LEGISLATIVE COUNCIL

Tuesday 5 November 1985

The PRESIDENT (Hon. A.M. Whyte) took the Chair at 2.20 p.m. and read prayers.

ASSENT TO BILLS

His Excellency the Governor, by message, intimated his assent to the following Bills:

Australia Acts (Request),
Criminal Law Consolidation Act Amendment (No. 2),
Evidence Act Amendment (No. 2),
Holidays Act Amendment.

QUESTIONS

CEP FUNDING

The Hon. M.B. CAMERON: I seek leave to make an explanation before asking the Minister of Labour a question about CEP funding.

Leave granted.

The Hon. M.B. CAMERON: A grant of $30 510 has been made to the Whyalla Trades Hall to fund the construction of a pergola, barbecue and drip feed watering system. The Minister of Labour has direct responsibility for allocating these funds and is required to sign approved CEP grants. The Minister is also a member of the Whyalla Trades Hall Committee. An article detailing the granting of these funds was printed in this morning's *Advertiser*. In the article, the Minister was quoted as saying he had no involvement in the application procedure for the grant.

I understand, however, that all such CEP grants require the final approval of Cabinet. The Minister of Labour must set a high standard of proprietry in the allocation of public funds. It is important that no doubt about the worth of an application is raised. According to the newspaper article, an application for a CEP grant was lodged in July 1984, but subsequently returned to the Whyalla Trades Hall Committee because of a lack of funds.

More than 12 months elapsed and the application was resubmitted on 4 October and within 26 days its approval was signed—on 30 October as I understand it. Members would be aware that the Minister of Labour, in addition to being the Minister responsible for approving the grant and being a member of the Whyalla Trades Hall Committee, is the Labor candidate for Whyalla at the next State election. My questions are:

1. Does the Minister acknowledge that there is conflict of interest in his giving final approval to funding of a project for an organisation of which he is a member?

2. Did he declare this interest either to the CEP committee, to Cabinet or the Premier?

3. What guidelines operate for Ministers to ensure that there is no conflict of interest in the way they allocate public moneys?

4. Is the Minister satisfied that the grant to the Whyalla Trades Hall is an appropriate use of CEP funds, given that it will provide a financial advantage to the Whyalla Trades and Labor Council and, therefore, increase property value?

The Hon. FRANK BLEVINS: I thank the honourable member for his series of questions. In his preamble to the questions, he made a statement that I have direct responsibility for the allocation of CEP funds. Of course, that is completely incorrect. It would be extraordinary if I did, and it would also lead to a great deal of temptation.

The Hon. C.M. Hill interjecting:

The Hon. FRANK BLEVINS: I am working on that and I will tell the honourable member about that in a moment. There may be a conflict there, Mr Hill, so maybe I should not continue to try to get something for the HMAS *Whyalla*.

The PRESIDENT: The honourable member can ask a question later.

The Hon. FRANK BLEVINS: I will make a note of it and, when I have concluded this, I will answer the Hon. Mr Hill's query. Of course, the Hon. Martin Cameron is quite incorrect. The people who have the responsibility for allocating CEP funds comprise a committee made up of representatives from the Department of Labour, the Department of Employment and Industrial Relations, the Youth Affairs Council of South Australia, the South Australian Council for Social Services, the Working Women's Centre, a representative of the Aboriginal community, a representative of the Local Government Association, a representative of the Chamber of Commerce and Industry, and a representative of the UT&LC.

The Hon. R.J. Ritson interjecting:

The Hon. FRANK BLEVINS: The Hon. Dr Ritson says we would have the numbers on this occasion. Overwhelmingly the community—not the Government—has the numbers. So, would he like me to run through them again and he can re-do his calculation? The procedure is that people apply and are assessed by this committee. If the application is in order, if it fits within the guidelines, the committee makes the appropriate recommendation to the Commonwealth and to me. I am not quite sure what the Commonwealth procedure is, but certainly I have never queried the committee's recommendations. On this occasion, I went through the recommendations, as I always do, and I saw, I think, about four for Whyalla—churches and other good works, including the Trades Hall—and I was absolutely delighted to see it. The only problem was I was not quick enough on my feet (at least on this occasion) to claim credit for it. Had I thought of it, I would have done so, but I can assure the honourable member that I will not be so slow in the future.

The Hon. L.H. Davis: Did Murphy announce it?

The Hon. FRANK BLEVINS: The interjection was to do with a Mr Murphy. When I have finished with this question and dealt with the HMAS *Whyalla* question, I will deal with that. So, it is clear that if somebody—a Minister or anybody else—wanted to influence the CEP committee, they would have a pretty difficult job. Of course, all members of Parliament seek to influence the committee, and I have had many representations from both sides of the Council—from both Liberal and Labor members—extolling the merits of a particular project that is under scrutiny by the committee. All I do is advise them of the procedure, and I will attach their letter (recommending this particular project) to the application of the particular project sponsor. So, when an application is forwarded, it will have a letter on occasions from either Liberal or Labor members of Parliament—I am not sure whether the Democrats have ever approached on a CEP matter.

The Hon. I. Gilfillan: We have.

The Hon. FRANK BLEVINS: They have. So, a letter from the Democrats would also be attached. On this occasion, with the Whyalla Trades Hall, to the best of my knowledge no letter was attached, probably because I did not think of it in time. As I say, I will not be quite so slow on the next occasion.

To suggest that this committee could be influenced by me or anybody else is to cast reflections on the Department of Labour, the Department of Employment and Industrial Relations, the Youth Affairs Council of South Australia, the South Australian Council of Social Services, the Work-

ing Women's Centre, a representative of the Aboriginal community, the Local Government Association, the Chamber of Commerce and Industry and the United Trades and Labor Council.

It is a slur on all those people and on all the organisations that they represent to suggest that the committee could be swayed by me or anybody else. There are very tight guidelines: if the project falls within those guidelines and if it is accorded merit by the committee, the project goes ahead; if it does not, it is refused. It is the same for a project coming from Whyalla or anywhere else.

The attitude of the Opposition, over the past couple of years when CEP projects have been available, to projects from the trade union movement has been appalling. The trade union movement is no different from an employer organisation or any other organisation that seeks to sponsor a project. The CEP committee does not have the power to reject an application from a trade union simply because it is a trade union; it does not have that power any more than it has the power to reject an application from an employer body.

The Hon. Anne Levy: Or a church group.

The Hon. FRANK BLEVINS: Or a church group or anybody else, but it seems to be the trade union movement that annoys members opposite. One of the most significant CEP projects in this State is sponsored by an employer body. I am sure that the Hon. Mr Hill would be very pleased with the project—the restoration of the *Falie*.

The Hon. C.M. Hill: What about that camp site down in the Coorong?

The Hon. FRANK BLEVINS: Yes. The *Falie* restoration is sponsored by MIASA (the Metal Industry Association of South Australia) and the metal trades unions. It is a very worthwhile project, as the Hon. Mr Hill would agree. Does the Hon. Mr Hill or anybody else in the Opposition consider that that project should not go ahead because the trade unions and employers are involved in the sponsorship? Of course it should go ahead, and that is what the committee did. Let us not have any nonsense that the trade unions are not responsible organisations in this community. Of course they are, and they are as much entitled to apply to the CEP committee for a CEP grant as anyone else is.

The Hon. C.M. Hill: Like the BLF?

The Hon. FRANK BLEVINS: I will not add that to my list but, if the honourable member wishes me to respond as regards the BLF, I certainly will. The answer to the first question—'Does the Minister see any conflict?'—is 'No': I see no conflict at all. I have no say whatsoever in how these grants are allocated other than to initial the final recommendation of the committee. I am not there at the committee deliberations, so I see no conflict. The fact that I am a member of the management committee of Trades Hall is something that I am very proud of. I have been as long as I can remember; I hope to be until such time as they kick me off when I am no longer of any use to them or anybody else, and I hope that that is not for another 30 years or so.

The fact that I am a member of the Trades Hall Management Committee is stated on the declaration of interests that all members of Parliament put in every year—it is public knowledge. The CEP committee would not have known that, unless it perused the members of Parliament declaration of interests. I would have thought it quite improper had the committee known about that or had it been drawn to its attention. If anyone brought that fact to the committee's attention, he would have had some problems from me. The chairman does not permit and would not answer any questions from the CEP committee as to the membership of the incorporated body making the approach for a CEP grant. The essential thing for the CEP committee is that grants are made on the merit of the project—not who sponsors it.

The answer to the second question is, 'No'. I will have to take the third question on notice, but I imagine that the first prerequisite is commonsense. I am not quite sure whether there are any formal guidelines, but I will find out for the honourable member. Certainly, a measure of commonsense would be the first prerequisite for any Minister. I will find out what formal guidelines apply now or applied under the previous Government. In answer to the fourth question, it is certainly an appropriate use of CEP funds, and it may well improve property values—but probably not by a great deal.

Whether it is for churches (and I have had considerable representations from churches), a surf lifesaving club, the Mount Gambier City Council or any one of dozens of other bodies, the use of funds increases the value to those organisations in varying degrees. That is the whole point of the CEP: it is to provide employment and at the same time leave assets for the community and for its use. It is not like a previous scheme over 10 years ago which was criticised—perhaps legitimately—for being a clean-up operation or a weed clearing operation. That is no longer the case with the CEP. Its secondary purpose after providing employment is to leave some tangible assets for groups in the community, including church groups, trade unions, sporting clubs, local councils, and so on. Incidentally, in his explanation the Hon. Martin Cameron got it wrong by saying that the asset accrued to the Trades and Labor Council; in fact, it is the Trades Hall Management Committee, which is quite a different body. In relation to the *HMAS Whyalla*—

The PRESIDENT: Order! The Hon. Mr Hill asked that question by way of interjection. If we allow members to obtain information by interjection, it will be a rather sad show.

The Hon. FRANK BLEVINS: The interjection is on the record, so I feel that it is perfectly appropriate to deal with it very briefly.

Members interjecting:

The PRESIDENT: Order! The Minister must resume his seat. The Hon. Mr Hill can ask a question.

The Hon. Frank Blevins: He did.

The PRESIDENT: The honourable member asked a question by interjection. If members are to find out information by having interjections answered, then other members might not be able to ask a legitimate question.

The Hon. Frank Blevins: That is up to the Opposition, isn't it?

The PRESIDENT: The honourable member was quite out of order in asking a question by interjection.

Members interjecting:

The PRESIDENT: Order! It was not a question; it was an interjection.

The Hon. C.J. Sumner: So what! It means that the interjection is on the record but the reply is not. That is not good enough.

Members interjecting:

The PRESIDENT: Order! We must not start quarrelling with one another. I call on the Hon. Mr Burdett.

COUNTRY DOCTORS

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Health a question about the country doctors' dispute.

Leave granted.

The Hon. J.C. BURDETT: The Minister has repeatedly told the Council that the country doctors' dispute has been solved. Some time ago the Minister arranged for country

hospitals to send letters to medical practitioners who practised in those hospitals offering them a package including payment of 90 per cent of the scheduled fee together with certain other benefits. The country doctors have consistently maintained that, as the scheduled fee was already an officially negotiated fee, they should receive 100 per cent of that fee. Previously I raised the analogy of an employer offering to pay 85 per cent or 90 per cent of an award rate to workers. Obviously, workers and the unions would be justifiably outraged by such a proposal. On 22 August 1985 the Minister said in the Council:

> Already, as I have said in this place quite recently, about two dozen country doctors have signed agreements with their local hospitals on that basis and we are ready, willing and anxious for the remainder of country practitioners to sign as soon as they like.

From the inquiries I have made, I doubt that 24 have signed agreements—about seven is the most I have been able to ascertain, most of whom are visiting specialists attracted by the travelling expenses component of the package. Certainly, the majority of the 200-odd country doctors have not signed the agreement and have no intention of signing it. They continue to take action to bring about a settlement of the dispute. Some time ago, as the Council has been told previously, they sent letters to their hospitals stating that their services were rendered on the condition that they be paid 100 per cent of the scheduled fee and receive certain other benefits.

I understand that legal proceedings are in the process of being issued by country doctors against some hospitals to recover the unpaid balance of the scheduled fee. I understand that other actions are also being contemplated to compel the Minister to do something about settling the dispute, despite his repeated claims that the dispute has been settled. My questions are as follows:

1. How many country doctors does the Minister claim have now signed the agreement?

2. What action does he propose to advise hospitals to take if they are sued over the balance of the 100 per cent scheduled fee?

3. What action does he contemplate taking to settle the dispute?

The Hon. J.R. CORNWALL: The Hon. Mr Burdett is at it again. It is about the only thing he seems to have achieved any knowledge on in the entire time he has been the shadow Minister of Health. He has been skulking about again, the dishonourable Mr Burdett, Rumpole's father, the Dickensian lawyer: he has been skulking about the country hospitals trying to foment trouble. Of course, the reality is that those country hospitals and the constituencies that he skulks about in are very limited in number and will have no bearing on the forthcoming State election whatsoever. All he is doing by his irresponsible actions is trying to disadvantage patients.

That is the net result of what he does, because he would be delighted if he could stir them up again into some sort of industrial action. He took great delight in the disadvantage that was put upon patients many months ago when there was a brief period of industrial activity in a very limited area of the State. That was the so-called country doctors dispute. They were offered 90 per cent of the schedule fee for treating public hospital patients. The dishonest and dishonourable Mr Burdett, with a little help from his friends—

Members interjecting:

The Hon. J.R. CORNWALL: I will tell you why he is dishonest because he has consistently peddled the idea that I believe that country doctors should be paid 90 per cent of the scheduled fee. He knows that is a falsehood. He knows this is a deliberate distortion and a deliberate falsehood.

The Hon. J.C. Burdett: It is not.

The Hon. J.R. CORNWALL: He says it is not. I will go through it again because he cannot be that slow on the uptake. I will go through it again for anyone who wants to listen. The reality for someone in country practice is that, under Medicare, doctors (whether they be general practitioners, visiting specialists or resident specialists) are entitled to be paid 100 per cent of the scheduled fee—and they are paid 100 per cent of the scheduled fee.

They bill the patient for any consultation in their surgery down the street or for any home visit, for 100 per cent of the scheduled fee. They are paid. The patient is refunded 85 per cent of that fee by Medicare and pays the difference. Nothing has changed in that sense, so the honourable member is dishonest and dishonourable—he admits that nothing has changed in that respect. Those doctors are paid 100 per cent of the fee or, in some cases, for some of the honourable member's more hungry mates in the bush, they charge more than 100 per cent of the scheduled fee, as he very well knows. What happens with their health card holders and their pensioner health benefit payments? Exactly the same as happened before Medicare: doctors are paid 85 per cent of the scheduled fee by Medicare.

The Hon. J.C. Burdett: What about—

The Hon. J.R. CORNWALL: They were always paid 90 per cent of the scheduled fee. Do not get excited, because you are caught again telling your falsehoods. You are a dishonourable and dishonest man, and I will continue—

The Hon. J.C. Burdett interjecting:

The Hon. J.R. CORNWALL: —to go through it until you get it through your thick old head. They are paid 100 per cent for all their private patients, whether it is in their surgery down the street or in the local hospital. Simple fact! In the case of the local hospital, as with the patients that they see in their surgeries down the street, they bill the patient direct. With their pensioner health card holders and their health card holders, they may well bill them direct if they wish and accept the Medicare refund or, if they are really tough and want to change the rules, they can insist on the additional 15 per cent gap. I am very pleased to say that the vast majority of responsible country doctors accept that 85 per cent for their pensioner health benefit card holders for services rendered in the surgery or home visits, as they always did.

Finally, we come to that percentage of patients who are public hospital patients and inpatients at the local hospital. For those services, and it is called modified fee for service (and it has been called modified fee for service for more than a decade—it was negotiated for and the Hon. Mr Burdett can sit and chuckle like a funny old man as much as he likes, but, for his information, the modified fee for service was negotiated in this State by Dr Brian Shea, Director-General of Medical Services, more than a decade ago) and country doctors have always been remunerated at 85 per cent of the medical benefits fee, the agreed and negotiated medical benefits scheduled fee.

With the introduction of Medicare there was a shift in the patient pattern when more patients were electing to be public patients when they were admitted to their local hospital and, because of that, there was some financial disadvantage. I said at the time and I have repeated it ever since that no doctor in South Australia should be financially disadvantaged because of the Medicare arrangements. It was as a result of that that the offers were negotiated.

Let me go through the offers. In the case of single person practices or husband and wife practices (of which there are a few in this State) in addition to the 90 per cent of the scheduled fee, that is, the $50 a week rise which the Health

Commission and I offered and which Cabinet ratified, in addition to that $50 a week rise in the case of single practices or husband and wife practices, they were offered $4 000 a year to pay locum services on top of that $50 a week rise, the $2 500 a year pay rise that they were offered to bring them back to comparative justice because they had lost some income—not down the street with the patients that they saw in their rooms (not at all) but because there was some increase in the number of public inpatients in hospitals—they were offered 90 per cent plus $4 000 a year in some cases as a locum allowance.

Visiting specialists were offered generous travelling allowances to ensure that they were not financially disadvantaged in any way, and that offer still stands. A number of doctors, when I last asked and it was brought up to date—it is probably two dozen and I believe it is significantly higher than that but I have not an update on it recently—anyway, there are one or two who are threatening legal proceedings, but my Crown Law opinion is that they should not waste their time: they have no basis on which to take those proceedings. The instructions to the hospitals are that they are to pay 85 per cent, the modified fee for service arrangement for doctors treating public inpatients where they have not signed an agreement. Where they have given some sort of written indication that they wish to accept the arrangement, they are to be paid 90 per cent.

They are not to be paid 100 per cent. That has never been agreed to by Cabinet, the Health Commission or anyone. The hospitals will not pay them 100 per cent and, as I said, my advice from the Crown Solicitor is that they have no case and that they will not be paid. They should save themselves time, money and sweat. As to what action I have taken to settle the dispute, I have been forever conciliatory. After initially negotiating with the doctors, after initially taking some quite up-market actions—

The Hon. M.B. Cameron: Outrageous.

The Hon. J.R. CORNWALL: No, they were not outrageous at all—they were quite up-market because they were designed to protect the interests of patients.

The Hon. M.B. Cameron: Bulldust.

The Hon. J.R. CORNWALL: The Hon. Mr Cameron says 'bulldust'. Ask the frail aged patients at Riverton who were forcibly transferred to Royal Adelaide Hospital what they thought about it—it was absolutely disgraceful. Ask the people in a number—fortunately, a very limited number—of South Australian towns who were victims of that sort of industrial action, and they will tell you that they did not appreciate it one bit. The vast majority of the profession, as I have said before, in non-metropolitan South Australia carried on in a most responsible way.

I am on record as saying that many times, and I say it again. I have no dispute with the majority of South Australian country doctors. It is at this stage and has been for many months a Clayton's dispute. The offer still stands: they can have their 90 per cent, their travelling allowances, their locum allowances where applicable, and the majority of them are getting on with the business of practising good medicine as they have always done. As far as I am concerned, I have done everything possible and I intend at this stage to do nothing more. I am also aware of course, in an effort to stir up further trouble, the Leader of the Opposition Mr Olsen has written to country doctors in South Australia in a most extraordinary way.

The Hon. R.C. DeGaris interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: He has written to the country doctors saying that they must contribute financially—he has demanded money from them. I am also aware that the Hon. Mr Burdett has had some advice from a well known south coast hospital and, when he found out the ramifications of paying the 100 per cent, he damn near died with his leg in the air. Where is the money coming from? I challenge the Hon. Mr Burdett on this matter—

The Hon. J.C.Burdett interjecting:

The Hon. J.R. CORNWALL: We will try Victor Harbor. You have not had little discussions with people at Victor Harbor? I think you have. Tell the truth. I challenge the Hon. Mr Burdett on this matter, as on so many other matters, to tell us where the money is coming from. Where is the money coming from for the voucher schemes that he announced in Whyalla? Where is the money coming from to run a secondary school dental service by paying private dentists, wherever possible?

Our preliminary costing on that is $4 million. Our preliminary costing on his undertaking to country doctors is about $800 000. There is almost $5 million just to meet two promises he made on the trot—open ticketing, that he made on the run. It is like the recompression chamber story—made on the run.

Members interjecting:

The Hon. J.R. CORNWALL: A little bit of help for you, Mr President. Members opposite said that $500 000 is nothing and that they will find this specialist—

The Hon. Frank Blevins: That's pork barrelling in its crudest form.

The Hon. J.R. CORNWALL: Shocking. And who developed it? We have the Hon. Dr Ritson sitting on the backbench. He has taken a great interest in hyperbaric chambers and recompression and is something of an expert. In fact, he accepted an appointment to one of my committees specifically to look at it.

Members interjecting:

The Hon. J.R. CORNWALL: It is about country medical services, indeed. What did they do? The shadow Minister of Fisheries wanders past the Leader of the Opposition's office and sees a drummed up press release on a recompression chamber and he puts it out. There is nothing from Mount Gambier at all; no listening to the expertise; no listening to Surgeon Lieutenant Commander Gorman or any other experts in the area; not even any regard for safety. It seems that health policy is now made by the shadow Minister of Fisheries, who comes from the Riverland. That is the sort of thing that the South Australian public can expect in the unlikely event that this discredited mob of yesterday's men are elected to Government.

BUILDING DISPUTES

The Hon. K.T. GRIFFIN: At long last I get the chance to ask for leave to make a brief explanation before asking the Minister of Labour a question about building disputes.

Leave granted.

The Hon. K.T. GRIFFIN: There is a report today of a demarcation dispute on a number of building sites—I think seven—around Adelaide between the Builders Labourers Federation, the Building Workers Industrial Union and the Plasterers Federation of South Australia. It is obvious that in the light of the pressures on the BLF at Commonwealth and Victorian levels that union is stepping up its militancy in South Australia. In fact, the Secretary (Mr Norm Gallagher) when he was released from gaol last month announced that the union would be intensifying moves for a shorter working week. The industrial disputation reported today is obviously a result of that. I have also been informed that the union has already forced a 36 hour week on major building sites at Berri, Tea Tree Gully and Greenacres, and is claiming a new site allowance for another major project at Port Adelaide.

As a result of the demarcation dispute, we see major building projects, such as ASER and the STA building, in which the State Government has a direct interest, being threatened with consequent significant increases in costs. It should be remembered that South Australia was involved in deregistration proceedings against the BLF, but that the present Government, in one of the first moves it took when it came to office, withdrew its support for those deregistration proceedings.

The present deregistration proceedings by the Commonwealth and Victoria against the Builders Labourers Federation arose out of similar militancy to which the South Australian building sites are now being subjected. My questions are:

1. What steps is the Government taking to resolve the demarcation disputes?

2. Is the Government considering deregistration procedures against the BLF?

The Hon. FRANK BLEVINS: A number of assumptions were made by the Hon. Mr Griffin in his explanation. He said that this was obviously a reaction by the Builders Labourers Federation to the deregistration proceedings that are occurring in the federal sphere. I get a little alarmed at those kind of assumptions. It may well be that—

The Hon. K.T. Griffin: I mentioned a number of other facts, too.

The Hon. FRANK BLEVINS: The honourable member made a number of assumptions.

The Hon. K.T. Griffin: Statements of fact.

The Hon. FRANK BLEVINS: They are not statements of fact at all. That is what really makes me cross. For the Hon. Mr Griffin to get up here and make all these rather wild assertions knowing nothing at all of the facts is, in my opinion, quite improper and wrong. The BLF is, of course, today's fashionable whipping boy, as it were. Certainly, in this State it would be quite wrong for the BLF to be described or used in that way. The deregistration proceedings that are presently going on in the federal sphere and also in Victoria deliberately exclude South Australia, Queensland and Western Australia.

The reason why those three States are not caught up in the federal moves to deregister the Builders Labourers Federation is that there is no evidence that that body has behaved in those three States in a way that warrants deregistration. This has been recognised by the Commonwealth and specific provision is made. I remember not very long ago—within the past few weeks—listening to the Queensland Minister of Labour on the ABC stating that he certainly would not be a party to deregistration proceedings against the Builders Labourers Federation in Queensland because it had not done anything to warrant it. The same situation applies in Western Australia and here.

Presently, we have a particularly nasty demarcation dispute. Whether it is the Builders Labourers within the building trades, or whether it is in the metal trades or the transport area, demarcation disputes are very nasty. It is not a demarcation dispute that is peculiar to the Builders Labourers; the Builders Labourers have not deliberately gone out and provoked a dispute. It is not that kind of dispute at all. It is a demarcation dispute—very nasty. I have spent considerable time trying to sort it out today and it is quite properly in the hands of the Federal Commission and the Trades and Labor Council. It is not a sign that the Builders Labourers Federation has gone off its head or anything like that. It is a sign that in industry—all sections of industry—one gets, occasionally, these very nasty demarcation disputes. No-one likes them, least of all the unions involved. However, they do occur. It is a fact of life.

One of the reasons why one has them is because of the difficulties involved in union amalgamation, and the principal architects of erecting the barriers to unions amalgamating were the federal counterparts of the Hon. Mr Griffin—such as Mr Fraser. We tried to change that legislation significantly at the federal level. However, we had problems with the Senate and always will have. I do not want anyone coming in here with the pious attitude that the Builders Labourers Federation is all bad because there is a dispute on building sites. Some of the groundwork that was created for those demarcation disputes was created by the Liberal Party when it was in Government—to its shame.

This matter is listed by Commissioner Griffen in Adelaide on Friday of this week. I contacted Commissioner Griffen this morning and asked her to see whether she could bring forward the date of the hearing. She has advised me that that is not possible because of other commitments. My office has had discussions with the two principal parties to see whether the Government can play any useful role in getting them together. That is not necessary. I have also had a couple of discussions today with the Secretary of the United Trades and Labor Council, John Lesses, who is attempting to have the dispute resolved using the appropriate procedures of the Trades and Labor Council. I am hopeful that the Trades and Labor Council will be able to resolve the dispute, using the procedures that it has developed. When disputes of this nature arise, they are as I say one of the most difficult types of dispute to deal with. I have always felt that the demarcation disputes were the responsibility of the trade union movement, even more so than the various industrial tribunals, and I am certainly pleased that the United Trades and Labor Council has this dispute within its area.

Concerning the 36 hour week, there are some agreements—I think four—in South Australia that have a 36 hour week. They are mainly shopping centre sites and the developers of those shopping centres have come to an agreement with the various unions that there will be a 36 hour week worked on those sites. I am not quite sure of all the details, but I understand that the developers are primarily interstate developers and such arrangements are normal in the shopping centre construction section of the industry. This Government's view on the 36 hour week is very clear and has been stated many times. We believe that the 38 hour week is the appropriate standard in industry at this time. It may well be—I am absolutely certain—that at some time in the future the 36 hour week will be the standard and so on, but that is certainly not the case and we do not support it. However, if an employer chooses to come to an agreement with a particular group of unions and give them a 36 hour week, there is not a great deal that the Government can do, and possibly not a great deal that it ought to do.

The Liberal Party, including the Opposition here, wants to deregulate the industrial arena. If it deregulates the industrial arena, whether for hours, wages or working conditions, and it thinks it will be restricted to the corner shop—the small business person who perhaps can employ a 17 year old for something less than the award rate—if it thinks it is going to stop there, it is dead wrong. There are also a number of unions who want the industrial arena deregulated, and in the building industry in certain areas they would be one of the beneficiaries, because there is no doubt that the accord to which this Government subscribed very strongly has had a dampening effect on wages. Whether that is good or bad is arguable, but certainly we believe that that is in the long term interest of this State and country.

Those who prattle on about deregulation would not know what had hit them if they ever got deregulation. The last time the Fraser Government tried to deregulate the wages area in this country was the biggest wage explosion that this country had seen for decades, and that was early in the 1980s.

The Hon. R.I. Lucas interjecting:

The Hon. FRANK BLEVINS: I suggest that you have a talk with your comrades before you start interjecting.

The Hon. R.I. Lucas: Comrades are on your side.

The Hon. FRANK BLEVINS: These RSL people are comrades.

Members interjecting:

The PRESIDENT: Order!

The Hon. FRANK BLEVINS: Certainly, for the Hon. Mr Griffin to get up and talk about the 36 hour week, to get up and talk about the demarcation disputes in the pious, pinched and narrow way he does, I think shows very clearly that he does not understand industry, and he never will. I hope for the sake of this State and this nation that the Liberal Party is never in a position to put into effect some of the more bizarre ideas that it proposes while in Opposition, and long may it stay there.

BRAIN INJURED PERSONS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister of Health a question on brain injured persons.

Leave granted.

The Hon. ANNE LEVY: It is an unfortunate fact of life that, despite many efforts to reduce the road toll, there are still numerous people being affected in road accidents, particularly leaving them with brain injuries. Most of these people are young and they are male. The tragedy of these people is certainly brought home to anyone who has anything to do with one of these individuals or with any of their families. I realise that the way to prevent such tragedies occurring is to undertake all possible measures to reduce the road toll. Can the Minister tell us whether there are any specific initiatives which can be undertaken to help the young brain injured once this tragedy has occurred?

The Hon. J.R. CORNWALL: Each year it is estimated that about 40 or 50 young people in South Australia suffer significant ongoing disability as a result of acquired brain injury. It is very true that, because of far better techniques of neurosurgery these days, a much higher percentage of these people are salvaged than was formally the case. They are mostly young males who have been involved either in road trauma or industrial injuries.

A Statewide service, which for some time has been called the SA Head Injury Service is to be set up and to operate from the Julia Farr Centre. It will provide a focus for the needs of the services for the brain injured in much the same way as is now provided through Hampstead Centre, for those with spinal injuries. The Government has made available $200 000 this year to establish the service, and has already committed $260 000 in the 1986-87 budget for ongoing support for the service.

