacity, partial incapacity for work is treated as total incapacity unless the corporation establishes that suitable employment is reasonably available to the worker; and

(c) after the end of the first two years of the period of incapacity, if—

(i) suitable employment is in fact not available to the worker; and

(ii) the worker establishes that the worker is, in effect, unemployable because employment of the relevant kind is not commonly available for a person in the worker's circumstances irrespective of the state of the labour market;

partial incapacity for work will also be treated as total incapacity, but otherwise an assessment of the weekly earnings the worker could earn in suitable employment after the end of the first two years of the period of incapacity must be made on the basis that employment of the relevant kind is available to the worker.

This is ultimately an amendment to section 35 of the principal Act, which touches on entitlements to weekly payments, and is one of the more important clauses of the whole Bill. There has been a great deal of debate surrounding this clause for a very long time. It was subject to debate in this place back in 1992 following a report from an all-Party select committee, which recommended that there should be some change to section 35. Within that committee that was agreed to by all members from all Parties. That consensus having been reached in the select committee, when it came into the Parliament Party politics took over again and the Labor and Liberal members retreated from a common position held within the select committee itself.

That position revolved around what should happen at the time of the second-year review. The recommendation of that committee was that after two years the burden of the onus of proof flipped from the corporation to the worker. Prior to two years, a partially incapacitated worker could be deemed totally incapacitated with the onus on the corporation to show that that was not the case and that that should not occur. The proposal of the committee was that after two years in fact the onus had to reverse. The Hon. Ian Gilfillan moved an amendment that sought to implement that. I have had an opportunity to discuss this issue with the Hon. Ian Gilfillan on a couple of occasions. He has told me about his understanding of what the committee sought to do in 1992 and the way things were meant to work when the Act was first passed in the mid-1980s. Of course, he was intimately involved in the debate at that stage as well and is probably in as good a position as anyone to know under what conditions it passed through the Parliament on that on occasion because his vote clearly was crucial.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: In fact, I think it did get up. I think he understood very well the intention of the Bill at the time. He told me that the amendment he moved in 1992, which is what I am reflecting in my amendment today, is and was the intention in the mid-1980s and was the intention of the recommendation of the select committee. What has been interesting with the tabling of this amendment is that the employers tell me it is far too weak and the unions tell me that it is far too tough. I think that has happened to quite a few amendments. I accept that they both have that view, but can they both be right at the same time?

There are two extreme positions available when one looks at the question of partial being deemed total. At one extreme people say, 'In no circumstances will a person who is partially incapacitated ever be deemed totally incapacitated, unable to get work.' That is one extreme. In fact, there is probably an extreme further over than that, because some people would only allow people to stay in the scheme for two years and would then throw them out. In fact, there are members in this Parliament who would even adopt that view. At the other extreme are people who would say that, 'If a person is partially incapacitated, they would have just about an absolute right to be deemed total every time.'

Both those extremes are not acceptable to any reasonable person and it is a matter of trying to draw a line. We faced exactly the same sorts of problems when I criticised the Government earlier when we talked about qualification for being accepted under the Government's clause 9, the amendment to section 30. I argued that the Government had tried to shift the line too far to one extreme. We are trying to draw a line in an area which clearly has all the shades of grey in it and trying to find a point which is fair and reasonable. No one point is absolutely right: there are only views about what is absolutely right.

Under my amendment, after two years if suitable employment is not available to the worker and the worker establishes that the worker is in effect unemployable, because employment of a relevant kind is not commonly available for a person in the worker's circumstances, irrespective of the state of the labour market, then partial incapacity for work will be treated as total incapacity. I am saying that there are clearly cases where partial incapacity will be treated as total incapacity and the onus will be on the worker to establish that suitable work is not available and that the worker is unemployable because employment of the relevant kind is not commonly available to that person, in that person's circumstances.

If we take a 55 year old migrant male labourer who suffers a back injury and who would be deemed to be partially incapacitated, I would argue that a worker in those circumstances has no realistic prospects of gaining future employment, and that person in those circumstances has clearly been incapacitated such that he would not expect to gain employment again. In those circumstances partial should be deemed as total. If such a case were put before any court, the court would find in that person's favour, and so it should. Realistically, that person's job options have been closed off by the work injury. That is a reasonable position to come to. Certainly, some partially incapacitated people will not be able to be deemed total but then every partially incapacitated person would not and should not expect to be deemed totally incapacitated. I urge members to support the amendment.

The Hon. K.T. GRIFFIN: The amendment at least in relation to the second year review is better than nothing. The amendment in relation to the benefit levels fundamentally changes the Government's Bill and weakens substantially the Government's reform initiatives. As a whole, the Democrat amendment is better than nothing at all. The Government is certainly not supportive of it, notwithstanding the point I have just made. The amendment introduces a modified version of a second year review, something to which we are happy to give further consideration. Our wording is preferred in relation to the second year review because it reflects clearly the entitlements that would be payable to workers, particularly partially incapacitated workers, after the first year of incapacity. The removal of any changes in benefit level entitlements and the weakening of the second year review provision from the Government's position is estimated to have the effect of reducing the value of cost savings to the scheme by $35 million to $45 million; that is, the failure to make benefit level changes will cost $14 million, and the weakening of the second year review will cost $25 million, therefore reducing overall savings by approximately $39 million.

It is important to recognise that, whilst this has been a particularly emotive and contentious issue since the Government introduced its Bill, what we are seeking to do in relation to benefit levels, in particular, is to reflect very largely the standards prescribed in February 1994 by the Federal Government's Industry Commission, following its inquiry into workers' compensation systems in Australia. In most respects we are now endeavouring to reflect the standards that the Industry Commission recommended. The Industry Commission argued correctly, in the Government's view, that staggered benefit level reductions for partially incapacitated workers over time were necessary to create a real financial incentive to achieve acceptable return to work rates.

Even with the benefit level reductions that the Government's original Bill proposed, South Australia's WorkCover scheme would have had the highest statutory benefit levels of any State workers' compensation scheme in Australia. The Government has not abandoned the fundamental proposition that benefit levels in this State must be brought more closely in line with interstate standards if South Australia is to achieve a nationally competitive workers' compensation scheme. However, as I said in my second reading reply, we are remaining true to our original policy intention to increase benefit levels for seriously disabled workers and to target benefit level reductions to long-term partially incapacitated workers only so as to minimise the impact of those reductions. Therefore, the amendments being proposed, whilst not supported, will have considerable impact upon the Government's proposed policy objective. We oppose the amendments but indicate that they are better than nothing.

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

Page 6, lines 25 to 36 and page 7, lines 1 to 4—Leave out paragraph (a) and insert:

(a) by striking out from subsection (1)(b)(ii) 'that the worker has a reasonable prospect of obtaining';

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

(1A) The following factors must be considered and given fair and reasonable weight in assessing the suitability of employment for a partially incapacitated worker—

(a) the nature and extent of the worker's disability; and

(b) the worker's age, level of education and skills; and

(c) the worker's experience in employment; and

(d) the worker's ability to adapt to employment other than the employment in which the worker was engaged at the time of the occurrence of the disability.

(c) by striking out subsection (2) and substituting the following subsection:

(2) For the purposes of subsection (1)—

(a) partial incapacity for work will be treated as total incapacity for work for the first two years of the period of incapacity unless the corporation establishes that suitable employment for which the worker is fit is reasonably available to the worker; and

(b) after the first two years of the period of incapacity, partial incapacity for work will be treated as total incapacity for work if—

(i) the worker has taken all reasonable and practicable steps to obtain suitable employment but has failed to do so; and

(ii) the worker suffers a substantial disadvantage in obtaining suitable employment because of the compensable disability.

The Opposition is cognisant of the concerns. There has been a great deal of rhetoric and a great desire by the Government to retreat from the conditions presently enjoyed by workers, despite the fact that this case was tested in the highest court and, in fact, found to be a right and proper situation. In light of the reality of the situation it is clear that the Hon. Mr Elliott feels that he has an obligation to look at this and perhaps do something about it. In his contribution he said that he felt that the Government was too far one way and we were too far the other way.

At the outset I say that the Opposition is taking a very real and concerned look at this, and in view of the circumstances

we have made a significant effort to try to modify our stance, and this would ease our situation beyond the point at which Mr Elliott believes us to be. I am concerned that Mr Elliott feels that way. However, in our concern to try to reach a resolution on this clause, we have given it a great deal of consideration and in fact have engaged eminent counsel to advise us on this issue, and that is the reason for the amendments being tabled. In support of our amendments and a commentary on the amendments of the Government and Mr Elliott, I put on the record that these amendments have different effects for totally incapacitated workers by comparison with partially incapacitated workers.

Totally incapacitated workers will receive 100 per cent of their notional weekly earnings for the first year of incapacity; therefore, they will receive 85 per cent of their notional weekly earnings thereafter. Only a tiny percentage of injured workers are totally incapacitated in a medico-legal sense. Most injured workers, even those with very serious disabilities, fit within the medico-legal definition of partially incapacitated workers.

These amendments mean that, for the first year of incapacity, partially incapacitated workers will receive 100 per cent of their notional weekly earnings unless they are earning income in suitable employment or WorkCover establishes that suitable employment is reasonably available to the worker but the worker has not taken up that employment. However, for partially incapacitated workers, after the first year of incapacity it will be conclusively presumed by the Government that suitable employment is available. The worker's payments will then drop. For the second year of incapacity, they will be 75 per cent of the difference between the worker's notional weekly earnings and the earnings from suitable employment which is conclusively presumed to be available; and, after the second year of incapacity, they will drop to 60 per cent of the difference between the worker's notional weekly earnings and the earnings which are conclusively presumed to be available.

This will have tragic effects on those workers. In reality, these amendments mean that almost all injured workers except the totally incapacitated will have their weekly payments cut to nothing or next to nothing after the first year. For example, an unskilled labourer with minimal education and experienced only in manual work may suffer a severe back injury which prevents their ever returning to manual work. However, in the medico-legal sense that worker would be only partially incapacitated, because they could undertake clerical duties. After the first year of incapacity, WorkCover would conclusively presume that suitable employment as a clerk was available to that labourer, even though no such job was available, so that their weekly payments would reduce to 75 per cent of the difference between the notional weekly earnings and the amount they would be earning if they were working as a clerk.