A Medical Director, to take charge of the service, is to be appointed soon, and a Project Manager has already been appointed on a 12 month contract to establish the unit, set up a data collection system, and to get the service off the ground. The position of senior therapist (either a physiotherapist or occupational therapist, or a social worker) has been advertised. A Clinical Officer will support the service, and the officers will work as a project team to further develop programs on a planned basis. I think it is worthwile to outline some of the activities which will be conducted by these officers. The activities will include:

- Compiling and maintaining medical records, and providing information for the SA Head Injury Service Care Registry.

The Hon. C.M. Hill interjecting:

The Hon. J.R. CORNWALL: That is right.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: Further activities are as follows:

- Giving professional direction to nursing and other professional staff responsible for the clinical care of patients.
- Providing professional support for clients of the SA Head Injury Service and those who care for them, expecially when they leave Julia Farr Centre.
- Visiting health units throughout the State to advise on individual cases, or provide information on developing services.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Davis will stop interjecting or I will name him.

The Hon. C.M. Hill: He is reading this.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: It does not seem to be a matter of any moment to these people that at this very time I am spelling out in some detail, and using Question Time as a suitable forum to do it, the details of a major head injury service which the Health Commission and the Government have just established in South Australia. If they believe, Sir—

The Hon. C.M. Hill interjecting:

The PRESIDENT: Order! The Hon. Mr Hill will come to order.

The Hon. J.R. CORNWALL: —that they can politicise a head injury service, God help them all: they are even sicker than I thought they were. The Government is firmly committed to expanding its present services and to setting up new services for the young brain injured and their families, including an in-patient facility superior to that which is available at present, day care centres, a transport service, and on-going support for families caring for the young brain injured at home. As far as accommodation is concerned, it is hoped to begin transferring patients from the Morris Ward 3 at Royal Adelaide Hospital's Hampstead Centre, to the Rotary wards at Julia Farr Centre.

The Hon. R.J. RITSON: A point of order, Sir. I draw the Council's attention to the time.

The PRESIDENT: We have five minutes of the hour to go.

The Hon. J.R. CORNWALL: The Rotary wards, on the ground floor of the centre, are to be completely refurbished and the adjoining outdoor areas upgraded to ensure that they are appropriate for the needs of the young clients of the new service, some of whom are behaviourally disturbed. The estimated cost of the refurbishment is $450 000, two-thirds of which will be paid by the South Australian Health Commission, and the remainder by Julia Farr Centre. The new wards will cater for all the in-patient needs of the young brain damaged, up to a maximum of 10.

Julia Farr Centre and the Royal Adelaide Hospital are now in the process of preparing a brief for the architects for the proposed refurbishment. Julia Farr Centre is also negotiating for suitable premises in which to establish the first off-campus day care centre for the young brain injured. It is also preparing plans to provide increased support for both the young brain injured and their carers within the community. The aim of this is to help maintain as many of these young people as possible in their home environment.

At present, many young brain injured are in institutions because of the great demands placed on their families and carers by keeping them at home. However, if adequate respite care can be provided and clients can be transported to day care centres, the demands on the family and carers

is not only alleviated but rehabilitation can be undertaken at the day centre.

For this significant number of families, whose problems are great, but whose concerns do not seem to be of any moment to members of the Opposition, who have consistently interjected throughout this reply, the new South Australian Head Injury Service will provide much needed improved facilities, care, support and coordinated services to help them get on with day-to-day living, which, in many cases, has been shattered by the trauma of brain injury. The new service could also see South Australia taking a lead in the treatment, care and research relating to the young brain injured in this country. I am disappointed that those cynical yesterday's men do not believe that this is important enough to take up six minutes of the time of this Parliament.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. Lucas interjecting:

The Hon. J.R. CORNWALL: Young man, you will still be sitting on the back bench in 10 years time, with the same annoying falsetto voice, because you will never learn.

Members interjecting:

The PRESIDENT: Order! I do not know whether the Minister has completed his reply or not.

Members interjecting:

The PRESIDENT: Order! There will not be nearly as many of you left here soon to listen to the questions.

QUESTIONS ON NOTICE

SHOPFRONT ADOLESCENT HEALTH SERVICE

The Hon. R.I. LUCAS (on notice) asked the Minister of Health:

1. Have any officers in the Central Sector of the Health Commission expressed any concern to the Director of the Central Sector or other senior officers of the Health Commission about the terms of the contract between the Health Commission and the Salisbury Council on the Shopfront Adolescent Health Service and, if so, what are those concerns?

2. Has any legal advice been provided to the Central Sector of the Health Commission about the interpretation of provisions in the contract and, in particular, to those relating to an agreement of the Health Commission to pay two-thirds of the costs of the salary of the Council's Community Health Co-ordinator and Neighbourhood Development Co-ordinator; if so, what is that advice?

The Hon. J.R. CORNWALL: The replies are as follows:

1. No concerns have been raised about the terms of the contract between SAHC and the Salisbury Council on the Shopfront Adolescent Health Service. However, discussions have been held on the appropriateness of certain costs charged to the shopfront budget by Salisbury Council.

2. No.

The Hon. R.I. Lucas interjecting:

The Hon. J.R. CORNWALL: No. The honourable member's informant has been sacked, of course. He went to the honourable member after he had been sacked.

Members interjecting:

The PRESIDENT: Order! I will have some order and decorum. If all members want to speak, there is no reason why you should not expect that, if you need me to suspend the Council while you do it, I will do it, and you will sit here a little later this evening. That is the only difference. I intend to do it. You have just gone on like a mob of schoolchildren.

ETHYLENE DICHLORIDE

The Hon. I. GILFILLAN (on notice) asked the Minister of Health:

1. Does the Minister recognise that ethylene dichloride is a carcinogen or cancer causing substance?

2. Is the Minister aware that ethylene dichloride or EDC is an intermediate compound in the manufacturing pathway from ethane to the plastic, polyvinyl chloride, or PVC?

3. What is the Minister's view as regards safety and public health of a proposal to manufacture the safe and inert plastic, PVC, from the safe feedstock, ethane, through a process which involves the transport of the intermediate compound, EDC, from a site, say in Port Adelaide, to a site, say in Victoria or Indonesia?

4. Does the Minister agree that when dangerous intermediate products are involved in a chemical manufacturing process it is in the best interests of safety and public health for the whole process to be conducted on the one site in a closed system which also guarantees that, at any one time, the amount of material in this intermediate and toxic form is minimised?

5. Could the Minister state whether this Government is still entertaining a proposal for a petrochemical works in South Australia, which would export EDC by ship or other tankers to distant plants elsewhere in Australia or overseas?

The Hon. J.R. CORNWALL: The replies are as follows:

1. The situation regarding the carcinogenicity of ethylene dichloride is not as clear cut as has been suggested. The International Agency for Research on Cancer states that there is sufficient evidence that ethylene dichloride is a carcinogen in animals. In the absence of proof the National Health and Medical Research Council has not indicated ethylene dichloride in its list of human carcinogens. There is an absence of adequate data for humans, but to be on the safe side, the International Agency for Research on Cancer has suggested it be treated as a human carcinogen.

2. Yes. There is a process for the production of polyvinyl chloride which produces ethylene dichloride as an intermediate reactant.

3. It would clearly be ideal for the entire process of production of PVC to occur in a closed system on one site. However, if this ideal is not feasible and should such a manufacturing plant be developed, then the principles of protection of workers, the general public and the environment would be put in place before the process began. EDC breaks down relatively quickly in the environment to non-carcinogenic substances which are controllable with appropriate techniques. In addition, transportation of EDC would come under legislation concerning the transportation of dangerous goods, so providing further safeguards. Thus, safe transportation of EDC, with proper precautions, could be achieved.

4. Total enclosure of any chemical reacting system is ideal. When the ideal is not feasible, it must be ensured that all appropriate safeguards are used to protect all people during transportation. It would be ensured by officers of the relevant Government departments that these safeguards are in place before the process is allowed to begin.

5. Yes.

INDUSTRIES DEVELOPMENT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 31 October. Page 1698.)

The Hon. L.H. DAVIS: I support the second reading. The Government guarantee system, which is the subject of amendment in this Bill, is the centrepiece of the Industries Development Act. It is administered by the Industries Development Committee, which is a committee of the Parliament. The Industries Development Committee consists

of five members—one from each side of each House together with the Under Treasurer's representative. For many years now the Industries Development Committee has done, I believe, effective work in promoting the establishment payment scheme and in administering the Government guarantee scheme.

A unique feature of the Industries Development Committee is that it is a bipartisan committee of Parliament. It meets behind closed doors and the minutes of the committee's meetings are not available. As far as I know there have never been any leaks of the confidential information which is discussed at those committee meetings. Unless the subject of specific legislation, Government guarantees for commercial loans must be referred to the Industries Development Committee, which takes written and oral evidence from officers of the State Development Department and more often than not examines representatives of the applicant company. Generally, the system has worked well, given that Government guarantees are only triggered when commercial financial organisations are not prepared to advance funds without a Government guarantee. Necessarily there are some risks involved. However, in recent years the public of South Australia has not suffered unduly from the failure of a company which has been granted a loan subject to a Government guarantee.

The Act as it now stands limits Governments to guarantee only loans. The increased sophistication of financial arrangements in recent years has found the Industries Development Act wanting. The Bill now before us simply seeks to extend Government guarantees to cover real or contingent liabilities including performance bonds. I support the measure. It will increase the flexibility of Government guarantee arrangements, and it will be a valuable addition to the armoury of weapons available to assist State development—both for established companies in South Australia and for national or international companies seeking to establish operations in South Australia.

We must recognise that incentives and assistance for business in South Australia—whether existing or potential business—must be competitive with the incentive and assistance schemes which are offered in other States. In closing I have one other comment: the Industries Development Act was first introduced in 1941 when Thomas Playford as Premier in South Australia was expanding the industrial base of this State. He saw in the Industries Development Act and the operation of the proposed Industries Development Committee a valuable way of underpinning industrial expansion in this State.

The fact is that in the past nine or 10 years this Act has been amended six times in rather piecemeal fashion. However, I am sorry to note that this Government has not undertaken a full review of the Industries Development Act. I recognise that a working party has been established to examine incentives and assistance for business in South Australia. Quite clearly, the Act which was introduced in 1941 is rather tired. In the past few years there has been quite a number of new initiatives established by other States. In the area of tourism, for example, there has been quite significant development in South Australia. It may well be appropriate that the Industries Development Act should take particular account of the needs of tourism. The legislation was certainly drafted at a time when tourism was not seen to be part of the general area for which Government support would be available. I support the second reading of this fairly simple measure. However, I repeat my disappointment that the Government in its three-year term has not seen fit to fully review the Industries Development Act.

The Hon. ANNE LEVY: I, too, support the Bill before the Council, which makes a minor amendment to the Industries Development Act. It will enable the Industries Development Committee to function more effectively and with greater flexibility. I am glad that the Hon. Mr Davis supports the Bill. However, I take issue with him on a number of ancillary remarks that he has made. He criticises the Government for not reviewing the entire Act. The Hon. Mr Davis knows full well that the Government set up a working party to review all State Government incentives and assistance to industry.

The working party produced a very comprehensive and voluminous report, which the Hon. Mr Davis has seen. The report was reviewed by the Government and the vast majority of the working party's recommendations was accepted and implemented by the Government. The one important factor (which has been stated) is that in a period of 12 months this new system of industry incentives and assistance will be reviewed to see whether it is functioning adequately. The Hon. Mr Davis knows full well that the Industries Development Committee has been asked to take part in this ongoing review of the new procedures. Obviously, it is desirable to see how the new procedures work before consideration is given to whether the Industries Development Act itself requires further review.

The Hon. Mr Davis also knows full well that when the new guidelines were brought to the Industries Development Committee they were fully discussed and it was agreed by all members that no amendments to the Industries Development Act were required to implement the new guidelines; and that the Act was flexible enough to accommodate the new guidelines and improve the incentives and assistance granted to industry in South Australia by means of the Industries Development Committee.

The Hon. Mr Davis also knows full well that the new incentives and assistance scheme includes new guidelines on the question of tourism projects and that the committee can implement these new guidelines without requiring any change to the Act to enable that to occur. In relation to tourism industry projects, the working party report states:

> Tourism industry projects can be supported where the project will add to desirable tourist plant or product without a significant detrimental impact on existing product or plant; the project will provide a net economic benefit to the region in which it is located; the project will create new employment opportunities; and the project fits within the objectives of the State tourism development plan and guidelines.

This is a clear statement of the guidelines within which the IDC will work on tourism projects, and certainly change to the Act is required to enable us to implement those guidelines. Furthermore, the honourable member would be well aware that the committee has, for some time, suggested that there should be greater promotion of its activities and the sort of assistance and incentive that it can supply, and the Government has agreed that there should be more active promotion so that all facets of industry, broadly interpreted, will be aware of the potential benefits that can be derived under the programs we look after. We have felt at times that only certain sections of industry were aware of the assistance that could be provided by the IDC, and we hope that with further promotion a wider range of sections of industry will come forward for the assistance and incentives administered through the IDC Act.

I do not wish to take up the time of the Council in a detailed debate on the IDC, but members may be interested to know that in the past financial year the IDC provided grants totalling well over $1 million to 31 companies, and that by means of this assistance a total of 562 new jobs were created, 45 per cent of which were female jobs and 55 per cent male jobs.

Likewise, after detailed consideration the committee provided 12 Government guarantees in the past financial year totalling over $5.5 million. This is not chicken feed: it is of considerable value to the development of industry in this State and, while the Bill before us is minor, it will add to the effectiveness with which the IDC can fulfil its charter in encouraging the development of all industries in South Australia. I support the second reading.

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

GOVERNMENT MANAGEMENT AND EMPLOYMENT BILL

Adjourned debate on second reading.

(Continued from 30 October. Page 1643.)

The Hon. C.J. SUMNER (Attorney-General): In responding to this debate may I say that the Government welcomes the general support of the Bill by the Opposition. Response to change has been a feature of the performance of the public sector in this State. This legislation updates the framework within which public employees work in a way that is appropriate to the 1980s and beyond.

One of the features of modern public sector management practice is the decentralisation of responsibility. Opposition support for this concept of decentralisation—which is already being pursued by means of delegation under the Public Service Act, and has been proceeding for some time—is welcome. However, a number of foreshadowed amendments to the Bill are directly at odds with the stance taken by members opposite on these issues, as they would have the effect of recentralising powers in the Government Management Board.

The Opposition appears to have some serious misconceptions about the roles of the Commissioner for Public Employment and the board. The Commissioner will not be all-powerful, an *El Supremo*, or the like. That person will, however, have sufficient powers to ensure that the standards of personnel and industrial relations practices set down in the Bill are adhered to. However, most practical decisions on personnel matters will be devolved to chief executive officers, except where senior positions are concerned.

Many of the powers in the Bill are not personnel matters, but relate to performance, efficiency and effectiveness, reporting and the broad range of administrative questions. These decisions are the province of chief executive officers, Ministers and the Government of the day. The Government Management Board will provide the focus for achieving the objectives of the Government of the day through effective and efficient use of a public sector which is properly structured to give a high level of performance and to achieve results. In fact, the feature of present arrangements under the Public Service Act, which was criticised most persistently during the review of Public Service management, was confusion of roles of the Public Service Board. The arrangements in the Bill are directed at overcoming this.

The Commissioner will be responsible for the observance of proper personnel and industrial relations arrangements. The Government Management Board will deal with the general management, performance and structural questions. To ensure that there is close communication and understanding the Commissioner will be a member of the Government Management Board. Suggestions that the Commissioner should preside over the board really would make the Commissioner an *El Supremo*.

Giving the board day-to-day personnel powers would have the board making senior appointments, with a danger of politicising the appointment system. An independent Commissioner overcomes this problem. It is absurd to suggest that this will lead to abuse of authority. Surely it is not being suggested that all positions requiring professional competence and integrity must be shared by a committee. The suggestion is tantamount to being a slur on the professionalism of our public servants.

Some reference has been made to the processes of appointment and removal of the Commissioner for Public Employment. Obviously, this is a matter which must be handled carefully. The Commissioner will be responsible to the Parliament in the sense that he will report to it periodically rather than being directly a servant of it. In most respects the Commissioner will be a part of Executive Government, but a measure of independence is required because of the need to keep away from the politicisation of Public Service appointments. The provisions for the dismissal of the Commissioner are framed accordingly, in fact, following the arrangements which apply to the Auditor-General.

There even appears to be some concern with the powers of the Commissioner in such areas as classification structures. These powers cannot be dealt with in isolation from the wage and condition fixing powers of the industrial tribunals which the Commissioner must observe and which cover the majority of public servants. The Bill also provides for devolving classification powers to department heads below the level of service positions. Experience with those departments already exercising classification delegations provides evidence that these powers can be successfully devolved from the centre.

The Opposition mentions pecuniary interests and wants them defined. As the Hon. Trevor Griffin pointed out, there is considerable clarity and definition as to what this means in other statutes, but to attempt to further define this in this Bill, given the variety of circumstances to which the Bill applies, is not necessary. As to the concern about capricious directions in this area by the Commissioner or Minister, a person given an instruction to resolve a conflict of interest could have recourse to a grievance appeal in most cases.

The process of consulting with employees is well established and is in the present Act. This does not prevent a Government acting quickly if necessary—consultation may not be practicable if speed is of the essence. Indeed, the housing and construction exercise, to which reference has been made, took place having regard to an almost identical section in the present Act.

The Opposition's position on equal employment opportunity is difficult to follow. It purports to support such measures but has then argued for those enabling clauses in the Bill to be removed. The clauses in this Bill are consistent with the equal employment opportunity legislation. The clauses in the Bill are not superfluous—they provide legislative backing to what has become broadly supported management practice.

It is worth mentioning that State instrumentalities as defined in the Bill are only covered by Parts I and II. These include the general principles of personnel management and administration, but not the detailed personnel and administrative matters in Part III which apply to the Public Service only. It is important that these principles be applied as widely as possible across the public sector. SGIC and the State Bank are exempted only because they are established as commercial organisations operating in a directly competitive marketplace. This is not true of ETSA, for example, and ETSA, which is excluded from the Public Service, will have the general principles apply to it.

I turn to one or two points made by other speakers. The Hon. Mr Lucas asks why there needs to be a Commissioner. The answer is that someone needs to exercise those statutory personnel and industrial powers specified in the Bill. That same person is required to report to Parliament. The Gov-

ernment considers it appropriate that the Commissioner of Public Employment exercise those powers and responsibilities provided in the Bill.

The proposals regarding negotiated conditions are a significant step forward in attracting the right sorts of people when specific needs exist. The merit principle should still apply in all selections. This does not preclude 'headhunting' but there is no reason why jobs cannot be called with a choice of normal or negotiated conditions. This is no more and no less than an open declaration of the existence of a publicly funded position for which the best available person will be appointed. The amendments foreshadowed open the way to such abuses as politicisation, patronage and neglect of merit.

In concluding these remarks, I once again thank members opposite for their general support of the Bill. Clearly, a number of amendments will be moved in Committee and attention will have to be given to them at that time. The implications of the Bill are far-reaching and important, and the Bill will set the scene for public administration for many years to come.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Progress reported; Committee to sit again.

CRIMES (CONFISCATION OF PROFITS) BILL

Adjourned debate on second reading.

(Continued from 29 October. Page 1561.)

The Hon. K.T. GRIFFIN: The Opposition supports the Bill which is designed to broaden the power of the courts in relation to the confiscation of profits derived by those committing criminal acts. It is important to recognise that this legislation in fact is broader than that in the Controlled Substances Act which was passed in March 1984 and which came into effect in May 1985.

That followed the introduction of a private member's Bill by me in 1983 to deal with the confiscation of assets of convicted drug traffickers under the Narcotic and Psychotropic Drugs Act. On that occasion, the Government indicated that it would not support my Bill to deal with amendments to the Narcotic and Psychotropic Drugs Act but preferred to introduce its own legislation, which came into operation some two years after confiscation of assets legislation could have been in effect if my Bill had been supported.

The Controlled Substances Bill provides for courts to exercise a power to confiscate from drug traffickers or convicted drug offenders assets which represent either the proceeds from their illegal activity or assets acquired in substitution for or as a result of the conversion of the proceedings from that illegal activity.

The Controlled Substances Bill extended to relatives of the convicted person, to corporations, related corporations and trusts. It is important, in dealing with this sort of legislation, to recognise that there are many ways by which criminals with ingenious legal advice are able to, at least, endeavour to get around the letter of the law and to find loopholes which will enable them to escape the consequences of illegal acts. This Bill is to apply to all indictable offences and also to offences which are of summary nature but which are to be declared by regulation to be prescribed offences for the purpose of this legislation.

I made the point, in speaking on the Controlled Substances Bill at the beginning of 1984, that it is important to have in the Statute itself details of the offences to which confiscation of assets powers are to be exercised so that the Parliament has the opportunity to debate the ambit of the legislation and to make a conscious decision as to whether or not the wide powers ought to apply to particular offences. I was critical of the Controlled Substances Bill because so much of the application of the powers contained in that legislation was to be imposed by regulation, which would only be subject to review by the Joint Standing Committee on Subordinate Legislation and could only be subject to disallowance in whole and not in part; further, no amendments could be made to the regulations.

In any event, we found, under that legislation, that the quite wide ranging powers of confiscation and for the imposition of penalties for possession of certain drugs and for the trading in certain drugs were to be prescribed by regulation. Notwithstanding our protests that the Bill itself did not contain specific reference to the offences to which the Bill would be applied, it was passed with the majority support of the Government and the Democrats in this place.

In this legislation I would want the Government to identify what summary offences are to be declared by regulation as prescribed offences to which the very wide powers of confiscation of profits from illegal activity are to be applied. When those offences are identified, I will propose amendments which would specifically refer to those summary offences in this Bill rather than leaving the decision to regulation. In ordinary circumstances the penalties that can be imposed for breaches of regulations are between $500 and $1 000, the maximum penalties being fixed by the principal Statute.

In this instance we may well have amounts far in excess of that being the subject of a sequestration order by the courts as being the proceeds of illegal activity. I think it is wrong in principle that those sorts of consequences should be allowed by this Parliament to flow from the exercise of a regulation making power rather than for the Parliament itself to make a firm and specific decision on the inclusion of particular offences subject to the confiscation power. That is one major area of concern to which I direct attention.

The Opposition has no difficulty with the fact that the legislation applies to all indictable offences. There are several other matters on which some comment should be made. First, clause 4 (2) enables a court to order the confiscation of an accretion to a person's property in consequence of the commission of a prescribed offence, or particularly where the identification of specific property is not possible. In those circumstances the whole of the person's property is liable to forfeiture. While I do not have any disagreement at all with the need to provide for the appropriate powers in the court to order compensation and restitution—I support that concept—the fact is that, where property is in the ownership of persons other than the convicted criminal, caution does have to be exercised as to the extent to which that property may be subject to forfeiture.

There is also the situation where a criminal may well have frittered away the ill-gotten gains from criminal activity leaving, for example, a home in which a spouse and children may reside. It would be unfortunate if the courts were to feel obliged to forfeit the house property, thus putting the family out on the street, particularly in circumstances where the family had no involvement at all with the illegal activity of the convicted criminal.

The other question in relation to clause 4 is whether the tracing mechanism (that is, to be able to trace the proceeds in one form or another) arising from illegal activity can extend to a corporation, to a related corporation under the Companies Code, to a family trust or unit trust, or some other mechanism by which the proceeds of illegal activity are filtered off into other holding agencies. That certainly needs to be clarified.

There is provision in clause 6 (6) of the Bill for the lapsing of a sequestration order in circumstances where a person is charged with an offence in respect of which the order is made, and that person is acquitted or the charge is withdrawn. It does not deal with the situation where the charge may be withdrawn and a new charge laid arising out of the same circumstances. In that instance there would seem to be an unnecessary amount of legal work involved to discharge the sequestration order and then apply for a new sequestration order immediately on the withdrawal of a charge and the laying of a new charge arising out of the same circumstances.

With respect to clause 7, I recognise that there will need to be provisions for search warrants to obtain information about the property that may be the subject of forfeiture. I think one should be particularly cautious about the granting of and provision for search warrants, but in these circumstances I believe it to be necessary. I believe that the safeguards are, generally speaking, adequate. There is only one matter of interest, and that is in clause 8 (2): a search warrant is not to be executed between the hours of 7 p.m. and 7 a.m. the following morning unless a magistrate has expressly authorised its execution between those hours. I would have thought that there need not be any particular limit on the hours within which a search warrant can be executed, but I would like an indication from the Attorney-General as to the reason for so limiting the application of the execution of a search warrant.

I have circulated this Bill to a number of lawyers who practise in the criminal law field. They have yet to respond to my invitation to comment on the Bill, and in view of that, I seek leave to conclude my remarks, to enable further consultation to occur.

Leave granted; debate adjourned.

[*Sitting suspended from 4.7 to 5 p.m.*]

BUILDERS LICENSING BILL

Adjourned debate on second reading.

(Continued from 31 October. Page 1701.)

The Hon. C.J. SUMNER (Attorney-General): In replying to the debate, I first address the question of consultation on the Bill. The criticisms in that respect are quite unjusitifed. The industry groups have been consulted about the principles of this Bill over a considerable period. The Bill was introduced and has been on the Notice Paper since 16 October, so one could hardly accuse the Government of rushing the Bill through Parliament.

An opportunity has been allowed for industry groups and any other groups interested to comment on the clauses. The principles have been discussed in the past with industry; the details are in the Bill before Parliament, and adequate time is being allowed for consideration of the issues. The Hon. Mr Burdett has indicated that in his view it is a Committee Bill and he has raised a number of issues. I will now canvass them and assume that he will place on file whatever amendments he sees necessary. I should also say that there will probably be, as was anticipated, some Government amendments to the Bill.

As to the issues raised by the Hon. Mr Burdett, the first revolved around clause 4 (1) *(d)*. A person who carries out speculative building work (as opposed to work pursuant to a building contract) would not need to be licensed if all the work is carried out by licensed persons. There is no requiement that the general work must be supervised by a category one or two building work supervisor, but the work of each category three tradesman must be supervised by a category three building work supervisor.

The speculative builder would also obtain the benefit of the statutory warranties implied in every domestic building work contact, and any person purchasing from the speculative builder would succeed to those warranties. However, in order to enforce those statutory warranties, the purchase would have to take action against the relevant tradesman.

The present Act has proved to be unsatisfactory. Under section 21 (6) it is necessary to engage the holder of a general builders licence to supervise the construction of a building. However, this applied only to the total construction of a building, and speculative builders were able to employ unlicensed persons to carry out renovations. The provision in the Bill applies to all building work and the speculative builder will be required either to obtain a licence or to employ licensed persons. I have asked for the definition of 'builder' to be re-examined in the light of the comments that have been made in the debate.

As to the second issue of demolition, there is no objection to the inclusion of this term. It could be argued that an order for remedial work does not include an order for demolition and, therefore, demolition is at the expense of the consumer. This would be an undesirable result if upheld by a court, especially if it were an order for damages which included an assessment of the cost of demolition.

As to clause 5 (2), an architect who fails within the definition 'builder' is only exempt from the obligations arising under the Act where he is acting in the ordinary course of the profession of architecture.

Clause 8 is a matter that will involve technical descriptions and should be dealt with in the regulations after discussions with industry groups.

Clause 10 (2) is a standard provision in occupational licensing legislation that has never caused any problems. The same provision has been in the Consumer Credit Act since 1973. It has also been a standard inclusion in those Acts which have conferred jurisdiction on the Commercial Tribunal, for example, the Second-hand Motor Vehicles Act 1983, the Second-hand Goods Act 1985, and the Land Agents, Brokers and Valuers Act 1985.

It is necessary to be flexible and it is not possible to specify all the information that the tribunal may require. For example, a builder may claim in his application that he holds some particular overseas qualification relevant to building. He might quite properly be asked to provide evidence of that. The tribunal might also require verification of statements made regarding financial resources.

Clause 10 (9) is again a standard provision which has been used in this type of legislation for years. It enables the tribunal to examine whether an applicant has previous convictions, whether he is generally of good character, and whether his past conduct is such that the tribunal should have regard to it in determining the application.

As to clause 10 (9) *(c)*, again it is necessary to be flexible with this provision. Any attempt to define what financial resources are required to carry out every conceivable type of building operation will lead to a bureaucratic nightmare. In fact, this provision was inserted in the current Act by the Hon. Mr Burdett. He stated in the second reading speech of the Builders Licensing Act Amendment Bill (No. 44 of 1980) on 26 March 1980:

> In recent times, it has become apparent that applications for licences under the Act ought to be required to satisfy the board that they have sufficient financial resources to carry on business in a proper manner as builders.

The Hon. Mr Burdett's reference to clause 10 (1) should be to clause 10 (11). This is somewhat of a nit-picking criticism. It is simply a drafting technique to avoid having to add to the word 'Director' every time it is used in this section the

words 'or a person who is, in the opinion of the tribunal, in a position to control or influence substantially the affairs of the body corporate'. It has absolutely no relevance to the Companies Code.

Clause 12 (7) is again a standard provision. However, it does stem from occupational licensing provisions under which disciplinary action could not be taken against the person who is not licensed. Now that disciplinary action may be taken against a former licensee, and orders can be made under section 33 against persons who do not hold a licence, there is probably no reason to retain the requirement for the tribunal to consent to a surrender of a licence.

The Hon. Mr Burdett's reference to clause 13 (11) should be to clause 13 (1). This provision is simply designed to enable a breathing space during which proper arrangements can be made following the death of a licensee. It is designed as an interim arrangement and I see no reason to permit this sort of unlicensed activity to continue for as long as the honourable member suggests. In any event, the tribunal has a discretion to approve the carrying on of business by an unlicensed person for such period and subject to such conditions as the tribunal may approve.