If the labourer's notional weekly earnings had been $400 per week, for example, and a clerk's earnings were $320 per week, the labourer's weekly payments would drop to 75 per cent of the difference between $400 and $320 per week, that is, 75 per cent of $80, which is only $60. The bottom line of this amendment is that very few injured workers would be entitled to weekly payments after the first year of incapacity, except for those with extremely serious injuries such as quadriplegics.

The Democrats' proposed amendments to section 35 would change the existing system so that in reality partially incapacitated workers are no longer entitled to weekly payments of income maintenance after the first two years of incapacity. This is better than the Government's position, but it completely contradicts the promise made by the Democrats that they would not agree to any changes which would result in a reduction of benefits to workers. Clearly, this will have that effect. The Democrats have tried to get around the perceived problems created by the Supreme Court decision in the James case without being as harsh as the Government by seeking to introduce an approximation of the principle of the odd lot in their proposed amendments to section 35(2C). Although the Democrats are no doubt sincere in their efforts, the simple fact is that their proposed odd lot amendments will not mean that weekly payments will continue to be available after two years incapacity to partially incapacitated workers who genuinely cannot obtain alternative employment because of their injury.

The concept of odd lot has been interpreted and applied by the courts over many years. There is no doubt that the concept applies only to cases of extremely high partial incapacity which approach total incapacity. The vast majority of partially incapacitated workers could not possibly hope to fall within the odd lot principles. These workers would suffer the reduction of weekly payments to nothing or close to nothing after a two year period, despite being genuinely unable to obtain work because of the injury.

The following are three examples: first, a labourer who suffers a 20 per cent back disability, rendering the worker unfit for work involving heavy lifting but capable of full time light duties and unable to obtain such restricted work; secondly, a process worker who suffers mutilation of the hand and is fit only for work involving limited use of the injured hand but is unable to obtain suitable employment; and, thirdly, a worker who suffers a leg injury and is fit only for work not involving prolonged standing but is unable to obtain such work.

Concern has been expressed in many quarters about the effect of the Supreme Court decision in James which interpreted section 35 to mean that WorkCover was required to have regard to the state of the labour market when assessing whether an injured worker had reasonable prospects of obtaining suitable employment. The Supreme Court said that an injured worker could not be said to have a reasonable prospect of obtaining employment if there was no suitable employment available in the labour market in the reasonably foreseeable future. Concern has been expressed that, as a result of the James decision, a worker with a minor disability is entitled to receive weekly payments, even though they are out of work because of the state of the labour market rather than because of their disability.

This proposed amendment would ensure that a partially incapacitated worker could continue to receive weekly payments only if the worker had taken all reasonable steps to obtain employment and the worker also established that a substantial part of the reason they were not able to obtain suitable employment was his or her disability. The proposed amendment also has the advantage over the proposed amendments of both the Government and the Democrats that it does not significantly change current section 35. The amendments of the Government and the Democrats introduce now concepts to the legislation which are likely to require interpretation by the courts over many years before their meaning is clear.

It is for those reasons that we would submit to this Committee that, because of the genuineness of our desire or probably the recognition of reality, there needs to be some

movement and that that movement needs to be fair and equitable and have compassion for injured workers. We also prevail upon the Democrats to interpret this in line with their commitment that they would not be involved in anything that would reduce the benefits to injured workers. We would ask them to interpret our amendment as meeting that criteria and call on their support. I would ask members of the Government to support that position also.

The Hon. M.J. ELLIOTT: When I first debated this provision, I concentrated on my amendments to the Government's clause. What I did not say was that, besides the wording I was inserting, I was deleting all but one line of clause 11 and in so deleting was opposing the Government's attempt to reduce benefit levels, as referred to by the Hon. Mr Roberts. That was the first effect of the amendment—that the Government's attempt to cut benefit levels in a different way from the way—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: To decrease almost all of them and to increase a couple was the effect of it. It was really only a variation of the Government's first proposal, which involved anyone with less than 40 per cent disability under Comcare guidelines, and that meant people with substantial disabilities. I think 40 per cent includes people who do not have the power of speech and people whose back is totally disabled, all of whom, after two years, would have been removed totally and effectively from the system.

That was the Government's first attempt, and now it has come back with this proposal, despite the fact that it made clear policy promises at the last election. I find it interesting that the Minister on several occasions has referred to the Government's policy objectives. I can only assume that its policy objectives must be different from its actual stated policies at the time of the election, because the Attorney refers to policy objectives which involve reducing benefits but the policy promised quite clearly that the Government would not reduce benefits. So I advise people at the next election to ask the Liberals not for their policies but for their policy objectives, because clearly they are the important aspects that we need to know.

I have said that I would not accept benefit cuts, so I am opposed to the whole of clause 35 as proposed by the Government except for, as I said, one line, which seeks to strike out paragraph (b) of subsection (5) of section 35 of the principal Act, which relates to the age at which entitlements cease. The effect of the Government's amendment will, I think, be that entitlements will cease at the age of 65. I understand that, if we fail to contain it at that point, in a substantial number of cases people will argue that the retirement age is much higher. Whilst that has some attraction from the viewpoint of arguments about age discrimination, the reality is that this could blow out to almost any age, and it would make the scheme unaffordable.

The Hon. T.G. Roberts interjecting:

The Hon. M.J. ELLIOTT: The actuary is trying to determine that everyone will retire at the age of 85, or something like that. Clearly, there needs to be a cut off point, and I think that the age of 65 is not unreasonable. That is the one part of the Government's amendment to section 35 that I will support.

I will make one further amendment recognising the fact that a redemption clause will be introduced later, although I think my clause might fail in the light of a vote that we had on a previous clause. However, it appears that the Government's redemption clause perhaps with Labor Party amendments might be carried. So it will be necessary to strike out subsections (6a) and (6b) and insert a new subsection (6a) which makes it plain that, if a liability to make weekly payments is commuted or redeemed, the worker is taken, for the purposes of the section, to be receiving the weekly payments that would have been payable if there had been no commutation or redemption. That is consequential on a later amendment that will be made, whether it be mine or the Government's, and perhaps with other amendments as well.

The Opposition amendment to which the Hon. Ron Roberts has spoken clearly acknowledges that there is a need for some change. Almost everyone concedes privately that there is a problem with section 35, but publicly some people are very concerned about how far we go. There is nothing wrong with being concerned about how far we go, but there does need to be a change. I believe the Labor Party amendment acknowledges that, and so it should because it is an honest position. I am prepared to give it further consideration, but I do think the wording as it currently stands will make almost no change to the current situation at all. That is my judgment on a first reading but, as I said, I am quite prepared to look at it. I have not had much chance to reflect on it, but at this stage I am not tempted to support it in lieu of my own amendment.

The Hon. K.T. GRIFFIN: The Government opposes the Opposition amendment. The Hon. Mr Elliott is correct: it does not make any significant change to the existing position. However, I would disagree with the Hon. Mr Elliott because I do not think that this really shows that the Opposition has acknowledged that a significant change is necessary. The fact of the matter is that it will maintain the gravy train for two years. For example, a person on 10 per cent incapacity receives 100 per cent average weekly earnings for the first year and 80 per cent for the second year, and the gravy train rolls on. It is important to recognise that 68 per cent of those on the scheme after 12 months have a disability of 10 per cent or less.

It is quite possible that, on the cases that have been established, a 20 year old with a 10 per cent disability can stay on compensation until aged 60, made easier by the fact that that person can go to out of the way places and not be required to find a job in more likely places. The Opposition has not faced up to the reality of the situation and, for those reasons, we oppose the amendment.

The Hon. R.R. ROBERTS: Without being provoked into anger at this late hour, I will leave aside some of the offensive remarks just made by the Attorney-General about people on gravy trains because it must be remembered that these people are not on the train because they want to take a holiday: they are on there because they were injured during the course of their employment. The Attorney-General, in an earlier contribution tonight, espoused the great qualities of the scheme, claiming that one had only to be injured at work to receive workers' compensation. Since he made that comment the Attorney has done nothing but try to erode the ability for people to get on it: he wants to stop them having reviews and a range of other things.

I also need to assure the Hon. Mr Elliott that it is not my view that it is necessary for there to be a change. As I explained during my contribution, a conscious effort has been made by the Australian Labor Party, not because we believe fundamentally that it has to change but because the reality of the situation is that there must be change. We asked the Committee, accepting the reality of the position, to make an appropriate change which was sensitive to the workers and

took into the equation situations of reality, whereby we have conceded that a worker's ability to obtain other employment must be substantially disadvantaged by the disability he has received. That is our fall-back position.

I am pleased that the Hon. Mr Elliott, whilst not indicating that he is prepared to support our amendment—and I assume that the Government will support the Hon. Mr Elliott, so the numbers are against us—has indicated that he is prepared to consider this further. In those considerations that he makes, it would be our earnest intention to provide as much information and as many assurances to the Hon. Mr Elliott that our intentions in this matter are earnest and that we are acting in the best interests of all the participants in the WorkCover scheme.

Hon. R.R. Roberts' amendment negatived; Hon. M.J. Elliott's amendment carried.

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

Page 7, after line 35—Insert paragraph as follows:

(c) by striking out subsections (6a) and (6b) and substituting the following subsection:

(6a) If a liability to make weekly payments is commuted or redeemed, the worker is taken, for the purposes of this section, to be receiving the weekly payments that would have been payable if there had been no commutation or redemption.

I have already spoken on this matter. If a redemption clause is passed later on, consequentially this change will need to occur.

Amendment carried; clause as amended passed

Progress reported; Committee to sit again.

PUBLIC SECTOR MANAGEMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments Nos 1 to 15, 17, 18, 20 to 22, 24 to 27, 29 to 35, 37, 39, 41 to 44, 46, 48 to 51, 53 to 114 and 116 to 133; had agreed to the amendments Nos 16, 19, 23, 28, 36, 38, 45, 47 and 52 with the amendments indicated in the annexed schedule; had disagreed to amendments Nos 40 and 115 and had made the alternative amendment to amendment No. 115 as indicated in the annexed schedule; and had made the consequential amendments as indicated in the annexed schedule.