Clause 14, as with clause 8, is a matter which will involve technical detail, and as such should be left to the regulations.

As to clause 15 (1), the term 'in pursuance of' may incorporate the term 'in accordance with'. In regard to the second point, 'proper supervision' is a matter to be determined by the tribunal with reference to the concept of 'proper supervision' as it applies in the building industry. However, I shall see whether this provision can be redrafted to make the intention clearer.

Clause 15 (2) is intended to give proper effect to clause 15 (1). It is similar to provisions in other Acts, for instance, the Second-hand Goods Act 1985. A strong sanction is necessary to ensure that a builder does not permit the absence of a registered building work supervisor to drag on for a long period. In addition, there may be a blatant lack of supervision which needs to be dealt with automatically, rather than through disciplinary proceedings.

I presume that the Hon. Mr Burdett's reference to clause 10 (3) is intended to be a reference to clause 15 (3). I am not sure whether mistakes in clause references arise in the *Hansard* proofs or not. The person referred to in clause 15 (3) may not want to be a registered building work supervisor. The builder may simply be asking for an exemption to cover a period of, say, two months while the registered building work supervisor would be on long service leave.

If clause 18 (5) were not included, it would be possible for a person to a building work supervisor for any number of licensees, despite the fact that it would be impossible for the person to properly supervise the building work of each licensee. Although disciplinary proceedings might be taken to correct such abuse, it is considered that it is more appropriate to make sure that building work can be properly supervised before an applicant takes on those responsibilities.

Normally, a building work supervisor should be registered only in respect of one licensee, but the tribunal has a discretion under clause 18 (5) to change that situation. An application by a person for approval to be registered as a building work supervisor in respect of more than one licensee would have to be determined on the particular circumstances of the case.

For example, the tribunal might exercise this discretion where the licensee for whom a building supervisor works has ceased building work for a period. The building work supervisor might apply for approval to supervise work for another licensee during that period. Another example might occur where related companies wish to have the same registered building supervisor. In such cases approval might be appropriate.

In relation to clause 18 (5) *(c)*, it is quite common to provide a tribunal with a general discretion in an area like this, rather than attempt to specify all the circumstances in which approval might be refused. However, I agree that it is difficult to perceive of circumstances in which a registered building work supervisor who is eligible to be approved should not be approved. I intend to have this clause re-examined.

In relation to clause 19 (5), the amendment proposed by the Hon. Mr Burdett is unnecessary. This is a standard provision contained in several other occupational licensing Acts and is simply designed to reflect the rules of natural justice. It would be quite wrong to require that the person to whom the inquiry relates be given copies of all documents in possession of the Commissioner because these documents may not all be placed before the tribunal and taken into account in determining what action (if any) should be taken. However, natural justice will require that the person be given copies of any documents which are placed before the tribunal. It should be pointed out that the tribunal is bound by the rules of evidence, that is, in respect of a disciplinary hearing.

In relation to clause 19 (11), obviously the tribunal will not take disciplinary action in respect of a speeding offence. Quite clearly this should be a matter that should be left to the tribunal's discretion. It would be impossible to specify every type of offence that might be relevant in every circumstance.

In relation to clause 19 (13), there is no retrospectivity in any real sense, because the disciplinary powers also existed under the repealed Act. It is far easier to include a provision such as clause 19 (13), rather than have to continue the Builder's Appellate and Disciplinary Tribunal in existence indefinitely to deal with any matters that might have arisen before the new Act came into operation.

In relation to clause 20, the Hon. Mr Burdett seems to confuse disqualification of licence with cancellation or suspension of a licence. If a licence is simply cancelled or suspended, there is nothing to prevent the previously licensed person from being employed in the building industry. However, if a person's conduct has been so serious that he has been disqualified from holding a licence (this being the most serious penalty that the tribunal may impose) then it is considered that he should not even be employed in the industry without approval. A provision to this effect has existed in the Second-hand Motor Vehicles Act since 1971 and has not caused any difficulty.

In relation to clause 25, the specific price in the contract must relate to 'the building work', that is, the building work specified in the contract. If there is an agreed variation to the extent of that building work, then there is nothing to prevent a variation of the contract price.

Clause 25 (5) is designed to cover cases in which the parties agree that certain portions of the contract are to be dealt with on an actual cost plus 10 per cent basis. For example, the contract might contemplate that a retaining wall is to be constructed, but the owner may not have decided which type of wall he wants. In such a case the arrangement may be that the owner will be charged the actual cost of constructing whatever wall is selected, plus 10 per cent to provide a margin for the builder.

Clause 26 does not have the effect claimed by the Hon. Mr Burdett. The effect of this clause is that the builder may recover payment for work performed in the preparation of plans, etc., but not until the work has been performed. However, there is provision in clause 26 (1) *(b)* to authorise particular payments so that these may be demanded in advance. Consideration will be given to prescribing reason-

able amounts for preliminary or ancillary work so that the builder may ask for payment in advance.

In relation to clause 32, a building contract is a far more complicated transaction than a contract to buying an existing house. When a consumer buys a house, he has usually inspected that house thoroughly and has made some inquiries before he reaches the stage of being asked to sign a contract. A period of two days is regarded as adequate for him to make any subsequent inquiries before his cooling-off period expires.

In the case of a building contract, the consumer may need to make more extensive inquiries and may need to seek legal advice on the contract, particularly as there are so many different forms of building contract that may be used. A period of five days is regarded as an appropriate period for this purpose. There is no essential reason why the cooling-off periods need to be the same. If it is considered that they should be the same, then I shall consider extending the cooling-off period under the Land and Business Agents Act to five days.

Clause 33 is designed to enable a building owner to apply to the tribunal where he believes that the builder has acted in breach of a statutory warranty. If no question of breach of statutory warranty arises, then the matter is properly dealt with by the courts. No expert building evidence would be required and the issue would be a clear one of whether moneys are properly payable under a contract. There is no reason why disputes of that kind cannot continue to be dealt with by the courts. It is certainly not intended that the tribunal should become an avenue for builders to collect their debts. Such action should be dealt with in the courts in the normal way.

However, if a builder takes such an action and the home owner disputes his or her liability to pay because of an alleged breach of statutory warranty, then provision is made for the whole action to be transferred to the tribunal so that all issues may be resolved in the same place.

It is ludicrous to suggest that a builder may wish to apply to the tribunal that an order be made against himself in respect of defective building work. It is even more ludicrous to suggest that a builder should be able to apply to the tribunal under clause 34 to have a provision of his contract declared to be harsh and unconscionable. Perhaps the Hon. Mr Burdett would also like to include a provision under which a builder may apply to the tribunal for an order for disciplinary action against himself?

The Hon. J.C. Burdett: What you are saying is ridiculous. I was suggesting that, as the home owner can apply to the tribunal to clarify matters in the course of the contract, so should a builder be able to. I did not say anything about orders against a builder, but only in regard to the contract generally.

The Hon. C.J. SUMNER: The honourable member obviously did not make that very clear in his second reading contribution.

The Hon. J.C. Burdett: You haven't read it.

The Hon. C.J. SUMNER: The honourable member can engage in insults if he likes, unjustified as they usually are, considering that all he did was read out the HIA submission that had been given to him.

The Hon. J.C. Burdett interjecting:

The Hon. C.J. SUMNER: I have got the HIA submission and I have read it. What it is is what the Hon. Mr Burdett read out. I am not going to stand here and be insulted by the honourable member. The honourable member got the HIA submission and read it to the Council.

The Hon. J.C. Burdett: That is not right.

The Hon. C.J. SUMNER: It is substantially correct, as the honourable member knows. If he wants me to go through a detailed comparison, I will. Clause 43 is to the same effect as section 22 of the present Act which has operated without any difficulty for many years. The Hon. Mr Burdett seems to be under the mistaken impression that this clause applies only to the investigation of complaints. In fact, it applies also to any investigation for the purpose of the Act, including an investigation as to whether a builder is licensed or has committed an offence under the Act. Clearly, it would be inappropriate for any inspection for these purposes to be 'at a time reasonably convenient for all parties' (whoever they may be).

The Hon. Mr Griffin then raised some issues, and I will deal with those. The honourable member also raised the question of consultation, which I have dealt with. There is, as I have said, no justification for criticism in that respect. There have been extensive consultations about the principles of the Bill. I introduced it as soon as possible to indicate that the Government was serious about taking positive action to overcome the many serious problems that consumers have experienced in recent times in the building industry.

Copies of the Bill were sent to interested parties on the day after its introduction in this Council. As I indicated previously, I am prepared to consider submissions. The Bill has, in fact, been before the Parliament since 16 October. The Hon. Mr Griffin has adopted a somewhat illogical and inconsistent approach to this Bill. His Party is very keen on rationalisation of legislation to bring about a consistent approach to matters such as occupational licensing. However, when the Government tries to do exactly that, it is criticised for it.

In 1983 we introduced a new Second-hand Motor Vehicles Act that established a new framework for occupational licensing. This framework involved the Commercial Tribunal acting as the licensing and disciplinary authority with power also to adjudicate on certain types of disputes; and the Commissioner for Consumer Affairs being the administration authority responsible for administration of the legislation, investigation and conciliation of complaints and the preparation of reports to the tribunal.

That legislation was consistent with the Bill previously introduced by the Hon. John Burdett. Subsequent to that, legislation which makes use of this same framework was introduced and passed by the Parliament to amend the Consumer Credit Act and the Land and Business Agents Act. So, on three previous occasions, the Hon. Mr Griffin has had the opportunity to comment upon this new occupational licensing system. Most of the objections he has raised to this Builders Licensing Bill could have been raised in relation to those other three Bills but he did not mention them. Only now, when apparently it occurs to him he decides to criticise the scheme that we have introduced. One may query whether he is still trying to fight certain battles that he had with the Hon. Mr Burdett when they were in the Cabinet together a few years ago.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: No, I am not touchy at all. I have perused the correspondence and minutes that the Hon. Mr Burdett and the Hon. Mr Griffin sent to each other in those days when they were in the Cabinet together on issues such as this, and they were not particularly friendly towards each other.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: No. Cabinet submissions I am referring to.

The Hon. R.J. Ritson interjecting:

The Hon. C.J.SUMNER: Later on tonight if you like, or next week, or February. This Government has adopted a consistent approach to the question of occupational licensing and will continue to do so. I point out also that some of the provisions that the Hon. Mr Griffin has criticised

have worked satisfactorily in other legislation for many years without any apparent problems.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: There is, with respect to second-hand motor vehicles, power to resolve most of the disputes before the Commercial Tribunal rather than before the courts. I am perfectly happy to look at the question of an appropriate monetary ceiling on the jurisdiction of the Commercial Tribunal under this Bill. This is dealing with the specific points raised by the Hon. Mr Griffin. That is a matter that I will consider and respond to in the Committee stage.

However, I do not agree with the other comments made by the Hon. Mr Griffin about the tribunal's jurisdiction. The very reason for giving the tribunal an adjudication role in matters such as this is so that the tribunal may get to the heart of the matter quickly and inexpensively without all the technicalities and legal forms that apply in court proceedings. The tribunal will have an experienced builder on it and, under the Commercial Tribunal Act, the Chairman can arrange for an expert in any particular facet of building work to sit on the tribunal as an adviser in a non-voting capacity. This will provide very significant benefits to all parties who appear before the tribunal, because they will not be put to the expense of calling expert witnesses to give evidence in every case.

The Hon. Mr Griffin claims that clause 34 of the Bill comprises the first time in any legislation that a court or tribunal has been given power to consider whether a contract is harsh or unconscionable. The honourable member may not be aware that section 46 of the Consumer Credit Act gave this very same power to the Credit Tribunal (which is now the Commercial Tribunal), and that provision has operated satisfactorily in this State since 1973. I am not aware of any criticisms of the way in which this section has been used over the past 12 years. The Hon. Mr Griffin claims that there is some blurring of the responsibilities of the Commissioner for Consumer Affairs and the Commercial Tribunal. That is not correct.

This Government has taken great care to ensure that there is an appropriate division of responsibility between the Commissioner and the tribunal and that the 'separation of powers' to which the Hon. Mr Griffin refers is scrupulously followed. In fact, one of the purposes of this Bill is to remove the highly unsatisfactory situation that presently exists under the Builders Licensing Act 1967. Under that Act, the Builders Licensing Board is an administering authority, a licensing authority, an investigating authority, an adjudicating authority and a prosecuting authority. It is hard to imagine a better example of 'an unreasonable collusion of responsibilities' (to use the words used by the Hon. Mr Griffin) with respect to the present Bill, which is designed to overcome that situation.

In any event, the provisions to which the Hon. Mr Griffin refers are the same as those that have been included in three other Acts passed by this Parliament and, to my knowledge, this is the first time he has seen fit to criticise them. I have noted the comments made by the Hon. Mr Griffin on drafting matters and I will certainly refer those to Parliamentary Counsel. They can be dealt with in the Committee stage.

Further, suggestions that the Commercial Tribunal might take disciplinary action against a licensee because of a minor traffic infringement or non-compliance with some regulatory requirement under the Companies Code are, I believe, fanciful and amount to virtually a vote of no-confidence in members of the tribunal. Quite obviously, the tribunal will take action only in cases where the offence has some relevance to the licensee's activities as a builder or to his fitness to be licensed as a builder.

The Hon. Mr Griffin criticises the provisions which are designed to ensure that those with a past history of bankruptcy or business failure are not able to operate as licensed builders. He is obviously quite out of touch with community concerns in this respect. One of the most common concerns expressed to me (and I am sure that the Hon. Mr Griffin has had similar concerns expressed to him) is that it seems far too easy for a person who has been bankrupt or who has been involved in a company placed in liquidation or receivership to continue in business through the medium of another company. Having regard to these very genuine community concerns, the Government is determined to bring in some additional controls in this area.

At the same time, there are sufficient safeguards in the Bill to ensure that the provisions do not operate harshly against applicants or licensees. In the case of an application for a licence, the onus will be on the applicant to establish special reasons why his application should be granted if he has previously been involved in bankruptcy or in a company in liquidation or receivership. This enables the tribunal to examine the reasons for the previous failure and to take them into account. Quite obviously, if there has been a liquidation purely for reconstruction purposes, it will not be difficult for the applicant to establish that this should not prejudice his application for a licence. Similarly, in the case of disciplinary action, the tribunal would simply not impose disciplinary action if the licensee was entirely blameless in the context of some liquidation or receivership of a licensed company or related company.

With respect to criticism of building contracts made by the Hon. Mr Griffin, the Housing Industry Association has recently prepared a draft of a revised standard building contract and the provisions of this Bill are generally consistent with that draft. In fact, the draft includes some of the very provisions which the Hon. Mr Griffin criticises in this Bill, including a specific provision that an estimated price must be a fair and reasonable estimate.

As indicated by the Hon. Mr Griffin, there was previously some consideration given to the possibility of establishing some kind of trust account into which a consumer might be required to pay moneys due to a builder before the tribunal would embark upon the adjudication of a dispute. That was in the context of the present legislation, under which some builders claim that applications are made to the Builders Licensing Board as a delaying tactic to avoid having to make payments to the builder.

The present Bill overcomes this potential problem in a quite different way. Where a consumer applies to the Commercial Tribunal in relation to an alleged breach of statutory warranty by the builder, the builder may, under clause 33 (6), ask the tribunal to adjudicate also on any alleged breach of contract on the part of the consumer. Therefore, where a consumer owes money to a builder and makes a frivolous application to the tribunal, not only will the application be dismissed, but the tribunal may make an order for payment to the builder of the amount that the consumer owes. This will avoid the builder having to go to the trouble and expense of issuing separate proceedings in a court to recover his money. In these circumstances, the proposed trust account provision is not necessary.

The provisions that I have just explained also indicate that the Hon. Mr Griffin is wrong when he says that there is no right of a building contractor to apply to the Commercial Tribunal for a set-off or counterclaim. It is quite clear that, where a consumer makes application to a tribunal, the tribunal may adjudicate upon all matters in dispute between the builder and the consumer and may make the same orders as could be made by a court of competent jurisdiction. I am somewhat surprised by the suggestion of the Hon. Mr Griffin that the tribunal should

be involved in conciliation of building disputes. I would have thought that that would cut across what he said previously relating to a mixture of functions. As he well knows, conciliation is an attempt to persuade the parties to a dispute to agree on some mutually acceptable resolution of it. It does not involve the giving of directions or the making of orders against either party. Where there is a dispute between a builder and a consumer, the first step that should be taken is to investigate the matter to obtain the necessary facts and then to meet with the builder and the consumer, preferably on the building site, to try to sort out the dispute.

Surely the officers of the Department of Public and Consumer Affairs are in the best position to carry out this function. Why should a person have to make an application to the tribunal in order for someone to attempt conciliation? The Government believes that disputes between traders and consumers should be submitted to a conciliation process first and that applications to courts and tribunals should be necessary only if that conciliation process fails. That was the policy adopted and followed by the previous Government with respect to the operations of the Department of Public and Consumer Affairs in its consumer affairs function.

I have received submissions on the Bill from the Housing Industry Association and the Master Builders Association. There is no need for me to go into detail on these submissions because officers of the Department of Public and Consumer Affairs are discussing the matters with those associations at present. In any event, almost all the comments made by the Housing Industry Association have been dealt with in my earlier remarks because the speech made by the Hon. Mr Burdett on this Bill consisted simply of his reading, word for word, large slabs of that association's submission, which I see that the honourable member now nods assent to. It is interesting to note that his criticisms now indicate that he got the Housing Industry Association submission and read slabs of it as his own comment.

The Hon. J.C. Burdett: I read parts of it.

The Hon. C.J. SUMNER: The honourable member at least could have acknowledged the authorship of the document.

The Hon. J.C. Burdett interjecting:

The Hon. C.J. SUMNER: The honourable member attempted to hoodwink the Council into thinking that they were all his own whiz-bang original ideas.

The Hon. J.C. Burdett: You have obtained a statement, from which you have been reading.

The Hon. C.J. SUMNER: The honourable member is now getting aggressive because he has not got officers to assist him in the preparation of his material. So he gets the Housing Industry Association to prepare his material, and he reads slabs of it into *Hansard* without even acknowledging its authorship.

The Hon. J.C. Burdett: Have you acknowledged the authorship of your speech?

The Hon. C.J. SUMNER: I am happy to say that the Commissioner for Consumer Affairs—

The Hon. K.T. Griffin: He wrote your speech.

The Hon. C.J. SUMNER: And so he should. I am happy for him to write my speech: that is what he is paid to do, and I am sure that he wrote many of the Hon. Mr Burdett's speeches when he was a Minister. There is no cause for criticism in that respect. All that I am saying is that the Hon. Mr Burdett decided to try to hoodwink the Council by reading out the Housing Industry Association submission and claiming it as his own.

The Hon. J.C. Burdett: I did not claim it as my own.

The Hon. C.J. SUMNER: The honourable member did not acknowledge its authorship.

The Hon. J.C. Burdett: Neither did you.

The Hon. C.J. SUMNER: I am not reading from a Housing Industry Association submission: I am reading from notes prepared by the Department of Public and Consumer Affairs. I really do not see what the honourable member—

The Hon. J.C. Burdett interjecting:

The Hon. C.J. SUMNER: The honourable member embarked on it initially. I am merely trying to point out that the honourable member read the Housing Industry Association submission.

The Hon. J.C. Burdett: I did not.

The Hon. C.J. SUMNER: Large slabs of it, without acknowledging it, and that is fair enough. Apparently that submission was made—

The Hon. R.C. DeGaris: The Housing Industry Association will have a better advocate after the next election.

The Hon. C.J. SUMNER: Who knows? I will not comment on that. Elections are in the lap of the gods. It will depend on the voters of South Australia at the appropriate time to make those decisions, which is as it should be. We can all come back: those who have been cocky and happy about their electoral prospects during the past two or three months may find that they have to eat their words, and those who have been pessimistic about their chances may find that they have won by an overwhelming majority, and that is on both sides of the Council, because there are pessimists on the Opposition side. I am sure that there are optimists on the Opposition side, and that is reflected in all members of Parliament when it gets close to an election time. In the final analysis, some are proved to be right and some are proved to be wrong, but it is not something that I wish to embark on at this time.

I conclude with some comments on the concerns expressed by the two major industry associations about the administration of this Bill being given to the Commissioner for Consumer Affairs. This is consistent with the occupational licensing framework established by the Government, and accepted by the previous Government. The Commissioner is also responsible for the administration of other similar occupational licensing legislation, including the Consumer Credit Act, the Second-hand Motor Vehicles Act and the Agents, Brokers and Valuers Act. None of the occupations dealt with under these Acts have raised any objection to this procedure.

I will briefly summarise the involvement of the Commissioner for Consumer Affairs in the administration of this legislation. First, he will be responsible for the staff involved in the administration of the legislation and the funds provided by Parliament for this purpose. Secondly, he will receive copies of licence applications made to the tribunal so that he may determine whether, on the information available to him, he should lodge an objection to an application. Obviously the Commissioner, having as one of his functions under other legislation the investigation of complaints from consumers, will often be in the possession of information that would be relevant to the determination by the tribunal of a licence application. Where the Commissioner provides information to the tribunal for this purpose, the rules of natural justice will require that the same information be disclosed to the applicant. The case of *Sobey v. Commercial and Private Agents Board* (1979) 22 SASR 70 is pertinent, in which former Walters J. said:

> . . . if an applicant for a licence should wish to comment on, or to contradict, information supplied to the board by the Commissioner [for Police], he should not be denied the right to do so. It would be wrong for the board to act on information obtained behind the back of an applicant without affording him an opportunity of commenting on it, or of contradicting it.

Thirdly, the Commissioner may (as any other person may) lodge an objection to an application for a licence. Fourthly,

the Commissioner may apply to the tribunal for variation or revocation of an exemption granted by the tribunal to a licensee under clause 15 (3) or an approval granted to a person under clause 20 (2). The licensee or other person may also apply for the same orders. Fifthly, the Commissioner may (as may any other person) lodge a complaint with the tribunal alleging that disciplinary action should be taken.

Sixthly, the Commissioner is obliged to conduct any investigation requested by the Registrar of the tribunal relevant to applications before the tribunal or matters that might constitute proper cause for disciplinary action. For example, the Registrar may wish to have a licence application further investigated before deciding whether he should grant the application himself under his delegated powers or refer it to the tribunal. Further, if an annual return lodged by a licensee discloses matters of concern to the Registrar, he may ask the Commissioner to investigate those matters.

Seventhly, the Commissioner has power to enter upon land and inspect building work. This is necessary for the purposes of enforcement of the Act and is entirely consistent with the powers conferred on authorised persons pursuant to section 22 of the present Builders Licensing Act.

Eighthly, the Commissioner is obliged to attempt conciliation of a dispute referred to him by the tribunal for this purpose. This is intended to cover any case in which a person applies direct to the tribunal without approaching the Commissioner to attempt to have the dispute resolved by conciliation. Ninthly, the Commissioner is obliged to submit an annual report on the administration of the Act. Tenthly, the Commissioner is generally responsible for enforcement of the Act and for instituting prosecutions for offences against the Act.

I hope the above summary will allay any concerns that the industry associations have about the involvement of the Commissioner for Consumer Affairs with the administration of this legislation. I have given a comprehensive reply to the matters raised by honourable members in this debate—in particular the Hon. Mr Burdett and the Hon. Mr Griffin—and no doubt they will now be able to consider the amendments that they wish to move. Consultations are proceeding with the industry associations—the Housing Industry Association and the Master Builders Association—and some Government amendments may be proposed in Committee.

Needless to say, I conclude by rejecting the criticisms of non-consultation again. There has clearly been consultation over a long period on the general principles, and the Bill is now being considered before the Parliament in the proper manner.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

[*Sitting suspended from 5.40 to 7.45 p.m.*]

GOVERNMENT MANAGEMENT AND EMPLOYMENT BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 1734.)

Clause 4—'Interpretation.'

The Hon. I. GILFILLAN: I move:

Page 2—

Line 4—Leave out 'Commissioner' and insert 'Director'.

Line 15—Leave out 'Commissioner' and insert 'Director'.

Lines 17 and 18—Leave out the definition of 'the Commissioner'.

After line 20—Insert definition as follows:

'the Director' means the person holding, or acting in, the position of the Director of Public Employment:.

This simple amendment replaces the word 'Commissioner' with the word 'Director', which is a more accurate reflection of the role as we see the job of the previously described Commissioner. The term 'Commissioner' tends to carry with it some sort of exalted almost semi-divine status, and we do not believe that the Bill carries anything like that significance or import for the job of the person who is in control of personnel management. The amendment is effective in going some way to achieve that change.

The Hon. M.B. CAMERON: We do not believe that this is an important amendment. True, it changes the name but basically it is the powers of the person who will be appointed that are important. The Opposition does not believe that the title is of the utmost importance, and therefore it is not going to the wall over the amendment. Certainly, we do not believe the name causes any difficulty.

The Hon. C.J. SUMNER: I am not sure whether the response by the Leader means he is supporting the amendment or not. He said he was not going to the wall. I appreciate that it is not that sort of issue, but it still begs the question of whether or not he will support the amendment. I assume he is opposing it and I compliment him on the good sense that he and his colleagues have shown in not supporting the change in name from 'Commissioner' to 'Director'. The Hon. Mr Gilfillan fails to realise that we now have three Commissioners in the Public Service Board: the Chairman and two Public Service Commissioners, three in all.

The Government's proposal is to reduce those three to one, and I would have thought the reduction from three to one—still calling the appointee 'Commissioner'—was a sufficient change in the role of this individual to satisfy the honourable member's desires to downgrade the position and the name it has. I oppose the amendment, and I compliment the Hon. Mr Cameron for his good sense in supporting it.

The Hon. M.B. CAMERON: I am surprised at the Minister's attitude. Although it is not an important issue, what the Hon. Mr Gilfillan has said has some sense. At this stage the Opposition intends to support the amendment.

The Hon. C.J. SUMNER: I am confused. When the Hon. Mr Cameron first spoke I gained the clear impression that he was not going to the wall over it and that he did not believe that it was an important amendment. Now he has spoken to the Hon. Mr Lucas and been given his instructions and is supporting the amendment. The Opposition is very confused about this matter. Our position is quite clear: the amendment is unnecessary and is just playing around unnecessarily with the Bill.

The Hon. K.L. MILNE: It is not really playing around. The words 'Public Service Commissioner'—

The Hon. C.J. Sumner: That is what they are called now and there are three of them. We will bring it down to one.

The Hon. K.L. MILNE: I know. The title 'Public Service Commissioner' has over the years grown into something rather frightening in some quarters, and reducing the power of three Commissioners into one makes it worse for some people. That is not intended by the Government or those responsible for the Bill, but that is a danger that can result. We simply believe it is better not to have an exalted kind of name. There is no need for the name 'Commissioner', given the powers, duties and protection that are given under this Bill. We believe it would be better for him to be part of the ordinary team and have a name the same as the others have of 'Director' or something close to it.

The Hon. C.J. Sumner: What about the Commissioner of Consumer Affairs?

The Hon. K.L. MILNE: That is a different matter. He is not dealing so much with people. The difference between this department and any other department is that it is dealing entirely with people: it is not builiding roads, wharves or looking at other areas—

The Hon. Anne Levy interjecting:

The Hon. K.L. MILNE: I think that that is possibly wrong, too.

The Hon. C.J. Sumner: What about the Highways Commissioner or the Commissioner for Stamps?

The Hon. K.L. MILNE: I could never understand why the Highways Commissioner was called that.

The Hon. L.H. Davis: What about 'Agent-General"?

The Hon. K.L. MILNE: Agent-General for the Public Service: that would be fun, but absolutely meaningless. I do not believe that the word 'Commissioner' is appropriate in any of the instances the Minister has cited. It should not be perpetuated in this Bill; it is not appropriate. He will have no greater powers than other people have. It looks as though he will be given powers of three Public Service Commissioners all rolled into one, and it would be much wiser and better understood when he comes to do his job if we give him a name to which people feel more accustomed.

The Hon. C.M. HILL: There is some worth in the suggestion of the Hon. Mr Gilfillan because the next level down in this new structure, as I understand the Bill, will be the chief executive officers who, as I see it, are the existing heads of departments—directors-general and so forth. The person at the top of the pyramid, if the title of director was attached to the office, would conform with the next level down which would comprise the people known as chief executive officers.

The title 'chief executive officer' fits rather neatly under the more senior person of director. The other elite in the new structure I suppose will be the members of the Government Management Board. As I understand it they will simply be known as board members, and the senior member will be known as the chairman of that board. This general framework fits in rather neatly with the name 'Director' pertaining to the man at the top of the pyramid.

The Committee divided on the amendments:

Ayes (10)—The Hons M.B. Cameron, R.C. DeGaris, Peter Dunn, I. Gilfillan (teller), K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, K.L. Milne, and R.J. Ritson.

Noes (7)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, M.S. Feleppa, Anne Levy, and C.J. Sumner (teller).

Pairs—Ayes—The Hons J.C. Burdett and L.H. Davis. Noes—The Hons C.W. Creedon and Barbara Wiese.

Majority of 3 for the Ayes.

Amendments thus carried.

The CHAIRMAN: Since these amendments have been carried, a number of situations throughout the Bill are affected. These alterations can be regarded as clerical corrections, if that is the wish of the Committee. The alteration simply removes 'Commissioner' and inserts 'Director'.

The Hon. C.J. SUMNER: I agree with that. It is very sensible.

The Hon. M.B. CAMERON: I move:

Page 2, line 29—Leave out 'a nominee of that Minister' and insert 'the Director'.