PHYLLOXERA AND GRAPE INDUSTRY BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendment.

PETROLEUM PRODUCTS REGULATION BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendment No. 2 and had disagreed to amendment No. 1 and made the alternative amendment in lieu thereof as indicated in the annexed schedule.

MINING (SPECIAL ENTERPRISES) AMENDMENT BILL

Received from the House of Assembly and read a first time.

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a second time.

I seek leave to have the second reading report and detailed explanation of clauses inserted in *Hansard* without my reading them.

Leave granted.

This Bill is aimed at making some important changes to the Mining Act. The changes will establish a regime with the necessary provisions to allow the Act to better deal with major mining enterprises. While new developments are expected to result from the South Australian Exploration Initiative, in due course, some existing projects should also benefit from the amendments.

With the SAEI now well publicised it is timely to give the appropriate signals to industry that South Australia is not just the place to invest exploration funds but also development funds.

Therefore, the changes will create a climate wherein mining investors can be attracted to South Australia in the knowledge and confidence that an appropriate regime exists to deal with large projects, and the regime recognises differing needs of projects. These changes will, however, not diminish the rigour with which proposals for mining development are assessed in this State before approval to proceed is given.

The approach is to introduce flexibility into the Mining Act by providing for provisions of the Act to be varied to accommodate large projects. There are three important elements to this:

(a) the concept of a special mining enterprise,

(b) a proposal put forward by a proponent, and

(c) an Agreement ratified by the Governor.

The concept of a Special Mining Enterprise is established by the Bill. Such an enterprise must be of major significance to the State and therefore justify special treatment. Accordingly, a project "Proposal" would be required to clearly define the Special Mining Enterprise. The proposal would set out the nature, extent and scheduling of the proposed mining development and include an economic analysis. The "proposal" is the basis on which the economic benefits can be assessed and appropriate terms and areas for leases can be determined.

The proponent will also be required to provide an assessment of the expected social and environmental impacts, a scheme of how the land would be rehabilitated and measures that will be taken by the proponent to protect Aboriginal sites and objects.

Further, an agreement, ratified by the Governor, is also envisaged for the exercise of powers under this amendment. The proponent of a project would be exempted from specified provisions of the Act or the application of provisions would be varied in accordance with the terms of the agreement. The approach has the flexibility to be project specific.

It is expressly intended that a mining tenement could be granted to cover all proposed activities associated with development of a mineral deposit for a term and area appropriate to the operations as described in the "Proposal". At present the Act has significant area, term and renewal constraints for tenements that mean they are not suitable for large projects.

The amendments will also require that the Minister notifies the public of decisions to grant exemptions or variations by placing a notice in the Gazette.

The Government believes that this measure will provide an incentive to the development of the mining industry in this State and I accordingly commend this Bill to honourable members.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will come into operation on a day (or days) to be fixed by proclamation.

Clause 3: Insertion of s. 41—Suspension or cancellation of lease

In conjunction with the proposed insertion of a new Part relating to special mining enterprises, it has been decided to make express provision in relation to the power of the Minister to suspend or cancel a mining lease if the lessee fails to comply with a term or condition of the lease. The Minister will be required to follow any procedure under the lease before he or she takes action to suspend or cancel a lease. A lessee will be able to appeal to the ERD Court against a suspension or cancellation.

Clause 4: Amendment of s. 56—Suspension and cancellation of licence

This amendment provides consistency with proposed new section 41 in relation to the power of the Minister to suspend or cancel a miscellaneous purposes licence, by requiring the Minister to comply with any procedures under the licence before taking such action, and including a right of appeal to the ERD Court.

Clause 5: Insertion of Part 8A

It is intended to enact a new Part relating to mining enterprises that are of major significance to the economy of the State. New section

56A sets out the object of the Part, which is to provide incentives for the establishment, development or expansion of major mining enterprises by allowing greater security and flexibility of tenure. New section 56B describes the nature of a mining enterprise that will be able to be brought within the operation of these provisions. The exercise of powers under this Part will be supported by a special agreement, that will need to be ratified by the Governor. An application under this Part will need to be supported by a proposal that addresses various matters, including the economic benefits expected to be derived from the enterprise and an assessment of social and environmental impacts. The application will be able to be made in relation to an area of land of any size, and the applicant will not need to have pegged out a mineral claim. While an application is being determined, the subject land will be "frozen", i.e., no competing claims can be made in respect of the land. If an application is refused, the applicant has a period of 28 days to decide whether to apply for "ordinary" mining tenements. If an application is accepted and an agreement entered into under this Part, the Minister will be able, under new section 56C and in accordance with the terms of the agreement (as ratified by the Governor), to grant various exemptions under the Act, or to vary the application of various requirements of the Act. New section 56D will facilitate the amalgamation of various existing tenements (if any) held in respect of the relevant enterprise.

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

WATERWORKS (RATING) AMENDMENT BILL

Received from the House of Assembly and read a first time.

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a second time.