The Opposition believes that, if anyone has to act as a disciplinary authority in relation to a chief executive officer, it should be the Minister or at least not a person on a lower level than the Commissioner (now the Director). That is the area in which we believe disciplinary action should occur. A problem could arise where the Minister could designate anyone to be the disciplinary authority. We believe that when action is taken of that kind it should be done at the highest possible level, preferably the Minister, but certainly no lower than the Director.

The Hon. I. GILFILLAN: We oppose this amendment. We see that there can be occasions when it would be appropriate for the Minister to have a nominee other than the Commissioner (or the Director as it will now be).

The Hon. C.J. SUMNER: The Government opposes this amendment. We believe the Bill gives flexibility to Ministers to arrange for inquiries to be conducted by a third party. The Commissioner may be the person used, but this is not always appropriate.

The Hon. K.T. GRIFFIN: As I interpret that definition, it really means that the Minister can nominate anyone; that person does not have to be in the Public Service or have any particular status. One might end up with a chief executive officer being disciplined by some person outside the Public Service who really has a lesser status in the community than the chief executive officer. I think that that is intolerable. That is why I believe that if you are going to discipline a chief executive officer you really need to do it as the responsible Minister, or as the so-called Director, rather than bring in someone from outside the Public Service, or any other person perhaps in the Public Service, to exercise those heavy responsibilities.

The Hon. K.L. MILNE: I think that we have overlooked that point. We are asked to infer that the nominee of the Minister would be a member of the Public Service. However, if it is to be a member of the Public Service then we should say something like 'of no less senior rank'. It would be very embarrassing to have a junior member nominated by the Minister.

The Hon. M.B. Cameron: You could have a ministerial assistant.

The Hon. K.L. MILNE: Yes, a ministerial assistant disciplining one of these people. I am amazed that the Public Service has not picked that up.

The Hon. C.J. Sumner: You didn't pick it up.

The CHAIRMAN: Does the Attorney wish to speak? You were half way up.

The Hon. C.J. SUMNER: If it is restricted to the Minister or the Commissioner (and that is the proposition put by the Hon. Mr Cameron), there may be difficulties with that, simply because the Commissioner may not be appropriate in a particular circumstance because he may have some involvement that would render him inappropriate, so the Chief Executive Officers will have the general power to delegate (that is in the Bill as it is) but the Minister will not. So, unless some alternative is put in this definition of 'disciplinary authority', it means the Minister, come what may, will in all circumstances be personally responsible for doing the disciplining.

The Hon. M.B. CAMERON: The Hon. Mr Milne has picked up this point and it seems to me that there is some room for discussion on this matter as to whether it ought to be 'or a designated Chief Executive Officer'; or whether we keep it at that level. That at least spreads the opportunity for a person to be nominated by the Minister or at a lower level than the Commissioner, so I wonder whether we could perhaps leave discussion on that clause while we examine the possibility of a further amendment to take up that point of the Minister's which indicates that it is perhaps too restrictive with just having the two and we could perhaps look at it at one other level, but certainly no lower. I think it is wrong to have the matter wide open for any person to be drawn out of the public or at an inappropriate level of the Public Service. It seems to me that that is quite inappropriate.

The Hon. K.T. GRIFFIN: What does the Government have in mind in the description of a nominee of that Minister? Does it have in mind that the nominee in fact would be another Minister or some other person and, if some other person, what status, what sort of qualifications and so on?

The Hon. C.J. SUMNER: It is designed to provide for some senior person perhaps inside the Public Service or possibly even outside the Public Service.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: There are surely checks and balances within the system with respect to the appointment of a junior person to be the disciplinary authority with respect to a Chief Executive Officer. That would be something that is intolerable. The Minister obviously is not going to nominate a CO6 clerk to discipline a Chief Executive Officer.

The Hon. C.M. HILL: I think it is an intolerable situation and I cannot understand the Government bringing legislation into this House of review which gives a Minister the opportunity to appoint an officer junior to and in the same department as the Chief Executive Officer who will be disciplined. It is very poor legislation if the Government, having had these facts pointed out to it, wants to proceed and create that possibility. Some of us know that in practice there are times when the relationships between a Minister and his departmental head are not as smooth as perhaps they should be and, if on such an occasion this question of disciplinary authority arose and the Minister had the right under the law to appoint a junior officer to such a departmental head, that is without any doubt at all a very intolerable situation. We in this Council should see to it that such legislation does not pass the Parliament. It is our job here to put it straight, and I would hope that we could find sufficient strength on the floor of this Council to correct an obvious mistake that the Government has made.

The Hon. C.J. SUMNER: I do not think it is an obvious mistake, but honourable members have raised points which I am happy to consider. If this could be deferred for some time, I will be happy to consider the propositions put by the Opposition.

The CHAIRMAN: Because it has been amended at this stage you will have to recommit it.

The Hon. C.J. SUMNER: We will leave it as it is and I will undertake to recommit it on that point.

The CHAIRMAN: For the Bill to be recommitted, the Hon. Mr Cameron will need to withdraw his amendment.

The Hon. M.B. CAMERON: I so do.

Leave granted; amendment withdrawn.

The Hon. M.B. CAMERON: I move:

Page 3, after line 6—Insert paragraph as follows:

(aa) the manner in which each of the applicants carried out the duties or functions of any position, employment or occupation previously held or engaged in by the applicant;

This is an important amendment for the Opposition. It indicates that, when a person is applying for a position, the word 'merit' means that the previous manner in which they carried out the duties and functions of a position, employment or occupation previously held or engaged in by the applicant is taken into account not 'where relevant' but should be taken into account. We believe that you cannot put any qualification on merit and that the words 'where relevant' really put a qualification on the merit of the person. If a person in a previous position has conducted himself in an appropriate and honest manner, that should be taken into account—and not 'where relevant'. We do not believe that there is any situation where the words 'where relevant' should be taken into account.

The Hon. I. GILFILLAN: We are opposed to this amendment. The relevance we believe is significant in all of these factors. It seems over cumbersome to impose on an assessment for merit in a selection process a mandatory assessment of the manner in which each of the applicants carried out the duties or functions of any position, employment or occupation previously held or engaged in by the applicant. That has absolutely no restriction. I also point out in *(a)* that those characteristics are only to be taken into account where 'relevant to the carrying out of the duties in question'. Even with the amendment proposed by the Opposition, the relevant factor is included in the wording and we believe that relevance is quite a significant part in getting an assessment of merit for the purposes of selection for filling positions in the public sector.

The Hon. C.J. SUMNER: I oppose the amendment. The modern concept of personnel management places prime importance on those requirements outlined in paragraph *(a)* of the Bill's definition. The Bill allows for past experience to be considered to the extent that it is truly relevant to the position considered. The definition of 'merit' presently in the Bill has been formulated following wide consultation with Commissioners of the existing board, a working party with union representatives and experienced Public Service managers, and members of the review committee. The general form of the amendment appears to be derived from earlier drafts, which in fact were specifically rejected during the consultations. I support the Hon. Mr Gilfillan in rejecting the amendment.

The Hon. M.B. CAMERON: I am very disappointed that that situation has been arrived at. I cannot think of any situation where a person's previous attitudes and the manner in which they carried out their previous positions would not be relevant to the present position. There are so many things that a person does: it could be their honesty in a position. Surely the first thing that one does when one is going to employ a person is to look at the merit of the person, and the first aspect of merit is how they carried out their previous job.

I am puzzled by the rejection by the Hon. Mr Gilfillan and the Attorney-General of what I consider to be a very sensible amendment. I was surprised when I saw the words 'where relevant' appear. As a small employer myself, the first thing that I would do would be to look at the person's previous track record in employment. The words 'where relevant' do not come into it.

The honesty of the person, their manner, and whether they are friendly—all these things must come into it. The first thing that one does is go to a previous employer and find out what the person is like. Why the words 'where relevant' are needed is beyond me.

The Hon. K.L. MILNE: It is not as clear cut as the Hon. Mr Cameron says, particularly in paragraph *(b)* (ii)— 'the extent to which each of the applicants has potential for development'. Many jobs in the Public Service do not require development. Some rotten, repetitive jobs have to be done by somebody. There is no future in them, but they need someone who likes that job and is capable of doing it. Whether they are capable of promotion is irrelevant. In that case, the words 'where relevant' are important unless we do away with that paragraph altogether, and I would not necessarily recommend that. To take out 'where relevant' and leave in paragraph *(b)* (ii) is an imposition on some people whose capacity is limited, and who are prepared to do these repetitive jobs. The safest thing is to leave it as it is.

The Hon. M.B. CAMERON: I do not think the Hon. Mr Milne understands my amendment. The words 'where relevant' are not taken out: the only words taken out are those in lines 14 to 18. The words 'where relevant' are left in in relation to subparagraph (ii). 'Where relevant' is taken out only in relation to subparagraph (i).

The Hon. I. GILFILLAN: What about the use of the word 'relevant' in paragraph *(a)*? How is the honourable member consistent in keeping 'relevant' in paragraph *(a)* and making it inappropriate in paragraph *(b)* (i)?

The Hon. M.B. CAMERON: 'Relevant to the carrying out' is a different use of the word 'relevant', as I understand the meaning of that paragraph. The Hon. Mr Milne can now feel free to support the amendment because we have left in the words 'where relevant' in the area where he wants them and have taken them out only where we consider them to be a qualification on merit which we do not regard as a necessary qualification.

The Committee divided on the amendment:

Ayes—(7)—The Hons M.B. Cameron (teller), Peter Dunn, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes—(10)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, R.C. DeGaris, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, and C.J. Sumner (teller).

Pairs—Ayes—The Hons. J.C. Burdett and L.H. Davis. Noes—The Hons C.W. Creedon and Barbara Wiese.

Majority of 3 for the Noes.

Amendment thus negatived.

The Hon. M.B. CAMERON: I move:

Page 3, after line 20—Insert definition as follows:

'the Minister responsible for the administration of this Act' means the Minister of Labour:

The Opposition believes that it is important that there be some indication, in a restructuring of the Public Service, of where the administration of this Act would sit. A Liberal Government would see the Minister of Labour as the appropriate Minister.

The Hon. I. GILFILLAN: We oppose this amendment in that we consider that it is appropriate that it be left flexible. It could be a Minister or the Chief Secretary. Therefore, I will not support the amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment. The question of which Minister is responsible for an Act should be left for the Government of the day. It is unreasonable to designate that in an Act unless there are very special circumstances as to why it should occur: that is not indicated in this case.

Amendment negatived.

The Hon. M.B. CAMERON: I move:

Page 4, lines 7 and 8—Leave out the definition of 'senior position' and insert definition as follows:

'senior position' means—

(a) a position classified in accordance with the classification structure for Executive Officers at or above the level of Executive Officer Grade 3;

or

(b) a position classified in accordance with any other classification structure at a level the remuneration for which equals or exceeds that for a position classified Executive Officer Grade 3,

but does not include a position of Chief Executive Officer:.

It is our belief that the definition of 'senior position' is too restrictive and not sufficiently definitive. The Opposition's intention is to insert that such a position should be in respect of a person the equivalent of an EO3 or above. That view indicated to us is supported widely within the Public Service.

Clearly, some departments are run by people on EO3 levels and in some instances people have a substantial position below that level. In that sense EO3 or its equivalent should be defined as a senior position. The total number of senior positions will be increased if my amendment is accepted. We want a functional and sensible piece of legislation. For that reason we believe that the amendment should supported.

The Hon. I. GILFILLAN: We support the intention behind the amendment. The only reason the Hon. Mr Cameron's amendment is duplicated in my amendment is that we have proposed a different level, that is, EO1. Rather than canvass the amendment I ask the Attorney to inform the Committee of the level of increase in personnel that would be involved if the classification is changed from EO3 to EO1. Is the Attorney in a position to comment on the significance of that change? At this stage I indicate that we will support the definition rather than leave it to prescription by regulation. We prefer to see it spelt out in the Bill.

The Hon. R.I. LUCAS: I support the Hon. Mr Cameron's amendment, and I indicate that I will oppose the Hon. Mr Gilfillan's amendment. I feel that widening the application of the senior position to the level sought by the Hon. Mr Gilfillan—in effect, to include EO1 and EO2, whereas the Hon. Mr Cameron draws the line at EO3 and higher—counteracts the thrust of the legislation. An essential component of the legislation is that responsibility for personnel management devolves upon the chief executive officers of departments. Being chief executive officers they will have responsibility for filling positions through to the level of senior officers. It will only be for positions of senior officers and above that the Commissioner or Director of Public Employment will now have some say with respect to the final ratification and approval of appointments.

Given that we have taken the general view that we have not been happy with the breadth of power of the Commissioner of Public Employment, it is consistent with that view and with the view that I have that chief executive officers should have as much power as possible (let the managers manage is the phrase that has been used) and we feel that the exemptions (which is what the senior positions will be) should be restricted as much as possible. That is why I indicate my support for the Hon. Mr Cameron's more limited amendment—the EO3 level—and my opposition to widening it to the level sought by the Hon. Mr Gilfillan. Can the Attorney say how many persons will be caught in the definition of 'senior position' under the amendment moved by the Hon. Mr Gilfillan? In other words, roughly how many persons are we talking about in the EO1 and EO2 categories and what are the salary equivalents as envisaged in the Hon. Mr Gilfillan's amendment?

The Hon. C.J. SUMNER: The Government would prefer to oppose both amendments. The Bill provides for the designation of senior position to be determined at some future time and promulgated by regulation. That gives the Government flexibility to determine which positions should be considered senior positions and have the selection procedures applicable to them. Both the amendments place senior positions within some kind of straightjacket. The Hon. Mr Gilfillan's straightjacket is not as tight as the Hon. Mr Cameron's. Nevertheless, in principle we believe it should not be imposed in this case.

The amendment will produce certain difficulties requiring further amendment to the legislation to bring in new groups or remove other groups from the designation of senior position. The suggestion that senior positions only apply to EO3 and above would limit the flexibility of deploying senior management in the service, which was an integral part of the review of Public Service management proposals. The Hon. Mr Cameron's proposition runs directly counter to that flexibility which is being written into the legislation and which I thought all honourable members wish to pursue, given their comments during the second reading debate.

There are problems in using the level of remuneration to identify positions (that is, by reference to EO levels). There are medical specialists, for instance, at MO7 level who are not employed as executives. The Government believes that there is a considerable case for designating senior positions

in a flexible manner on the basis of their function rather than on the basis of salary. I suppose the other point is that there is no such thing as an executive officer grade 3, which is a level proposed in the Hon. Mr Cameron's amendment. There is a classification code of EO3 which represents a particular level in the executive officer classification group.

I see no problem with the Government Bill. It provides flexibility. The public and the Parliament know the designated senior positions because of the regulations that have to be made. I am advised that there are some 200 EO1 positions and above and that there are some 50 or 60 EO3 positions and above. Of course, that does not include the specialists who may be at a similar salary classification (including medical specialists, crown law officers and other specialists) who are paid in accordance with a different range than the normal AO or EO Public Service classifications. I do not know whether my advisers have figures for all EO or equivalent classifications and above throughout the Public Service. As I have said, there are some 200 EO1 positions and above and about 50 or 60 EO3 positions and above.

The Hon. I. GILFILLAN: I direct a question to the Leader of the Opposition. Bearing in mind the Opposition's attitude to the Bill, if we restricted the power of the Government to determine by regulation how far the Director of Public Employment would be able to exercise control, it would seem to me that this would suit the main intention of the Opposition's view of the role of the Director. I would like the Leader's response. I think there is good reason to provide a determining level in the legislation if only for some degree of predictability for the public sector itself. There is uncertainty in not knowing whether or not those jobs—and very significant jobs they are—in the public sector will be on fairly short term change, because changes by regulation can be undertaken very rapidly. This seems to leave the integration of these executive officers into the public sector open to uncertainty. There is good sense in determining a level.

I appreciate that there is some difficulty in providing a sharp delineation between executive officers and other people on the same salary but who may not be described as executive officers, but I would not think it was beyond the wit of the Director to ask the CEO of the department to make a recommendation. That does not seem to exclude good sense in personnel management because it embraces people who are not technically executive officers but who are paid fairly handsome salaries. If the Government is not prepared to accept any definition being written into the legislation, given that the Opposition is determined to stick to its EO3 proposal, we will test our amendment but we will not make too much fuss about it if the amendment in regard to EO1 officers is defeated, and we would then support the Opposition's amendment. I hope that the Leader of the Opposition will explain, because I see a contradiction in relation to the role of the Director.

The Hon. M.B. CAMERON: If I understand the honourable member correctly, he said that we want some flexibility.

The Hon. I. Gilfillan: I would have thought you would like that.

The Hon. M.B. CAMERON: I accept that, but from the point of view of the officers concerned, a definitive position must be provided in the Bill. We can get to the point where flexibility is too great, especially, as the honourable member points out, in regard to regulations. In my time in this Council regulations have been used as a different method of achieving aims because, as the honourable member well knows, they can be brought in or defeated if one House believes they are inappropriate, but a couple of hours later they can be back in and we can be back to the same situation, particularly if the House is not sitting. There is a lack of certainty.

In our opinion, in relation to personnel managment, the less we have to rely on regulations, the better, where it is possible to achieve certainty. I think that the honourable member and I are on the same wave length in regard to this clause. There must be as much certainty as possible about the position facing public servants so that they know where they are going in the short term and possibly in the long term. Regulations can be very difficult.

The Hon. R.I. LUCAS: I think that both the Attorney and the Hon. Mr Gilfillan have slightly misunderstood the reason for our amendment. It is true that generally we have argued for flexibility, as has the Government, throughout the Bill, but our problem with saying, as the Attorney suggested, 'Let us leave it open to regulations as to where the line is drawn' is that we have argued consistently that chief executive officers must have as much power over appointment of their personnel as possible, so the line ought to be drawn pretty close to the top, thus restricting the number of senior positions.

Under our amendment, the Director of Public Employment, the powers of whom we want to circumscribe somewhat, will have power in regard to 50 positions—EO3 category and higher. Under the amendment of the Hon. Mr Gilfillan, the Director will have that power with respect to 200 or more positions and therefore correspondingly the CEOs of the departments will not have that power with respect to 200 or 150 positions—the difference between 200 and 50 in regard to both amendments.

The Attorney-General says that there should be flexibility. That is fine, but the Government of the day by regulation could well draw the line as low as it likes, even as low as EO1 or lower, should it want to give more power to the Director of Public Employment in respect to what it defines as senior positions, thereby giving less power to the Chief executive officers.

The Hon. I. Gilfillan: It might vary from department to department. It might dip down lower in some departments than in others.

The Hon. R.I. LUCAS: That may or may not be the case. It might be correct, and perhaps the Attorney can comment. Nevertheless, whether it varies between departments, the point is that through regulations the line can be dropped lower than we would wish. We would like to restrict the line to the position of EO3 which, as the Attorney has indicated, would involve only some 50 positions in regard to which the Director of Public Employment would have some say.

The Hon. C.J. SUMNER: The Government prefers the Bill as introduced but, to put everyone out of their misery and in the light of the Hon. Mr Gilfillan's indication that he will support the Opposition if we do not agree to his amendment, and as his amendment is more reasonable than the Opposition's amendment, I will support the Hon. Mr Gilfillan's amendment.

The CHAIRMAN: We have been discussing two amendments. The Hon. Mr Gilfillan has not yet moved his amendment, and I ask him to do so.

The Hon. I. GILFILLAN: I move:

Page 4, lines 7 and 8—Leave out the definition of 'senior position' and insert definition as follows:

'senior position' means—

(a) a position classified in accordance with the classification structure for executive officers;

or

(b) a position classified in accordance with any other classification structure at a level the rate of remuneration for which equals or exceeds that for positions classified at the lowest level in the classification structure for executive officers,

but does not include a position of chief executive officer:.

Definition of 'senior position' struck out.

The Hon. M.B. CAMERON: We still prefer our amendment regarding the EO3 level but, in view of the Attorney's indication that he intends to support the Hon. Mr Gilfillan, we will not call for a division.

The Hon. I. Gilfillan's amendment carried.

The Hon. M.B. CAMERON: I move:

Page 4, after line 28—Insert paragraph as follows:

(fa) the Electricity Trust of South Australia established under the Electricity Trust of South Australia Act, 1946;.

This amendment excludes from the definition of 'State instrumentality' the Electricity Trust of South Australia. This would bring it into the same position as the State Bank and SGIC, both very similar bodies acting in a similar way. Discussions the Opposition has had with professional engineers and others in the community suggest that the trust should be excluded to enable it to be in a similar position to these other two organisations.

The trust is a very different organisation in terms of Government instrumentalities, and we believe it would be advantageous to South Australians generally to have this position maintained. I ask the Committee to support the amendment.

The Hon. I. GILFILLAN: We support the amendment. It is important to remember that the Minister of Mines and Energy is about to set up a working party to review the whole perspective of ETSA, and obviously this would be significant to that working party. That is one factor. The other is that we support the argument of the Leader of the Opposition that ETSA has not at this stage of its development shown the characteristic that requires it to be part of the public sector for the purposes of this legislation, and that its individuality and identification are best served by exempting it at this stage.

The Hon. C.J. SUMNER: The Government is opposed to the amendment. There is no analogy between ETSA and the other two organisations specifically exempted from the operation of this Bill, namely, the State Bank and SGIC, which operate in a competitive market environment. ETSA is a monopoly and now is clearly subject to ministerial direction.

The Hon. M.B. Cameron interjecting:

The Hon. C.J. SUMNER: It will be. Therefore, for those two reasons there is no basis for saying that ETSA should be excluded from the operation of the Bill. If at some time a Government believes it should be excluded, it can be excluded under subsection (2) of the definition, which indicates that any specified body may be declared by proclamation as not a State instrumentality for the purposes of this Act. To automatically exclude ETSA on the basis that it is the same sort of trading corporation as the State Bank or SGIC is erroneous.

The Hon. I. Gilfillan: It is competing with SAGASCO.

The Hon. C.J. SUMNER: No, it is not competing in the same sort of competitive environment as those two instrumentalities. It is clear—

The Hon. M.B. Cameron interjecting:

The Hon. C.J. SUMNER: No, it is not. The State Bank is operating in a very competitive commercial environment, as is SGIC. ETSA is not and, even if it is said that there is competition between ETSA and SAGASCO, it is fairly limited competition as well and fairly well regulated. We believe there is no basis for excluding ETSA from the operation of those parts of this Bill that will apply to it. Not all the Parts will apply to it, but just the general principles of management and personnel.

The Hon. K.L. MILNE: The answer lies probably between what the Attorney says and what the Hon. Mr Gilfillan says. There is a case for the trust to be excluded, but the reasons are quite different. It is not commercial in that sense, but it is different since it is an organisation that provides services to every home and the possibility of political interference is almost unlimited. Certainly, that is not so in the banking or insurance world. Any Government knows perfectly well that to interfere in those worldwide commercial organisations, which are linked to the worldwide system, would be madness.

As to ETSA, already there are cases that can be cited where there has been interference in certain electorates. This is one reason why we should keep the trust as far as possible from Parliamentary or political interference. Only last week we agreed that ETSA should be brought officially under a Minister, and it was assumed that either the Premier or the Minister of Mines and Energy had enormous influence on it.

In fact, the Premier just made a decision recently and said that there would be a reduction in tariffs (or that there would not be an increase or whatever) and that is what happened. It would be most unfortunate to place such an organisation, which has to plan some 20 years ahead in some instances, in a position in which it can be interfered with at the whim of a particular Government. In our system of government where we have large Parties with members screaming at the Premier or the Leader of the Opposition to show some sort of preference in a marginal electorate, it can be very dangerous. It is wise at this stage to keep the trust out of the Bill until we see how the Bill works.

Amendment carried.

The Hon. K.T. GRIFFIN: In relation to 'State instrumentality', I asked in the second reading debate whether the two universities and the Institute of Technology were included within that definition. What instrumentalities are likely to be declared to be included or not included under that definition?

The Hon. C.J. SUMNER: I would have thought it was reasonably clear that the universities were not included as State instrumentalities because they are not subject to control or direction by the Minister.

The Hon. K.T. Griffin: They don't have to be, under the definition.

The Hon. C.J. SUMNER: Just a minute. They could be declared as State instrumentalities but they are not State instrumentalities by virtue of this Bill. There would not be any intention to include universities as State instrumentalities under this legislation. There is no intention to declare universities or the institute as State instrumentalities. That would not be appropriate.

The Hon. K.T. Griffin: What about the College of Advanced Education?

The Hon. C.J. SUMNER: As I read it, 'State instrumentality' would not include the South Australian College of Advanced Education, Adelaide University, Flinders University or the South Australian Institute of Technology because they are not subject to control or direction by a Minister. They could be declared under the definition to be a State instrumentality, but—

The Hon. K.T. Griffin: They don't have to be subject to control or direction of the Minister if they are comprised of persons, a majority of whom are appointed by the Governor, Minister or agency. The control or direction of the Minister is an alternative.

The Hon. C.J. SUMNER: No, it is not; it has to be both. Clearly, the universities are not included unless they are declared; neither, I believe, is the South Australian Institute of Technology. However, it appears that the South Australian College of Advanced Education would be included as a body corporate that has a governing body comprised of persons, a majority of whom are appointed by the Governor.

The Hon. K.T. Griffin: Do you propose to declare out the South Australian College?

The Hon. C.J. SUMNER: It is not proposed to declare them out.

The Hon. R.I. LUCAS: I welcome the Attorney-General's undertaking, on behalf of the Government, that the universities are not to be included. I remember only two years ago a similar provision in the South Australian Government Financing Authority legislation and I had no idea that that provision would have been used to declare the universities as a State instrumentality which, in the end, was done under that particular piece of legislation. In relation to subsequent clauses, in particular the power of the Minister (under clause 6) with respect to equal employment opportunity programs, I am aware that in relation to at least one university, one Government department and Minister are not very happy about the university's response to a particular program that they would have liked to see implemented in that institution.

I am pleased to hear the Attorney-General say that this Bill will not be used by the Government to ensure that that department has its way with respect to that institution. Nevertheless, it raises the question in relation to the college. As it is not going to be declared out, the particular Minister responsible for an equal employment opportunity program would have those sorts of powers in relation to the college. I am not aware of the view of the Director of the Adelaide College of Advanced Education to the Bill giving the Government and the particular Minister power to institute those programs which may be contrary to the views of the governing council of the college. I do not know whether the Government has in mind instituting such programs through this legislation in the college, and that is why the Attorney-General has indicated, in particular, that the college would not be declared out of 'State instrumentalities' under this particular legislation.

The Hon. C.J. SUMNER: If the South Australian College of Advanced Education is included in the Bill then provisions and procedures available in it could be applied to the college.

The Hon. R.I. Lucas: Is the Minister aware of any intention—

The Hon. C.J. SUMNER: I do not know what the intention is; I cannot answer for that at this stage. All I know is if the Government wishes to use the provisions of the Act as far as equal opportunity management plans are concerned with respect to the South Australian College of Advanced Education, then it could do it.

The Hon. C.M. HILL: Do the State's artistic performing companies, such as the instrumentalities of the South Australian Opera Company and the State Theatre Company (which both operate under their own Acts) come within the scope of this definition? If so, will the Minister undertake that the traditional artistic freedom enjoyed by those institutions will not in any way be overwridden as a result of this legislation.

The Hon. C.J. SUMNER: The honourable member is a strange fellow. He refers to traditional artistic freedom. I recall his being a very trenchant critic of one of the State instrumentalities, at any rate, that is responsible for the performing arts in this State. No doubt, as a future Minister for the Arts I suppose he wants it both ways. He is wanting—

The Hon. C.M. Hill: Answer the question.

The Hon. C.J. SUMNER: I am. You want to assert the artistic freedom and a few months ago—

The Hon. C.M. Hill: You're trying to be funny.

The Hon. C.J. SUMNER: I am not trying to be funny. A few months ago the honourable member was wanting to organise their program. He was fed up. He did not like going to the theatre any more because he did not like the plays. So, as a future Minister for the Arts he was going to fix them up and make sure they put on something a bit different. That is what the honourable member was saying; there is no doubt about that. Now he comes in and says, 'Well, the Government has some dastardly plot to interfere with the artistic freedom of the State companies.'

The Hon. C.M. Hill: I didn't say that at all. I asked you a plain question.

The Hon. C.J. SUMNER: You are getting a plain answer.

The Hon. C.M. Hill: No, I am not.

The Hon. C.J. SUMNER: You are getting a very good answer and you are being ticked off because of your inconsistency as shadow Minister for the Arts and a potential future Minister.

The Hon. C.M. Hill: You're still trying to work out the answer.

The Hon. C.J. SUMNER: No, I am not.

The Hon. C.M. Hill: This is one thing the Attorney is good at—talking, talking, talking—

The CHAIRMAN: Order!

The Hon. C.J. SUMNER: The honourable member is getting too sensitive. He is championing the cause of artistic freedom for our State companies. I remember him a few months ago saying he was boycotting the theatre—he was not going any more—unless they fixed up its program. I suppose that is his choice. However, the question really is whether or not he would wish to impose his particular artistic preferences on the companies as a future Minister for the Arts. Those organisations, having boards appointed by the Governor, would be covered by the legislation. That is about as far as one can take the matter with respect to their management practices. The question of the artistic freedom of these organisations is another issue that I do not think is appropriate to debate here.

The Hon. C.M. HILL: The Minister amazes me. As I said by interjection, the one thing he is good at in this Council is padding his reply in the early stages while he tries to marshall his thoughts. The padding usually involves trying to score cheap points and digging into history when even he knows that his own memory fails him from time to time.