I seek leave to have the second reading report and the detailed explanation of clauses inserted in *Hansard* without my reading them.

Leave granted.

This Bill introduces a method of calculating water rates consistent with the Commission of Audit recommendation 14.2, namely, that a new pricing structure should be developed which specifically addresses certain pricing objectives such as, the removal of the free water allowance and, with the reports of the Working Group on Water Resource Policy adopted by the Council of Australian Governments (COAG) on 25 February 1994.

In recent times the residential water rating system calculated water rates based on the capital value of property. This was eventually abolished in 1992, replaced with a set supply charge and an associated 136 kL water allocation for all households, and went some way to achieving a "pay for use" system.

The new water pricing system which the Government announced in December 1994, to come into effect at the beginning of the 1995-96 consumption year, introduced further changes which achieves a "Pay for use" system for residential customers. These changes involved:

- a quarterly access charge of $28.25
- 20 cents per kilolitre (kL) for the first 136 kL
- 88 cents per kL for consumption between 136 kL and 500 kL
- 90 cents per kL for consumption above 500 kL.

This Bill brings into effect further substantial reform to achieve a "pay for use" system for non-commercial properties, including industrial and residential properties and properties in country lands water districts. These changes will effectively bring all non commercial properties into line with residential users, with dependence on property valuation eliminated.

The benefits from reforming water pricing include:

- a water rating system which better reflects the cost of service delivery
- the potential for better allocation of resources, as future demand for services will be guided by customers and their willingness to pay
- elimination of cross subsidies between non-commercial customers, reducing the cost for industry operating in this State
- encouraging the community to use water in a more responsible manner.

Commercial water pricing will, as in the past, continue to be based on property valuations. I commend this Bill to the House.

Clauses 1 and 2

Clauses 1 and 2 are formal.

Clause 3: Substitution of Divisions 1 and 2 of Part 5

Clause 3 replaces Divisions 1 and 2 of Part 5 of the principal Act with a new Division 1. The form of this Division is similar to the one that it replaces except that it provides for rating of all land instead of only residential land. Commercial land is rated differently from residential, country and all other kinds of rateable land. The supply charge for commercial land is determined by a rate on the capital value of the land whereas the supply charge for non-commercial land is fixed by the Minister. A water consumption rate based on the volume of water supplied to land must be paid in addition to the supply charge. However, in relation to commercial land (but not other land) the supply charge is credited against the water consumption rate. Commercial land is defined to be land used for trading in goods or for providing a service but does not include land in a country lands water district.

Clause 4: Substitution of s. 68

Clause 4 replaces section 68 of the principal Act with a similar provision. Subsection (3) allows notices under the new Division for the 1995-1996 financial year to be published up until 31 July 1995 for transitional reasons.

Clause 5: Insertion of ss. 86A and 86B

Clause 5 inserts a new sections 86A and 86B. Section 86A deals with the problem of rating strata schemes. Subsection (1) provides that in a strata scheme the owner of a unit is liable for the supply charge in respect of his or her unit and the strata corporation is liable for the water consumption rate. Liability for the water consumption rate may be shifted from the corporation to the units by notice given to the Minister. The notice must be authorised by a special resolution of the corporation. The purpose of subsection (6) is to safeguard the Minister against a notice that has not been authorised by a special resolution. Subsection (6)*(a)* enables the Minister to recover the water consumption rate in accordance with the notice with the result that the owner of a unit may be obliged to pay more than he or she should. In that event subsection (6)*(b)* enables recovery of the amount overpaid from the corporation or from other unit holders.

New section 86B provides for those situations (other than strata schemes) where the Minister supplies water to two or more consumers through one pipe and rates them separately. They will share the water consumption rate in the manner agreed between them or equally if they can't agree. Subclause (6) is a transitional provision that provides that if agreement cannot be reached in respect of the 1995-1996 financial year subsection (1) will not apply in respect of that year. This provision is necessary because it will take a considerable time to identify all the parcels of land to which section 86B applies so that rate notices dividing the water consumption rate equally can be issued in those cases where the ratepayers have not advised the Minister of some other proportion.

Clause 6: Amendment of s. 94—Time for payment of water rates, etc.

Clause 6 makes a consequential amendment to section 94.

Clause 7: Amendment of the South Australian Water Corporation Act 1994

Clause 7 amends the *South Australian Water Corporation Act 1994*. Schedule 2 of the *South Australian Water Corporation Act 1994* makes consequential changes to the *Waterworks Act 1932* most of which change references to "Minister" in the *Waterworks Act* to references to the South Australian Water Corporation. This clause makes similar amendments to the new sections inserted by the Bill into the *Waterworks Act*.

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

STATUTES AMENDMENT (CORRECTIONAL SERVICES) BILL

Received from the House of Assembly and read a first time.

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a second time.

I seek leave to have the second reading report and detailed explanation of clauses inserted in *Hansard* without my reading them.

Leave granted.

This Bill seeks to amend the *Correctional Services Act 1982* and the *Statutes Amendment (Truth in Sentencing) Act 1994*.

The first object of this Bill is to amend the *Correctional Services Act 1982* to provide an evidentiary aid that will assist in the effective dealing with prisoners who use or consume drugs while in prison.

Difficulties have been experienced in successfully establishing that a prisoner has consumed or used a prohibited drug while in prison (which is an offence against the regulations under the Act and is accordingly dealt with by prison managers or Visiting Tribunals). Firstly, proving that a particular sample of urine was taken from a particular prisoner on a particular day has been onerous. Secondly, different drugs remain in the body for different periods of time—some up to 10 weeks—and so could, in some cases, have been consumed by the prisoner before admission to prison.

Some of these difficulties will be rectified by amendments to the regulations, but it is desirable to amend the Act to assist in the matter of proving that a particular sample of urine was taken from a particular prisoner in accordance with the Act. Without this amendment, prison managers will be required to produce various witnesses which only serves to delay proceedings and make them more cumbersome and costly.

The second object of this Bill is to ensure that prisoners be required to accept their parole conditions in writing prior to being released from prison or home detention.

Prior to the commencement of the *Statutes Amendment (Truth in Sentencing) Act 1994*, prisoners were required to accept parole conditions fixed by the Parole Board in writing before being released on parole. Refusal, or failure to do so, resulted in the prisoner remaining in prison until his or her conditions were signed.

The requirement that prisoners sign their parole conditions was omitted from the Act as amended by the recent "Truth in Sentencing" legislation, largely because long-term prisoners now have to apply for parole and the Parole Board of course will not order release unless the prisoner accepts the proposed conditions.

However, it is now realised that the requirement should be retained for those prisoners still entitled to automatic release, i.e., those serving a total sentence of less than 5 years.

The parole system has rested historically upon the concept of an agreement between the parolee and the State in which the State agrees to release the parolee from prison in return for the parolee's promise to abide by certain conditions. If these conditions are breached, the parolee may be returned to prison.

There could be serious implications for the community and for the effective application of the parole system in this State should prisoners be released without a signed acknowledgment of the acceptance of their parole conditions.

Without the evidence of a prisoner's signature, there only remains an assertion by the Parole Board that the prisoner has been informed of the conditions of parole. Such evidence will only go as far as establishing the Board's perception of the prisoner's understanding of the conditions of parole. It is questionable that an intentional breach of a parole condition could be established without the evidence of a prisoner's signature confirming that parole conditions had been seen and accepted by the prisoner.

Should a prisoner serving a sentence of imprisonment of less than five years state that parole conditions are not acceptable and elect to refuse parole, there is currently no provision for that decision to be formalised. All prisoners who would otherwise remain in prison by refusing or rejecting parole conditions must be released under the provisions of Section 66 of the *Correctional Services Act*.

The intention of this amendment is to ensure that prisoners acknowledge their understanding and acceptance of the conditions set by the Parole Board by signing the release document outlining those conditions prior to release. Prisoners refusing to sign the release document will be required to continue to serve the balance of their sentence in prison until they agree to sign the release conditions set by the Parole Board.

The third amendment to the *Correctional Services Act 1982* proposed by this Bill is to enable outstanding warrants that are to be served on prisoners to be served by correctional services staff. As the law now stands, warrants (many being for non payment of fines) can only be served by the police which is time consuming and costly. It has been the practice for some time for the Commissioner of Police to permit the appointment of certain officers from the Department for Correctional Services as special constables for this purpose. The appointments are made under section 30 of the *Police Act 1952*. While this system has been satisfactory in the past, there is now a reluctance to continue with it as approximately 50 correctional services officers currently hold such an appointment. The administrative burden for the Police Department is significant in making the appointments and monitoring the activities of the appointees and potential problems exist with regard to their accountability under the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

It is therefore considered to be more efficient and appropriate that correctional services staff can be authorised by the CEO to execute warrants on prisoners.

Section 20 of the *Statutes Amendment (Truth in Sentencing) Act* 1994 is also amended.

This is the section which deals with the effect of the abolition of days of remission on existing sentences.

There have been differences of opinion over the proper interpretation of this section and the amendments are designed to bring certainty to its interpretation.

On the one hand section 20 has been interpreted to mean that upon the commencement of the *Statutes Amendment (Truth in Sentencing) Act*, 1994 current prisoners who had a non-parole period set before the Act came into force are credited with the maximum number of days of remission that they would have received on that non-parole period and that amount is deducted from both the non-parole period and the head sentence.

The other interpretation of the section is that it requires one-third of the non-parole period to be deducted from the non-parole period and one-third of the head sentence to be deducted from the head sentence.

This second interpretation does not accord with how the remission system worked. A prisoner with a non-parole period only earned remissions while in prison. No more remissions were earned once the prisoner was released on parole.

This is best explained by an example: A prisoner sentenced to imprisonment for eight years with a non-parole period of six years could earn a maximum amount of remissions totalling two years. If that amount of remissions was earned, the prisoner was entitled to release on parole after four years in custody with an unexpired balance (and so period of parole) of two years. This is arrived at by starting with a head sentence of eight years less two years of remission, less four years served in prison. No more remissions would be earned while the person remained on parole. So for such a person, the maximum remission which could be earned is two years.