If his memory was not failing, he would well know that, at the time I gave some criticism of the State Theatre Company, I made it perfectly clear that I was not wanting in any way to interfere with the artistic freedom to which they are entitled and which they enjoy, but which now under the Bill before us I fear they may not enjoy in the future because, when he finally got around to finding an answer to the question, he omitted to reply to that section of it. We have an understanding that these instrumentalities will come under this legislation. What I want from the Minister, on behalf of the artists and the general cultural community in this State, is (as I requested previously), a clear undertaking from the Minister that the artistic freedom of these instrumentalities will not in any way be curtailed as a result of the legislation before us. If there is any chance of such a curtailment, I will move an amendment to exclude them from the provisions. It is as simple as that. So again, I am asking—

The Hon. C.J. Sumner interjecting:

The Hon. C.M. HILL: No, I did not.

The CHAIRMAN: Order! The honourable Attorney has had lots to say on this. Let us hear the Hon. Mr Hill.

The Hon. C.M. HILL: I am only asking the simple question for the third time, Mr Chairman: will the Public Service involvement in these instrumentalities as a result of this measure in any way adversely affect the artistic freedom which they enjoy and which most certainly they should enjoy?

The Hon. K.L. Milne: It would probably enhance it.

The Hon. C.M.HILL: I cannot understand that response of the Hon. Mr Milne. It is a serious matter and, if the Minister does not think it is a serious matter, let him go down there a little more often.

The Hon. C.J. Sumner: I go down there more often than you. You boycotted it.

The Hon. C.M. HILL: I did not boycott it.

The CHAIRMAN: Order! The Council and the public are not interested in whether the Minister or Mr Hill attends the theatre more.

The Hon. C.M. HILL: I concur, but I still want an undertaking.

The Hon. C.J. Sumner interjecting:

The Hon. C.M. HILL: The Minister is trying to provoke me. I simply want the undertaking. This is the one place, the Parliament of this State, where protection should be given to such principles.

The Hon. C.J. Sumner: Give us the line about defending the country.

The Hon. C.M. HILL: Never mind about defending the country. I am defending the arts people. It is good that someone is doing it, because apparently the Government overlooked it when it brought this Bill in. Its record during this debate so far indicates that there have been some amazing omissions in the legislation, so I think that the Minister should give the undertaking. I ask him again for it.

The Hon. C.J. SUMNER: The honourable member is trying to provoke a debate when none exists. I find it astonishing that someone who was prepared to criticise the State Theatre Company and its program—someone who made it quite clear that as Minister for the Arts he would get stuck into them and sort them out and make them put on popular programs—is now coming in here on behalf of such organisations and talking about artistic freedom. It is only Part 11 of the Bill that would apply to those organisations. The detailed procedures in the Bill that apply to the actual Public Service do not apply to ETSA (that is a point I made previously); they do not apply to the State Theatre Company, the Festival Centre or the Opera Company. So, I think it should be clear that this Bill has no effect on the current principles with respect to artistic freedom or whatever that operate currently. If they are to be changed, perhaps they need to await the honourable member's accession, his return to the position of Minister for the Arts—

The Hon. C.M. Hill: They won't be waiting very long.

The Hon. C.J. SUMNER: I understand that the honourable member is in a bit of trouble. Even if Mr Olsen became the Premier, the honourable member's disappearing for six weeks at a crucial time of the year has put him in a bad light with his Leader.

The Hon. C.M. Hill: Somebody had to go over there and keep their eye on you.

The Hon. C.J. SUMNER: No, that is not right. You did not find me.

The Hon. C.M. Hill interjecting:

The CHAIRMAN: Order! It will be a long enough night without this kind of argument.

The Hon. C.J. SUMNER: I was a representative of the Government at Monza, where I promoted the Grand Prix in the Italian language. That was a substantial part of the great success that the Grand Prix was last weekend. This Bill does not affect the current arrangement as far as the relationship between the Government and those organisations that the honourable member has mentioned with respect to such things as artistic freedom.

The Hon. M.B. Cameron interjecting:

The Hon. C.J. SUMNER: No, it is the honourable member opposite. What is applicable to them are the general principles of public sector management, and I do not see that that impinges on any principles of artistic freedom that these organisations enjoy, whatever they might happen to be, and I suspect with considerable doubt as to what they are, in light of the honourable member's previous comments about the State Theatre Company.

The Hon. R.I. LUCAS: The Attorney glosses over the fact—

The Hon. I. Gilfillan interjecting:

The Hon. R.I. LUCAS: Well, that is true. He spent a lot of time glossing over the matter I raised regarding the College of Advanced Education and the matter that the Hon. Mr Hill raised regarding organisations such as the State Theatre Company. The Minister says that Part 11 is only in relation to principles of public sector management. What the Minister does not point out to the Committee, and he is being a little deceptive in that (and that is not like him), is the power under clause 6(3) to order equal employment opportunity programs. What that provision gives the Minister (and let us take the college or the State Theatre Company), is that, if the Government of the day decides that young persons or Aborigines or Vietnamese are disproportionately represented amongst the unemployed, the Government can choose in an equal employment opportunity program, as that provision indicates, to secure employment for them in the public sector. The Minister is able to direct those bodies, such as the College of Advanced Education (or, if we look at Mr Hill's example, the State Theatre Company), to employ under such a program these classes (such as young persons, Vietnamese or Aborigines) and to accord them preference in employment.

It is possible through this provision that the Government and the Minister of the day could interfere in the normal hiring practices of the State Theatre Company and the College of Advanced Education (the matter that I raised earlier). It is not correct for the Attorney to say that part II does not have much effect on it.

The Hon. C.J. Sumner: You want to take it out, anyway.

The Hon. R.I. LUCAS: The Attorney is opposing it. The whole point is that the Attorney says that part II has no effect on the relationship between the Minister and the bodies that I have mentioned. We could pass this clause and then find that we lose the argument with respect to clause 6 and the equal opportunity programs and in particular that clause 6 (3) remains part of the Bill. The Attorney says that part II has no effect on the relationship between the Government and the bodies I have mentioned in respect to artistic provisions.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: That is not correct.

The CHAIRMAN: Order! I thought the Hon. Mr Lucas was asking a question. We are still on clause 4, but the Hon. Mr Lucas is speaking to clause 6.

The Hon. R.I. LUCAS: That is not correct, Mr Chairman. I am arguing that what the Attorney has said is not correct in relation to clause 4. The Attorney argues that under clause 4 State instrumentalities (such as the college, the State Theatre Company and so on, because they will be included in the definition under clause 4, which relates to what part II will do in relation to State instrumentalities) are not really affected. In relation to the State Theatre Company, the Attorney said that the Bill will not affect its present artistic freedom. I am saying that part II could enable the Government of the day to order the State Theatre Company or the college to employ a certain percentage of Vietnamese, Aborigines, young people or whatever.

The Hon. C.J. Sumner: Why have you got it in for Aborigines and Vietnamese?

The Hon. R.I. LUCAS: Let us raise the level of the debate. If the Attorney wants to get through this debate at a respectable time, he should raise the level of the debate. Let us not stoop to that level. I do not have it in for Aborigines or Vietnamese, and the Attorney should know that. I am pointing out that through this provision the Minister can order that certain numbers be employed. If it happens that Aborigines, Vietnamese or Methodists—the defined class—are not as artistically gifted as other persons in the community, there can be an effect. That is an argument in relation to the State Theatre Company. However, I am more concerned about the college. I am saying, as I said earlier, that there is already a Minister and a department trying to institute certain programs in a tertiary institution—not the college—and not meeting with much success.

The Hon. C.J. Sumner: Who is? Name them.

The Hon. R.I. LUCAS: I will talk to the Attorney later and tell him. It is someone very close to the Attorney. It is possible that it will flow through into the college and, therefore, this provision could be used. The only point I am making is that it is not correct for the Attorney to say, 'Do not worry about it; part II will not affect and cannot affect whatever is declared to be a State instrumentality.' That can occur if clause 6 (3) remains in the Bill.

The Hon. C.J. SUMNER: The honourable member should be making these comments with respect to clause 6, but he has jumped the gun. I made it clear that with respect to the South Australian College of Advanced Education the Bill is applicable—Part II—and that means that the provisions of clause 6(3) are also applicable. The Hon. Mr Hill then asked me what I regarded as a question that was somewhat of a red herring when he introduced the question of artistic freedom in State funded artistic bodies such as the State Theatre Company. I gave a limited reply and said that I did not believe (and I have no doubt that the Hon. Mr Hill was referring to clause 6(3), although he referred to the Bill at large) that the Bill would be used to interefere with the artistic freedom of Government funded arts bodies. Whatever the position with respect to artistic freedom at the present time (and that may be open to some dispute) I do not see it being affected by the provisions of this Bill.

I am not sure whether the Hon. Mr Lucas is suggesting that in every play, irrespective of what it is, there must be 50 women, 50 men, two Aborigines, one Vietnamese, four Methodists and three Catholics. I thought we were having a serious debate, but that is the nonsense that the Hon. Mr Lucas is putting forward. I do not see this Bill interfering with the artistic freedom of theatre companies, whatever that artistic freedom might be. I do not want to get into a debate as to the limits on artistic freedom in respect to State funded companies. That is a different issue which can be debated at some other time. Whatever the artistic freedom is, I do not see it being affected by this Bill. An equal opportunity management program, for instance, dealing with the number of men, women, Aborigines and Vietnamese that should be in a play would not be—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: With respect to general employment, equal opportunity plans can be made, and that is clear. However, I do not see that they would be made in such a manner as to impinge on the so-called artistic freedom and how and who should be in a particular play.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I do not believe that that is likely to be the case. I think it applies to administrative positions. If an equal opportunity program is laid down for administrative positions in the State Theatre Company, the Festival Centre—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: As a matter of practice, I do not think the Government will lay down an equal opportunity plan which will interfere with the so-called artistic freedom of the companies—whatever that artistic freedom is. I do not think even the Hon. Mr Hill says that there is an absolute artistic freedom for companies. The Hon. Mr Hill understands about the responsibility of organisations to the public, to the taxpayer and to the people who pay the funds. I know that the Hon. Mr Hill is concerned about the money poured into these organisations, and that is why he became cross a couple of months ago. I hope that I have answered the honourable member's question.

The Hon. R.I. Lucas: Is that your response?

The Hon. C.J. SUMNER: Have I not answered the question? Equal opportunity plans can be made, and I made that clear with respect to the South Australian College of Advanced Education. They can also be made with respect to bodies publicly funded for the arts where there is a board appointed by the Government. I do not see how that will impinge on the artistic freedom (whatever that is) of those organisations. Presumably, that will be excluded from the management plan.

The Hon. K.L. MILNE: The Hon. Mr Lucas has voiced his concern about clause 6(3), and I share that concern. This is another instance of the Government trying to do two things in one Bill. We already have equal opportunities legislation and a Commissioner for Equal Opportunity. Bringing equal opportunities into this Bill will cause all sorts of problems. The sooner we get to clause 6 and deal with it the better.

Clause as amended passed.

Clause 5—'General principles of public administration.'

The Hon. M.B. CAMERON: I move:

Page 5, line 26—Leave out 'proper' and insert 'the highest practicable'.

It is the view of the Opposition that the use of the word 'proper' can indicate that standards can be set which in fact take the position of financial management to the nth degree and beyond what is practicable. We all know that one of the problems we often face in dealing with the Public Service is that red tape seems to grow and it quite often grows because forms that have been filled out forever are never reconsidered because they were thought by someone in the past to be the proper standards, which must be adhered to. The fact that they are not practicable is never reconsidered, whereas that would be the case in a normal organisation.

The thrust of this Bill is to try to get back to a situation where common sense and practical situations are brought into account. We believe that the use of the words 'the highest practicable' will mean that matters like the cost of the standards is taken into account thus ending up not with a diminution of the importance of proper financial management but taking into account the practicality of those standards to ensure that they do not go beyond the pale.

The Hon. I. GILFILLAN: There is some dilemma as to the comparative meaning of the words 'proper', 'the highest practicable' and 'optimum'. Given our deliberations and highly respected advice from Parliamentary Counsel, we intend to oppose the amendment and support the wording in the Bill.

The Hon. C.J. SUMNER: We oppose the amendment.

Amendment negatived; clause passed.

Clause 6—'General principles of personnel management.'

The Hon. I. GILFILLAN: I move:

Page 6—
Line 11—Leave out 'class' and insert 'group'.
Line 12—Leave out 'class' and insert 'group'.

This amendment changes certain words, principally reflecting the sensitivity of the words used. It is not a profound

amendment. We prefer the word 'group' to 'class' in subclauses (2) and (3).

The Hon. C.J. Sumner: We will not make a fuss about that.

The Hon. M.B. CAMERON: Frankly, I do not think that that was a very convincing explanation. This amendment is not of the utmost importance, and I am not convinced by the explanation that the change is necessary.

The Hon. C.J. SUMNER: We are not fussy about this amendment but, in the light of the Hon. Mr Cameron's response that he will not support the amendment, we oppose it.

Amendment negatived.

The Hon. M.B. CAMERON: I move:

Page 6—Leave out lines 13 to 15.

The CHAIRMAN: The Hon. Mr Gilfillan has an amendment to line 16.

The Hon. M.B. CAMERON: My amendment deletes subclause (3), which is an unnecessary provision. This subclause brings about something greater than equal opportunity. It gets to the point where almost anything goes, and it makes an absolute farce of equality of opportunity. The Government is saying, 'Yes, but we want to apply the principles that we have what we like, and how we like it, and we will be the sole judge of that.' It sets up a whole new forum for discrimination and makes any action by the Government legal in relation to any group or class of people.

It also detracts from the basic premise of merit, which is reflected in the frontispiece of the Bill. It sets up a class that cannot be justified except in the mind of the Minister who makes that determination. Frankly, we think it is a very unnecessary and provocative provision, one that we ask the Committee not to support. I know that the Hon. Mr Gilfillan has an amendment on file in relation to this matter and I am sure that he will explain that amendment at the appropriate time. I indicate that we will call for a vote on the deletion of these words as a test case for support of our amendment to delete subclause (3) in its entirety. I suggest that the Hon. Mr Gilfillan might then proceed with his amendment, and we will indicate our attitude to that at the appropriate time.

The Hon. I. GILFILLAN: I move:

Page 6—
Line 15—Leave out 'class' and insert 'group'.
Line 16—After 'employment' insert '(subject to probation)'.

This is a very significant part of the Bill, as I have thought since we first began to consider it. The equal opportunity provision under subclause (2) is of substantial dimension and allows for a very important part of the Government's incentive in overcoming what might have been discrimination against certain groups in regard to employment. I have a strong sense of support for this in that this redresses previous discrimination or imbalance, but I believe that the Opposition, in seeking to delete subclause (3), is removing a further dimension that I do not believe we should run away from or disguise.

This subclause provides preference for a group of people in relation to employment. My amendment will define the type of employment offered to those people in the class that is disproportionately represented among the unemployed. There will be a probationary form of employment. That is a modification, but it is certainly not intended to be nor I hope will it be, a negation of the basic aim, which is to redress an unfair situation in relation to the proportion of a certain group of people in our society regarding unemployment.

If the Government and the public sector cannot exercise the right to redress injustice and express concern and the concern of the community at large regarding unemployment which impinges, as it does very often, on the group that is least able to fight its way into a highly competitive employment market, then who else will exercise that right? I am glad to be able to tell the Committee that there are a few—but unfortunately not enough—private companies which are unostentatiously going about the same sort of preference in their own employment programs. They bring in a proportion of the disabled, Aborigines, or the intellectually handicapped as they have recognised that those people have particular difficulty in obtaining employment. Either we say that that is immoral and that we do not want it as part of our society or we recognise that the public sector, which is expressing the conscience of the community at large, the Parliament and the Government, should be given the power to do just that.

Therefore, it is essential that this ingredient be retained in the Bill. To oppose it on the ground that it may allow certain distortions and certain groups who come into certain occupational situations where they may appear as a joke (if one is looking at the funny side of it) is really camouflaging the essence of the situation. As a community, we have recognised, I am glad to say, that unemployment is an unfair imposition on certain groups in society through no fault of their own and they find it difficult to get jobs.

From that point of view it is important that in this or any other Bill where the Government has an opportunity to take its part, and its part will be only a minor part, but it will be an example no doubt to others in the community to offer this preference, and this preference in my amendment will be of a probationary nature so that people who have these periods of employment will, at the end of their probationary period, need to show that they can by merit deserve to retain their position. Therefore, I oppose the Opposition's amendment to delete the subclause *in toto*. Under my amendment the Government, through the public sector, can do what I believe it should be doing, that is, showing some compassion and showing an example to the way employers should be providing access to employment for those who are struggling against handicaps not of their own making so that they can play a part in the workforce of South Australia.

The Hon. K.L. MILNE: The Hon. Mr Gilfillan has almost suggested something that has been worrying me in the last few minutes. I support him in what he is saying. I have talked this matter over with him. We have worked this out together but I have just realised that the word 'preference', which the Leader of the Opposition raised, is quite contradictory to 'equal opportunity'. We did not consider that point properly and, had I thought of it, I would have preferred to say 'according of special consideration'. To give preference to people who are not really suited for a job but who, because they are unemployed, means giving the job to them in preference to someone who is perfect for the job, is not providing equal opportunity. We are getting the situation muddled and perhaps we should defer this matter until we have looked at it further. Certainly, I am in sympathy with what my colleague says. We have worked this out in discussions with a number of people, but there is a distinct contradiction and I would prefer to alter the wording but I will be supporting the Hon. Mr Gilfillan's amendment in regard to 'probationary' because that should be included in any case. I do not want to get rid of the provision entirely but I want to get rid of the contradiction of preference versus equal opportunity.

The Hon. ANNE LEVY: I think the Hon. Mr Milne is misreading the clause. I wholeheartedly endorse a great deal of what the Hon. Mr Gilfillan just said. I refer the Hon. Mr Milne to subclause 3*(b)*. That provision is not saying they will have a preference for a particular position: it is to enable them to compete successfully. People who have been disadvantaged need to have certain preference, say, in a

training program, in obtaining qualifications, so that they can compensate for the discrimination that they have suffered in the past. As a result, they can be able to compete on an equal footing. That is what that subclause is saying.

Members interjecting:

The Hon. ANNE LEVY: That's what it says: preference with a view to enabling them to compete—not preference in getting positions. It is preference in enabling them to compete as effectively as other people.

The Hon. K.L. Milne interjecting:

The Hon. ANNE LEVY: No, that refers to equal opportunity. It expands what equal opportunity can mean: that there are individuals who have suffered discrimination in the past for a whole host of reasons and we need not go into those and paragraph *(b)* then gives preference to these people to help overcome the discrimination that they have suffered in the past so that they can compete on an equal footing. To say that people have an equal opportunity to apply for a high position means nothing if one group of people is able without difficulty to receive the education and experience necessary for that position, and another group have been denied that experience, education and opportunity: they are not on an equal footing to compete for that high position. Subclause (3)*(b)* is saying that preference can be given to those people who have been discriminated against in the past so that they can achieve that experience and education, so that they are then on an equal footing to compete for senior positions.

A little while ago there was discussion about whether there should be a cut-off point at EO1 or EO3. It was stated that there are more than 200 EO1s and above in our current State Public Service. I just went from the Chamber and checked up and members might be interested to know that of these more than 200 officers there are only eight women in the whole South Australian Public Service in that category.

The Hon. C.J. Sumner: That is probably a bit out of date now.

The Hon. ANNE LEVY: No, this is the latest figure that I can obtain—and there is not one Aborigine in that category.

Obviously, a large number of people have not been able to compete effectively for these high positions because they have been denied the opportunities and experience to enable them to do that. Clause 6 (3) *(b)* states as a principle that people who have been discriminated against in the past should be given preference so that they will then be able to compete on an equal footing. This is what affirmative action is about.

I agree with the Hon. Mr Gilfillan that some private firms are undertaking programs of this sort very successfully, as illustrated in the report on the pilot project of affirmative action run by the Federal Government in 28 private companies and tertiary institutions. It is highly desirable that this State recognise the necessity for this type of preference to enable people to compete on an equal footing in our very important legislation on employment in the public sector, and particularly in the section on the general principles pertaining to public sector employment in this State.

The Hon. R.I. LUCAS: With due respect to the Hon. Anne Levy she, too, has misunderstood the provisions of the clause before us. Clause 6 (3) *(b)* is clearly covered in clause 6(2) and, therefore, is superfluous to the arguments before us.

Clause 6 (2), provides for an equal employment opportunity program designed to ensure that persons of a defined class have equal opportunities in relation to employment in the public sector with persons not of that class. All the examples that the Hon. Anne Levy talked about, in particular I presume women, in relation to access to training, courses, and that sort of thing, can clearly be undertaken by the Government of the day under clause 6 (2).

My argument is that clause 6 (3) *(b)* is superfluous. What we are talking about is, in essence, clause 6 (3) *(a)*. The Hon. Anne Levy chose not to address any of her remarks to clause 6 (3) *(a)* because in that clause there is clearly nothing in relation to enabling people to compete: it gives a preference to a defined class—young persons—or a defined class of person. It is quite contrary to the basic principle of merit that was the whole essence of the Guerin report and the whole essence, supposedly, of this Bill. Clause 6 (1) states:

(a) all selection processes shall be directed towards and based on a proper assessment of merit.

That is meant to be the selection procedures in relation to appointments in the Public Service. If we are going to raise the standards of the Public Service, the Government's argument is—and the Opposition accepts—that appointments should be based on merit. That is what clause 6 is trying to tell us.

However, what it tries to then do in clause 6 (3), particularly in clause 6 (3) *(a)* is say that there will be merit through most of the Bill, but an escape clause will be included where you do not have to consider merit; where someone can apply for a particular position who is eminently well qualified under the merit criteria earlier outlined in the Act, deserves the job, wants the job, but loses it because one of these persons in a defined class (whether it be young or old persons, women, Vietnamese, or whatever) clearly on a merit principle not equal to the person will get the job over the person who deserves the particular position.

What on earth are we coming to when we have those particular provisions being put into legislation dealing with public employment not only in Public Service departments but, as earlier indicated in debate, including through clause 4, colleges of advanced education and the whole range of State instrumentalities that will be caught under that clause. The only group clearly defined in clause 6 (3) *(a)* is young persons, and then it says, 'or persons of a defined class'. The Hon. Mr Gilfillan and other members in this Chamber have had much to do with adult unemployed groups. Many people would argue that the needs of the adult unemployed are perhaps much greater than the needs of the young unemployed at the moment in so far as many Governments have recognised the problems of the young unemployed and have devoted programs to them.

If we are going to say that the only group that is specifically identified as getting preference is unemployed young persons, and we do not know whether the adult unemployed (over 55s) will be defined as a class, what we are saying to the adult unemployed, or some other group that might be disproportionately represented amongst the unemployed is, at least in the first instance, we are giving preference to young persons over and above the adult unemployed or that other group.

That is only a subsidiary argument to the reasons why I feel the Parliament should oppose clause 6 (3) *(a)*. Nevertheless, while it is a subsidiary argument, it is something that those members in this Chamber who have had much to do with groups working with adult unemployed, for instance, should bear in mind when we give any support, if we are going to, to provisions such as clause 6 (3) *(a)*.

The Hon. C.J. SUMNER: I was wavering on this particular clause, following the arguments of the Hon. Mr Cameron and the Hon. Mr Gilfillan. However, following the forceful and persuasive intervention by my colleague, the Hon. Anne Levy, I am reaffirmed in my resolve to support the original Government proposition in this Bill. This matter was debated earlier when we were discussing the definition, so I do not wish to recanvass all the arguments.

However, I think that clause 6 (3) is important for the development of equal opportunity in the public sector. The shadow Minister of Ethnic Affairs, I know, is very concerned about this clause, and I know that he will see it as the the Government sees it. I have little doubt that he will cross the floor and vote with the Government on this matter because he has read clause 6 (3), in particular clause 6 (3) *(b)*, and he sees that that clause will enable equal opportunity programs to be implemented with respect to groups that have been discriminated against in the past. Of course, it applies to women, as the Hon. Anne Levy indicated. Surveys conducted on the number of women in EO positions and the number of people of ethnic minority background in senior executive positions in the Public Service indicates that they are grossly under-represented in terms of their proportions in the population generally.

I do not see any particular evil in the clause. It has the capacity, used sensitively, to achieve a good deal of improvement in the participation of people who have, in the past, been under-represented and discriminated against in public sector employment, without substantially undercutting the merit principle.

The Hon. K.L. MILNE: No matter what everybody has said, giving preference to people is against the merit system; it is also against the equal opportunity system. Surely we can find some words like 'sympathetic consideration' or 'special consideration' or something of that kind which is not directing somebody to give a preference to somebody. We know perfectly well this will cause trouble, as it is worded. For example, who knows how to find out what groups have been specially discriminated against in numbers? There has been great play here about young persons, but one of the saddest groups of unemployed are the over 40s. This provision is trying to do the impossible. I know what the Hon. Anne Levy is talking about and I know that once you are down it is damned hard to get up again, so they need some help.

The Hon. Anne Levy: A preference.

The Hon. K.L. MILNE: It is not a preference in that sense.

The Hon. Anne Levy: It is a preference to enable them to compete. That's what it says.

The Hon. K.L. MILNE: I know that is what it says; that is what I do not approve of. I approve of the principle but I do not approve of the way it is set out. I agree with the Hon. Mr Gilfillan in much of what he said; I agree with much of what everybody said. It simply means we have struck a very difficult situation and we ought to give it more consideration. That is what this Committee is for. I am prepared to consider it until midnight, but it would be better if we got on with something and came back to it. I am asking to have this matter deferred until we can consider if further.

The CHAIRMAN: It cannot be deferred unless the previous amendments were rescinded or withdrawn. The clause could be recommitted at the end of the debate, if that is what the Hon. Mr Milne wants to move to do. His other option would be to attempt to amend it here and now before we move any further. I presume that the honourable member would want to amend the provision for the accordance of preference. The other alternative is to move to have the clause recommitted at the end of the Bill.

The Hon. M.B. CAMERON: We do get into a bind when we try to change words in the middle of a debate. It is a difficult situation. It is fairly obvious to me that the Bill will end up in a conference between the Houses, and perhaps I could suggest to the Hon. Mr Milne that, because of the difficulty in changing words at this stage, the preferable course might be for him to support our amendment to delete the provision in which case the Bill will obviously be considered again in another place and then the whole matter can be thought out in the conference, rather than try to do it off the top of our heads now. May I suggest that that course of action might be preferable? It will save a lot of debate now.

The Hon. I. GILFILLAN: Whatever evolves in conference may well take place, but that is not what my attitude to it is at the moment. We either trust the wording or we do not. Subclause (3) states that 'the Minister may in an equal employment opportunity program.' Either we support or reject the equal employment opportunity program, and I happen to support it. That means that, when a group of people do not have an equal opportunity, it is the obligation of the Government in concert with others in the society—including me as a sometime employer—to offer these particular concessions—if preference is the wrong word ('preference' to me does not have any connotations that are unfortunate in this context; in fact, I think it is appropriate). I do not object to the intention of subclause (3) but I consider it to be a repitition of what is quite competently able to be put into place through subclause (2). My amendments are not aimed at removing the opportunity spelled out in subclause 3 *(b)*, but are really tidying up the wording so that we are not repeating what is already competent for the Minister to do under sublcause (2).

The qualification that the employment offered is subject to probation is a pretty dramatic restriction on the type of employment. It is only of a limited time period. The person who has this opportunity is really only having an equal opportunity with others who have had other preferences beforehand, such as the preference of birth, of wealth, of education, of colour, or of race. There are all sorts of ways in which people do not have an equal opportunity, and I consider that these provisions give the Government an opportunity to put real effect to an equal employment opportunity program. So, I am convinced that the amendments listed in my name are reasonable and workable.

The Hon. ANNE LEVY: I would plead with the Hon. Mr Gilfillan to not limit his consideration to subclause (3) *(a)*. Subclause 3 *(b)* is merely an extension of *(a)*. Subclause 3 *(a)* is referring to people being employed in the first place, and I agree with him that past discrimination must be overcome in order to have equal or fair representation amongst the people who are employed. Subclause (3) *(b)* refers to what happens, if you like, to people once they are employed, and their opportunities for advancement. To only have *(a)* without *(b)* could lead to a situation where people are employed but they sit at the CO1 level forever because they do not have the opportunities to enable them to rise above those levels. Subclause 3 *(a)* refers to getting into the Public Service, and *(b)* refers to equal opportunities in rising once in the Public Service, and to have one without the other is only half of equal opportunity. Both parts are necessary if one is to have a true equal opportunity program.

The CHAIRMAN: I intend to put the words down to 'employment'. If they stand, then the Hon. Mr Gilfillan proceeds with the inclusion of other words.

The Hon. M.B. Cameron: This is in support of our amendment?

The CHAIRMAN: This is the test case. If those words are struck out, then you proceed to strike out the rest of the clause. If they stand, the Hon. Mr Gilfillan proceeds with his amendments. I put the question: 'That the words down to 'employment' stand as printed'.

The Committee divided on the question:

Ayes (6)—The Hons. G. L. Bruce, M.S. Feleppa, I. Gilfillan, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Noes (7)—The Hons. M.B. Cameron (teller), Peter Dunn, K.T. Griffin, Diana Laidlaw, R.I. Lucas, K.L. Milne, and R.J. Ritson.

Pairs—Ayes—The Hons Frank Blevins, B. A. Chatterton, J.R Cornwall, and C.W. Creedon. Noes—The Hons J.C. Burdett, L.H. Davis, R.C. DeGaris, and C.M. Hill.

Majority of 1 for the Noes.

Question thus negatived.

The Hon. M.B. CAMERON: I move:

That the remaining words in subclause (3) be struck out.