On the second interpretation a prisoner sentenced to imprisonment for eight years with a non-parole period of six years could be credited with remissions on the eight year head sentence. The maximum remissions which could be earned on a head sentence of eight years is two years eight months. The head sentence could thus be reduced to five years four months. The maximum amount of remissions which could be earned on the non-parole period remains the same as in the first example, namely two years. If that amount of remissions is earned, the prisoner is entitled to release on parole after 4 years in custody, with an unexpired balance (and so period of parole) of one year and four months.

The complexity of these calculations shows clearly a good reason why this system must be abandoned once and for all.

These amendments make it clear that the first interpretation is the one to be used when calculating the amount of remissions which are to be credited to a person who was serving a sentence of imprisonment on 1 August, 1994 (the date on which the *Statutes Amendment (Truth in Sentencing) Act* 1994 came into operation).

Differences of opinion have also been expressed as to whether section 20 requires a once only calculation of remissions on 1 August, 1994 or whether new calculations are required to be made on the happening of certain events, namely when a prisoner is refused or refuses parole or is returned to prison as a result of breaching parole.

The intention was that a once only calculation should be made and new subsections (2) and (3) make it clear that this is so.

Firstly new sub-section (2) makes it clear that a person who is returned to prison upon cancellation of parole does not earn remissions on the balance of the unexpired parole period.

It is true that before the abolition of remissions such a person could earn remissions on the balance of the unexpired parole period. This was anomalous. It had the result that a person on parole who re-offends could have his or her unexpired term reduced by one-third while the person who does not re-offend does not. The rationale for this anomaly was that remissions were a tool for maintaining discipline in prisons. This rationale is not accepted by the Government and therefore has been removed. The Government has no qualms in removing the anomaly.

Secondly, subsection (3) makes it clear that a person who is refused parole by the Parole Board or who refuses parole gets no further remissions.

Prisoners who are refused parole are prisoners who have not shown satisfactory progress in prison. To credit these prisoners with days of remission after they have been refused parole by the Parole Board would, first, contradict the policy of the 1994 legislation that a once and for all calculation of remissions should be made on 1 August, 1994 and, second, would make a category of prisoners eligible for remissions who were never in contemplation when the remission system was introduced.

Prisoners who refuse parole for any reason will, as I have indicated, receive no further remissions. These prisoners would, before 1 August, 1994, have been eligible for remissions until they were released on parole or served their sentence. The effect of new subsection (3) is that such prisoners will not be eligible for any remissions after the expiry of their non-parole period. This once again is in accord with the policy that there should be a once and for all calculation of remissions on 1 August, 1994. It is the prisoner's decision to remain in prison which ends his or her entitlement to earn remissions. This is not a factor which the Government believes calls for reconsideration of the policy that there should be a once only calculation of remissions at 1 August, 1994.

I commend this Bill to the House.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides that the Act will come into operation on assent, except for clause 4 which will be taken to have come into operation on the day on which the *Statutes Amendment (Truth in Sentencing) Act 1994* came into operation (i.e., 1 August 1994).

Clause 3: Amendment of Correctional Services Act 1982

This clause amends the *Correctional Services Act 1982*. Firstly, it inserts a new evidentiary provision in the section dealing with drug testing of prisoners by urinalysis. If it is alleged in a complaint, information or other notice of charge that a sample of urine was obtained from a particular prisoner on a particular day, and the sample was assigned a particular number, these steps will be taken to be proved, and to have been carried out in accordance with the Act, unless the prisoner proves otherwise.

Paragraph *(b)* of this clause requires all prisoners to accept in writing their parole conditions before they are released on parole. Prisoners to whom section 66 applies (i.e., those serving sentences of less than 5 years) must, if they do not accept their parole conditions, be reviewed periodically by the Parole Board, and will be released at such time as they accept the proposed conditions.

Paragraph *(c)* inserts a new section in the Act that allows an employee of the Department for Correctional Services, if authorised by the CEO for the purpose, to execute any warrant on a prisoner.

Clause 4: Amendment of Statutes Amendment (Truth in Sentencing) Act 1994

This clause amends section 20 of the *Statutes Amendment (Truth in Sentencing) Act 1994* by firstly making it clear in new subsection (2) that no further reductions in sentence are to be made if a prisoner who was sentenced while the remission system was still in force becomes liable to serve the balance of his or her sentence (e.g. as a result of re-offending while on parole). New subsection (3) makes it clear that the reduction of sentence effected by subsection (1) in relation to a sentence with a non-parole period is limited to the maximum remissions the prisoner could have earned off that non-parole period (ignoring the fact that the prisoner may, as it turns out, *not* be released as the end of that non-parole period).

Clause 5: Transitional provision

This clause provides that the amendments made to section 20 of the *Statutes Amendment (Truth in Sentencing) Act 1994* do not affect any prior order or decision of a court or the Parole Board.

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

MINING (NATIVE TITLE) AMENDMENT BILL

The House of Assembly requested a conference, at which it would be represented by five managers, on the Legislative Council's amendments to which it had disagreed.

ADJOURNMENT

At 12.9 a.m. the Council adjourned until Thursday 6 April at 11 a.m.