The Hon. C.J. SUMNER: It looks as though that division has determined the matter, so I will not divide on it.

The Hon. I. Gilfillan's amendments withdrawn.

Motion carried; clause as amended passed.

Clause 7 passed.

Clause 8—'Annual report.'

The Hon. M.B. CAMERON: I move:

Page 6, line 43—Leave out subclause (2) and insert subclause as follows:

(2) The report must contain—

(a) a full account of the financial affairs of the government agency;

and

(b) any other information required by regulation.

The Opposition believes that, if we are to be consistent with open government and provide for the maximum information being available to the public for services that it is funding, the need exists for a report that indicates financial competence as well as any other detail that may indicate how many actions may be taken, etc. The prescription of a financial report associated with the annual report is desirable and eliminates any possibility of the public, the Parliament or anybody else who may be interested in the agency being excluded from information that is their right.

The Hon. I. GILFILLAN: I oppose this amendment. Any sensible regulation would include that and it seems an unnecessary addition.

The Hon. C.J. SUMNER: We do not oppose the intention behind the honourable member's amendment, but believe that it is more flexibly and better done by way of regulation.

Amendment negatived; clause passed.

Clause 9 passed.

Clause 10—'Constitution of the Board.'

The Hon. M.B. CAMERON: I move:

Page 7, lines 15 to 25—Leave out subclauses (1) and (2) and insert subclauses as follows:

(1) The Board shall consist of 5 members, of whom—

(a) one shall be the Commissioner;

and

(b) the remainder shall be persons appointed by the governor, being persons who have, in the opinion of the governor, appropriate knowledge and experience in the area of management or industrial relations.

(2) Of the persons appointed by the Governor, 2 shall be appointed on a full-time basis and the remainder on a part-time basis only.

This is probably the first of the major philosophical differences between the Government and the Opposition in relation to the structure of the Bill. the Government model for that structure is not the best approach. I am speaking to the whole of our amendment, even though there is an intervening amendment. Again, we will consider our amendment as a test case. The intervening amendment is really only a qualifying amendment, but the Hon. Mr Gilfillan will no doubt talk to that. We suggest that there be three part-time and two full-time members of the board.

In our amendment, we make the distinction that the Commissioner will be a part-time member of the board while fulfilling his other role as Commissioner for the balance of his employment. The structure is more consistent with the model that will benefit the Public Service for a long time to come. It is supported by many people within the Public Service. We have taken evidence from them and indicated to them the course of action that we seek to take, and have found within the Public Service genuine interest in our alternative approach.

There appears from what I have read of the debate in another place that there is a major philosophical difference between the Government and the Opposition in other matters at a later stage in this Bill; nevertheless, we believe that this approach is the best and the one that we would support.

The Hon. I. GILFILLAN: I support the definition of the board substantially as in the Bill. As members may have already noticed, I have on file an amendment that would qualify the subclause (2) *(a)* appointment from the UTLC so that that person would be employed in the public sector. This follows an initiative that we took with the Children's Services Office, where in several places we were successful in getting the appointment to boards of union representatives who are involved in that occupation.

We feel that on a board with these responsibilities it is important that a nominee from the public sector is included. Obviously their contribution would give the board direct workface contact. We believe that is more valuable than to have a person nominated by the UTLC. We do not say that the UTLC would not make a very sensible or worthwhile nomination. However, we prefer to be assured that the person nominated is actually currently employed in the public sector. The further debate as to the significance of any divergence between the philosophy of the Opposition and that of the Government as indicated by the Opposition amendment escapes me. The amendment appears to reduce the membership of the board by one, and it also makes a few other minor amendments. However, I will not debate that now.

The Hon. R.I. LUCAS: I think the Hon. Mr Gilfillan's amendment makes a slight improvement to the Government's position. However, once again, as was the case previously in the debate with respect to equal employment opportunities, the amendment is quite contrary to what is meant to be the essential element of this Bill, that is, the principle of merit. We have talked about merit all the way through. Why then should we not talk about merit in relation to appointments to such senior positions on the board? Surely the principle ought to be that persons most capable of doing the job should be appointed to the board, whether it has five or six members.

It may be that even with the Hon. Mr Gilfillan's amendment on many occasions the person nominated by the UTLC has nowhere near the experience, qualifications or expertise that the Government of the day may well find in the selection of its four appointees to the board. The Hon. Trevor Griffin indicated that not all members of the Public Service are trade unionists. Therefore, it should not be assumed that taking a UTLC nominee automatically means that the nominee represents employees in the Public Service. Certainly, in the electorate at large only about 50 or 55 per cent of workers are trade unionists. I do not know what the comparative percentage is for the Public Service. My impression is that—

The Hon. K.L. Milne: Aren't they compelled to join a union? Aren't they compelled to sign something?

The Hon. R.I. LUCAS: Only new employees. There are many people in the Public Service who have been there for years and are not members of a trade union, but I do not know what that percentage is. As I have said, the percentage for the general workforce is about 50 or 55 per cent. There are members of the Public Service who, for their own reasons, are not members of a trade union. Certainly, a nominee of the UTLC cannot presume to represent those people. The major argument relates to merit. It is quite conceivable that a nominee of the UTLC, on the criterion

of merit that we have used throughout this Bill, should not be appointed to a prestigious position on the Government Management Board; and perhaps the four or five Government appointees selected on the criterion of merit should be appointed. While I see some marginal improvement in the Hon. Mr Gilfillan's amendment (and I suppose if I get a chance I will support it) I will certainly oppose the provision in relation to a nominee of the UTLC.

The Hon. K.L. MILNE: The principle of the UTLC nominating whoever it chooses comes about partly because it is assumed that the majority of workers are members of a union (and I believe that to be the case). Secondly, for industrial relations purposes there would be someone on the board looking at problems before they arise. I hope the philosophy of this Parliament is that we are getting around to dealing with industrial relations in the sense of stopping problems before they arise. I support the provision of a UTLC nominee, and I support the suggestion that the nominee be a member of the Public Service itself.

I think there is a tendency with the trade union movement—and it is a pity—to say that, if a union representative is required, it should be a UTLC staff member or someone like that. That is not the object of the exercise; the object is to have a Public Service worker on the board. I suppose the situation is that there are some missing words. The Hon. Mr Gilfillan and I talked about this and decided on 'employed in the public sector'. That eases the problem a great deal. If someone can suggest other words to clarify the situation such as 'appropriate merit' or 'appropriate representative' to make it quite obvious that the UTLC was meant to select someone capable of playing a proper part on the board, that will be considered. There have been instances where, with the best will in the world, representatives of the trade union movement have not been able to cope with their responsibilities in this situation. We want to avoid that. I agree with the principle and will support it if nothing else can be suggested.

The Hon. C.J. SUMNER: The Government opposes the Opposition amendment and the Democrats amendment. The Government believes that a board of six members is appropriate and also asserts that there is a case for the UTLC to be represented on the Government Management Board for the reasons outlined by the Hon. Lance Milne. However, we think that, if a particular body is to be requested to nominate one person, that should be left to that organisation. We do not believe that that should be restricted as proposed by the Hon. Mr Gilfillan. I cannot support either amendment.

The Hon. M.B. CAMERON: As indicated by the Hon. Mr Lucas, we see the Hon. Mr Gilfillan's amendment as a slight improvement. I say 'slight' because I do not believe it really covers the situation that we feel is created. The UTLC presumes that it automatically represents all people in the Public Service. There are members of the Public Service who believe that the Public Service Association should not be connected to the UTLC—that it is an organisation of a different nature. There are other people who are affected by the Bill who are not members of a trade union. Very shortly there will be less proscription on people in the public sector to become members of a trade union, because we will be getting rid of the preference to unionists requirement placed on people joining the Public Service.

That matter will be debated in another area very shortly once the election is called—it is one of the many matters that will be debated. If our amendment fails (and it appears that it will fail) we will support the Hon. Mr Gilfillan's amendment because it is a slight improvement.

The Committee divided on the question that the words proposed to be struck out stand:

Ayes (8)—The Hons Frank Blevins (teller), G.L. Bruce, B.A. Chatterton, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, and Barbara Wiese.

Noes (7)—The Hons M.B. Cameron (teller), Peter Dunn, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Pairs—Ayes—The Hons C.W. Creedon, J.R. Cornwall, and C.J. Sumner. Noes—The Hons J.C. Burdett, L.H. Davis, and R.C. DeGaris.

Majority of 1 for the Ayes.

Question thus resolved in the affirmative.

The Hon. I GILFILLAN: I move:

Page 7, line 20—After 'person' insert 'employed in the public sector who has been'.

Amendment carried.

The Hon. M.B. CAMERON: I believe that the Hon. Mr Gilfillan has an amendment on file that is the direct opposite of the amendment that I propose, which is consequential on an amendment I moved previously. I will not move my proposed amendment.

The Hon. I. GILFILLAN: I move:

Page 7, line 26—After 'Board' insert 'appointed to the Board on a full-time basis'.

This amendment has the effect of ensuring that the Chairman or the presiding member of the board shall be appointed to the board on a full-time basis. I point out to the Committee that the significance of that is that it would preclude the Director from holding that office, because the Director is already a full-time officer in his or her own right. In a way which is not immediately apparent, this will ensure that there will be a full-time Chairman other than the Commissioner of the board.

The Hon. M.B. CAMERON: Because there are a number of matters that will be affected by this provision, it would be inappropriate for the Director to be also the Chairman of the board. We support the amendment.

The Hon. C.J. SUMNER: The Government opposes this amendment. It will add another full-time person, perhaps unnecessarily, to the Government payroll. The Parliament would be imposing an extra $70 000 on the Government without any justification. It may be that the person who is appointed as the Chairman is full-time, but surely that flexibility should be left to the Government of the day. If the Government of the day feels that the board operates satisfactorily with part-time members and a full-time Director, surely that is adequate. Why should we impose on the board another full-time person when it may not be necessary?

It can be a full-time person, if the Government so desires. The Government is strongly opposed to the amendment, which is wasteful of public resources.

The Hon. K.L. MILNE: If the Government of the day believes that it wants to change it, it can do so.

The Hon. C.J. Sumner: No—

Members interjecting:

The Hon. C.J. Sumner: —it's ridiculous.

The Hon. K.L. MILNE: It is not ridiculous. It will come up later in discussions on the board that I am sure will generate controversy. It would be pretty difficult for a part-time Chairman to have the authority to undertake the advisory duties that the board is supposed to undertake. I do not know what those advisory duties are and I do not know why the board is there. If it is going to be there it ought to have teeth. One of the ways to give it teeth is to have a full-time Chairman. Who is going to see that these things are done if the Chairman is part-time and is away doing something else? It is a full-time job. He must be either in a position to do the job or not—

The Hon. C.J. Sumner: One minute you say you do not want it and then you want a full-time person.

The Hon. K.L. MILNE: I said that if we are going to have it I would like to see a full-time person in charge because it is that type of appointment. It is not the type of appointment for a part-time person either from within or from outside the Public Service.

The Hon. I. GILFILLAN: I am disappointed that the Minister has not recognised that the functions that the Government is putting to the board are probably among the most significant roles that anyone will have in South Australia. I am optimistic, even if the Attorney is not, that there will be dramatic, profound and substantial improvements in the public sector in all sorts of ways and in an ongoing way with the board—at least the person who is going to be spearheading it—giving devotion to it on a full-time basis. I have been largely persuaded to that view through the experience of my colleague the Hon. Mr Milne who has had much more experience with boards than I have. Whether it is the Chairman or not, I am convinced that the Hon. Mr Milne is right that it should be the Chairman: it is ridiculous to give any group the responsibility of these functions in view of the enormous potential for improving the efficiency of the public sector yet leaving it to bits and pieces by people who might do a bit one week and a bit the next week. It is a job in which people should give devoted service. I am disappointed that the Minister does not see that. We must have people giving their whole effort—

The Hon. C.J. Sumner: I thought you were for lean government. This guy will be getting $70 000. You are inconsistent in your arguments.

The Hon. I. GILFILLAN: Getting lean Government is exactly what we would expect from the board and $70 000 is a cheap price for that. Either one does the job properly or one does not do it. The Minister is shackling the thing by saying that we want people who might do the job and we do not care much if they are full-time or part-time.

The Hon. C.J. SUMNER: The Liberals do not seem to be able to make up their mind: they have a case of democratitis. The amendment moved by the Hon. Mr Cameron to clause 10 (3) provided that the Chairman should be a part-time person.

The Hon. M.B. Cameron: You knocked that out.

The Hon. C.J. SUMNER: That was your original proposition. Now you have done a 180 degree turn and support the Democrats who want a full-time Chairman. As I say, the Liberals have a case of democratitis: they do not really know what they are doing.

Members interjecting:

The Hon. C.J. SUMNER: The only cure is retirement, and that is probably coming fairly soon.

The Hon. R.I. Lucas: The Hon. Mr Milne would be a good appointment.

The Hon. C.J. SUMNER: The Hon. Mr Milne has had much experience as Chairman on various boards: he is still smarting because he was not appointed full-time Chairman of SGIC. The Liberals seem to have changed their mind from the original proposition they had on file. Apparently what honourable members want to do now, including the Liberals, is to insist on a full-time Chairman of the board when that might not be the most appropriate arrangement that the Government of the day desires. Surely, that is a decision that ought to be left to the Government as part of good management practice, rather than having imposed in the Bill that the Chairman of the board should be a full-time member. He may be a full-time person. That is possible, depending on the arrangements that the Government wishes to have with respect to that board. That decision should be left to the Government of the day.

Amendment carried; clause as amended passed.

Clause 11—'Conditions of office.'

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

Page 7, line 37—Leave out 'official duties' and insert 'satisfactorily the duties of the office'.

This amendment is of a drafting nature. In the Bill is reference to removal of an appointed member of the board on the ground of mental or physical incapacity to carry out official duties, and that really does not follow what in the past two or three years has been the recognised format for removal. Instead of reference to mental or physical incapacity, my amendment provides the more appropriate terms.

Amendment carried; clause as amended passed.

Clause 12—'Procedure at meetings of the board.'

The Hon. M.B. CAMERON: I move:

Page 8, line 22—Leave out 'the prescribed number of' and insert 'Three'.

My amendment relates to a quorum. We believe it is appropriate for the number of members required for a quorum to be detailed in the Bill and not left to the prescribed number or be left to subclause (3), which gives a rather complicated means of arriving at a quorum and one that we believe is unnecessary. I urge the Committee to support the amendment.

The Hon. C.J. SUMNER: The amendment would fix the quorum regardless of the number of members of the board appointed from time to time. I believe the amendment should be rejected. As drafted, the Bill allows for the majority of board members actually appointed at any time. That seems to be a more desirable provision.

The Hon. I. GILFILLAN: We oppose the amendment.

Amendment negatived; clause passed.

Clauses 13 and 14 passed.

Clause 15—'Conflict of interest.'

The Hon. K.T. GRIFFIN: In relation to subclause (2), which I referred to during the second reading debate, it appears that the Minister can direct an appointed member to take specified action with a view to resolving a conflict between a pecuniary or other personal interest and an official duty as a member of the board. In view of the lack of any definition of pecuniary or other personal interest, what does the Attorney-General intend is encompassed in the meaning of those words? Does the Attorney-General agree that the direction by the Minister to take specified action can extend to a whole range of actions that might not resolve the conflict but might be adverse to the interests of the member of the board? How is that likely to be administered in those circumstances?

The Hon. C.J. SUMNER: I do not see the same problems as the honourable member with respect to this. I agree that it is a broad clause, but I think that what is generally considered to be a pecuniary or other personal interest is known. Certainly, other legislation—parliamentarians' and local government pecuniary interests legislation—

The Hon. K.T. Griffin: That is defined.

The Hon. C.J. SUMNER: It is defined, but in this case we are dealing with a Minister and members of the board, including the Commissioner, and the Minister is able to give directions to resolve a conflict. I would think that the Minister would take into account what are generally accepted rules relating to conflict of interest and pecuniary interests that exist in other legislation and, indeed, that exist to some extent (as I understand it) in the general law. I do not see the difficulty that the honourable member sees, given that one is dealing virtually with an employer-employee relationship rather than the situation of an elected representative as one is with local government or parliamentarians' pecuniary interests.

The Hon. K.T. GRIFFIN: I do not want to labour the point but merely to place on record that I have some concern about the lack of clarity in the provision relating to members of the board. That also applies in relation to

other relationships later in the Bill. It seems to me that it is even more important to have some definition of what is a pecuniary or other personal interest where one has a Minister in a position of being able to give directions to someone as to the way in which a conflict would be resolved.

For example, if the board member had company shares or shares were held by a family trust in which the board member had a contingent interest, does the Minister have power to order the disposal of the shares at what might be a personal loss to the member or the trust? Does the power of direction go to the extent of trusts? They are the difficulties I see. I want to draw attention to the inadequacy of it because one day it will be a matter which is in issue, if at any time there needs to be a direction given by the Minister. I suggest that because of the lack of definition it will probably be unworkable.

The Hon. C.J. SUMNER: I do not share the concerns of the honourable member. It may be worth while pointing out that this was a suggestion of members in the House of Assembly of the same political persuasion as the Hon. Mr Griffin. That is how it came to be in the Bill. I know that Opposition members do not always get on, but I do not see that there is the difficulty that the honourable member has outlined. If there is a pecuniary interest of the nature that the honourable member has outlined, which provides a direct conflict of interest, then I suppose some action has to be taken to resolve it. If the situation is such that the board member's personal interests are so great, and that person is not prepared to give up the personal interests, then I guess the alternative is resignation and non-participation further in the board.

The Hon. K.T. GRIFFIN: The Attorney-General suggested that this clause was included at the instigation of Opposition members in the House of Assembly. That might be correct in so far as that is concerned. However, it was included, I suggest, because there was then already a provision in the Bill that the Government introduced in relation to the power for a Minister to give a direction to the then Commissioner. The concept was already in the Bill and it was merely extended to members of the board. I do not think the fact that it was included in the House of Assembly in relation to the Government Management Board is justification for saying that it is all fair and above board. The question of interpretation could have been raised in respect of that same sort of clause in other parts of the Bill, as introduced in the House of Assembly.

Clause passed.

New clause 15a—'Members of board to disclose pecuniary interests.'

The Hon. M.B. CAMERON: I move:

Page 9, after line 6—Insert new clause as follows:

15a. (1) Each of the appointed members of the board shall disclose pecuniary interests of the member to the Minister responsible for the administration of this Act in accordance with the regulations.

(2) The Minister shall, at the request of any person, review the information disclosed by a member of the board under this section and report whether there is, in the Minister's opinion, a conflict between the member's pecuniary interests and official duties.

(3) Failure to comply with subsection (1) constitutes misconduct.

This new clause will require members of the board to disclose pecuniary interests. If it is excluded one will have to ask why there are so many similar provisions in other legislation relating to people in these types of situations. The Opposition believes there can be advantages to people on the board to have this inside information, and advantages for people from industry who will, hopefully, be drawn to make themselves available for inclusion on the board, even on a part-time basis. It is in the interests of the people concerned, the board and the community to have them disclose their pecuniary interests.

The Hon. I. GILFILLAN: We support the amendment. I have on file a later amendment which gives confidentiality in this respect.

The Hon. C.J. SUMNER: I will not oppose the amendment at this stage. It seems to me to have some merit, although the Premier may have a different view of it. If he does, I have no doubt that he can pursue that in another place or at the conference stage. To my way of thinking, it has some merit and I will therefore let it pass at this stage.

New clause inserted.

New clause 15b—'Extent to which board is subject to ministerial direction.'

The Hon. M.B. CAMERON: I move:

15b. (1) Subject to this section, the board is subject to direction by the Minister responsible for the administration of this Act.

(2) No Ministerial direction shall be given to the board—

(a) requiring that material be included in, or excluded from, a report that is to be laid before Parliament;

(b) requiring the board to make, or refrain from making, any particular recommendation or comment when providing any advice or making any other report to a Minister or Ministers under this Act;

(c) requiring the board to refrain from making any particular review of public sector operations.

(3) A Ministerial direction to the board—

(a) must be communicated to the board in writing; and

(b) must be included in the annual report of the board.

This clause indicates the extent to which the board is subject to ministerial direction, and is a summation of a number of discussions held on the Bill before it was drawn up. It more clearly defines the propriety of the relationship between the Minister and the board. It is somewhat prescriptive or more definitive. It does not leave the Bill an open-ended cheque as we believe is presently the case. More specifically, proposed subclause (2) *(b)* provides that an indication of ministerial direction must be made available in the annual report of the board. We believe it is appropriate, if a Minister gives a specific direction to the board, that it should be communicated to the board in writing and it should also be included in the annual report of the board.

The Hon. I. GILFILLAN: I support the amendment. We feel that, as with the Director, there ought to be a specified area in which ministerial direction cannot impose on the board.

The Hon. C.J. SUMNER: I reject this amendment. It arises out of a misconception about the role of the board. The board does not direct the Commissioner. The board does not have detailed personnel and industrial relations powers, although I understand that members opposite wish to give the board those powers. That will be debated subsequently. The board is intended to be advisory and one would expect it to act consistently with the policies of the Government of the day. It would be both impractical and, in confidential matters, undesirable for all such directions, if the board were directed by the Government, to be included in an annual report.

So, the board is an advisory board. It is not a board with executive authority, and as such I do not believe that the amendments which put the board virtually on the same basis as the Director of Public Employment, are justified. In fact, I think they run contrary to the intention of the Government with respect to the board, which we see as having a primarily advisory function rather than an executive function.

The Hon. R.I. LUCAS: This amendment does not arise, as the Attorney-General suggests, from our misunderstanding of the Bill. It does arise, as he suggested towards the end, from subsequent amendments that we intend moving in the Committee stage, and in particular the very next

amendment in relation to the functions of the board under clause 16. Being ever optimistic, we hope that that amendment will pass, and therefore we move from what is, as the Attorney suggests, largely an advisory board to a position where the board will have certain functions, particularly powers to establish practices and procedures in relation to personnel management. So, it is clearly not an advisory function but an executive function—to establish. Therefore, to that extent new clause 15b is linked to subsequent amendments that we will be debating later.

The Hon. I. GILFILLAN: It is unfortunate that the Attorney seems particularly sensitive about these restrictions on a ministerial direction. They are not particularly intrusive. What I think is missed here is the recognition that both the Director and the board have a service, in their first role, to the people of South Australia who are the main people to be affected by the efficiency or inefficiency of the public sector, and secondly to Parliament.

They are not the sort of private servants of the Government of the day, and nothing will be served by allowing a Minister to require that the board have certain material in or excluded from a report. That to me is quite unacceptable dictatorial treatment of a board which is appointed with the authority and integrity to do a job and which will then be censored as to what it puts in a report. I would like to see this open and free reporting to Parliament by both the Director and the board. I do not have any hesitation in supporting the new clause. However, I signal that we oppose strenuously the next indicated amendments which would subsume the role of the Director into the board. That is what the Opposition intends to do with its next amendment, but we have no truck with that. The board has an important role to play, and it ought to be openly communicating to the Parliament and the people of South Australia, and not twisted and turned and then censored by the Government of the day.

New clause inserted.

Clause 16—'The functions of the board.'

The Hon. M.B. CAMERON: I move:

Page 9, lines 9 to 12—

Leave out all words in these lines and insert: 'review and—

(i) to establish, and ensure the implementation of, appropriate policies, practices and procedures in relation to personnel management and industrial relations in the Public Service;
and

(ii) to advise the Minister responsible for the administration of this Act and other Ministers on policies, practices and procedures that should be applied to any other aspect of management in the Public Service or to any aspect of management in other parts of the public sector;'.

This is an important amendment and is an indication, as the Attorney said, that we believe that the board should have a very positive role. We do not believe that the board should be left a toothless tiger. We believe that the Commissioner, under this Bill as it was drawn, has far too much power so that he will be a superfunctionary who will virtually be above the law. That situation should not come into being. There has always been some division of responsibility under the Public Service Board. There is no argument against one person being responsible for some of the directions of the Public Service in relation to personnel management, but he or she has to be subject to somebody. At present the indication is that that person will be subject to the provision of removal by Parliament, but of course that is not entirely satisfactory, as we all know. That is a very dramatic step for a Parliament to take. It is assumed that the person who will be appointed under this Act, because we are trying to keep the Public Service non-political, will be non-political.

That may not necessarily be the case. We could have a situation where for some considerable period of time a new Government is in power with a person in a very high and dictatorial position in the Public Service who will not be under the control of the Government of the day even though the Government of the day will be answerable to the people. In fact, it will be quite the opposite. As I have said, the board itself will be a totally toothless tiger and it will have only an advisory role. We believe that it should go beyond that. We believe that the board should have a very positive role to help establish and ensure the implementation of appropriate policies, and so on.

I urge the Committee to support the amendment. It is a fundamental question in the whole Bill and we believe that it should be supported. We believe that a personnel manager should be answerable to someone. We believe that being answerable to Parliament is insufficient because in day to day matters Parliament does not know what is going on, and Parliament will not know what is going on. I believe it would be very rare for Parliament to be called upon to make a judgment. It is not a function that Parliament would use lightly. I believe the only person to be removed from office by Parliament was Mr Justice Boothby. I think he forgot that he had left England—he believed that he was still living back in the old country. I do not think it is a situation that the Opposition can support. I urge the Committee to support my amendment. I indicate that I regard this as a test case for the various matters that follow as a consequence.

The Hon. I. GILFILLAN: I do not see it in the same way as the Opposition. The Opposition is intent on blanketing the quite unique role of the Commissioner in efficient and proper personnel industrial relations management under much more direct control from the Minister than the Opposition realises. Under the exemptions successfully moved by the Opposition with our support, the board is really no more restrained than the Commissioner. A similar restriction is placed in the Bill. Regarding the Opposition's criticism that the Commissioner will be an autocrat free to do what he or she wishes and to stamp thoughtlessly about, regardless of the Government or the people under his or her control—that same criticism could be levelled at the board. However, I do not think that the criticism can be directed at either the Commissioner or the board.

I think it is a tragedy that by supporting this amendment we would immediately frustrate the aim of having a clear and efficient system of dealing with the personnel aspect of the public sector. At the same time, we would spread even thinner the energies and capacity of the board to do what it is set up to do. I believe it is a negative amendment which leaves us with the partly inherited mess from previous legislation. The paranoia about the role of the Commissioner is completely misplaced.

The Hon. C.J. SUMNER: I also reject the amendment. A cornerstone of the Bill in relation to central agency powers is the separation of the day to day personnel and industrial relations responsibilities from the broader management improvement and review responsibilities. A central theme of the review of Public Service management was to provide greater attention to the latter and thus the structures in the present Bill, in the Government's view, provide the best way of achieving this by giving the Commissioner responsibilities in the personnel and industrial relations area and the board the management and improvement review responsibilities. If accepted, the amendment would involve the board in the detail of personnel and industrial relations matters and there would be some confusion in the role between the Commissioner's responsibility and that of the board, as the Hon. Mr Gilfillan so cogently explained to the Committee. Accordingly, I cannot accept the amend-

ment for those reasons and for the reasons outlined by the Hon. Mr Gilfillan.

The Hon. K.L. MILNE: I support the amendment so that it can be discussed at a conference. I do not necessarily want the board to have more teeth, but I do not necessarily want it to be toothless, either. In fact, I do not know what its functions should be and I do not think the Government does, either. The way it is set up makes it impossible to tell what real function the board will have. How can the board advise the Minister on matters of its own initiative if it has no power to demand information, documents, statistics, and so on? What sort of advice will the board give the Minister? Will it read books about the Public Service and make suggestions? Will it go into departments and demand information? If so, who will do that work—the full-time members or all the board? Will the board make inspections? If it does not, how will it find out what must be looked at? Will it work solely from annual reports?

Just what is the board going to do? Will it interfere with the Public Accounts Committee of Parliament or the Auditor-General's Department? Where does the board fit in? I cannot see what the board will do if it does not run the organisation. I do not think that we need five board members at $70 000 a year or whatever it was. Who will do the work? The board must have support staff. Will they come from the board itself or will a unit be created to support the board in preparing information to advise the Minister on? Who will comprise the unit?

I can see the intention behind the Bill quite clearly: the Government is trying to cut away the red tape and remove delays and overlapping. There is no question about that. I cannot see how the board can contribute to the function that is given to it in the separation of its duties from those of the Commissioner. I can see clearly that the Commissioner's job is to deal with people, equipment, offices, conditions of employment, and classifications and that it will be a very full-time job for him and his staff. I can see the benefit in taking away those duties from a group of people worried about the efficiency of the Public Service. To have it as advisory only seems to be an odd way to go about digging deeply into what is wrong, if anything, with certain departments. I would have thought, if that is what the Government wants to do, it might be better to call in outside consultants from time to time. A board would not be required for that—the Minister could do it. I am completely confused as to what the board will do, the level at which it will operate and the contribution it will make.

The Hon. C.J. Sumner: Why not ask the Hon. Mr Gilfillan?

The Hon. K.L. MILNE: We have talked it over, and he knows that I have been confused about it. I do not want to necessarily end up opposing what the Government is trying to do. However, I want to be able to say that there has been a conference of both Houses to try to iron out what on earth these people will do. I am not criticising what has been said, but for that reason only I want the matter further considered because I do not think the Government has the right answer and it would be regrettable if the Bill went through as it is.

The Hon. M.B. CAMERON: I appreciate that contribution from the Hon. Mr Milne. It is very sensible to enable this matter to be considered further and for him to take this course of action, because he is quite right—at present the board is really a nonsense. It is important to establish just what it does and where it goes. We believe in relation to personnel management on a day to day basis that the board will cut across what the Commissioner or the Director will do. The board itself should have direct input into the establishment and implementation of policies when it comes to overall questions. We believe that our amendment would do that, but we would certainly be prepared to listen to what takes place at a conference to see whether some appropriate position could be made out for the board and the Director to ensure that they do not have too much conflict but that, nevertheless, the Director has some restriction on him in relation to his role. At present we do not think that the restriction—that he can be subject to the discipline of Parliament—is sufficient, certainly not in his day to day management of the Public Service.

Amendment carried.

The Hon. R.I. LUCAS: Clause 27 refers to the functions of the Commissioner. Clause 16 (1) *(e)* provides that a function of the board is:

to devise in co-operation with Government agencies programs and initiatives for management improvement in the public sector . . .

Under clause 27 (1) *(j)* a function of the Commissioner is:

to establish and implement programs of management training and staff development;

How do those two functions mesh in? Perhaps I am misinterpreting the provisions, but the functions of the board and the Commissioner seem to be similar in that regard. Clause 16 (1) *(e)* uses a slightly stronger verb 'to devise' rather than 'to advise' or 'to review' and so on. This indicates something definite—to devise some sort of executive function. I would be interested in the Attorney's interpretation.

The Hon. C.J. SUMNER: The functions of the Commissioner in relation to management training and staff development relate to individual programs and specific employees whereas the proposal under clause 16 (1) *(e)* deals with broader functions of the board in advising Ministers in respect to more general initiatives for management improvement. The Commissioner is more concerned with individuals, management training and staff development and programs that are actually prepared for staff development and management training, and the board is more concerned with recommending to the Government general management improvement programs which might apply throughout the public sector or in a particular area but which are of a more general nature rather than being confined to specific individuals—that is more the role of the Commissioner.

The Hon. R.I. LUCAS: I thank the Attorney for that partial explanation. I take it that the Attorney would agree that what is done by the Commissioner at the individual level should mesh with what is done by the board at the overall level, and I guess that the Government's response would be that that is achieved by the Commissioner being a member of the board and therefore—

The Hon. I. Gilfillan: The Commissioner could be directed by the Minister.

The Hon. R.I. LUCAS: Yes. Therefore, what the Commissioner does at the individual level in regard to management improvement in a specific department should mesh with what the board does through that mechanism.

Clause as amended passed.

Clauses 17 and 18 passed.

Clause 19—'The structure of the Public Service.'

The Hon. M.B. CAMERON: I move:

Page 11, line 9—After 'practicable' insert 'having regard to the efficient operation of the administrative unit or units in question'.

We believe that this amendment gives a deeper sense of purpose to the clause and there is distinct advantage in the inclusion of these words.

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

Page 11, lines 5 to 13—Leave out subclauses (5) and (6).

This amendment would override the Hon. Mr Cameron's amendment. Clause 19 deals with the structure of the Public Service. Subclause (2) provides for the Governor, by pro-

clamation, to establish an administrative unit, to alter the title of an administrative unit and to abolish an administrative unit. Subclause (3) provides that the Government may, by proclamation under subclause (2) or by separate proclamation, transfer positions or a group of positions from an administrative unit to another administrative unit; incorporate a group of public employees (not forming part of the Public Service) into an administrative unit; exclude from the Public Service a group of public employees previously incorporated into an administrative unit; and make any appointment or any transitional or ancillary provision that may be necessary or expedient in the circumstances.

Subclause (5) provides that a proclamation shall not be made with respect to a matter referred to in subclause (3) except upon the recommendation of the Minister responsible for the administration of the Act. Subclause (6) provides that the Minister responsible for the administration of the Act shall, so far as is practicable, before making a recommendation to the Government for a proclamation, have certain consultations.

I am concerned that, generally speaking, proclamations are made by the Governor on advice of Executive Council (that is, the Government of the day) so that the whole Cabinet has the responsibility for determining whether or not a proclamation will be recommended. If it is, then it will ordinarily be made by the Governor in Council. While it is not unique that decisions proclamations are made by the Cabinet only on the recommendation of a certain Minister, nevertheless that position is rare.

It seems to me that to frustrate or hamper the power of a Cabinet to make a recommendation for a proclamation will prejudice the proper administration of the Public Service where it involves the transfer of positions or groups of positions from one administrative unit to another. The Governor can make proclamations to establish, to alter the title of, or to abolish an administrative unit.

The Hon. K.L. Milne: What does that actually mean?

The Hon. K.T. GRIFFIN: That if the Government wants to establish a department it can establish it by proclamation but, if it wants to transfer a group of persons within a Government department to another Government department, it cannot be done unless the Minister recommends to Cabinet—

The Hon. K.L. Milne: Which Minister?

The Hon. K.T. GRIFFIN: The Minister responsible for the administration of the Act, presumably the Premier or the Minister of Labour. The recommendation has to be made by the Minister to Cabinet before Cabinet can approve a proclamation and the Minister cannot make the recommendation unless the Minister has notified members of the recognised organisation and consulted with them.

It seems to me that, whilst in ordinary circumstances there would generally be discussions or consultation, it is unwise to hinder the capacity of a Government to move persons or groups of persons within administrative units from one unit to another in the way that has been provided in subclauses (5) and (6). The responsibility ought to be with the Cabinet of the day to structure its administrative units or Government departments as it sees fit and that it ought not be hindered in that task by the mechanisms set out in these subclauses (5) and (6).

The Hon. C.J. SUMNER: The honourable member has been very persuasive with respect to subclause (5), at least as far as I am concerned. However, with respect to subclause (6) I am advised that it is similar to a section that already exists in the Public Service Act. Clause 19 (6), which requires some degree of consultation before re-organisation of a department, is currently provided for to some extent. However, with regard to subclause (5), I am inclined to agree that it is unnecessary: it does mean that if a particular Minister or the Minister responsible for this Act refused to recommend to the Government that a certain reorganisation should take place, it presumably could not occur even though the whole Cabinet wanted it to occur.

There may be an argument that the whole Cabinet could direct the Minister to make the recommendation, but my preliminary view is that what the honourable member says is correct and that the matter should be dealt with by Cabinet in the normal way. If the Minister responsible for this Act objects to the particular reorganisation proposed by a Minister, the place to fight it out is in Cabinet. Of course, it probably presupposes the Premier's being responsible for the administration of this Act. That may not always be the case, so we could have a situation where the Premier wishes to reorganise and the Minister responsible for the Act has to make the recommendation. While one would not expect that conflict to occur in the real world—

The Hon. R.C. DeGaris: It has happened before.

The Hon. C.J. SUMNER: It may have. In less convivial or consensus climes perhaps it could happen again. One need only read newspapers to see the sorts of things that happen in one of our neighbouring States to the north to know that things are not always as harmonious in Cabinets as they are in Cabinets in South Australia. One logically gets to the position where the Premier, who has the responsibility by convention for reorganisation of ministerial portfolios and the administrative structures that go with it, could be thwarted if the Minister responsible for this Act was to say that he would not make the recommendation.

That is a fairly unlikely event, but logically it could happen. The main argument I would put is the one that this has been done, that is, the reorganisation by the Governor by proclamation should be done by Cabinet as a whole and should not be able to be held up because one particular Minister refuses to make the recommendation. I am inclined to agree with the honourable member's proposition to delete subclause (5), but I have not had an opportunity of getting instructions from my Leader in another place on this matter, whose Bill this is, and therefore, while agreeing at this stage, I have to put that slight reservation that, as the matter is to go to a conference, he may wish to consider it at the conference stage.

The Hon. K.T. GRIFFIN: I desire to put my amendments separately. I move:

Page 11, line 5—Leave out subclause (5).

If this subclause is deleted it will require some redrafting of subclause (6) in regard to the point made by the Attorney in regard to consultation. If that is recognised it can be tidied up either by recommittal at the end of consideration of the Bill or at some other point.

The CHAIRMAN: Does the Hon. Mr Cameron wish to proceed with his amendment on file?

The Hon. M.B. CAMERON: No. I withdraw my amendment.

Amendment carried.

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

Page 11, line 8—Leave out subclause (6).

The Committee divided on the amendment:

Ayes (7)—The Hons M.B. Cameron, R.C. DeGaris, Peter Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, and R.J. Ritson.

Noes (8)—The Hons G.L. Bruce, B.A. Chatterton, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons J.C. Burdett, L.H. Davis, and R.I. Lucas. Noes—The Hons J.R. Cornwall, C.W. Creedon, and Frank Blevins.

Majority of 1 for the Noes.

Amendment thus negatived; clause as amended passed.

Clause 20 passed.

Clause 21—'Establishment of office of Commissioner for Public Employment.'

The Hon. I. GILFILLAN: I move:

Page 11—
Line 26—Leave out 'COMMISSIONER FOR' and insert 'DIRECTOR OF'.
Line 27—Leave out 'Commissioner for' and insert 'Director of'.

The Hon. M.B. CAMERON: This is consistent with an amendment considered during the early stages of the Bill, and the Opposition supports it.

Amendments carried; clause as amended passed.

Clause 22—'Conditions of appointment of the Commissioner.'

The Hon. M.B. CAMERON: I move:

Page 11, after line 35—Insert subclause as follows:
(3a) A person is not eligible to be appointed as the Commissioner for terms of office that in aggregate exceed 10 years.

The Opposition believes that a person, after 10 years, would be unlikely to actively and effectively provide leadership and although they could provide leadership—and I guess this is being extreme—their ability to do so would diminish by the end of that 10 year period. While such a person would not be discharged from service by a Liberal Government, we would give that person an opportunity to make use of their expertise and skills to the advantage of the State in another area.

The Hon. I. GILFILLAN: We oppose the amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment as there seems to be no need for it. I do not see why the matter should not be left to the discretion of the Government of the day. The period of appointment is limited and, therefore, there is the capacity for the Government of the day to change the person. I do not see that there should be any restriction on the maximum time for which a person can be appointed.

Amendment negatived.

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

Page 12, lines 8 to 21—Leave out subclauses (6) and (7) and insert subclause as follows:
(6) The Governor may remove the Commissioner from office for—
(a) misconduct;
(b) neglect of duty;
(c) incompetence;
or
(d) mental or physical incapacity to carry out satisfactorily the duties of the office.

This amendment addresses the issue to which I referred during the second reading debate, that is, that we have a Commissioner (or Director) who is appointed by the Governor, effectively the Government of the day, and who can only be removed by an address of both Houses of Parliament being presented to the Governor praying for the removal of that person. As I indicated during the second reading debate, the Parliament has no involvement in the appointment of the Commissioner or Director (presently described as the Director). It is quite probable that the Government of the day without consulting with any other Party in the Parliament will appoint this particular office bearer and, if that person turns out to be unsatisfactory in any number of respects, then the only way that person can be removed is to come to both Houses of Parliament praying for the removal. That is unlikely to occur because of the highly controversial nature of such a move and the fact that such a move exposes that encumbent to very close public scrutiny and the misconduct that may be alleged.

Consistently with some amendments that have already been carried and other amendments that are to be moved, if the Director is to be subject to the general control and direction of the board, it seems to me to be somewhat inconsistent for the Director (or Commissioner) to be secure in tenure and to have the capacity to thumb his or her nose at the board which, in accordance with the amendments to be considered, is to have the general control and direction of that person. I propose the deletion of these two subclauses and the inclusion of a more usual provision which, I hope, will be accepted. I understand that 'Commissioner' will be amended to 'Director' to make it consistent with earlier amendments.

The Hon. I. GILFILLAN: We have not had long to consider this amendment. I am interested to hear the Attorney-General's point of view. My immediate reaction is that the Director may at times be making decisions and acting in a way which would, if only temporarily, put the Director offside with the Government of the day and, it is reasonable from that point of view, that the tenure of office may be more secure than some others.

Were this measure to remain as it is in the Bill, I have an amendment on file which would affect that method of removal by the joint address of both Houses of Parliament. So, leaving that matter aside, is the Government convinced that the current measure in the Bill must stand?

The Hon. C.J. SUMNER: I do not have specific riding instructions on this. Clauses in the present Bill follow the sections in the current Public Service Act.

The Hon. K.T. Griffin: In relation to the board?

The Hon. C.J. SUMNER: Yes, in relation to the board. However, it seems to me that the Hon. Mr Griffin was reasonably persuasive in his arguments once again and, even if it is the Governor who may remove the Commissioner, the Governor cannot act capriciously because the grounds on which the Governor may remove the Commissioner are specified in the honourable member's amendment, namely, misconduct, neglect of duty, incompetence, or mental or physical incapacity to carry out satisfactorily the duties of the office. I think there is some merit in what the honourable member says, and I will not oppose the amendment at this point, although the Government may reserve the right to re-examine it in another place or at a conference.

Amendment carried.

The Hon. I. GILFILLAN: I do not think that it is appropriate for me to proceed with my amendment.

The Hon. M.B. CAMERON: I move:

Page 12—
Lines 35 to 37—Leave out paragraph *(g)*.
Lines 39 and 40—Leave out 'or (7)'.

I move the amendments standing in the name of the Hon. Mr Griffin.

Amendments carried; clause as amended passed.

Clauses 23 to 25 passed.

Clause 26—'Extent to which Commissioner is subject to Ministerial direction.'

The Hon. M.B. CAMERON: I move:

Page 13, line 30—After the last word in this line insert 'and by the Board'.

This amendment is consequential on the previous amendment that was supported by the Hon. Mr Milne, who is not present at the moment but has indicated that he will support the further amendment on the same basis as the previous amendment—that is, that the Director shall be subject to some direction of the board.

The Hon. I. GILFILLAN: I oppose the amendment. The argument has already been fairly substantially canvassed, and therefore I do not intend to go over it again. It is very hard to ascertain exactly how other members, who are not here, will vote.

The Hon. C.J. SUMNER: I agree that this is consequential to the major principle relating to the role of the board, and that has been determined in principle, so I oppose it but will not divide.

Amendment carried.

The Hon. M.B. CAMERON: I move:

Page 13, line 31—Leave out 'ministerial'.

We believe that there should not be the situation in the Bill at the moment. We believe that 'no ministerial direction' takes away all powers from the Government and Minsiter of the day in relation to what can be some very difficult situations concerning particular public servants. The reality of life is that it is not always possible for Ministers to get on with public servants that they might inherit from previous Governments, and we indicate that taking out the word 'ministerial' is desirable.

The Hon. R.I. LUCAS: I support the amendment. It is consequential on the amendment that we have just dealt with—that is, that the Commissioner can be given a direction now by the Minister and the board whereas, in the Government Bill, he or she was only able to be given a direction by the Minister, and that is why we had ministerial direction.We are now encompassing all directions, whether they be ministerial or board directions, to the Director.

I want to place on record my support for the amendment and also my strong support for the provision in clause 26 (3) *(a)* and *(b)*. It is heartening, as I indicated in my second reading contribution, that we will now see in this legislation the principle established that the ministerial directions that are given to bodies like the Commissioner or Director *(a)* must be communicated to the Commissioner in writing, and *(b)* must be included in the annual report. As I said, I am heartened that the principles have at least been accepted in this legislation and I certainly hope, as I indicated in my second reading contribution, that we will see this principle extended to ministerial directions given to other statutory authorities.

The other comment in relation to clause 26 (and I touched on this very briefly in the second reading stage), is that I originally had some great problems with the concept of the Director. I still have some problems but not as many as I indicated I had upon first reading. On reading clause 26, one finds that the Director is subject to direction by the appropriate minister, and that really there are only limited areas under clause 26 (2) where it says, 'and no ministerial direction shall be given to the Commissioner' in relation to some limited areas relating to particular people, appointments and classifications of particular positions. It would appear that when we turn the page and go through in some detail the whole range of other functions of the Commissioner, the Director is going to be subject to ministerial direction, upon my reading of the Bill, anyway. As I indicated, if that reading is correct, I was somewhat less concerned upon a second reading of the position of Director than I was originally concerned.

Amendment carried; clause as amended passed.

Clause 27—'Functions of the Commissioner.'

The Hon. M.B. CAMERON: I move:

Page 14, lines 3 to 5—Leave out all words in these lines and insert 'to ensure the implementation of the policies, practices and procedures established by the board in relation to personnel management and industrial relations in the Public Service'.

The Opposition believes that this clarifies the situation. I understand that the Hon. Mr Gilfillan has an amendment.

The Hon. C.J. SUMNER: I oppose the amendment but I will not divide.

Amendment carried.

The Hon. M.B. CAMERON: I move:

Page 14, line 46—After '(1)' insert '*(b); (c), (d), (e)* and *(f)*'.

This amendment tidies up the wording. Subclause (2) provides for the determinations of the Commissioner contemplated by subclause (1) and goes on with a number of provisions. Those determinations are related only to paragraphs *(b), (c), (d), (e)* and *(f)*. If we had determination to classify, we would have conflict, so we seek support for this amendment.

The Hon. I. GILFILLAN: I support the amendment.

Amendment carried.

The Hon. M.B. CAMERON: I move:

Page 15, line 14—After 'Act' insert 'or by the board'.

Both this and the next amendment (to clause 29) are consequential on previous amendments relating to powers of the board in relation to the Director.

Amendment carried.

The Hon. R.I. LUCAS: As I indicated earlier, I have a number of questions that I want to pursue at this stage. What is specifically envisaged by the function of the Commissioner as specified in clause 27 (1) *(b)*, in particular, by the phrase 'to maintain appropriate staffing levels'? I understand that it would be a decision of Government with respect to staff ceilings, employment in the public sector and the like. Are we in this function giving the power to the Director in relation to staff ceilings and staffing levels.

The Hon. C.J. SUMNER: It is generally designed to deal with manpower planning with respect to the Public Service and, in particular, occupational groups, to ensure that where certain expertise is needed the Commissioner has a responsibility to ensure that the people with that expertise have the jobs and that plans are made to ensure that there are the proper staffing levels in the appropriate department for that expertise.

The Hon. R.I. LUCAS: How is it envisaged by the Government that the Director will achieve this? Assume that the Government is cutting back its expenditure and seeks to limit employment or impose staff ceilings in relation to the Public Service. What role does the Director of Public Employment take if that Director believes that the appropriate staffing levels are not being maintained by the Government's allocation for the particular Public Service departments?

The Hon. C.J. SUMNER: This is one area where the Director would be subject to ministerial direction. It provides for the Director to do what he can in terms of manpower planning. Obviously, he has no authority to obtain an appropriation of moneys and, if the Government refuses to provide an appropriation, the Director has to do the best that he can within the resources that he has.

The Hon. R.I. LUCAS: Given that sort of possible conflict situation where the Director believes that the Government of the day is not maintaining appropriate staffing levels, under the Bill as envisaged would the Director be able to speak up publicly in relation to staffing levels?

The Hon. C.J. SUMNER: It could be included in the annual report if the Director felt that it was sufficiently important.

The Hon. R.I. LUCAS: I take it from that, given that there is a power or restriction under clause 26 where the Minister is not able to require the material to be included in or excluded from a report that is to be laid before the Parliament, should the Director of Public Employment take umbrage at the staffing levels provided by the Government of the day, the Director would be able to include such unfavourable comment towards the Government of the day and the staffing levels in the report, and the Minister would not be able to direct the Director of Public Employment with respect to those comments.

The Hon. C.J. SUMNER: The only doubt is that as a result of amendments moved by members opposite the word 'ministerial' has been taken out of cl 26 (2). There may be some doubt, then, as to what directions are being referred to in clause 26 (2). Certainly, as originally drafted, what the Director wished to put in his report was something for the Director.

The Hon. R.I. LUCAS: I understand that the totality of what we have done now is that it is clear that the direction, whilst we do not say 'ministerial' specifically, is being given by the Minister on some occasions and the board on others. Therefore, I am putting to the Minister that the Director of Public Employment would be able to put in his annual report unfavourable comment towards the Government of the day in relation to lack of money for appropriate staffing levels. Does the Attorney agree with that proposition?

The Hon. I. Gilfillan: Yes.

The Hon. R.I. LUCAS: The answer is 'yes'. The Hon. Mr Gilfillan give me the answer to that.

The Hon. C.J. SUMNER: I gave the answer on the previous question.

The Hon. R.I. LUCAS: I will not enter into an argument. In relation to clause 27 (1) *(d)*, can the Attorney and his advisers indicate what the Government intends, in particular, concerning 'conditions of service'? Are we talking about the range of benefits—fringe benefits in particular? What is intended with respect to that function?

The Hon. C.J. SUMNER: It deals with what it says—the conditions of service for particular positions.

The Hon. R.I. Lucas: He can determine fringe benefits, and so on.

The Hon. C.J. SUMNER: Presumably—subject to any industrial awards that may be applicable.

The Hon. R.I. Lucas: A number of fringe benefits do not come under industrial awards.

The Hon. C.J. SUMNER: I am not sure what the honourable member has in mind. Industrial awards would cover many of the conditions of service. There may be other conditions of service offered that are not inconsistent with an industrial award. The Commissioner, presumably subject to the direction of the Minister, would have the power to determine the conditions of service. Whether it is fringe benefits or not, I do not know; there may be other conditions applicable to a particular employee.

The Hon. R.I. LUCAS: Hours worked, flexitime and so on would come within the ambit of conditions of service. Are we providing the Commissioner with the function to make determinations about hours of service?

The Hon. C.J. SUMNER: That is another aspect of conditions of service, yes.

The Hon. R.I. LUCAS: Function *(f)* provides:

To determine the educational, vocational or professional qualifications required in respect of positions or classes of positions in the Public Service;

I take it that we are giving the Director of Public Employment the power to determine a different educational standard, say, than might exist at the moment. It is not likely to occur, but in a hypothetical situation the Director of the day might consider that all public servants should have at least one year's experience in a tertiary course. I take it that it will be up to the Director of Public Employment to make those sorts of decisions.

The Hon. C.J. SUMNER: That is correct. It is a continuation of the current arrangement that exists with the Public Service Board.

The Hon. R.I. LUCAS: Function *(h)* provides:

To provide advisory and other services to the various administrative units in relation to personnel management and industrial relations;

As the Minister would be aware, a number of departments already have personnel sections. Function *(h)* provides the Commissioner with power to provide advisory and other services in relation to personnel management and industrial relations. What will be the relationship of the Director and his or her department of personnel management and industrial relations *vis-a-vis* similar sections that already exist within departments? Is it intended, for example, that those personnel sections would be wound down and incorporated in some way into the Director's department of personnel management and industrial relations? Or is it intended that the existing sections would continue their role similar to the current situation?

The Hon. C.J. SUMNER: This function is purely facilitative. It provides the Director with the ability to provide advisory and other services in relation to personnel management and industrial relations. Many departments have their own personnel management and industrial relations groups and advisers. There is no reason why that should not continue. That should be consistent with the decentralisation of decision making responsibilities, and that is part of the thrust of this Bill. It may be that it is appropriate for the Director to give advice to some departments. Some smaller departments in particular do not have all the personnel able to provide advice in these areas. It may be appropriate for the Director to provide advice. I do not really see any substantial change to the existing arrangement.

The Hon. R.I. LUCAS: Function *(k)* provides:

To assist in the recruitment, deployment and redeployment of public employees.

In the definition clause 'public employee' means a person appointed to the Public Service or employed by the Crown or a State instrumentality. Under clause 27 (1) *(k)* the Director will have the power to assist in the recruitment, deployment and redeployment of persons employed not only in Public Service departments as we know them—and the heading for Part III refers to the Public Service (which we have already defined)—but also in relation to statutory authorities. On my reading, that will include all the State instrumentalities about which we had the long debate under clause 4, including the College of Advanced Education, the State Theatre Company, the Health Commission and a whole range of statutory authorities that exist in South Australia. What is the Government's intention in giving the Director power to assist in recruitment, deployment and redeployment of that range of employees?

The Hon. C.J. SUMNER: Just at it states—to assist with those functions. There are redeployment policies throughout the public sector not just within the Public Service but also in relation to public instrumentalities. Some public instrumentalities are already included in redeployment arrangements with the Public Service and as between themselves, and this merely provides that the Commissioner has the role of assisting in organising redeployment where these arrangements have been made and he may assist in recruitment and redeployment. He may only assist—the Commissioner does not have the absolute right to organise recruitment in a statutory authority.

The Hon. R.I. LUCAS: We are saying that a function of the Director is to assist in recruitment at, say, the South Australian College of Advanced Education. If that is the Government's intention, let the statutory authorities like the colleges beware. I would have thought it that was not a role or function of the Director of Public Employment to assist the College of Advanced Education and a range of other statutory authorities in their recruitment procedures.

The Hon. C.J. Sumner: If they request assistance.

The Hon. R.I. LUCAS: There is no question of requesting.

The Hon. C.J. Sumner: It says 'assist'.

The Hon. R.I. LUCAS: The function of the Director is to assist, but there is nothing about assisting after request. It provides that he or she has the function of assisting those bodies in their recruitment procedures. The question is not whether the Director is requested. If, say, the college said, 'I do not want the Director of Public Employment to assist in recruitment procedures', the Director can point to the letter of the Act and say that he has the right to assist in

recruitment. I presume that that means there can be arguments as to whether the Director can sit in or have someone else sit in on the panels if he wants to. There are a range of procedures in regard to which he can offer assistance, whether to the college or to other bodies. Clearly, the Minister is happy with that, and I will not pursue it at this stage, but I want to place on the record that I would have thought that this is the only area in relation to the functions where we stray beyond what I thought was the intention of this clause, and that is in relation to the Public Service, as the heading indicates. We are now heading off into the direction of all the other State Government instrumentalities. I indicate my concern.

Clause as amended passed.

Clause 28 passed.

Clause 29—'Reviews of personnel management.'

The Hon. M.B. CAMERON: I move:

Page 15, line 42—After 'Act' insert 'or the board'.

This amendment is consequential on a previous amendment.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 16—

Line 23—Leave out 'shall' and insert 'may'.

Lines 28 and 29—Leave out 'may be referred to in the annual report of the commissioner' and insert 'shall be referred to in the director's annual report if it has not been sooner referred to by the director in a special report under section 33'.

I will oppose the amendments that the Leader of the Opposition has on file. The justification for my first amendment is that there ought not to be an absolutely unshakable injunction that a Minister must take steps in consequence of agreeing with the Commissioner on a certain recommendation. That may be inappropriate at certain times and, although the wording possibly allows that, it is safer with the word 'may' instead of 'shall'.

The second amendment refers to the word 'may' where it applies to the Minister's obligation to report where he disagrees with the Commissioner's recommendation; the Minister must be obliged to report. It should not be left to his discretion. The reference to section 33 allows the Director to make interim reports so that he does not have to wait to communicate to the Minister and the Parliament by only one annual report.

The Hon. M.B. CAMERON: The Hon. Mr Gilfillan has convinced me by his argument and, in the light of his amendments, I will not proceed with my amendment.

Amendments carried.

The Hon. R.I. LUCAS: Is it correct to say that the review of personnel management by the Director, as envisaged in clause 29, will be only of Public Service departments and not statutory authorities?

The Hon. C.J. SUMNER: It applies to those administrative units covered by Part III, involving those in the Public Service.

The Hon. I. GILFILLAN: I move:

Page 16, lines 28 and 29—Leave out 'may be referred to in the annual report of the Commissioner' and insert 'shall be referred to in the Director's annual report if it has not been sooner referred to by the Director in a special report under section 33'.

I have already canvassed this amendment. I believe it should be an obligation on the Minister to report, and the additional words referring to section 33 provide for the Director to report more often than just once annually.

The Hon. M.B. CAMERON: To facilitate the amendment of the Hon. Mr Gilfillan, I withdraw my amendment on file.

The Hon. C.J. SUMNER: The amendment is opposed by the Government.

Amendment carried; clause as amended passed.

Clause 30—'Investigative powers of Commissioner.'

The Hon. R.I. LUCAS: The Attorney confirmed, in response to my question on clause 29, that the review of personnel management to be conducted by the Director could be conducted only by the Director for what we know as Public Service departments or administrative units. In clause 30 (1) *(a)*, the Director is given power by notice in writing to require a public employee or former public employee to appear before the Commissioner for examination.

My question to the Attorney is: if the reviews of personnel management, referred to in clause 29, are only in relation to Public Service departments, why is there the need to give the Director the power to direct employees of, say, the College of Advanced Education (and this relates to all the other statutory authorities) and also former employees of the college, with no restriction on how long ago, so that under these provisions former employees of statutory authorities or State instrumentalities could be required to appear before the Director?

The Hon. C.J. SUMNER: I think the honourable member's explanation is correct.

The Hon. R.I. LUCAS: What do you mean by that? That was a peremptory response from the Attorney. I do not know what it was meant to indicate. My question was: why are we giving the Director of Public Employment such wide investigative powers? He could be conducting a review of personnel management in, say, the Department of Housing and Construction—

The Hon. C.J. SUMNER: It is not just a review under clause 29. It refers to 'making any investigation for the purposes of this Act'.

The Hon. R.I. LUCAS: What you are saying is that he can investigate statutory authorities and State instrumentalities on other matters?

The Hon. C.J. SUMNER: That is right.

The Hon. R.I. Lucas: Under what provisions?

The Hon. C.J. SUMNER: I am not sure what the honourable member is trying to get at. I have answered the question.

The Hon. R.I. LUCAS: The second question was: under what other provisions can the Director go in and conduct an investigation of a State instrumentality?

The Hon. C.J. SUMNER: For the purposes of the Act.

The Hon. R.I. LUCAS: That is what I said. Under what other provisions in the Act can the Director go into a State instrumentality? This provision says he can do it 'under clause 29'. I understand that. The Attorney-General responded and said that he can also go in under other provisions, and that that is why we are giving him the power to require employees of State instrumentalities (such as the South Australian College of Advanced Education) to not only appear and answer questions but also to produce documents, etc. to an investigation. I can understand, if he is conducting a review in housing, why he should have power to compel housing department (Public Service) employees but why should he have power in relation to other related statutory authorities for the purpose of conducting a review of personnel management?

The Hon. C.J. SUMNER: As I read clause 30, that is the power he has.

The Hon. R.I. LUCAS: The Attorney-General in response to the question said, 'The Director has the power to go in and do investigations other than that envisaged in clause 29 in statutory authorities such as the college, etc.' My question to the Attorney-General was, 'Where in the Act is the Director given power to go into other statutory authorities like the college?' The Attorney-General still has not responded to that question.

The Hon. C.J. SUMNER: For instance, clause 27 (1) *(l)*.

The Hon. R.I. LUCAS: Let us look at that. It provides:

To investigate or assist in the investigation of matters in connection with the conduct or discipline of employees.

'Employee' is defined under clause 4 only in relation to the Public Service. Therefore, it does not apply to State Government instrumentalities. 'Employee' is defined quite specifically to be different from public employees in the provision we are presently looking at. 'Employee' is defined specifically as employees of the Public Service as we know it, and does not include the South Australian College of Advanced Education and all the range of other statutory authorities. So, clause 27 (1) *(l)* is not an example of where the Director can go into a statutory authority and investigate.

The Hon. C.J. SUMNER: There are a number of areas where public employees (that is, public servants) and employees work together side by side, for instance, the Health Commission and the Department of Technical and Further Education. Unless one has the power to investigate all of them in relation, for instance, to a review under clause 29 dealing with personnel management, one can only do half the job. The broad powers of clause 30 are necessary to ensure that the broader aspects of any inquiry of the Commissioner can be carried out covering both so-called public servants in the strict sense of the term and other public employees.

The Hon. R.I. LUCAS: I will not prolong the matter further other than to say that, from what the Attorney-General says, there is no other provision whereby the Director can go into a statutory authority and conduct an investigation. I am heartened by that because I do not think that the Director should have the power to race around to statutory authorities conducting other investigations. I am still most uneasy about the power to require public employees and former public employees not only to give evidence but also to produce documents and so on. That is going way beyond anything that ought to be envisaged in clause 30 of this Bill and I indicate my opposition to it.

Clause passed.

Clauses 31 and 32 passed.

Clause 33—'Annual report.'

The Hon. I. GILFILLAN: I move:

Page 18—

After line 32—Insert subclause as follows:

(2a) The Director may, at any time, submit to the Minister a special report under this section upon any matter relating to personnel management or industrial relations in the Public Service or any part of the Public Service.

Line 34—After 'subsection (1)' insert 'or (2a)'.

As I indicated with earlier amendments, this clause enables the Director to make interim reports and not be obliged only to make one annual report. One will see in clause 33 that, although the report is made in the first instance to the Minister, subclause (3) provides that the Minister shall, within 12 sitting days after receipt of the report, cause copies of the report to be laid before each House of Parliament. That is an important additional avenue for a Director to communicate directly to Parliament. In my vision of the role of the Director, it is essential that we have this open line of communication, with its restrictions, namely, that the Minister must have seen the report prior to its publication or presentation to Parliament. It is a worthwhile amendment and I recommend it to the Committee.

Amendments carried; clause as amended passed.

Clauses 34 to 47 passed.

Clause 48—'Basis of appointment to the Public Service.'

The Hon. M.B. CAMERON: I move:

Page 27, lines 44 and 45—Leave out paragraph *(a)* and insert paragraph as follows:

(a) an appointment may be made on that basis for the purpose of filling a position without seeking applications in respect of the position and, in that event, the appointee shall, on being appointed to the Public Service, be assigned to the position by the appointing authority;.

As the Bill stands the introduction of people from outside the Public Service into contract positions would be extremely difficult, particularly if a person being sought on a confidential basis in the initial stages had to go through the process outlined in that Act. Clearly people would be very constrained as to whether they were willing to have their names put forward.

It cuts across the very purpose of freeing up the Public Service, of bringing in expertise where it is considered appropriate and of seeking people of special ability in the community to assist in upgrading the Public Service. This subject is very dear to the heart of the Hon. Mr Milne and I am certain that he will support the amendment, which deals with the contract employments from outside the Public Service and which enables people to be brought in from outside. I do not believe that it is appropriate for those people to have to go through all the stages and selection processes under this Act. Certainly, there are people who have entered the Public Service on the basis of special expertise, and that is the way we think it ought to stand.

The Hon. I. GILFILLAN: I support with vigor the expressed aim of the Leader of the Opposition that this Bill is to open up and make more flexible conditions of employment in the Public Service. I am certainly not persuaded that subclause *(a)* should be deleted. I do not think that that will add much to it, but I foreshadow support for the deletion of *(c)*, which appears to me to be an unnecessary cluttering up of the process of getting negotiated conditions for employment. However, I think *(a)* is reasonable. It certainly will allow the appointment to reflect merit. Without *(a)*, there would be virtually no safeguard to prevent *ad hoc* patronage or appointment on the spur of the moment by people such as the Chief Executive Officer or others who are making appointments, and I do not see that the inclusion of *(a)*, bearing in mind that most of the selection processes will be by regulation and quite flexible in different sections and different areas, will bind in concrete appointments of all types. I think that it would be an unnecessary deletion and in fact would be a backward step in appointing people on the basis of negotiated conditions.

The Hon. C.J. SUMNER: The Government opposes both propositions and believes that the Bill should remain as it is. It provides sufficient flexibility to enable people to be appointed from outside subject to negotiated conditions, asserts the rights of existing public employees and also provides that the well recognised selection processes should be gone through, even though an appointment may be made from outside subject to negotiated conditions. I oppose both the Hon. Mr Cameron's and the Hon. Mr Gilfillan's amendment.

The Hon. K.L. MILNE: I think that while we are tidying up these sorts of procedures we ought to tidy them up properly. It seems to me that it is an opportunity to shorten the procedures for getting people under contract from outside the Public Service. Either you want them or you do not, and if the Public Service wants them—and I believe it does—it wants to take advantage of expertise in the private sector, just as the private sector frequently seeks to take advantage of the expertise in the Public Service, so there is a switching from one to the other.

However, I see no point in asking somebody or having somebody in mind that you are not quite sure about. If you are not sure about them, do not ask them. There will be somebody in the Public Service for sure. But, if you are sure that you want somebody and you are going out to get him or her, then you make inquiries beforehand. You would probably quietly mention the matter to them and perhaps introduce them to one or two people and do a little bit of

spade work on the side before anybody had to make a commitment. No doubt the Director and the public servants in the department concerned could discuss the matter with those likely to want the job. This could be done very properly without causing somebody to give up a job in the private sector and take the risk of not being appointed, yet still having to go through the grill of the Public Service procedures. It is very much more risky seeking a job in the Public Service from the private sector, because at some stage one's hand has to be declared and what one is doing will be known.

The Hon. M.B. Cameron: You could potentially lose the first job.

The Hon. K.L. MILNE: Yes, there is a big potential for losing the job one already holds and not getting a job in the Public Service because of a complaint or an appeal. Those matters should be sorted out in a different way altogether. Perhaps it could be put into the regulations. However, I would like to see subclause (4)*(a)* deleted for that reason. There is a danger of putting people one really wants through an unnecessary grilling.

The Committee divided on the amendment:

Ayes (9)—The Hons M.B. Cameron (teller), R.C. DeGaris, Peter Dunn, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, K.L. Milne, and R.J. Ritson.

Noes (8)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, M.S. Feleppa, I. Gilfillan, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons J.C. Burdett and L.H. Davis.

Noes—The Hons J.R. Cornwall and C.W. Creedon.

Majority of 1 for the Ayes.

Amendment thus carried.

The Hon. M.B. CAMERON: I move:

Page 28, lines 1 to 10—Leave out paragraph *(c)*.

The Hon. C.J. SUMNER: We oppose that, but will not divide on it.

Amendment carried.

The Hon. R.I. LUCAS: Is the effect of subclause (4) *(b)* that ministerial officers hired under the contract system at present would have to be approved by the Director of Public Employment?

The Hon. C.J. SUMNER: No, they would be hired in the same way as at present.

The Hon. R.I. LUCAS: How is that?

The Hon. C.J. SUMNER: No provision in this Bill applies to those people. They are not under the current Public Service Act.

The Hon. R.I. LUCAS: They are not covered at all?

The Hon. C.J. SUMNER: Apparently not.

Clause as amended passed.

Clauses 49 to 75 passed.

Clause 76—'Immunity from liability.'

The Hon. M.B. CAMERON: I move:

Page 42, line 20—leave out 'or purported exercise'.

The Hon. C.J. SUMNER: The Government opposes this amendment, which restricts the immunity that is given to a public employee—quite unjustifably. One may have a public employee who has certain investigatory powers under the legislation and who, acting in good faith goes beyond the powers that he has in investigation. The matter is challenged and taken to the court. It is found that, although he is acting in good faith, and according to what he considers to be the law—and might be doing it on advice from the Crown Law officers—he does not have the immunity from being sued that this Bill provides for. Therefore, the purported exercise should also be included in the immunity, on advice by Parliamentary Counsel that this is a normal clause in these sorts of circumstances.

The Hon. K.T. GRIFFIN: Whilst the clause itself is in a form that is not uncommon, periodically I have moved for the deletion of the words 'or purported exercise' because I do not think that in some instances Government office holders ought to be able to rely on the exercise in good faith of a power or function that may ultimately be not in accordance with the law.

For that reason I do not think it is appropriate, in this context, to deal specifically with the purported exercise of official duties but merely to give an indemnity if the act or omission was done or made in the exercise of official powers or functions. That is really all that I can add to the debate. I think that the issue is a fairly clear one.

The Hon. C.J. SUMNER: For the reasons that I have stated, I think it would be quite unfair to public employees in many situations for that to apply.

The Hon. I. GILFILLAN: Not having confidence in my own opinion on this, I vote with the Government. The Attorney has heard the argument.

Amendment negatived; clause passed.

Clauses 77 to 80 passed.

New clause 80a—'Confidentiality of information as to pecuniary interests disclosed under Act.'

The Hon. I. GILFILLAN: I move:

Page 43, after line 28—Insert new clause as follows:

80a. No person shall communicate any information as to another's pecuniary interests disclosed by the other in pursuance of this Act except insofar as the communication is necessary for the purpose of—

(a) keeping proper records of the information disclosed;

(b) reviewing the information and reporting upon the existence or otherwise of any conflict of interests in accordance with this Act;

(c) giving directions with a view to resolving a conflict of interest in accordance with this Act; or

(d) taking disciplinary action under this Act, removing a person from office under this Act, or conducting legal proceedings of any kind.

Penalty: $2 000.

This clause is aimed at protecting those who are obliged in this Bill to give details of pecuniary interests. It is aimed at confidentiality but allows for its effectiveness.

The Hon. M.B. CAMERON: The Opposition is very much persuaded by the arguments of the Hon. Mr Gilfillan.

New clause inserted.

Remaining clauses (81 to 83) and first schedule passed.

Second schedule.

The Hon. M.B. CAMERON: I move:

Page 47—Leave out paragraph *(k)* of subclause (1).

This is consequential on a previous amendment.

Amendment carried; second schedule as amended passed.

Third schedule.

The Hon. M.B. CAMERON: I move:

Page 50—Leave out clause 11 (2) '$1 000' and insert '$2 000'.

This amendment effectively doubles the possible penalty in relation to offences under this Act, and I ask members to support it.

The Hon. I. GILFILLAN: I am persuaded by the eloquence and powerful logic of the Leader of the Opposition and therefore support the amendment.

Amendment carried.

The Hon. M.B. CAMERON: I move:

Page 50, after subclause (1)—Insert subclause as follows:

(1a) The report of the Presiding Officer must—

(a) in the case of the Promotion and Grievance Appeals Tribunal—refer to the number and nature of grievance appeals that were determined during the period to which the report relates to be frivolous or vexatious; and

(b) in the case of either Tribunal—refer to any matters stipulated by the regulations.

It is believed that it would be helpful to people looking at the report to know and understand from how many people appeals of a frivolous or vexatious nature are received.

The Hon. I. GILFILLAN: We oppose the amendment.

The Hon. C.J. SUMNER: The good sense of the Hon. Mr Gilfillan has been manifestly demonstrated by his last remark. I am pleased to note that he and the Government are in agreement in opposing this quite ridiculous amendment.

Amendment negatived; third schedule as amended passed.

Fourth schedule passed.

Title.

The Hon. M.B. CAMERON: I move:

Page 1, lines 6 and 7—Leave out 'establish principles governing management and employment in the public sector' and insert 'provide for the efficient and effective management of the public sector and the provision of public services of the highest practicable standard'.

This amendment is aimed at ensuring that it is understood what the Public Service is really all about and that it is there to provide services to the public. It is important in the Opposition's opinion to place this in the title of the Bill and make it very clear that, while I suppose the Bill could be said to be about management and employment in the public sector, its purpose is to provide services to the community.

The Hon. I. GILFILLAN: I support the amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment because it does not seem necessary. It is already covered in the general principles in clause 5. However, in view of the Hon. Mr Gilfillan's quite unreasonable attitude on this matter, I have no alternative but to oppose the amendment. However, there is no point in calling for a division.

The Hon. K.L. MILNE: I realise what the Opposition is trying to do, but I do not think that it should be written into the title. There is a special way of writing titles. We are all on the same wave length, but I think the title is sufficient as it stands. I am not displeased that the Bill is going to a conference. I indicate now that my preference is for the title to be as worded by Parliamentary Counsel.

The Hon. M.B. Cameron: He did ours, too.

The Hon. K.L. MILNE: It does not sound as professional as the original. I think there is a special way of writing titles. On balance, I support it as it stands.

Amendment carried; title as amended passed.

Bill reported with amendments.

Bill recommitted.

Clause 4—'Interpretation'—reconsidered.

The Hon. M.B. CAMERON: I move:

Page 2, line 29—Leave out 'a nominee of that Minister' and insert 'the Commissioner'.

I accept that there was some discussion previously about a further broadening of the original concept. Again, this may be too restrictive but, rather than hold up the Bill on this small point, as I would expect the Bill to go to a conference if there is not an election in the meantime (and I think that the Government will be sorely tempted now—it is the first time it has shown any sign of being slightly in front in any poll in the past three years, but that is irrelevant to the debate and I will not pursue it), I suggest that the Hon. Mr Milne support the amendment at this stage on the understanding that either prior to or at the conference we can seek a better form of words that will cover the situation about which he and I are so concerned: that is, there is too much freedom in relation to this matter.

The Hon. C.J. SUMNER: The Government opposes this amendment but, as the Opposition seems to have once again nobbled the Hon. Mr Milne, we have no alternative but to bow to the weight of numbers.

Amendment carried; clause as further amended passed.

Bill reported with a further amendment; Committee's report adopted.

Bill read a third time and passed.

NATURAL GAS (INTERIM SUPPLY) BILL

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

The Hon. FRANK BLEVINS (Minister of Labour): I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

It is with considerable disappointment that I bring this Bill before the Council today. When this Government took office it took over the responsibility to do something about the very difficult situation in relation to the supply and pricing of natural gas to this State. The first step was the establishment of the Advisory Committee on Future Electricity Generation Options, the Stewart committee, which reported in May 1984, defining the supply, price and contractual problems and recommending a strategy for their resolution.

The Government accepted that strategy and established the Future Energy Action Committee and under it a Gas Committee to pursue its implementation. For more than 12 months the Government has been engaged in negotiations with the Cooper Basin producers in an attempt to reach agreement on new arrangements which will extricate the State and producers from those difficulties. At times agreement has seemed close, but on each occasion fundamental differences have frustrated the completion of satisfactory arrangements.

The primary problem is being able to guarantee supply. The reason that that is a problem is not the quantity of gas reserves which are physically available to meet the needs of the Adelaide and Sydney markets for the next few years. The real problem is the contractual arrangements which require that sufficient reserves of gas are established to supply the Sydney market until the year 2006 before further supply is available to Adelaide after the present gas sales contract with the Pipelines Authority of South Australia expires at the end of 1987.

Those supplies are not at present guaranteed and the government is now in the situation, with the major gas users such as ETSA, Adelaide Brighton Cement and a number of other industrial users, requiring about two years to convert plant to alternative fuels, where the matter cannot be left unresolved and a solution must be achieved unilaterally. The Government would certainly prefer a negotiated solution and I would still not rule that out either before or after the Bill has been passed by this Parliament.

Before explaining why agreement has not been achieved, I would like to remind the Council of some of the history of this matter. In December 1963 the first Cooper Basin gas discovery was made at Gidgealpa. In 1966 the Moomba field was discovered and proved by 1967 to contain sufficient reserves to develop for supply to Adelaide. Construction of a pipeline, however, could only be justified if a large consumer could be obtained.

The Government convinced ETSA that it should be that customer and with the development of Torrens Island as a gas rather than an oil fired power station, South Australia's electricity tariffs escaped the OPEC price shocks of the 1970's. Contracts were drawn up between the producers and

each of the South Australian users, including SAGASCO, Adelaide Brighton Cement, some relatively small industrial users and ETSA.

The State Government legislated to establish the Pipelines Authority of South Australia and gas deliveries to these users began in 1969. During 1971 the producers entered into a letter of agreement with AGL to supply the Sydney region to the year 2006, subject to the proving of adequate gas reserves. By September 1972, sufficient reserves were established to satisfy the lower schedule B requirements and the letter became binding.

The South Australian Government supported this expansion because it would mean throughput of sufficient gas to produce the required quantities of ethane and gas liquids for a petrochemical scheme and liquids project in South Australia. The Adelaide market was, at that time, catered for until 1991, 20 years, and there seemed every prospect of significant future discoveries. But, by 1973, SANTOS was in financial difficulty. The impact of inflation had been serious and the Australian Resources Development Bank, which was financing SANTOS, would not extend any further credit unless more realistic price review arrangements were attached to the AGL letter of agreement.

There were inefficiencies with production stemming from the 16 fields capable of producing gas being separately owned in different proportions by nine parties. With two market areas to be satisfied from separately dedicated fields, it had become clear that setting up a single production unit would avoid fragmented and expensive separate developments and thus achieve considerable cost savings. The producers approached the South Australian Government seeking a price increase.

There followed from that a comprehensive review of arrangements which implemented the present contractual structure and the producers received a price increase from both PASA and AGL. The arrangement that the higher schedule A volumes of the AGL letter of agreement must be established before gas can be supplied to PASA under the future requirements agreement is only modified by the requirement that 213.5 BCF of fuel gas and ethane feedstock are reserved for use by a petrochemical project ahead of fulfilling all other contracts. Subsequently there was a significant downgrading of reserves with reserves estimates at the end of the 1970's indicating a substantial shortfall on schedule A. Since that time there have been several developments which have had a significant bearing on the Government's approach to this matter.

The first was the price arbitration handed down in September 1982 which gave the producers an 80 per cent increase in the price of gas. The Liberal Government of the day was facing an election and negotiated the 'Goldsworthy agreement' to phase in the increase over the course of 1982, but granted the producers increases totalling 165 per cent of the pre-arbitration figure over the period to the end of 1985. That the prices set out in the Goldsworthy agreement were excessive was clearly demonstrated in 1983 when a 3 year price of $1.01 per gigajoule was handed down in the next AGL arbitration.

This Government has been bound by the 'Goldsworthy agreement' since it took office, but has sought in its negotiations with the producers some amelioration of the 1985 price of $1.62. In April 1984 the Stewart committee identified a number of difficulties with the PASA future requirements agreement and recommended that steps should be taken to resolve the future gas supply uncertainties.

Specifically; the implementation of gas sharing with AGL (supported by legislation) to permit continued gas supplies to PASA beyond 1987 from present reserves; revision of the future requirements agreement to remove features which may require PASA to purchase more gas than it is able to sell, and incorporate satisfactory arrangements for long term supply, pricing and exploration requirements; further discussions and investigations to define supply possibilities from Queensland and Bass Strait with respect to quantities and costs; and continued planning for possible conversion of some Torrens Island gas fired plant to burn imported black coal if satisfactory price and supply arrangements for natural gas cannot be achieved.

Legal advice obtained by the Government's Future Energy Action Committee subsequently indicated that legislation to implement gas sharing arrangements with AGL would be unlikely to withstand a challenge under section 92 of the Commonwealth Constitution. Negotiations with the producers to revise the future requirements agreement have been protracted but have not achieved a solution. This has impacted on the Government's ability to make alternative arrangements for supply from Queensland or Bass Strait because, if substantial contracts were signed for supply from either of those sources and gas subsequently became available from the Cooper Basin region of South Australia, PASA would have a contractual obligation to take up to 80 per cent of 100 petajoules per annum, if that quantity were available, at a price up to 110 per cent of the price of fuel oil subject to arbitration. That attaches a considerable commercial risk to entering into alternative supply arrangements if the Cooper Basin producers cannot guarantee supply.

In April 1984, the Stewart committee cited a producers forecast for September 1984 of Cooper Basin reserves which indicated that about five years supply would be available to PASA for supply under the future requirements agreement. The producers subsequently advised AGL that schedule A volumes were available but AGL have not accepted that declaration and an independent expert has been appointed under the terms of the AGL letter of agreement to determine the matter. The independent expert's report will be binding on both the producers and AGL, and the Government has arranged with AGL and the producers for the independent expert to also report on the quantity of gas which could be available to PASA from petroleum exploration licences 5 and 6 when the matter is determined.

The independent expert is not expected to report until mid-December 1985. The Government and ETSA have proceeded with planning for a possible conversion of 400 megawatts of Torrens Island generating plant to black coal and will further consider that matter when the independent expert reports in the light of expected future gas availability at that time. In deciding to legislate at this time, the Government obviously has serious concerns about the reserves situation and is not prepared to allow a situation to develop where the independent expert reports, determining that no gas is available to the Adelaide market after 1987 from the Cooper Basin region, and no alternative arrangements for ongoing supply after that time are in place.

The Government and the producers were originally discussing long term supply arrangements but the Government has been obliged to consider only a five year contract because of uncertainties about reserves. Various figures and estimates have been given to the Government, the Stewart committee and the Future Energy Action Committee since 1983. The producers have also changed the assumptions on which they calculate reserves.

In the derivation of figures from mid-1984, the producers have reduced the 'porosity' assumption for the structures from 9 per cent to 8 per cent. However, the Department of Mines and Energy believes that the correct figure is over 10 per cent for many of the fields. The effect of reducing the 9 per cent porosity figure to 8 per cent, rather than perhaps raising it, is a significant apparent improvement in reserves. But these 'additions' are gas reserves on paper, they are not new discoveries.

The department has identified a range of differences between their estimates and the producers' estimates, some of which are quite large, resulting from differences of opinions on the 'porosity cut-offs' for the gas reservoirs and other technical aspects such as 'mapping interpretation' of the structures and disagreement on the 'materials balance' estimates on the reservoirs. The producers have also adjusted the so-called 'abandonment pressure' of their fields in estimating reserves. Again the result is an increase on paper.

However, the 'abandonment gas' even though it is included, would probably not be considered producible at today's prices. Furthermore, by adjusting the 'drill stem cutoff' test parameters, the producers have also included reservoirs for which the gas flow rate was previously considered uneconomic. For these reasons, and a number of other technical concerns, I am advised that we cannot yet be confident about the reserves. These concerns cannot be satisfactorily resolved by discussion and agreement between the Department of Mines and Energy and the producers because the problem is contractual and the only assessment of reserves which will affect the contractual situation is the report of the independent expert appointed under the AGL letter of agreement.

The producers, although asserting that there is no reserves problem, are not prepared to guarantee supply. The negotiating team concentrated on that aspect but could not achieve a satisfactory result. The State must have a demonstrated and secure supply to enable it to enter into a contract. Therefore the State has had no option but to use the petrochemical gas and ethane feedstock as the backup for a supply arrangement.

If a satisfactory determination of schedule A is obtained and there are additional reserves or new discoveries, the State will not need to draw on the petrochemical fuel gas and feedstock. The result could be a significant delay in the target date for a petrochemical project. However, if the reserves are insufficient, the State will have to draw on the fuel gas and feedstock. If it is necessary to draw on the ethane feedstock, the possibility of a petrochemical project will be very much at risk.

Establishment of this supply arrangement, providing Adelaide's present projected requirements for five years, will provide the necessary breathing space to enable the Pipelines Authority to enter into investigations and negotiations for further supplies from the Cooper Basin and elsewhere. The Government attempted to negotiate an agreed arrangement for a five year supply, based on the backup of the petrochemical fuel gas and ethane, but the producers raised certain legalities which they asserted prevented them from entering into such a contract. The Government has been left with no other option than to proceed with this legislation.

The detail of the legislation is necessarily quite complex, but what it will achieve is quite simple. The Bill reserves a quantity of gas, which is the difference between the maximum contract quantities set out in the first schedule to the present Gas Sales Contract for the years 1985, 1986 and 1987, and the actual amount taken by PASA from 1 January 1985; and the gas reserved by the deed of covenant and release for a petrochemical industry in this State. In addition, it makes provision for ethane to be supplied, if necessary, as if such quantities formed a part of the quantity of reserved gas.

That gas will be supplied in annual contract quantities of up to 100 petajoules in 1985, 95 petajoules in 1986 and 1987, and 100 petajoules thereafter, as agreed between PASA and the producers but failing agreement, as determined by the Minister. The price of gas will remain at $1.62 per gigajoule for the currency of the 'Goldsworthy agreement', that is, until the end of 1985. From then and until the next AGL arbitration is handed down, the price will be set according to a formula based on the last arbitrated price of $1.10 in 1982 and escalated to take account of inflation. That will give effect to a reduction in price of about 10 cents in 1986.

When the AGL arbitration is handed down, the price will be set at the AGL arbitrated price. That will remove any disparity between the field gate prices applying to the Sydney and Adelaide markets. The Bill voids the PASA future requirements agreement, allowing the Pipelines Authority of South Australia to enter into new contracts with the Cooper Basin producers, or gas producers elsewhere, such as South-West Queensland or Bass Strait for further supplies to the Adelaide market, without the commercial risks that would apply if that document remained. In so saying, I would like to make it clear that this Government will only enter into new contracts for gas which is proven to be available and not for gas which has yet to be found.

The Bill provides for a restriction on the production of gas in South Australia for supply to contracts other than those existing at the time of the commencement of this Act, without the approval of the Minister. This provision will ensure that South Australia maintains a right to ensure that all gas discovered in this State, with the exception of that which is already committed, can be applied to South Australia's energy needs. This Bill must be enforceable and to ensure that the Minister will be able to deal with a contravention or failure to supply by varying, suspending or cancelling a petroleum production licence.

A person who contravenes or fails to comply with a provision of the Act will be guilty of a summary offence with a penalty of $1 million and $100 000 per day in respect of a continuing offence. These provisions may seem unnecessarily punitive, but given the possible profitability of an offence, they are necessary to ensure compliance. It will be a defence to a charge of an offence against this Act for the defendant to prove that the circumstances alleged to constitute the offence arose from circumstances beyond its control.

The Bill contains provision to ensure that no action can be taken or civil liability incurred by the Crown, the Minister, the Pipelines Authority, a member of the Pipelines Authority, or an employee, or a person acting on behalf of the Crown, or the Pipelines Authority in relation to the operation of the Act. The producers are protected from civil liability in complying with the Act and there is no right to enforce a mortgage or other security arising by reason of compliance with the Act or an obligation imposed under it. Attached to the Bill is a schedule setting out the necessary technical and administrative arrangements for supply of gas under the Act.

As I stated at the outset, I am disappointed, indeed distressed, that a satisfactory agreement with the Cooper Basin producers has not been achieved. I certainly do not close off the possibility of such an agreement yet being achieved. However, the Government has a responsibility, indeed an obligation, to ensure that South Australia's necessary gas supplies are guaranteed at a price which is reasonable. The Government must ensure that the matter is resolved.

Clause 1 is formal.

Clause 2 provides for the commencement of the Act. The Act, other than section 12, will operate from the date of introduction in another place. This provides a safeguard against contracts for supply of gas entered into before the Governor's assent to gain the benefit of section 10 (1) *(b)*. However the offence provision (section 12) will not operate retrospectively.

Clause 3 sets out definitions.

Clause 4 reserves certain quantities of gas from the Cooper Basin region. Ethane, butane and propane are not reserved by this clause. Ethane is reserved by clause 7.

Clause 5 obliges the Cooper basin produders to supply the reserved gas to the Pipelines Authority of South Australia. Detailed terms and conditions as to the supply of the gas are set out in the first schedule.

Clause 6 discharges the gas sales contract.

Clause 7 sets out the price to be paid for the gas. Subclause (4) requires the authority to pay for 80 per cent of the gas required to be supplied in a year whether it takes the gas or not.

Clause 8 reserves ethane but allows the producers to include ethane with gas supplied to AGL and to the Authority to bring that gas to the required quality. The producers may also use ethane as fuel at Port Bonython and for any other purpose with the approval of the Minister.

Clause 9 ensures that the gas supplied to the authority is used for the benefit of the State.

Clause 10 makes the PASA future requirements agreement void.

Clause 11 requires that future production of natural gas must be approved by the Minister. The provision is subject to qualification set out in subclause (1).

Clause 12 gives the Minister power to alter, suspend or cancel the petroleum production licence of a producer who fails to comply with the Act.

Clause 13 is an offence provision.

Clause 14 provides a defence in the case of circumstances beyond the control of the defendant.

Clause 15 limits the liability of the Crown, the authority and the producers.

The first schedule sets out the terms and conditions on which gas is to be supplied under the Act.

The second schedule delineates the Cooper Basin region.

The Hon. M.B. CAMERON secured the adjournment of the debate.

ADJOURNMENT

At 1.7 a.m. the Council adjourned until Wednesday 6 November at 2.15 p.m.